



# Oaths Act 1867

Current as at [Not applicable]

## Indicative reprint note

This is an **unofficial** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Justice Legislation (COVID-19 Emergency Response-Permanency) Amendment Bill 2021. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act.***

The point-in-time date for this indicative reprint is the introduction date for the Justice Legislation (COVID-19 Emergency Response-Permanency) Amendment Bill 2021—15 September 2021.

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## Queensland

# Oaths Act 1867

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# Oaths Act 1867

## An Act to consolidate and amend the laws relating to oaths

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### Part 1 Preliminary

#### 1A Short title

This Act may be cited as the *Oaths Act 1867*.

#### 1B Definitions

In this Act—

***accepted method***—

- 1 *Accepted method*, for electronically signing an affidavit or a declaration, means—
  - (a) a method prescribed, or a method stated in a rule of court or practice direction made, given, issued or approved, under section 13A that is applicable to the affidavit or declaration; or
  - (b) if no method is prescribed, or no rule or practice direction is made, given, issued or approved, that applies to the affidavit or declaration—a method described in paragraph 2.
- 2 *Accepted method*, for electronically signing a document other than an affidavit or a declaration to which paragraph 1(a) applies, means a method that—

- (a) identifies the signatory for the document and the signatory's intention in relation to the contents of the document; and
- (b) is either—
  - (i) as reliable as appropriate for the purpose for which the document is signed, having regard to all the circumstances, including any relevant agreement; or
  - (ii) proven in fact to have fulfilled the functions described in paragraph (a), by itself or together with further evidence.

3 However, for paragraph 2, the term is subject to a regulation prescribing under section 13A a method that is not an accepted method for electronically signing an affidavit or a declaration.

***administer—***

- (a) for part 4—see section 11; or
- (b) for part 6A—see section 31B.

***audio visual link*** means facilities that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places and includes videoconferencing.

***Australian legal practitioner*** see the *Legal Profession Act 2007*, section 6(1).

***authorised person***, in relation to a person's oath or affirmation, means a person who is authorised by law to administer the person's oath or affirmation.

***commissioner for declarations*** see the *Justices of the Peace and Commissioners for Declarations Act 1991*, section 3.

***confirm***, a document, for part 6A, see section 31B.

***copy***, of an electronic document, for part 6A, see section 31B.

***counterpart***, for a document, means a copy of the document that includes the entire contents of the document but does not

include the signatures of all the other persons who are to sign the document.

***court of justice*** includes a person authorised to administer oaths to witnesses.

***direct***, in relation to a document, includes instruct.

***document*** means any record of information however recorded and includes—

- (a) anything on which there is writing; and
- (b) anything on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- (d) any record of information that exists in digital form and is capable of being reproduced, transmitted, stored or duplicated by electronic means.

***electronically sign***, a document, means sign the document using an accepted method.

***electronic document*** means—

- (a) a record of information reproduced from a thing mentioned in definition *document*, paragraph (c); or
- (b) a document of a type mentioned in definition *document*, paragraph (d).

***information*** includes information in the form of data, text or images.

***make***, in relation to a document—

- (a) for part 4—see section 11; or
- (b) for part 6A—see section 31B.

***official version***, of a document, for part 6A, see section 31Y(2) and (3).

***originating version***, of a document, for part 6A, see section 31Y(4).

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***physical document*** means a document of a type mentioned in definition *document*, paragraph (a) or (b).

***presiding judge*** includes a person authorised to administer oaths to witnesses.

***sign***, a document, means—

- (a) for a physical document—physically sign the document or counterpart; or
- (b) for an electronic document—electronically sign the document or counterpart.

***special witness***, for a document, see section 12.

***State*** includes a Territory.

***water allocations register*** see the *Water Act 2000*, schedule 4.

***witness***, a document—

- (a) for part 4—see section 11; or
- (b) for part 6A—see section 31B.

