

I certify that this is a copy of the authorised version of this Act as at 18 March 2022, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 18 March 2022.

Robyn Webb  
Chief Parliamentary Counsel  
Dated 13 April 2022



TASMANIA

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## **OATHS ACT 2001**

**No. 77 of 2001**

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## **OATHS ACT 2001**

**No. 77 of 2001**

**An Act to provide for the making of oaths, affidavits,  
declarations and affirmations**

**[Royal Assent 17 December 2001]**

Be it enacted by His Excellency the Governor of Tasmania, by  
and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:

### **PART 1 – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the *Oaths Act 2001*.

#### **2. Commencement**

This Act commences on a day to be proclaimed.

### 3. Interpretation

In this Act –

*affidavit* includes –

- (a) any affirmation, statutory declaration or other declaration; and
- (b) any acknowledgment, examination or attestation; and
- (c) for the purpose of section 7, any deposition or statement made by an informant or a complainant;

*appointed person* means a person appointed under section 9 to take and receive evidence;

*commissioner for declarations* means a person referred to in section 12;

*consular agent* means –

- (a) a consul-general, consul, vice-consul or consular agent; and
- (b) an acting consul-general, acting consul, acting vice-consul or acting consular agent;

*declared office* means an office declared under section 8;

*diplomatic agent* means –

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- (a) any ambassador, envoy, high commissioner, minister, head of mission, commissioner, *charge d'affaires*, counsellor or secretary at any embassy, legation, high commission or commission; and
- (b) a trade commissioner; and
- (c) a person appointed to hold or act in a declared office in a country or place outside Australia;

***judicial authority*** means a judge, person, court or body authorised by the law of a place outside this State to take or receive evidence on oath in that place;

***oath*** includes an affirmation and a declaration;

***relevant matter*** includes –

- (a) age; and
- (b) the capacity to hear, understand or communicate.

## **PART 2 – AFFIDAVITS**

### **4. Affidavit of service**

An affidavit of the service in this State of any process or other document to be issued out of any court may be taken before a justice.

### **5. Attestation by justice in other jurisdictions**

- (1) If, under any Act, any affidavit is required to be made, or any document to be signed, before any justice, it is sufficient if the affidavit is made or document is signed before a justice in the jurisdiction in which the affidavit is made or the document is signed.
- (2) The signature of any person on any affidavit or document purporting to be that of a justice in the jurisdiction in which the affidavit is made or document is signed is evidence that –
  - (a) the person is a justice; and
  - (b) the person signed the affidavit or document; and
  - (c) the person has authority to take the affidavit or to attest the signature to the document.

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**6. Oaths and affidavits before diplomatic and consular agents out of State**

- (1) If, under any Act, any oath, affidavit or document is required to be administered by, or made or signed before, a commissioner for taking affidavits or a justice, or if any notarial act is required to be done in any place out of this State for the purpose of being used in this State, it is sufficient if the oath, affidavit, document or notarial act is administered, made, signed or done before or by any diplomatic agent or consular agent performing functions in that place.
- (2) The signature of any person to any oath, affidavit, document or notarial act purporting to be that of a diplomatic agent or consular agent is evidence that –
  - (a) the person is a diplomatic agent or consular agent; and
  - (b) the person administered the oath or signed the affidavit, document or notarial act; and
  - (c) the person has authority to administer the oath, take the affidavit, attest the signature to the document or do the notarial act.

**7. Affidavit instead of oath**

- (1) This section applies to an affidavit before a justice or an appointed person made by a person

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who the justice or appointed person is satisfied, having regard to any relevant matter, is not competent to take an oath.

- (2) The affidavit is –
  - (a) allowed as if it were taken on oath if –
    - (i) the justice or appointed person tells the person making it that it is important to tell the truth; and
    - (ii) that person declares that the affidavit does not contain any lies; and
  - (b) not allowed if the justice or appointed person is satisfied that the person –
    - (i) does not understand the difference between the truth and a lie; or
    - (ii) is not able to respond rationally to questions.
- (3) It is presumed, unless the contrary is established to the satisfaction of the justice or appointed person, that the person –
  - (a) understands the difference between the truth and a lie; and
  - (b) is able to respond rationally to questions.
- (4) This section does not make evidence admissible if it would otherwise be inadmissible.

**8. Declared office**

The Minister, by order, may declare an office of the Commonwealth to be a declared office for the purpose of the definition of “diplomatic agent”.

