

Act No. 20, 1900.

OATHS.

An Act to consolidate the enactments relating to oaths, affirmations, statutory declarations and affidavits. [22nd September, 1900.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

Preliminary.

1. This Act shall commence and take effect on the first day of January, one thousand nine hundred and one, and may be cited as the "Oaths Act, 1900," and is divided into parts as follows:—

PART I.—*Preliminary*—ss. 1-2.

PART II.—*Oaths*—ss. 3-11.

PART III.—*Affirmations*—ss. 12-14.

PART IV.—*Statutory declarations*—ss. 15-25.

PART V.—*Affidavits*—ss. 26-29.

Commencement,
short title, and
division.

Repeal.
Schedule I.

Rules and notifica-
tions under repealed
Acts.

2. (1) The Acts mentioned in the First Schedule to this Act are, to the extent therein expressed, hereby repealed.

(2) All rules made and notifications published under the authority of any Act hereby repealed shall be deemed to have been made and published under the authority of this Act.

PART II.

Oaths.

3. (1) Where but for the passing of this Act or the Act twentieth Victoria number nine hereby repealed it would be necessary for any person—

(a) to take the oaths commonly called the Oaths of Allegiance, Supremacy, and Abjuration, or any of them; or

(b) to take the oath prescribed by the Act commonly called the Roman Catholic Relief Act; or

(c) to make the declaration prescribed by the Imperial Act ninth George the Fourth, chapter seventeen, it

Oath of allegiance
substituted for
certain oath and
declaration.
Second Schedule.
20 Vic. No. 9, s. 1.
33 Vic. No. 14, s. 9.

Oaths.

it shall be sufficient for such person to take in lieu of the said several oaths and declaration the oath of allegiance in the form in the Second Schedule hereto.

(2) Where by any law in force at the time of the passing of the said Act twentieth Victoria number nine the said several oaths or any of them might be taken before the Supreme Court or before a Judge, or were required to be taken in open Court, the oath prescribed by this Act may be taken and subscribed at any hour before the said Court or any Judge thereof, or before any Circuit Court or Court of Quarter Sessions, or any justice of the peace authorised by writ of *Dedimus potestatem* for that purpose.

Before whom the oath may be taken.
20 Vic. No. 9, s. 2.

4. (1) The oath of allegiance in the form in the Second Schedule hereto shall be substituted for the oaths prescribed by the thirty-third section of the Constitution Act.

Oath of allegiance.
Second Schedule.
33 Vic. No. 14, s. 9.

(2) The said form in the said Second Schedule shall be the form of oath of allegiance taken by all other persons liable to take the said oath.

5. In this part of this Act—

“Oath of allegiance,” when hereinafter used, means an oath in the form in the Second Schedule hereto.

Interpretation.
Second to Fifth Schedules.
Ibid. s. 2.
Ibid. s. 3.

“Official oath” means an oath in the form in the Third Schedule hereto.

“Judicial oath” means an oath in the form in the Fourth Schedule hereto.

Ibid. s. 4.

“Executive Councillor’s oath” means an oath in the form in the Fifth Schedule hereto.

Ibid. s. 5.

6. The name of the Sovereign of the United Kingdom of Great Britain and Ireland shall be substituted in the said forms from time to time instead of the name of Her Majesty.

Name of Sovereign.
Ibid. s. 10.
20 Vic. No. 9, s. 4.

7. (1) The oath of allegiance and the official oath shall be tendered to and taken by all public officers required by order of the Governor to take the same.

Public officers.
33 Vic. No. 14, s. 6.

(2) Such oaths shall be tendered to and taken by every such officer in manner in that behalf provided by the said order as soon as may be after the acceptance of office by him.

8. (1) The oath of allegiance and the judicial oath shall be tendered to and taken by Judges of the Supreme Court and justices of the peace.

Judges and justices of the peace.
Ibid. s. 7.

(2) Such oaths shall be tendered and taken in manner in which the oaths required to be taken by such persons before the passing of the Act thirty-third Victoria number fourteen would have been tendered and taken.

9. (1) The oath of allegiance and the judicial oath shall be tendered to and taken by District Court Judges and other judicial officers who are required by order of the Governor to take the same.