## Part 2 Oaths of office and allegiance

### 1 Oath substituted for the oaths and declaration now prescribed by law

In every case where but for the passing of this Act it would be necessary for any person to take the oaths commonly called the oaths of allegiance supremacy and abjuration or any of them or the oath prescribed by the Act of Parliament commonly called the *Roman Catholic Relief Act 1830* or to make the declaration prescribed by the Act of Parliament passed in the ninth year of the reign of King George IV chapter 17 and whensoever it shall be necessary for any person to take the oath of allegiance it shall be sufficient for such person to take in lieu of the said several oaths and declaration the following oath of allegiance—

‘I A.B. do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, as lawful Sovereign of the United Kingdom, Australia, and her other Realms and Territories, and to Her Heirs and Successors, according to law.’;

anything in the said Acts of Parliament or in any other statute Act or law notwithstanding.

## **2 Before whom the oath may be taken**

Where by any law now in force in this State the said several oaths or any of them may be taken before the Supreme Court or before a judge or are 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 district court or court of quarter sessions or before any justice of the peace authorised by writ of dedimus potestatem for that purpose.

## **3 Oaths for justices of the peace and others**

- (1) The oath of office to be hereafter taken by justices of the peace shall (in lieu of the oath in that behalf heretofore taken by them) be the oath following—

‘I A.B. do sincerely promise and swear that as a justice of the peace for the State of Queensland I will at all times and in all things do equal justice to the poor and rich and discharge the duties of my office according to the law to the best of my knowledge and ability without fear favour or affection.’.

- (2) Masters of the Supreme Court, members of the Industrial Court and the Land Court appointed after the passing of the *Oaths Acts Amendment Act 1981*, wardens appointed under the *Mineral Resources Act 1989* and commissioners of the Queensland Industrial Relations Commission appointed after the passing of the *Holidays and Other Legislation Amendment Act 2012* shall take the oath of allegiance and also the oath of office hereinbefore mentioned with the necessary adaptations.

- (3) Commissioners of the Queensland Industrial Relations Commission appointed before the passing of the *Holidays and Other Legislation Amendment Act 2012* may take the oath of allegiance and the oath of office mentioned in subsection (1) with the necessary adaptations.

#### **4 Name of the Sovereign**

In case of the demise of Her Majesty (whom may God long preserve) the name of Her Majesty's successor for the time being shall be substituted in the form of oath instead of the name of Her Majesty.

#### **5 Affirmation in lieu of oath**

Every person who now is or shall hereafter be by law entitled to make affirmation in lieu of an oath may make affirmation in the form hereinbefore prescribed with the words 'solemnly and sincerely promise and affirm' substituted for the words 'sincerely promise and swear'.

#### **5A Form of oath of allegiance**

- (1) On and after the coming into operation of this Act and without prejudice to the provisions of any Act requiring the taking of a further oath of allegiance upon the demise of Her Majesty, there shall be substituted for the oath of allegiance prescribed by section 1, and for any oath of allegiance prescribed under any Act, other than the *Constitution of Queensland 2001*, an oath of allegiance in the following form—

I, , do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, as lawful Sovereign of the United Kingdom, Australia, and her other Realms and Territories, and to Her Heirs and Successors, according to law.

So Help Me God!

- (2) In the case of the demise of Her Majesty (whom may God long preserve) the name of Her Majesty's successor according

to law for the time being shall be substituted in the form of oath of allegiance prescribed by subsection (1) instead of the name of Her Majesty.

## **Part 3**

### **Declarations substituted for certain official oaths**

#### **6 Declarations substituted for oaths and affirmations**

In any case whereby any statute law or ordinance made or to be made relating to any of the public revenue of the State or any of the public offices or public departments or by any official regulation in any department any oath solemn affirmation or affidavit might but for the passing of this Act be required to be taken or made by any person on the doing of any act matter or thing or for the purpose of verifying any book entry or return or for any other purpose whatsoever it shall be lawful for the Governor in Council of the said State if the Governor in Council shall so think fit to substitute a declaration to the same effect as the oath solemn affirmation or affidavit which might but for the passing of this Act be required to be taken or made and the person who might under the Act or Acts imposing the same be required to take or make such oath solemn affirmation or affidavit shall in the presence of the officer or person empowered by such Act or Acts to administer such oath solemn affirmation or affidavit make and subscribe such declaration and every such officer or person is hereby empowered and required to administer the same accordingly.

