

Oaths Act 1900 No 20

[1900-20]



New South Wales

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- **Does not include amendments by**

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Oaths Act 1900 No 20



New South Wales

An Act to consolidate the enactments relating to oaths, affirmations, statutory declarations and affidavits.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Oaths Act 1900*.

1A Commencement

This Act shall commence on 1 January 1901.

2 Repeals etc

- (1) The Acts mentioned in the First Schedule to this Act are, to the extent therein expressed, hereby repealed.
- (2) All rules made and notifications published under the authority of any Act hereby repealed shall be deemed to have been made and published under the authority of this Act.

2A Proceedings for offences

Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 13 (2), 20, 25, 25A, 29 or 30.

Part 2 Oaths

3 Form and manner of taking oaths

- (1) Where but for the passing of this Act or the Act twentieth Victoria number nine hereby repealed it would be necessary for any person: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 shall be sufficient for such person to take in lieu of the said several oaths and declaration the oath of allegiance in the form of the Second Schedule.

(2) The oaths prescribed in the Second, Third, and Fourth Schedules may be taken and subscribed at any hour:

(a) within the State of New South Wales before any Justice of the High Court of Australia or of the Supreme Court, any member of the Industrial Commission of New South Wales, any District Court Judge, or before any justice of the peace who is authorised by writ of *dedimus potestatem* for that purpose, and

(b) without the said State before any Justice of the High Court of Australia or of the Supreme Court of any State of the Commonwealth of Australia, or before any person who is authorised by writ of *dedimus potestatem* for that purpose.

(2A) Without prejudice to the operation of subsection (2) the oaths prescribed in the Second and Fourth Schedules may be taken and subscribed at any hour:

(a) by a Magistrate—before the Chief Magistrate or the person for the time being acting in that office, or

(b) by a justice of the peace—before a Magistrate or a registrar of the Local Court.

(3) A writ of *dedimus potestatem* for the purpose of administering any such oath may be issued for execution in any part of His Majesty's Dominions.

4 Oath of allegiance

The form in the Second Schedule shall, subject to section 6, be the form of oath of allegiance taken by all persons liable to take the said oath.

5 Definitions

In this part of this Act:

Oath of allegiance, where hereinafter used, means an oath in the form in the Second Schedule.

Official oath means an oath in the form in the Third Schedule.

Judicial oath means an oath in the form in the Fourth Schedule.

6 Name of Sovereign

The name of the Sovereign of the United Kingdom of Great Britain and Ireland shall be

substituted in the said form from time to time instead of the name of Her Majesty.

7 Public officers

- (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.
- (2) (Repealed)

8 Judges and justices of the peace

- (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.
- (2) (Repealed)

9 District Court Judges and other judicial officers

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

10 (Repealed)

11 Penalty on not taking required oath

- (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, the officer shall, if the officer has already entered on his or her office, vacate the same, and if the officer 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.

11A Manner of taking oath

- (1) Any person taking any oath on the Bible or on the New Testament, or the Old Testament, for any purpose whatsoever, whether in judicial proceedings or otherwise, shall, if physically capable of doing so, hold a copy of the Bible or Testament in his or her hand, but it shall not be necessary for the person to kiss such copy by way of assent.
- (2) The officer administering the oath may repeat the appropriate form of adjuration, and the person taking the oath shall thereupon, while holding in his or her hand a copy of the Bible, New Testament, or Old Testament, indicate his or her assent to the oath so administered by uttering the words "So help me, God"; or

- (3) The person taking the oath may, while holding in his or her hand a copy of the Bible, New Testament, or Old Testament, repeat the words of the oath as prescribed or allowed by law.
- (4) In all judicial proceedings the officer administering the oath shall, unless the person about to take the oath voluntarily objects thereto, administer the oath in the form and manner set out in subsection (2); but no oath shall be deemed illegal or invalid by reason of any breach of the provisions of this section.
- (5) Provided that any witness in any judicial proceeding may swear with up-lifted hand in the following manner and form:

The witness with uplifted hand says—"I swear by Almighty God as I shall answer to God at the Great Day of Judgment that I will speak the truth, the whole truth, and nothing but the truth."