District Court judges and other judicial officers.
Ibid.

(2)

Oaths.

(2) Such oaths shall be tendered and taken in manner in that behalf provided by the said order.

Executive
councillors.
33 Vic. No. 14, s. 5.

10.(1) The oath of allegiance, the official oath, and the Executive Councillor's oath shall be tendered to and taken by every member of the Executive Council before he enters upon the discharge of the duties of his office.

(2) Such oaths shall be tendered and taken in manner in which the oaths required to be taken by such member before the passing of the Act thirty-third Victoria number fourteen on entering on his office would have been tendered and taken.

Penalty on not
taking required oath.
Ibid. s. 8.

11. (1) If any such officer as aforesaid liable to take any such oath declines or neglects when the same is duly tendered to take such oath, he shall, if he has already entered on his office, vacate the same, and if he has not entered on the same be disqualified from so doing.

(2) But no person shall be compelled in respect of the same appointment to the same office to take such oath more than once.

PART III.

Affirmations.

Ibid. s. 11.

12. When an oath is required to be taken under Part II of this Act, any person by law entitled to make a solemn affirmation or declaration instead of taking an oath may instead of taking such oath make a solemn affirmation in the form of such oath appointed by this Act, substituting the words "solemnly, sincerely, and truly declare and affirm" for the word "swear," and omitting the words "so help me God."

Declaration or
affirmation in lieu of
oath.

Sixth and Seventh
Schedules.
20 Vic. No. 31, s. 10.
22 Vic. No. 7, s. 1.
22 Vic. No. 18, s. 48.
40 Vic. No. 8, s. 3.
46 Vic. No. 17, s. 34.

13. (1) Whenever any person—
(a) called as a witness in any Court or before any justice or other person authorised to administer an oath, whether in a civil or criminal proceeding, or
(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, objects to take an oath, or is reasonably objected to as incompetent to take an oath, or appears to such Court or justice or person so authorised incompetent to take an oath, he may in lieu of such oath—

(i) when so called as a witness make a declaration in the form in the Sixth Schedule hereto, or

(ii) in any other case make a solemn affirmation in the form in the Seventh Schedule hereto.

Penalty for wilfully
false statements.

(2) Whosoever, having made such declaration or affirmation, wilfully gives any false evidence before such Court, justice, or person

Oaths.

so authorised, or makes any false statement in such information, complaint, proceeding, affidavit, or deposition, knowing the same to be false, shall be deemed guilty of perjury if the evidence or statement, had it been on oath, would by law have been perjury.

14. (1) Whenever any juror objects to be sworn, the Court or Judge may permit him, instead of taking an oath, to make a solemn declaration, which shall be in the form of oath now in use, but substituting the words "So you solemnly declare and promise" for the words "So help you God."

Affirmations by jurors in certain cases.
20 Vic. No. 31, s. 10.
46 Vic. No. 17, s. 339.

(2) It shall not be necessary to allege, in any record or proceeding, that a particular juror made any such declaration, but it shall be sufficient in all cases to state that the jurors solemnly declared or were sworn.

PART IV.

Statutory declarations.

15. In any case where by any Act relating to any of the public revenue or any public office or public department, or by any official regulation in any department, any oath or affidavit might, but for this Act, be required to be taken or made by any person—

Declarations substituted for oaths.
9 Vic. No. 9, s. 1.

(a) on the doing of any act, matter, or thing, or

(b) for the purpose of verifying any book, account, entry, or return, or

(c) for any other purpose whatsoever,

the Governor may, by notification in the Gazette, substitute a declaration to the same effect as such oath or affidavit.

16. From and after the expiration of twenty-one days next following the date of the Gazette wherein such notification is first published the provisions of this Part of this Act shall extend and apply to every case, office, or department specified in such notification.

To be notified in Gazette.
Ibid. s. 2.

17. After the expiration of the said twenty-one days it shall not be lawful for any officer or other person to administer or cause to be administered any oath or to take or cause to be taken any affidavit in lieu of which such declaration has been substituted.

Oaths not to be taken thereafter.
Ibid. s. 3.