#### **7 Act not to extend to oath of allegiance**

However, nothing in section 6 contained shall extend or apply to the oath of allegiance in any case in which the same now is or may be required to be taken by any person who may be appointed to any office but such oath of allegiance shall

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continue to be required and shall be administered and taken as well and in the same manner as if this Act had not been passed.

**8 Nor to oaths in judicial proceeding**

In addition, nothing in section 6 contained shall extend or apply to any oath solemn affirmation or affidavit which now is or hereafter may be made or taken or be required to be made or taken in any judicial proceeding in any court of justice or in any proceeding for or by way of summary conviction before any justice or justices of the peace but all such oaths affirmations and affidavits shall continue to be required and to be administered taken and made as well and in the same manner as if this Act had not been passed.

**9 Such substitution to be notified in gazette**

When the Governor in Council shall in any such case as aforesaid have substituted a declaration in lieu of an oath solemn affirmation or affidavit the same shall be notified in the gazette and from and after the expiration of 21 days next following the day of the date of the gazette wherein such notification shall have been first published the provisions of this Act shall extend and apply to each and every case office or department specified in such notification.

**10 Oaths or affirmations not to be made or taken thereafter**

After the expiration of the said 21 days it shall not be lawful for any officer or other person to administer or cause to be administered or receive or cause to be received any oath solemn affirmation or affidavit in lieu of which such declaration as aforesaid shall have been directed by the said Governor in Council to be substituted.

## Part 4 Affidavits and statutory declarations

### Division 1 Preliminary

#### 11 Definitions for part

In this part—

*administer* includes—

- (a) in relation to an oath or affirmation—take, receive and swear; and
- (b) in relation to a declaration—take and receive.

*make*, in relation to a document, includes execute.

*special witness*, for a document, see section 12.

*witness*, a document, includes—

- (a) witness the signing of the document; and
- (b) for an affidavit—administer an oath or affirmation for the affidavit; and
- (c) for a declaration—administer the declaration.

#### 12 Special witnesses

(1) A *special witness*, for a document, is a person who is—

- (a) an Australian legal practitioner; or
- (b) a government legal officer under the *Legal Profession Act 2007* who is an Australian lawyer but not an Australian legal practitioner and who witnesses documents in the course of the government work engaged in by the officer; or
- (c) a justice or commissioner for declarations approved by the chief executive under subsection (2); or
- (d) a justice or commissioner for declarations—

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- (i) employed by the law practice that prepared the document; and
- (ii) who witnesses documents in the course of that employment; or
- (e) a notary public; or
- (f) a person mentioned in subsection (3) for the document.

*Note—*

See sections 31Q and 31S for further provision about special witnesses.

- (2) The chief executive may approve a justice or commissioner for declarations to be a special witness if the chief executive is satisfied the justice or commissioner for declarations is an appropriate person for witnessing documents under part 6A.
- (3) For subsection (1)(f), a person is also a special witness for a document if—
  - (a) the document is prepared by the public trustee; and
  - (b) the person is a justice or commissioner for declarations who is an employee of the public trustee.
- (4) In this section—

*Australian lawyer* see the *Legal Profession Act 2007*, section 5(1).

*law practice* see the *Legal Profession Act 2007*, schedule 2.

## **13 References to witnesses, signatories and substitute signatories**

- (1) In this part—
  - (a) a reference to a witness in relation to a document is a reference to a person witnessing the making of the document; and
  - (b) a reference to a signatory in relation to a document is a reference to the person for whom the document is made, whether signed by the person or by a substitute signatory at the direction of the person; and

- (c) a reference to a substitute signatory in relation to a document is a reference to a person signing the document at the direction of the signatory.
- (2) Also, for an affidavit or a declaration—
  - (a) a reference to a witness in relation to the affidavit or declaration is a reference to the person who administers an oath or affirmation to the person making the affidavit or declaration before the affidavit or declaration is made; and
  - (b) a reference to a signatory in relation to the affidavit or declaration is a reference to the person who makes or gives an oath or affirmation for the person's affidavit or declaration before the affidavit or declaration is made.