- (6) Provided also that:
 - (a) an oath may be administered and taken in any form and in any manner which would have been lawful if this section had not passed,
 - (b) every oath shall be binding for all purposes for which it is administered and may be taken in any form and in any manner which the person taking the same declares to be binding,
 - (c) where an oath has been administered and taken, the fact that the person taking the same had at the time no religious belief shall not for any purpose affect the legality or validity of the oath.

Part 3 Affirmations

12 Affirmations

Subject to section 13, when an oath is required to be taken, any person who objects to take an oath may instead of taking such oath make a solemn affirmation in the form of such oath substituting the words "solemnly, sincerely and truly declare and affirm" for the word "swear" or for any other word or words to the like effect and omitting the words "so help me God" or any other word or words to the like effect.

13 Declaration or affirmation instead of oath

- (1) Subject to the [Evidence Act 1995](#), whenever any person:
 - (a) called as a witness in any Court or before any Judge or Magistrate 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 Judge or Magistrate, 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 Judge or Magistrate or person so authorised incompetent to take an oath, the person may in lieu of such oath:

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

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

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

Part 4 Statutory declarations

15 Declarations substituted for oaths

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:

(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 To be notified in Gazette

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 shall extend and apply to every case, office, or department specified in such notification.

17 Oaths not to be taken thereafter

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.

18 Declaration, how administered

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.

19 This Part not to extend to certain oaths

Nothing in this Part 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 Abolition of extra judicial oaths

- (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, and any person who does so without lawful authority is liable to imprisonment for 2 years.
- (2) Provided that nothing in this section contained shall be construed to extend to:
 - (a) any oath or affidavit before any Judge or Magistrate 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 Magistrate 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.

21 Declarations in cases not specifically provided for

- (1) The Registrar-General, a Deputy Registrar-General or any justice of the peace, notary public, commissioner of the court for taking affidavits, Australian legal practitioner authorised by section 27 (1) to take and receive any affidavit, or other person by law authorised to administer an oath, may take and receive the declaration of any person

voluntarily making the same before him or her, in the form or to the effect of the form in either the Eighth or the Ninth Schedule.

- (2) Any statutory declaration taken and received prior to the commencement of the *Oaths (Amendment) Act 1916* before any commissioner of the court for taking affidavits, shall be deemed to have been duly taken and received.

21A Penalty for taking and receiving statutory declaration without authority

- (1) Any person who, not being by law authorised to take and receive a statutory declaration:
- (a) falsely pretends to be so authorised, or
 - (b) takes and receives a statutory declaration,
- shall be guilty of an offence against this section.
- (2) Any person who takes and receives a statutory declaration in any capacity in which the person is not by law authorised to act shall be guilty of an offence against this section.
- (3) Any person who is guilty of an offence against this section shall on summary conviction before the Local Court be liable to imprisonment for a term not exceeding twelve months or to a penalty not exceeding 2 penalty units.

22 Wills, deeds etc may be verified by declaration

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 Fees

Whenever any declaration is made and subscribed by any person under or in pursuance of any of the provisions of this Part, 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 Form of declaration

In all cases where by this Part, 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,

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.

24A Declarations by persons unable to read

If it appears to the person before whom a statutory declaration is taken and received (**the authorised person**) that the person making the declaration (**the deponent**) is blind or illiterate, the authorised person must certify, in or below the jurat:

- (a) that the declaration was read to the deponent in the presence of the authorised person, and
- (b) that it appeared to the authorised person that the deponent understood the declaration, and
- (c) that the deponent subscribed the declaration (by signature or mark) in the presence of the authorised person.

25 False declaration

In all cases where by this Part, 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 an indictable offence and liable to imprisonment for 5 years.