18. Every person who but for this Act might be required to take such oath or make such affidavit shall, in the presence of the officer or person empowered by the Act or regulation imposing the same to administer such oath or take such affidavit, make and subscribe such declaration; and such officer or person is hereby empowered and required to administer such declaration accordingly.

Declaration, how administered.
Ibid. s. 1.

Oaths.

This Part not to extend to certain oaths.

9 Vic. No. 9, ss. 5, 6.

Abolition of extra judicial oaths.

Ibid. s. 7.

Declarations in cases not specifically provided for.

Eighth and Ninth Schedules.

Ibid. s. 9.

46 Vic. No. 17, s. 295.

Wills, deeds, &c., may be verified by declaration.

9 Vic. No. 9, s. 8.

Fees.

Ibid. s. 10.

Form of declaration. Eighth and Ninth Schedules.

Ibid. s. 11.

46 Vic. No. 17, s. 295.

19. Nothing in this Part of this Act shall extend or apply to—

- (a) the oath of allegiance in any case in which the same is required to be taken by any person appointed to any office; or
- (b) any oath or affidavit taken or made or required to be taken or made in any judicial proceeding in any court of justice.

20. (1) It shall not be lawful for any justice of the peace or other person to administer or cause or allow to be received any oath or affidavit touching any matter or thing whereof such justice or other person has not jurisdiction or cognisance by some Act or Imperial Act in force at the time being.

(2) Provided that nothing in this section contained shall be construed to extend to—

- (a) any oath or affidavit before any justice of the peace in any matter or thing touching the preservation of the peace, or the prosecution, trial, or punishment of offences; or
- (b) any inquiry held before any justice of the peace in the nature of coroners' inquests respecting sudden deaths; or
- (c) any proceeding before either House of Parliament or a committee thereof; or
- (d) any oath or affidavit required by the laws of any foreign or other country out of New South Wales to give validity to instruments in writing designed to be used in foreign or other countries respectively; or
- (e) any declaration under this Part of this Act.

21. Any justice of the peace, notary public, or other officer by law authorised to administer an oath may take and receive the declaration of any person voluntarily making the same before him in the form or to the effect of the form in either the Eighth or the Ninth Schedule to this Act.

22. Any attesting witness to the execution of any will or codicil, deed, or instrument in writing, and any other competent person, may verify and prove the signing, sealing, publication, or delivery of any such will, codicil, deed, or instrument in writing by such declaration in writing made as aforesaid before such justice, notary, or officer.

23. Whenever any declaration is made and subscribed by any person under or in pursuance of any of the provisions of this Part of this Act, every such fee as would have been due and payable on the taking or making of any oath or affidavit shall be in like manner due and payable upon making and subscribing such declaration.

24. In all cases where by this Part of this Act, or under the authority thereof, or by virtue of any power or authority hereby given, a declaration—

- (a) is substituted in lieu of an oath or affidavit; or

(b)

Oaths.

(b) is directed or authorised to be made and subscribed, although not substituted in lieu of an oath or affidavit, such declaration, unless otherwise directed by the powers hereby given, shall be in the form, or to the effect of the form, in either the Eighth or the Ninth Schedule to this Act.

25. In all cases where by this Part of this Act, or under the authority thereof, or by virtue of any power or authority hereby given, a declaration—

(a) is substituted in lieu of an oath or affidavit; or

(b) is directed or authorised to be made and subscribed, although not substituted in lieu of an oath or affidavit,

any person who wilfully and corruptly makes and subscribes any such declaration, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanour.

False declaration.
9 Vic. No. 9, ss. 4,
9, 12.

PART V.

Affidavits.

26. Every justice of the peace shall have power to take and receive affidavits in all matters pending in any Court.

Justices empowered
to take affidavits.
37 Vic. No. 10, s. 1.

27. (1) The Chief Justice of the Supreme Court may by commission, under the seal of the said Court, authorise as many persons as he may think necessary to take and receive affidavits concerning any matter within the jurisdiction of any Court.

Appointment of
commissioners for
affidavits.
Ibid.

(2) Every such commission heretofore issued by any Chief Justice and now in force shall be deemed to have been issued under this Act.