**9. Power to take evidence and administer oaths**

- (1) A judicial authority wishing to take evidence in this State may appoint a person to take and receive evidence in this State.
- (2) An appointed person may –
  - (a) take or receive evidence in this State for the judicial authority; and
  - (b) administer an oath for that purpose.
- (3) An appointed person appointed by a judicial authority that is not a court or judge may only take and receive evidence or administer an oath in this State with the written consent of the Attorney-General.

**10. Certificate of consular agent**

- (1) An affidavit is not to be taken by an appointed person unless the person receives a written certificate from a consular agent of the place to which the judicial authority belongs that he or she believes the affidavit is required for the purpose of a matter pending before or in that judicial authority.

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- (2) The jurat or attestation of the affidavit is to state the name and official designation of the consular agent on whose certificate the affidavit has been taken.

**11. False affidavit**

- (1) An affidavit taken by an appointed person is taken to have been made in a judicial proceeding.
- (2) In any prosecution for perjury in respect of an affidavit –
- (a) it is not necessary to prove that –
    - (i) any judicial or other proceeding was actually pending before or in a judicial authority; or
    - (ii) the certificate referred to in section 10 was actually given; and
  - (b) any evidence to the contrary is not admissible.

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**PART 3 – COMMISSIONERS FOR DECLARATIONS**

**12. Commissioners for declarations**

- (1) The Minister may appoint persons to be commissioners for declarations.
- (2) A person is a commissioner for declarations if the person is –
  - (a) a prescribed person under regulation 7 of the *Statutory Declarations Regulations 2018* of the Commonwealth; or
  - (b) . . . . .
  - (c) a member of a group of persons declared by the Minister to be an occupational group for the purposes of this section.
- (3) The Minister is to publish in the *Gazette* notice of any –
  - (a) appointment under subsection (1); and
  - (b) declaration under subsection (2)(c); and
  - (c) revocation of the appointment or declaration.

**13. Title to be shown**

A commissioner for declarations signing in that capacity is to add after his or her signature –

- (a) “commissioner for declarations”; and

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- (b) his or her title, if qualified as a commissioner under section 12(2).

**14. Statutory declarations**

- (1) Any justice or other person by law authorised to administer an oath or a commissioner for declarations may take and receive the voluntary declaration of a person.
- (2) A declaration is to be in accordance with Form 1 as specified in Schedule 1.
- (3) If, under any Act, a declaration or document is authorised or required to be made or signed before a justice, it is sufficient if that declaration or document is made or signed before a commissioner for declarations.

**15. Validity of declaration**

A declaration made or a document signed is not invalidated only because the person before whom it was made or signed is no longer a commissioner for declarations.

## **PART 4 – MISCELLANEOUS**

### **16. Affirmations and oaths**

- (1) A person may make an affirmation instead of taking an oath for any purpose where an oath is required by law.
- (2) An affirmation has the same effect as an oath.
- (3) An affirmation, unless otherwise provided for, is to state that the person solemnly and sincerely declares and affirms the matter to be affirmed.
- (4) An oath may be taken by saying “I swear” in reply to the oath being tendered.
- (5) An affirmation may be made by saying “I affirm” in reply to the affirmation being tendered.

### **17. Regulations**

The Governor may make regulations for the purposes of this Act.

### **18. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and

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- (b) the department responsible to the Minister for Justice and Industrial Relations in relation to the administration of this Act is the Department of Justice and Industrial Relations.

**19. Transitional provisions**

- (1) A declaration made under section 131B(1)(c) of the *Evidence Act 1910* before the commencement of this Act is, on that commencement, taken to be a declaration made under section 12(2)(c) of this Act.
- (2) A person who was a commissioner for declarations under section 131A of the *Evidence Act 1910* before the commencement of this Act is, on that commencement, a commissioner for declarations under this Act.

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**SCHEDULE 1 – FORMS**

Section 14

**Form 1 – Statutory Declaration**

I, .....

.....  
(name, address, occupation and telephone number)

do solemnly and sincerely declare that .....

.....  
(facts)

I make this solemn declaration under the *Oaths Act 2001*.

Declared at .....  
(place)

on ..... before me

.....  
(Justice, commissioner for declarations  
or authorised person)

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**NOTES**

The foregoing text of the *Oaths Act 2001* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 18 March 2022 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Oaths Act 2001</i>	No. 77 of 2001	1.7.2002
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2018</i>	No. 29 of 2018	10.12.2018
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2022</i>	No. 2 of 2022	18.3.2022

**TABLE OF AMENDMENTS**

Provision affected	How affected
Section 12	Amended by No. 2 of 2022, Sched. 1
Schedule 1	Amended by No. 29 of 2018, s. 40