

AUSTRALIAN CAPITAL TERRITORY

OATHS AND AFFIRMATIONS ORDINANCE
1984

No. 79 of 1984

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AUSTRALIAN CAPITAL TERRITORY

Oaths and Affirmations Ordinance 1984

No. 79 of 1984

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 13 December 1984.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

GARETH EVANS
Attorney-General

An Ordinance relating to oaths and affirmations

PART I—PRELIMINARY

Short title

1. This Ordinance may be cited as the *Oaths and Affirmations Ordinance 1984*.¹

Repeal

2. The *Oaths Ordinance 1934* is repealed.

The Oaths Act

3. The Oaths Act, 1900, of the State of New South Wales shall cease to be in force in the Territory.

Interpretation

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

“barrister and solicitor” has the same meaning as in the *Legal Practitioners Ordinance 1970*;

“court” includes any tribunal or person having authority under a law in force in the Territory, or by consent of parties, to receive evidence;

“diplomatic or consular representative” has the same meaning as in the *Evidence Ordinance 1971*;

“proceeding” means a matter or inquiry, whether civil or criminal, heard or conducted by a court in which evidence is, or may be, received.

Application

5. This Ordinance does not affect the operation of the Rules of the Supreme Court of the Australian Capital Territory.

PART II—FORM OF OATHS AND AFFIRMATIONS

Oath or affirmation of office

6. (1) An oath of office to be taken by a person pursuant to a law in force in the Territory shall, where the form of oath is not prescribed by or under that law, be in accordance with the form of oath specified in Schedule 1.

(2) Where a person is entitled or required to make an affirmation of office instead of taking an oath of office and the form of affirmation is not prescribed by or under the relevant law, the affirmation shall be in accordance with the form of affirmation specified in Schedule 1.

Oath or affirmation by witness

7. (1) An oath to be taken by a person called as a witness in a proceeding shall, where no other form of oath is prescribed by or under the relevant law, be in accordance with the form of oath specified in Schedule 2.

(2) Where a person called as a witness in a proceeding is entitled or required to make an affirmation instead of taking an oath, and the form of affirmation is not prescribed by or under the relevant law, the affirmation shall be in accordance with the form of affirmation specified in Schedule 2.

Oath or affirmation by interpreter of spoken language

8. (1) An oath to be taken by a person who is to interpret a spoken language in a proceeding shall be in accordance with the form of oath specified in Schedule 3.

(2) Where a person who is to interpret a spoken language in a proceeding is entitled or required to make an affirmation instead of taking an oath, the affirmation shall be in accordance with the form of affirmation specified in Schedule 3.

Oath or affirmation by interpreter of signs

9. (1) An oath to be taken by a person who is to interpret statements in a proceeding made by means of signs shall be in accordance with the form of oath specified in Schedule 4.

(2) Where a person who is to interpret statements in a proceeding made by means of signs is entitled or required to make an affirmation instead of taking an oath, the affirmation shall be in accordance with the form of affirmation specified in Schedule 4.

Oath or affirmation by deponent to affidavit

10. (1) An oath to be taken by a deponent to an affidavit for use in a proceeding shall be in accordance with the form of oath specified in Schedule 5.

(2) Where a deponent to an affidavit for use in a proceeding is entitled or required to make an affirmation instead of taking an oath, the affirmation shall be in accordance with the form of affirmation specified in Schedule 5.

PART III—ADMINISTRATION OF OATH OR AFFIDAVIT

Authority to administer oath, &c.

11. (1) An oath to be taken or affidavit to be made for the purposes of a proceeding or for any other purpose under a law in force in the Territory may be sworn or affirmed—

- (a) in the Territory, before a justice of the peace, a Notary Public for the Territory or a barrister and solicitor;
- (b) in a State or another Territory, before—
 - (i) a person referred to in paragraph (a);
 - (ii) a justice of the peace of that State or Territory;
 - (iii) a Notary Public for that State or Territory; or
 - (iv) any other person having authority to administer an oath in that State or Territory; and

(c) in any other place, before—

- (i) a person referred to in paragraph (a);
- (ii) an Australian diplomatic or consular representative in the country in which that place is situated;
- (iii) a Notary Public for that place; or
- (iv) any person having authority to administer an oath in that place.