28. Every person authorised to act under any such commission shall receive such fees as may be prescribed by rule of the Supreme Court.

Fees.
Ibid. s. 2.

29. Every person wilfully swearing falsely in any affidavit made before any such justice of the peace or other person so authorised to take affidavits shall be deemed guilty of perjury and shall incur and be liable to the same pains and penalties as if he had wilfully sworn falsely in open Court in a judicial proceeding in the Supreme Court.

Penalty for swearing
falsely in affidavits.
Ibid. s. 1.

Act No. 20, 1900.

Oaths.

SCHEDULES.

Section 2.

FIRST SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
9 Vic. No. 9 ...	An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the Government of New South Wales and to substitute declarations in lieu thereof, and for the suppression of voluntary and extra-judicial oaths and affidavits.	The whole.
20 Vic. No. 9 ...	An Act to simplify the oaths of qualification for office.	The whole.
20 Vic. No. 31 ...	The Common Law Procedure Act of 1857...	Section 10.
22 Vic. No. 7 ...	An Act for the further amendment of the law of evidence.	The unrepealed portion.
22 Vic. No. 18 ...	District Courts Act of 1858	So much of section 48 as relates to section 10 of the Common Law Procedure Act of 1857.
33 Vic. No. 14 ...	Promissory Oaths Act	The whole.
36 Vic. No. 31 ...	Promissory Oaths Declaratory Act of 1873	The whole.
37 Vic. No. 10 ...	Commissioners for Affidavits Act of 1874...	The whole.
40 Vic. No. 8 ...	Evidence Further Amendment Act, 1876...	The unrepealed portion.
46 Vic. No. 17 ...	Criminal Law Amendment Act of 1883 ...	Section 295, from and including the words "And every solemn declaration" to the end of the section; sections 339 and 343, and the Seventh Schedule.

Sections 3, 4, 5.

33 Vic. No. 14, s. 2.

SECOND SCHEDULE.

Oath of allegiance.

I, _____, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her Heirs and Successors according to law.

So help me God.

Section 5.

37 Vic. No. 10, s. 3.

THIRD SCHEDULE.

Official oath.

I, _____, do swear that I will well and truly serve Her Majesty Queen Victoria in the office of _____

So help me God.

FOURTH

Oaths.

FOURTH SCHEDULE.

Section 5.

Judicial oath.

37 Vic. No. 10, s. 4.

I, _____, do swear that I will well and truly serve our Sovereign Lady Queen Victoria in the office of _____, and I will do right to all manner of people after the laws and usages of this Colony without fear or favour, affection or ill-will.

So help me God.

FIFTH SCHEDULE.

Section 5.

*Executive Councillor's oath.**Ibid.* s. 5.

I, _____, being chosen and admitted of Her Majesty's Executive Council in New South Wales, do swear that I will to the best of my judgment at all times when thereto required freely give my counsel and advice to the Governor or Officer Administering the Government of New South Wales for the time being for the good management of the public affairs of New South Wales, that I will not directly or indirectly reveal such matters as shall be debated in council and committed to my secrecy, but that I will in all things be a true and faithful councillor.

So help me God.

SIXTH SCHEDULE.

Section 13.

*Declaration.*46 Vic. No. 17,
s. 343.

I solemnly declare that the evidence now about to be given (or the statement now about to be made) by me shall be the truth, the whole truth, and nothing but the truth.

SEVENTH SCHEDULE.

Section 13.

Affirmation.

20 Vic. No. 31, s. 10.

I, _____, do solemnly, sincerely, and truly affirm and declare, &c.

EIGHTH SCHEDULE.

Sections 21, 24.

*Declaration.*9 Vic. No. 9,
Schedule.

I, _____, do solemnly and sincerely declare that _____, and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act, 1900.

NINTH SCHEDULE.

Sections 21, 24.

*Declaration.*46 Vic. No. 17,
Schedule 7.

I, _____, of (residence), do hereby solemnly declare and affirm that [the facts to be stated according to the declarant's knowledge, belief, or information, severally]. And I make this solemn declaration, as to the matter (or matters) aforesaid, according to the law in this behalf made—and subject to the punishment by law provided for any wilfully false statement in any such declaration.