25A False declaration for material benefit

In all cases where by this Part, 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, and who derives or attempts to derive a material benefit as a consequence of the untrue particular is guilty of an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 7 years.

Part 5 Affidavits

26 Before whom oaths or affidavits may be taken

- (1) Any oath declaration or affidavit required for the purpose of any court or for the purpose of the registration of any instrument in the State of New South Wales or for the purpose of any arbitration may be taken or made:
 - (a) in any place in the said State before any justice of the peace for the said State, and
 - (b) in any country or place out of the said State before a notary public, or before any person having authority to administer an oath in that country or place, and
 - (c) in any country or place out of the said State before a British Consular Officer or an Australian Consular Officer exercising his or her functions in that country or place.
- (2) In this section:

Australian Consular Officer means a person appointed to hold or act in any of the following offices (being an office of the Commonwealth of Australia) in a country or place outside the Commonwealth of Australia, namely Ambassador, High Commissioner, Minister, Head of Mission, Commissioner, Chargé d’Affaires, Counsellor or Secretary at an Embassy, High Commissioner’s Office or Legation, Consul-General, Consul, Vice-Consul, Trade Commissioner and Consular Agent and includes a person appointed to hold or act in the office of Counsellor, Official Secretary or Assistant Official Secretary at the Australian Commissioner’s Office in Singapore or of Secretary at the Australian Military Mission in Berlin or of Agent-General in London of the State of New South Wales or of Secretary, New South Wales Government Offices, London.

British Consular Officer means a British Ambassador, Envoy, Minister, Chargé d’Affaires, Secretary of Embassy or Legation, Consul-General, Acting Consul-General, Consul, Acting Consul, Vice-Consul, Acting Vice-Consul, Proconsul, Consular Agent and Acting Consular Agent.

26A (Repealed)

26B Appointee of foreign authority may, in certain circumstances, administer oath

- (1) In this section **foreign authority** means a court, judge, person or body authorised by the law of a place outside New South Wales to take or receive evidence in that place.
- (2) For the purpose of proceedings (other than criminal proceedings) before a foreign authority, the foreign authority, or a person authorised by the foreign authority to take and receive evidence in New South Wales, may administer an oath to a person in New South Wales for the purpose of taking and receiving that evidence subject, in the case of a foreign authority that is not a court or judge, to the consent of the Chief Justice of the Supreme Court being first obtained.

27 Authority to take and receive affidavits

- (1) An Australian legal practitioner is, except in so far as the Chief Justice of the Supreme Court by order under his or her hand otherwise directs, authorised to take and receive, subject to subsection (4), affidavits concerning any matter within the jurisdiction of any court or required for the purpose of registering an instrument in New South Wales or for any other purpose to be effected in New South Wales.
- (2) The Chief Justice may, by commission under the seal of the Supreme Court, authorise as many other persons as the Chief Justice may think necessary to take and receive affidavits concerning any matter within the jurisdiction of any court.
- (3) (Repealed)
- (4) The authorisation of an Australian legal practitioner by subsection (1) has effect subject to any rule made by any court in respect of any affidavit made concerning any matter within its jurisdiction.
- (5) (Repealed)

27A Affidavits by persons unable to read

If it appears to the person before whom an affidavit is made (**the authorised person**) that the person making the affidavit (**the deponent**) is blind or illiterate, the authorised person must certify, in or below the jurat:

- (a) that the affidavit was read to the deponent in the presence of the authorised person, and
- (b) that it appeared to the authorised person that the deponent understood the affidavit, and
- (c) that the deponent subscribed the affidavit (by signature or mark) in the presence of the authorised person.

28 Fees

Every person authorised to act under a commission issued pursuant to subsection (2) of section 27 shall receive such fees as may be prescribed by the rules made under the [Civil Procedure Act 2005](#).

29 Penalty for swearing falsely in affidavits

Except as provided by section 33, 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 the person had wilfully sworn falsely in open Court in a judicial proceeding in the Supreme Court.