(2) A person authorized under sub-section (1) to administer an oath may, for any purpose for which the oath may be administered, administer an affirmation.

Swearing or affirming of affidavit

12. Where, by a law in force in the Territory, an affidavit is required or permitted to be made, the affidavit may be sworn or affirmed in accordance with Part V.

Affidavit by affirmation

13. Where a deponent to an affidavit makes an affirmation pursuant to sub-section 10 (2), the form of *jurat* shall be varied and the necessary alterations shall be made so as to conform with the affirmation.

PART IV—AFFIRMATIONS

Entitlement to make affirmation

14. (1) In any case where an oath is required or permitted by law, a person is entitled, instead of taking such an oath, to make an affirmation.

(2) This section has effect notwithstanding anything contained in any other law of the Territory.

Requirement to make affirmation

15. Where a person required or permitted by law to take an oath—

- (a) appears to a person before whom an oath may be taken to be incompetent to take an oath;
- (b) is objected to, on grounds a person before whom an oath may be taken considers reasonable, as incompetent to take an oath; or
- (c) wishes to take an oath in a form and manner permitted under section 21, but it is not, in the opinion of a person before whom an

oath may be taken, reasonably practicable without inconvenience or delay for him to take that oath at the appropriate time and place,
the person before whom an oath may be taken may require that first-mentioned person to make an affirmation instead of taking an oath.

Effect of affirmation

16. An affirmation made by a person pursuant to this Part has the same effect for all purposes as if that person had taken an oath.

PART V—MANNER OF TAKING OATHS AND MAKING AFFIRMATIONS

Oath or affirmation by spoken words or other means

17. (1) A person taking an oath shall, if he is physically capable of doing so, in the presence of the person before whom the oath is taken—

- (a) hold in his hand the Bible, the New Testament or the Old Testament; and
- (b) at the same time, say the words of the oath.

(2) A person making an affirmation shall, if he is physically capable of doing so, in the presence of the person before whom the affirmation is made, say the words of the affirmation.

(3) The words of an oath or affirmation shall be spoken in the English language or such other language as the person before whom the oath is taken or affirmation made allows.

(4) A person who is incapable of speaking may express the words of an oath or affirmation by signs or by such other means as the person before whom the oath is taken or affirmation made allows.

Written evidence of oath or affirmation of office

18. A person who has taken or made an oath or affirmation of office shall forthwith, in the presence of the person before whom the oath or affirmation was taken or made, sign an instrument showing the form of that oath or affirmation, and the person before whom the oath or affirmation was taken or made shall certify on the instrument that the oath or affirmation was taken or made and the date on which it was taken or made.

Affidavit by person unable to understand English

19. Where, in relation to an affidavit, an oath or affirmation is allowed to be taken or made in a language other than English, the person before whom the affidavit is made shall certify in or below the *jurat* that a person whose name and address are stated in the certificate swore or affirmed before the first-mentioned person—

- (a) that he had in the presence of the first-mentioned person interpreted to the deponent—
 - (i) the contents of the affidavit; and
 - (ii) the words of the oath or affirmation;
- (b) that the deponent seemed to understand the affidavit and the oath or affirmation; and
- (c) that the deponent had sworn or affirmed that the contents of the affidavit so interpreted to him were true.

Affidavit by illiterate or blind person

20. Where it appears to the person before whom an affidavit is made that the deponent is illiterate or blind, the person shall certify in or below the *jurat* that the affidavit was read in his presence to the deponent and that the deponent seemed to understand the affidavit.

PART VI—MISCELLANEOUS**Alternative form and manner for oath**

21. Subject to section 15 but notwithstanding any other provision of this Ordinance, where a person who is required or permitted to take an oath states, in the presence of the person before whom the oath is to be taken, that an oath taken in a form and manner other than the form and manner specified in this Ordinance would be binding on him, the oath may be taken in that form and manner.

Validity of oath or affirmation

22. (1) Where a person has taken or made an oath or affirmation he is required or permitted to take or make in accordance with a form prescribed by or under a law in force in the Territory or in any form and manner that he has stated to be binding on him, that person is bound by the oath or affirmation for all purposes for which it was taken or made.

