

# OATHS ORDINANCE 1939-1960.\*

1729

## An Ordinance relating to Oaths, Affirmations, Declarations and Attestations.

### PART I.—PRELIMINARY.

1 This Ordinance may be cited as the *Oaths Ordinance* 1939-1960.\*

Short title.  
Short title  
amended:  
No. 17, 1938,  
s. 4.

Repeal.

2.—(1.) After the commencement of this Ordinance, the Ordinances and Acts of the State of South Australia mentioned in the First Schedule to this Ordinance shall, to the extent therein expressed, cease to apply to the Northern Territory.

(2.) The *Affirmations Ordinance* 1921 and the *Commissioners for Affidavits Validation Ordinance* 1925 are repealed.

3 This Ordinance is divided into Parts, as follows:—

Parts.

Part I.—Preliminary.

Part II.—Promissory Oaths, Affirmations and  
Declarations.

Part III.—Affidavits.

Part IV.—Appointment of Persons to take Declara-  
tions and attest Documents.

Part V.—Forms of Oaths.

Part VI.—Miscellaneous.

4. In this Ordinance, unless the contrary intention appears—

Definitions.  
Amended by  
No. 13, 1953,  
s. 2; and  
No. 14, 1960,  
s. 2.

“affidavit” includes any affirmation, statutory or other declaration, acknowledgment or examination;

\* The *Oaths Ordinance* 1939-1960 comprises the *Oaths Ordinance* 1939 as amended. Particulars of the Principal Ordinance and of the amending Ordinances are set out in the following table:—

Ordinance.	Number and Year.	Date notified in Commonwealth Gazette.	Date of Assent by Administrator.	Date of Commencement.
<i>Oaths Ordinance</i> 1939 ..	No. 23, 1939	16th November, 1939	..	16th November, 1939
<i>Oaths Ordinance</i> 1952 ..	No. 2, 1952	..	23rd January, 1952	23rd January, 1952
<i>Oaths Ordinance</i> 1953 ..	No. 13, 1953	..	29th June, 1953	29th June, 1953
<i>Oaths Ordinance</i> 1960 ..	No. 14, 1960	..	9th September, 1960	9th September, 1960

*Oaths Ordinance 1939-1960.*

“Australian diplomatic or consular agent” includes a person appointed to hold or act in any of the following offices (being an office of the Commonwealth) in a country or place outside Australia:—

- (a) ambassador;
- (b) high commissioner;
- (c) minister;
- (d) head of mission;
- (e) commissioner;
- (f) *chargé d'affaires*;
- (g) counsellor, secretary or *attaché* at an embassy, high commissioner's office, legation or other post;
- (h) consul-general;
- (i) consul;
- (j) vice-consul;
- (k) trade commissioner; and
- (l) consular agent;

“authorized” means authorized by the Administrator by notice in the *Gazette* under Part IV. of this Ordinance;

“bank” means any person or company lawfully carrying on the business of banking, and includes any savings bank or banking institution established in the Territory under or in pursuance of any law in force in the Territory;

“bank manager” means a person appointed to take charge of the head or any branch office in the Territory of a bank;

“consular agent” means a consul-general, consul, vice-consul, pro-consul or consular agent, or acting consul-general, acting consul, acting vice-consul, acting pro-consul or acting consular agent;

“Court” includes any Judge or Justice and any board of inquiry or other tribunal and any arbitrator or person having authority by law or consent of parties to take evidence on oath;

“diplomatic agent” means an ambassador, envoy, minister, *chargé d'affaires*, or secretary of an embassy or a legation;

“instrument” means instrument or document in writing;

- “ Judge ” means the Judge of the Northern Territory and includes the member or members of any Court having authority to admit evidence;
- “ Justice ” means a Justice of the Peace;
- “ notarial act ” includes any act, matter or thing which, in the Territory or elsewhere, a notary public can attest or verify or otherwise do by or under any law or custom or otherwise for the purpose of being used in the Territory;
- “ oath ” includes affirmation and declaration;
- “ postmaster ” means a person appointed to take charge of a post office in the Territory;
- “ Schedule ” means a Schedule to this Ordinance.