## **Division 2                      General requirement for affidavits and declarations**

### **13A      Accepted method for electronically signing affidavits or declarations**

- (1) A regulation may prescribe an accepted method, or what is not an accepted method, for electronically signing an affidavit or a declaration, including an affidavit or a declaration to be filed or admitted into evidence in a proceeding in a court or tribunal.
- (2) The person or body for a court or tribunal who has the power to make rules of court or practice directions regulating the practice and procedure of the court or tribunal may make, give, issue or approve a rule or practice direction that states an accepted method for electronically signing an affidavit or a declaration to be filed or admitted into evidence in a proceeding in the court or tribunal.
- (3) The person or body for the court or tribunal must, when making, giving, issuing or approving a rule or practice direction under subsection (2), consider the need to ensure

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consistency of the rule or practice direction with the rules or practice directions of other courts and tribunals.

- (4) If a rule or practice direction made, given, issued or approved under subsection (2) is inconsistent with a regulation made under subsection (1), the regulation prevails to the extent of the inconsistency.

### **13B Jurat of affidavit**

- (1) This section applies in relation to an affidavit made, signed or witnessed under this Act or another law.
- (2) The signatory must ensure the affidavit's jurat states the following matters—
- (a) if applicable, that the affidavit was made in the form of an electronic document;
  - (b) if applicable, that the affidavit was electronically signed by the signatory or substitute signatory;
  - (c) if applicable, that the affidavit was made, signed and witnessed under part 6A;
  - (d) that either—
    - (i) the contents of the affidavit are true; or
    - (ii) if the contents of the affidavit are stated on the basis of information and belief—those contents are true to the best of the knowledge of the person making the statement;
  - (e) that the signatory understands that a person who provides a false matter in the affidavit commits an offence.

*Example of offence—*

perjury under the Criminal Code, section 123

### **13C Statement in declaration**

- (1) This section applies in relation to a declaration made, signed or witnessed under this Act or another law.

- (2) The signatory must ensure the declaration states the following matters—
- (a) if applicable, that the declaration was made in the form of an electronic document;
  - (b) if applicable, that the declaration was electronically signed by the signatory or substitute signatory;
  - (c) if applicable, that the declaration was made, signed and witnessed under part 6A;
  - (d) that either—
    - (i) the contents of the declaration are true; or
    - (ii) if the contents of the declaration are stated on the basis of information and belief—those contents are true to the best of the knowledge of the person making the statement;
  - (e) that the signatory understands that a person who provides a false matter in the declaration commits an offence.

*Example of offence—*

perjury under the Criminal Code, section 123

### **13D Witness must verify particular matters**

A person who witnesses an affidavit or a declaration must take reasonable steps to verify each of the following matters—

- (a) the identity of the signatory;
- (b) that the name of the signatory matches the name of the signatory written on or in the affidavit or declaration.

### **13E Additional requirement for witness for affidavit or declaration**

A person who witnesses an affidavit or a declaration must include all of the following information on the affidavit or declaration—

- (a) the witness's full name;
- (b) if the witness is a special witness—
  - (i) that the witness is a special witness; and
  - (ii) the type of witness under section 12(1) that the special witness is; and

*Examples of a type of witness for subparagraph (ii)—*

- an Australian legal practitioner
  - a justice approved by the chief executive under section 12(2)
  - a commissioner for declarations approved by the chief executive under section 12(2)
- (iii) for a witness who is an Australian legal practitioner and an employee of, or a partner in, a law practice—the name of the law practice; and
  - (iv) if subparagraph (iii) does not apply—the witness's place of employment, if applicable; and
  - (v) that the witness understands the requirements for witnessing a document by audio visual link and has complied with those requirements, if applicable;

*Example of information to be included on an affidavit or a declaration for a special witness who is an Australian legal practitioner and who witnesses the affidavit or declaration by audio visual link—*

Jane Anne Doe

Australian legal practitioner, ABC Legal

Special witness under the *Oaths Act 1867*

I understand the requirements for witnessing a document by audio visual link and have complied with those requirements.