(2) Where a person has taken an oath in accordance with this Ordinance or another law in force in the Territory, the fact that that person did not at the relevant time have any religious belief or did not for any other reason regard the oath as binding on him does not affect the validity of that oath.

Effect of non-compliance

23. The validity of an oath or affirmation is not affected by reason only of a failure to comply with the provisions of Part II or V.

Oath or affirmation for purposes of foreign tribunal

24. (1) Subject to this section, a person appointed by a foreign tribunal to take evidence in the Territory for that tribunal may administer an oath or affirmation in the Territory for the purpose of taking that evidence.

(2) Where an oath or affirmation to be administered under sub-section (1) relates to evidence to be taken for a foreign tribunal other than a court or a judge, the oath or affirmation shall not be administered without the consent of the Attorney-General.

(3) Nothing in this section authorizes a person to administer an oath or affirmation in connection with criminal proceedings.

(4) In this section, “foreign tribunal” means a person or body authorized by a law of a place outside the Territory to take or receive evidence in that place.

Oath or affirmation without authority

25. (1) A person shall not, unless he is authorized to do so by or under a law in force in the Territory—

- (a) require another person to take an oath or make an affirmation; or
- (b) administer an oath or affirmation to another person.

(2) A person who wilfully contravenes sub-section (1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

Oath, &c., for purposes of foreign law

26. (1) Subject to sub-section 24 (2), where an oath, affirmation or affidavit is required or permitted by a foreign law for any purpose, nothing in this Ordinance makes it an offence for an authorized person to administer the oath or affirmation, or take the affidavit, for that purpose.

(2) In this section—

“authorized person” means a person authorized under this Ordinance to administer an oath or affirmation, or take an affidavit;

“foreign law” means a law of a place outside the Territory.

Fee

27. A fee is not payable to any person in respect of an oath taken or affirmation made in accordance with this Ordinance.

Amendment of *Seat of Government (Administration) Ordinance 1930*

28. The Second Schedule to the *Seat of Government (Administration) Ordinance 1930* is amended by omitting from Part I—

“*Oaths Ordinance 1934*”

and substituting—

“*Oaths and Affirmations Ordinance 1984*”.

SCHEDULE 1

Section 6

OATH AND AFFIRMATION OF OFFICE

OATH

I, A.B., do swear that I will well and truly serve in the office of
SO HELP ME GOD!

AFFIRMATION

I, A.B., do solemnly and sincerely affirm and declare that I will well and truly serve in the office of

SCHEDULE 2

Section 7

OATH AND AFFIRMATION BY WITNESS

OATH

I swear by Almighty God that the evidence I shall give will be the truth, the whole truth, and nothing but the truth.

AFFIRMATION

I solemnly declare and affirm that the evidence I shall give will be the truth, the whole truth, and nothing but the truth.

SCHEDULE 3

Section 8

OATH AND AFFIRMATION BY INTERPRETER OF SPOKEN LANGUAGE

OATH

I swear by Almighty God that I shall, to the best of my skill and ability, truly and faithfully translate from the English language into the _____ language and from the _____ language into the English language.

AFFIRMATION

I solemnly declare and affirm that I shall, to the best of my skill and ability, truly and faithfully translate from the English language into the _____ language and from the _____ language into the English language.

SCHEDULE 4

Section 9

OATH AND AFFIRMATION BY INTERPRETER OF STATEMENTS MADE BY MEANS OF SIGNS

OATH

I swear by Almighty God that I shall, to the best of my skill and ability, truly and faithfully communicate by signs or other convenient means words spoken in the English language and translate into the English language statements made by means of signs.

AFFIRMATION

I solemnly declare and affirm that I shall, to the best of my ability, truly and faithfully communicate by signs or other convenient means words spoken in the English language and translate into the English language statements made by means of signs.

SCHEDULE 5

Section 10

OATH AND AFFIRMATION BY DEPONENT TO AFFIDAVIT

OATH

I swear by Almighty God that the signature to this affidavit is my signature and that every statement in the affidavit is true.

AFFIRMATION

I solemnly declare and affirm that the signature to this affidavit is my signature and that every statement in the affidavit is true.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 19 December 1984.