**PART II.—PROMISSORY OATHS, AFFIRMATIONS AND DECLARATIONS.**

- 5. The oath of allegiance shall be in accordance with the form in the Second Schedule. Form of oath of allegiance.
- 6. The judicial oath shall be in accordance with the form in the Third Schedule. Form of judicial oath.
- 7. The judicial oath shall be the oath of office to be taken by a Justice of the Peace or a Special Magistrate, who shall take this oath and also the oath of allegiance in the manner prescribed by the *Justices Ordinance 1928-1939*. Oaths to be taken by Justices and Special Magistrates.
- 8. Any person may make an affirmation in lieu of taking any oath of allegiance or judicial oath. Affirmation in lieu of oath.
- 9. Every affirmation under this Part shall commence “ I, do solemnly, sincerely and truly affirm ” and shall proceed in the same words as the oath required or permitted by law under the same circumstances, omitting all words of imprecation or calling to witness, and the attestation of any affirmation in writing may be in the same words as the jurat of an affidavit substituting the word “ affirmed ” for the word “ sworn ”. Form of affirmation.
- 10. Every person authorized to administer an oath shall have authority to take an affirmation under this Part. Persons entitled to take affirmations.
- 11. If any person declines or neglects to take any oath or affirmation required to be taken by him under any law for the time being in force in the Territory, he shall, if he has already entered on the office in relation to which the oath or affirmation is required, vacate that office, and, if he has not entered on that office, he shall be disqualified from entering on it, but a person Penalty on not taking prescribed oath.

shall not be compelled in respect of the same appointment to the same office to take an oath or make an affirmation more than once.

Prohibition on use of oath of allegiance.

12. Except as expressly required by some law in force in the Territory, a person shall not be required or authorized to take the oath of allegiance or any oath substituted for that oath or to make any affirmation or declaration to the like effect of that oath.

### PART III.—AFFIDAVITS.

Affidavits may be sworn before Justices.

13. Any affidavit required for the purposes of any proceeding or matter before any Court may be sworn in any place in the Territory before any Justice without the issue of any commission for taking affidavits.

Appointment of Commissioners for Affidavits.

14.—(1.) The Judge of the Northern Territory may, by commission under the seal of the Supreme Court, appoint such persons as he thinks fit, whether within the Territory or elsewhere, to be Commissioners for Affidavits and may revoke any such appointment at pleasure.

(2.) An application for appointment as Commissioner for Affidavits shall be accompanied by a fee of One pound.

(3.) A Commissioner for Affidavits may administer an oath and may take affidavits for the purposes of any proceeding or matter before any Court.

(4.) Where an affidavit is taken before a Commissioner for Affidavits who is a Clerk of a Local Court, the signature of the Clerk shall be authenticated by the seal of the Local Court.

(5.) Any person who, immediately prior to the commencement of this Ordinance, was authorized to take affidavits in the Supreme Court shall be deemed to have been appointed a Commissioner for Affidavits under this Ordinance, and any reference in any law in force in the Territory to a Commissioner for taking affidavits in the Supreme Court shall be deemed to include a reference to a Commissioner for Affidavits appointed under this Ordinance.

Judicial notice of signature of person before whom affidavit is sworn.

15. Judicial and official notice shall be taken of—

(a) the signature of every person before whom affidavits may be sworn under this Part if the signature is contained in or subscribed to any affidavit purporting to be sworn before that person; and

(b) the seal of any Local Court attached to any such affidavit.

16.—(1.) Any person who wilfully makes any false statement in any affidavit sworn under this Part shall be guilty of an indictable offence. Offences.

Penalty: Imprisonment for four years.

(2.) Any person who wilfully takes any affidavit, not being lawfully authorized to do so, shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for one year.

**PART IV.—APPOINTMENT OF PERSONS TO TAKE DECLARATIONS AND ATTEST DOCUMENTS.**

17.—(1.) The Administrator may, by notice in the *Gazette*, authorize such postmasters, bank managers and members of the Police Force of the Territory as he deems necessary to take declarations and attest the execution of instruments pursuant to this Part. Authorization of persons to take declarations and attest instruments.