- (c) if paragraph (b) does not apply—
  - (i) the type of witness under section 16A or 16B that the witness is; and

*Examples of a type of witness for subparagraph (i)—*

- a lawyer
- a justice of the peace

- (ii) the witness's place of employment, if applicable;
- (d) other information prescribed by regulation for this section.

#### 14 Form of declaration

In all cases where a declaration in lieu of an oath shall have been substituted by this Act or by virtue of any power or authority hereby given or where a declaration is directed or authorised to be made and subscribed under the authority of this Act or of any power hereby given although the same be not substituted in lieu of an oath heretofore legally taken such declaration unless otherwise directed by the powers hereby given shall be in the following form—

‘I A.B. do solemnly and sincerely declare that [*let the person declare the facts*] and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.’

#### 15 Fees payable

Whenever any declaration shall be made and subscribed by any person or persons under or in pursuance of the provisions of this Act or any of them all and every such fees or fee as would have been due and payable on the taking or making any legal oath solemn affirmation or affidavit shall be in like manner due and payable upon making and subscribing such declaration.

### Division 3                      Signing in physical presence of witness

#### 16 Application of division

This division applies to an affidavit or a declaration signed in the physical presence of a witness, including a special witness.

*Note—*

See part 6A for requirements for witnessing an affidavit or a declaration by audio visual link.

## **16A Who may witness affidavits**

- (1) A person's affidavit may be witnessed by any of the following persons without a commission being issued for the purpose—
  - (a) a justice, commissioner for declarations or notary public under the law of the State, the Commonwealth or another State;
  - (b) a lawyer;
  - (c) a conveyancer, or another person authorised to administer an oath, under the law of the State, the Commonwealth or another State;
  - (d) if the affidavit is witnessed outside Australia—a person authorised to administer an oath under the law of the place in which the affidavit is witnessed;
  - (e) another person prescribed by regulation for this section.

*Note—*

See also section 13E and part 6A for requirements for witnessing an affidavit by audio visual link.

- (2) However, a regulation may provide that a person mentioned in subsection (1)(a), (b), (c), (d) or (e)—
  - (a) may witness an affidavit only of a prescribed type and subject to any prescribed conditions;
  - (b) may not witness an affidavit of a prescribed type.
- (3) This section applies to an affidavit witnessed for Queensland law, whether it is witnessed inside or outside Queensland (including outside Australia).

## **16B Who may witness declarations**

- (1) A person's declaration may be witnessed by—

- (a) a justice, commissioner for declarations or notary public under the law of the State, the Commonwealth or another State; or
- (b) a lawyer; or
- (c) a conveyancer, or another person authorised to administer an oath, under the law of the State, the Commonwealth or another State; or
- (d) another person prescribed by regulation for this section.

*Note—*

See also section 13E and part 6A for requirements for witnessing a declaration by audio visual link.

- (2) However, a regulation may provide that a person mentioned in subsection (1)(a), (b), (c) or (d)—
  - (a) may witness a declaration only of a prescribed type and subject to any prescribed conditions; or
  - (b) may not witness a declaration of a prescribed type.
- (3) This section applies to a declaration witnessed for Queensland law, whether it is witnessed inside or outside Queensland (including outside Australia).

## **16C Affidavit or declaration electronically signed in physical presence of witness**

- (1) This section applies if a signatory or substitute signatory signs an affidavit or a declaration in the physical presence of a witness.

*Note—*

See section 31R in relation to a substitute signatory directed by audio visual link to sign a document for a signatory.