30 Untrue document purporting to be affidavit

Where a person wilfully makes and subscribes a document that purports to be, but is not, an affidavit taken and received in accordance with the requirements of section 11A, knowing it to be untrue in a material particular not related to any requirement or formality necessary for the making of an affidavit, that person is guilty of an offence and:

- (a) upon conviction on indictment—liable to imprisonment for 5 years, or
- (b) upon conviction by the Local Court—liable to a penalty not exceeding 5 penalty units or imprisonment for a term not exceeding six months.

31 Alternative verdict where false swearing not proved

Where, on the trial of a person for false swearing in an affidavit, it appears that the document purporting to be the affidavit was not taken in accordance with the requirements of section 11A but the jury is satisfied that the accused wilfully made and subscribed the document knowing it to be untrue in a material particular not related to any requirement or formality necessary for the making of an affidavit the accused may be acquitted of the offence charged and convicted of an offence under section 30.

32 Person may make declaration instead of oath

- (1) This section applies to the making of an affidavit by a person before a justice or other person authorised to take an affidavit when the justice or other person is satisfied, having regard to any matter thought relevant (including age and capacity to hear, understand or communicate) that the person is not competent to take an oath.
- (2) The affidavit by the person is to be allowed, as if it were taken on oath, so long as:
 - (a) the justice or other person tells the person that it is important to tell the truth, and
 - (b) the person makes a declaration, by responding appropriately when asked, that he or she will not tell lies in the affidavit.
- (3) However, the affidavit is not to be allowed if the justice or other person is satisfied that:
 - (a) the person does not understand the difference between the truth and a lie, or
 - (b) the person is not able to respond rationally to questions.
- (4) It is to be presumed, unless the contrary is established to the satisfaction of the justice or other person, that the person understands the difference between the truth and a lie and is able to respond rationally to questions.
- (5) This section does not make evidence admissible if it would otherwise be inadmissible.
- (6) In this section, **affidavit** includes a deposition and a statement made in an

information or complaint.

33 False statements

- (1) Any person who, having made an affidavit under section 32, wilfully makes a false statement in the affidavit, knowing the statement to be false, is taken to be guilty of perjury if the making of the statement, had it been on oath, would by law have been perjury.
- (2) No prosecution for an offence referred to in subsection (1) is to be commenced without the sanction of the Attorney General.

Part 6

34, 35 (Repealed)

First Schedule

(Section 2)

| 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 | <i>The Common Law Procedure Act of 1857.</i> | Section 10. |
| 22 Vic No 7 | An Act for the further amendment of the law of evidence. | The unrepealed portion. |
| 22 Vic No 18 | <i>District Courts Act of 1858.</i> | So much of section 48 as relates to section 10 of the <i>Common Law Procedure Act of 1857.</i> |
| 33 Vic No 14 | Promissory Oaths Act. | The whole. |
| 36 Vic No 31 | <i>Promissory Oaths Declaratory Act of 1873.</i> | The whole. |
| 37 Vic No 10 | <i>Commissioners for Affidavits Act of 1874.</i> | The whole. |
| 40 Vic No 8 | <i>Evidence Further Amendment Act 1876.</i> | The unrepealed portion. |
| 46 Vic No 17 | <i>Criminal Law Amendment Act of 1883.</i> | 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. |

Second Schedule Oath of allegiance

(Sections 3, 4, 5)

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.

Third Schedule Official oath

(Section 5)

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

So help me God.

Fourth Schedule Judicial oath

(Section 5)

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 the State of New South Wales without fear or favour, affection or ill-will.

So help me God.

Fifth Schedule (Repealed)

Sixth Schedule Declaration

(Section 13)

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 Affirmation

(Section 13)

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

Eighth Schedule Declaration

(Sections 21, 24)

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 Declaration

(Sections 21, 24)

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.

Tenth Schedule (Repealed)