(2.) The authorization of any person under this section shall be terminated by—

- (a) his death;
- (b) his ceasing to be a postmaster, bank manager or member of the Police Force (according to the nature of the qualification by virtue of which he was authorized); or
- (c) the termination of his authorization by the Administrator by notice in the *Gazette*.

18.—(1.) Where, by or under any law in force in the Territory (other than a Commonwealth Act or regulations thereunder), it is provided— Who may take declarations and attest instruments.

- (a) that any declaration shall or may be made before a justice of the peace or some other person or authority; or
- (b) that any instrument shall or may be signed or executed in the presence of, or be attested or witnessed by, a justice of the peace or some other person or authority,

that provision shall, subject to sub-section (2.) of this section, be deemed to be complied with if the declaration is made before, or the instrument is signed or executed in the presence of, or attested or witnessed by, as the case may be, either—

- (i) a Justice of the Peace for the Territory, or, if that law so permits, for any other part of the Commonwealth or for any other country, or such other person or authority; or
- (ii) any authorized postmaster; or

- (iii) any authorized bank manager; or
- (iv) any authorized member of the Police Force of the Territory.

(2.) The name of the town or other place where the office of an authorized postmaster, bank manager or member of the Police Force, as the case may be, is situated or where he is stationed shall be stated after his signature and description on any declaration made before, and any instrument signed or executed in the presence of, or attested or witnessed by, him.

Meanings of terms in declarations and instruments.

19. Where, in or upon any declaration or instrument the words "authorized postmaster", "authorized bank manager" or "authorized police officer" appear after any signature, they shall, unless the contrary intention appears, be taken to mean authorized postmaster, or authorized bank manager, or authorized member of the Police Force of the Territory, as the case may be, as defined in this Ordinance.

Ordinance to apply notwithstanding provisions of any State Act, Ordinance or law.

20. The provisions of this Part shall apply notwithstanding the provisions of "The Real Property Act, 1886", of the State of South Australia in its application to the Territory, or any other law in force in the Territory (other than a Commonwealth Act or regulations thereunder).

#### PART V.—FORMS OF OATHS.

Oaths before Supreme Court in criminal trials.

21.—(1.) Subject to this Ordinance, and unless the person to whom it is proposed to administer an oath requests that the oath be administered in some other manner, an oath taken by a witness in a criminal trial before the Supreme Court shall be administered and taken in the manner provided in this section.

(2.) The person taking the oath shall, standing up, hold a copy of the Bible, or the New Testament or the Old Testament, in his hand and, after an oath in accordance with the form in the Fourth Schedule has been tendered by the officer administering it, shall utter the words "So help me God!":

Provided that no such oath shall be deemed to be illegal or invalid by reason of any breach of this section.

Ordinary manner of taking oath in other cases.

22.—(1.) Subject to this Ordinance, and unless the person to whom it is proposed to administer an oath requests that the oath be administered in some other manner, an oath, whether in judicial proceedings or otherwise, shall (except in the case of an oath taken by a witness in a criminal trial before the Supreme Court) be administered and taken in the manner provided in this section.

(2.) The person taking the oath shall, standing up, hold a copy of the Bible, or the New Testament or the Old Testament, in his hand and, after an oath in accordance with the form of the Fifth Schedule has been tendered by the officer administering it, shall utter the words "So help me God!":

Provided that no such oath shall be deemed to be illegal or invalid by reason of any breach of this section.

23. Officers may be sworn to take charge of juries in accordance with the form in the Sixth Schedule or to the like effect.

Oath of officer in charge of jury.

#### PART VI.—MISCELLANEOUS.

24. Notwithstanding anything in this Ordinance or any other law for the time being in force in the Territory (except a Commonwealth Act or regulations thereunder)—

Oaths may be taken in other forms.

- (a) an oath, whether in judicial proceedings or otherwise, may be administered and taken in any form and in any manner which would have been lawful if this Ordinance had not been made;
- (b) every such oath shall be binding for all purposes if it is administered and taken in any form and in any manner which the person taking it declares to be binding;
- (c) where any such oath has been administered and taken, the fact that the person taking it had not at the time any religious belief shall not for any purpose affect the legality or validity of the oath.