- (2) The affidavit or declaration may be made in the form of an electronic document, and may be electronically signed, if the witness is a special witness for the affidavit or declaration or another person prescribed by regulation for this section.
- (3) However, a regulation made under subsection (2) may provide that a person prescribed for this section—

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- (a) may witness an affidavit or a declaration only of a prescribed type and subject to any prescribed conditions; or
  - (b) may not witness an affidavit or a declaration of a prescribed type.
- (4) If the affidavit or declaration is in the form of an electronic document and electronically signed, the witness may confirm the affidavit or declaration by signing the electronic document or a true copy or counterpart for the electronic document.
- (5) If a justice or commissioner for declarations confirms the affidavit or declaration under subsection (4), the justice or commissioner for declarations is not required to insert on the affidavit or declaration the imprint of a seal of office issued to the person under the *Justices of the Peace and Commissioners for Declarations Act 1991*.
- (6) This section does not apply to a declaration lodged or deposited in the land registry or water allocations register.
- (7) To remove any doubt, it is declared that this section applies to a declaration that is supporting evidence under the participation rules within the meaning of the Electronic Conveyancing National Law (Queensland) for a document lodged under section 7 of that Law.

**16D Effect of affidavit or declaration electronically signed in physical presence of witness**

- (1) This section applies to an affidavit or a declaration under section 16C if—
  - (a) either—
    - (i) the affidavit or declaration is in the form of an electronic document and the signatory or substitute signatory electronically signed the electronic document; and
    - (ii) the witness confirmed the affidavit or declaration by signing the same electronic document; or

- (b) the affidavit or declaration is made using counterparts in the form of electronic documents.
- (2) If subsection (1)(b) applies—
  - (a) the counterpart confirmed by the witness for the document must be kept with the document signed by the signatory or substitute signatory; and
  - (b) the counterpart mentioned in paragraph (a) and the document signed by the signatory or substitute signatory together constitute the affidavit or declaration.
- (3) If the affidavit or declaration is required to be given, produced or used for any purpose, the electronic document or a printout of the electronic document, or the counterparts or a printout of the counterparts constituting the affidavit or declaration, may be—
  - (a) given, produced or used for the purpose; and
  - (b) relied on as evidence of the affidavit or declaration.

*Example for subsection (3)—*

The electronic document or a printout of the electronic document, or the counterparts or a printout of the counterparts constituting an affidavit or a declaration, may be given to a court or other entity, and relied on by the court or other entity, as evidence of the affidavit or declaration.

- (4) Subsection (3) does not limit the power of a court to require production of the electronic document, or the counterparts in the form of electronic documents, in a proceeding.

## Part 5 Solemn affirmations and declarations

### 17 Affirmation instead of oath in certain cases

- (1) If any person called as a witness or required or desired to make an oath affidavit or deposition objects to being sworn it

[s 18]

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shall be lawful for the court or judge or other presiding officer or person qualified to administer oaths or to take affidavits or depositions to permit such person instead of being sworn to make his or her solemn affirmation in the words following videlicet—

‘I A.B. do solemnly sincerely and truly affirm and declare etc.’.

- (2) Which solemn affirmation shall be of the same force and effect as if such person had taken an oath in the usual form and the like provisions shall apply also to every person required to be sworn as a juror.

## **18 Quakers and Moravians permitted to make a solemn affirmation or declaration instead of oath**

- (1) Every person being or having been of the persuasion of the people called Quakers and every person being or having been a Moravian shall be permitted to make his or her solemn affirmation or declaration instead of taking an oath in all places and for all purposes whatsoever where an oath is or shall be required either by the common law or by an Act of Parliament already made or hereafter to be made which said affirmation or declaration shall be of the same force and effect as if he or she had taken an oath in the usual form.
- (2) However, every such affirmation or declaration shall be in the words following that is to say—

‘I A.B. being [*or having been as the case may be*] one of the people called Quakers [*or one of the persuasion of the people called Quakers or of the united brethren called Moravians as the case may be*] do solemnly sincerely and truly affirm and declare.’.

