

EXPLANATORY STATEMENT
AUSTRALIAN CAPITAL TERRITORY
OATHS AND AFFIRMATIONS ORDINANCE 1984
No. 79 of 1984

This Ordinance replaces the Oaths Act 1900 of New South Wales in its application to the Australian Capital Territory.

The Oaths Act 1900 relates to oaths, affirmations, statutory declarations and affidavits. The Law Reform Commission of the A.C.T. in its Report on the New South Wales Acts in Force in the Australian Capital Territory noted that parts of the Act are clearly inapplicable in the A.C.T. and other parts are of doubtful application. The Commission considered that 'the Act clearly needs a major overhaul'.

The Ordinance provides that a person who is required or permitted to take an oath is entitled, as of right, to make an affirmation instead. Under the Oaths Act 1900 it was necessary for a person to object to the taking of an oath before an affirmation could be made. This change accords with longstanding Commonwealth legislative policy.

In 1978 the Judges of the A.C.T. Supreme Court made new Rules of Court in relation to oaths and affirmations in proceedings in that Court. These Rules, which are also applied in the High Court, Federal Court and Family Court when sitting in the A.C.T., have been followed in provisions of the Ordinance relating to the form of oaths and affirmations, the manner of taking oaths and making affirmations and affidavits.

These provisions apply to proceedings in the Court of Petty Sessions and, where no other provision is made in the relevant legislation, in relation to proceedings before any tribunal or person having authority under a law in force in the Territory to receive evidence on oath.

The Ordinance also provides for the taking of an oath and the making of an affirmation or affidavit by a person who cannot speak English or who is incapable of speaking. For this purpose provision is made for the oath or affirmation by an interpreter of spoken language and of an interpreter of statements made by means of signs.

The Ordinance contains provisions designed to ensure that a person who is blind, illiterate or cannot speak English understands an affidavit which he makes.

The Ordinance also provides for the persons before whom an oath may be taken or an affirmation or affidavit made (for the first time in the Territory, a barrister and solicitor will be able to take an affidavit) and for the administration of an oath or affirmation for the purpose of the taking of evidence by a foreign tribunal.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Oaths and Affirmations Ordinance 1984.

Section 2 repeals the Oaths Ordinance 1934. That Ordinance amended section 26 of the Oaths Act 1900 of NSW in its application to the Territory.

Section 3 provides that the Oaths Act 1900 of New South Wales shall cease to be in force in the Territory.

Section 4 contains interpretation provisions for the purposes of the proposed Ordinance.

Section 5 preserves the operation of the Rules of the Supreme Court of the A.C.T. which make provision for oaths, affirmations and affidavits in relation to proceedings in that Court.

Section 6 provides for the form of an oath or affirmation of office.

Sections 7 to 10 provide for the forms of oath or affirmation to be taken or made by a person called as a witness in a proceeding, a person who is to interpret a spoken language in a proceeding, a person who is to interpret statements made by signs in a proceeding, and a deponent to an affidavit, respectively.

Section 11 prescribes the persons before whom an oath may be taken or an affirmation and affidavit made for the purposes of a proceeding or for any other purpose under a law in force in the Territory.

Section 12 provides that an affidavit may be sworn or affirmed in the manner provided in section 17.

Section 13 requires the form of jurat (i.e. the memorandum at the end of an affidavit stating where and when the affidavit was sworn, followed by the signature and description of the person before whom it was sworn) to be varied and the necessary alterations made where the deponent to an affidavit makes an affirmation.

Section 14 entitles a person to make an affirmation instead of taking an oath in any case where an oath is required or permitted by law. This provision has effect notwithstanding anything contained in any other law of the Territory.

Section 15 provides that a person may be required to make an affirmation instead of taking an oath where that person appears to be incompetent to take an oath, is reasonably objected to as incompetent to take an oath, or where it is not practicable to allow that person to take an oath in the form and manner he desires.

Section 16 provides that an affirmation is to have the same effect for all purposes as an oath.

Section 17 prescribes the manner of taking an oath and making an affirmation. Provision is made to enable the words of an oath or affirmation to be spoken in other than the English language and for a person who is incapable of speaking to express the words by signs or other means.

Section 18 requires a record to be made in writing in relation to an oath or affirmation of office.

Section 19 provides that where, in relation to an affidavit, an oath or affirmation is taken or made in a language other than English a certificate is to appear on the affidavit that the contents of the affidavit and the oath or affirmation were interpreted to the deponent, the deponent seemed to understand the affidavit and the oath or affirmation and that the deponent has taken or made the required oath or affirmation.

Section 20 provides that where an affidavit is sworn by an illiterate or blind person a certificate is to appear on the affidavit that the affidavit was read to the deponent and that the deponent seemed to understand it.

Section 21 permits a person to take an oath in a form and manner other than that specified in the Ordinance provided that person states before the person taking the oath that an oath taken in that form and manner would be binding on him.

Section 22 provides that an oath or affirmation is binding for all purposes for which it was taken or made. The section further provides that the validity of an oath is not affected by the fact that the person concerned did not have any religious belief at the time it was taken.

Section 23 ensures that the validity of an oath or affirmation is not affected by reason only of a failure to comply with the provisions of the Ordinance relating to the form of oath and affirmation and the manner of taking an oath or making an affirmation.

Section 24 authorises a foreign tribunal to administer an oath or affirmation for the purpose of taking evidence in the Territory. Where a foreign tribunal is not a court or a judge the Attorney-General's consent is required before an oath or affirmation is administered. The authorisation does not extend to criminal proceedings. The provision is based on section 26B of the Oaths Act 1900 of NSW which was inserted in 1973.

Section 25 makes it an offence for a person, who is not authorised to do so, to require another person to take an oath or make an affirmation or to administer an oath or affirmation to another person.

Section 26 excludes from the operation of the offence provision the administration of an oath or affirmation or the taking of an affidavit by an authorised person for a purpose required or permitted by a foreign law.

Section 27 provides that a fee is not payable to any person in respect of an oath taken or affirmation made in accordance with the Ordinance.

Section 28 amends the Seat of Government (Administration) Ordinance 1930 to give administrative responsibility for the Ordinance to the Attorney-General.

Schedules 1 to 5 prescribe the form of oath and affirmation of office and the form of oath and affirmation by a witness, interpreter of spoken language, interpreter of statements made by means of signs and deponent to an affidavit, respectively.

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Authorised by the
Attorney-General.