25. Where any person—

- (a) called as a witness in any Court;
- (b) having to make a statement in any information, complaint or proceeding in any Court or before any Justice; or
- (c) required or desired to make an affidavit or deposition,

Affirmations in legal proceedings.

objects to take an oath, or is reasonably objected to as incompetent to take an oath, or appears to the Court incompetent to take an oath, or desires or is required to take an oath in a form and manner required by his religion to make it binding on his conscience, but which it is found to be impracticable to administer to him in that form and manner at the time and place when and where the oath is desired or required to be taken, he may, in lieu of that oath make an affirmation in accordance with the form in the Seventh Schedule.

Penalty for wilfully making false statements.

**26** Any person who, having made an affirmation in pursuance of section twenty-five of this Ordinance, wilfully gives false evidence before any Court or makes any false statement in any information, complaint, proceeding, affidavit or deposition, knowing the evidence or statement to be false, shall be guilty of an indictable offence.

Penalty: Imprisonment for four years.

Taking of oaths and affidavits out of the Territory. Sub-section (1.) amended by N. 2, 1952, s. 2.

**27.—(1.)** Any oath or affidavit required for the purpose of any Court or matter in the Territory may be taken or made, in any place out of the Territory, before—

- (a) a Commissioner for Affidavits empowered and authorized to act in that place;
- (b) a British or Australian diplomatic or consular agent exercising his function in that place; or
- (c) any person having authority to administer an oath in that place.

(2.) Judicial and official notice may be taken—

- (a) of the signature or seal of any such Commissioner or agent, or of any person having authority to administer an oath, if he purports to have such authority otherwise than by the law of a foreign country not under the dominion of His Majesty; and
- (b) of the fact that any particular place is under the dominion of His Majesty.

(3.) In the case of a person purporting to have authority to administer an oath by the law of a foreign country not under the dominion of His Majesty, the authority may be verified by any of the persons mentioned in paragraphs (a) and (b) of sub-section (1.) of this section, or by the certificate of the superior court of such place, and, if the authority purports to be so verified, the oath or affidavit may be admitted or received without further proof of the signature or seal, or of the judicial, official or other character of such firstmentioned person.

Taking of affidavits out of the Territory by sailors, soldiers and airmen. Inserted by No. 14, 1960, s. 3.

**27A.—(1.)** Any oath or affidavit required to be made by any member of a fighting force, for the purpose of any court or matter in the Territory, may be taken or made in any place out of the Territory before any officer of any naval, military or air force of any part of Her Majesty's dominions who holds a rank not below the following, namely:—

- (a) in the case of a naval officer, lieutenant;
- (b) in the case of a military officer, captain;
- (c) in the case of an officer of an air force, flight-lieutenant,

or before any person having the authority to administer an oath in the Territory.



(2.) An officer administering an oath or taking an affidavit by virtue of the powers conferred by this section shall state in the jurat or attestation to the oath or affidavit—

- (a) the date on which the oath or affidavit is taken or sworn; and
- (b) the full name and rank of the officer.

(3.) An apparently genuine signature purporting to be the signature of a person administering an oath or taking an affidavit, and purporting to be the signature of an officer of a naval, military or air force of any part of Her Majesty's dominions who holds a rank not below that specified in subsection (1.) of this section, may be deemed to be the signature of such an officer unless the contrary is shown.

(4.) In this section—

a reference to "Her Majesty's dominions" applies to and includes a territory administered by Her Majesty under a Trusteeship Agreement and a protectorate and a protected State over which Her Majesty extends protection, as though that territory, protectorate or protected State were part of Her Majesty's dominions;

"member of a fighting force" includes any man or woman who is a member of a naval, military or air force of any country, and any person who, as a representative or employee of any charitable, religious or other organization for promoting the welfare of members of any such force, is attached to any such force.

**28.—**(1.) The provisions of the last two preceding sections shall, so far as applicable, extend to every attestation, verification, acknowledgment or signature in relation to any document required, authorized or permitted by or under any law or by custom or otherwise to be attested, verified, acknowledged or signed, and to the doing of all notarial acts as if those provisions had been re-enacted in this section, excluding words relating to the administration of oaths and the taking of affidavits and substituting therefor words relating to attestation, verification, acknowledgment or signature, as the case may be.

Extension of provisions relating to affidavits, to attestation, &c., of other documents. Sub-section (1.) amended by No. 14, 1960, s. 4.

(2.) The provisions of this section shall apply to documents required, authorized or permitted by or under "The Real Property Act, 1886" of the State of South Australia in its application to the Territory, as amended by the *Real Property Ordinance* 1918-1932, or by or under any enactment to be made in amendment of or in substitution therefor.

## Oaths Ordinance 1939-1960.

## THE SCHEDULES.

## THE FIRST SCHEDULE.

Sec. 2.

REPEAL OF CERTAIN ACTS AND ORDINANCES OF THE STATE OF  
SOUTH AUSTRALIA.

Number and Year of Act or Ordinance.	Title or Short Title of Act or Ordinance.	Extent of Repeal.
3 of 1848 ..	An Ordinance to Facilitate the Admission of the Unsworn Testimony of the Aboriginal Inhabitants of South Australia and the parts adjacent.	The whole.
4 of 1849 ..	An Ordinance to amend Ordinance No. 3 of 1848, " To Facilitate the Admission of the Unsworn Testimony of the Aboriginal Inhabitants of South Australia and the Parts adjacent."	The whole.
23 of 1859 ..	An Act to provide for the Appointment of Commissioners to take Affidavits as well in South Australia as elsewhere, to be made use of in the Supreme Court of South Australia and for the more easy Administration of Oaths to Persons appointed to act as Justices of the Peace in South Australia	The whole.
13 of 1866-7 ..	An Act for amending the Law of Evidence and Practice on Criminal Trials	Section 10.
8 of 1867 ..	<i>Supreme Court Act, 1867</i> .. ..	Sections 16-18, 22.
6 of 1869-70 ..	<i>Promissory Oaths Act, 1869</i> .. ..	The whole.
23 of 1872 ..	An Act for increasing the facilities for the taking of Acknowledgments of Married Women, and for other purposes.	Sections 2, 4, 5 and 7.
38 of 1876 ..	<i>The Criminal Law Consolidation Act, 1876</i>	Sections 377 and 378.
671 of 1896 ..	<i>The Affirmations Act, 1896</i> .. ..	The whole.

Amended by  
No. 14, 1960,  
s.5.

## THE SECOND SCHEDULE.

Sec. 5.

## OATH OF ALLEGIANCE.

"I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to our Sovereign Lord the King according to law. So help me God! "

## THE THIRD SCHEDULE.

Sec. 6.

## JUDICIAL OATH.

"I, \_\_\_\_\_, do swear that I will well and truly serve our Sovereign Lord the King in the office of \_\_\_\_\_ and I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God! "

## THE FOURTH SCHEDULE.

Sec. 21.

FORM OF OATH TO BE TAKEN BY WITNESSES IN CRIMINAL TRIALS BEFORE  
THE SUPREME COURT.

"The evidence you shall give to the Court (or, to the Court and jury sworn) on the issues joined between our Sovereign Lord the King and the prisoner at the bar shall be the truth, the whole truth and nothing but the truth. So help you God! "

THE SCHEDULES—*continued.*

THE FIFTH SCHEDULE.

Sec. 22.

ORDINARY FORM OF OATH.

“The evidence you shall give touching the matters now before the Court shall be the truth, the whole truth and nothing but the truth. So help you God!”.

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THE SIXTH SCHEDULE.

Sec. 23.

OATH OF OFFICER IN CHARGE OF JURY.

“You swear that you will keep this jury in your custody and suffer no one to speak to them nor speak to them yourself except on some necessary occasion having reference to their health, business or family affairs. So help you God!”.

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THE SEVENTH SCHEDULE.

Sec. 25.

AFFIRMATION.

“I, \_\_\_\_\_, do solemnly, sincerely and truly affirm and declare, &c. . . .”.

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