## **19 Separatists instead of an oath may make the following affirmation**

- (1) Every person for the time being belonging to the sect called separatists who shall be required upon any lawful occasion to take an oath in any case where by law an oath is or may be

required shall instead of the usual form be permitted to make his or her solemn affirmation or declaration in these words following videlicet—

‘I A.B. do in the presence of Almighty God solemnly sincerely and truly affirm and declare that I am a member of the religious sect called separatists and that the taking of any oath is contrary to my religious belief as well as essentially opposed to the tenets of that sect and I do also in the same solemn manner affirm and declare.’.

- (2) Which said solemn affirmation or declaration shall be adjudged and taken and is hereby enacted and declared to be of the same force and effect to all intents and purposes in all courts of justice and other places whatsoever where by law an oath is or may be required as if such separatists had taken an oath in the usual form.

## Part 6 Other oaths

### 21 Swearing of jurors in civil trials

Jurors may be sworn for civil trials in open court in the following form or in a form to the same effect—

You will conscientiously try the issues on which your decision is required and decide them according to the evidence. You will also not disclose anything about the jury’s deliberations other than as allowed or required by law. So help you God.

### 22 Swearing of jurors in criminal trials

Jurors may be sworn for criminal trials in open court in the following form or in a form to the same effect—

You will conscientiously try the charges against the defendant (or defendants) [\*or the issues on which your decision is required] and decide them according to the evidence. You will

also not disclose anything about the jury's deliberations other than as allowed or required by law. So help you God.

## **23 Witnesses' oath in civil causes**

Witnesses may be sworn in civil causes in open court in the following form or to the like effect—

‘The evidence which you shall give to the court [and jury sworn] touching the matters in question between the parties shall be the truth the whole truth and nothing but the truth So help you God.’.

## **23A Witnesses' oath in proceedings not otherwise specified**

Witnesses may be sworn in any judicial or other proceedings in respect of which a form of oath to be sworn therein is not provided in this Act in the following form or to the like effect—

‘The evidence which you shall give to the court [*or* in these proceedings] shall be the truth the whole truth and nothing but the truth So help you God.’.

## **24 Voire dire**

Any person may be sworn on the voire dire in the following form or to the like effect—

‘You shall true answer make to all such questions as the court shall demand of you So help you God.’.

## **25 Witnesses' oath on criminal trials**

Witnesses may be sworn on criminal trials in open court in the following form or to the like effect—

‘The evidence which you shall give to the court and jury sworn between our Sovereign Lady the Queen and the prisoner [*or* prisoners *or* defendant] at the bar [*or* the

defendant] shall be the truth the whole truth and nothing but the truth So help you God.’.

## **26 Interpreters’ oath in civil causes**

Interpreters may be sworn in civil causes in open court in the following form or to the like effect—

‘You swear that you understand the language of the witness [*or plaintiff or defendant*] and are able to interpret between the witness [*or plaintiff or defendant*] and the court and jury and all persons conversant with the English language So help you God.’

‘You shall well and truly interpret and true explanation make between the witness [*or plaintiff or defendant*] and the court and jury and all persons conversant with the English language to the best of your knowledge skill and ability and the evidence you shall give to the court and jury sworn touching the matters in question shall be the truth the whole truth and nothing but the truth So help you God.’.

## **27 Interpreters’ oath in civil causes on the voire dire**

Interpreters may be sworn in civil causes in open court to interpret on the voire dire in the following form or to the like effect—

‘You swear that you understand the language of the witness [*or plaintiff or defendant*] and are able to interpret between the witness [*or plaintiff or defendant*] and the court and all persons conversant with the English language So help you God.’

‘You shall well and truly interpret and true explanation make between the witness [*or plaintiff or defendant*] and the court and all persons conversant with the English language to the best of your knowledge skill and ability and you shall true answer make to all such questions as the court shall demand of you So help you God.’.

**28 Interpreters' oath for the arraignment—to interpret between prisoner and others**

- (1) Interpreters may be sworn in open court for the purpose of conducting the arraignment of any person accused in the following form or to the like effect—

‘You swear that you understand the language of the prisoner at the bar and are able to interpret between the prisoner and the court So help you God.’

‘You shall well and truly interpret and true explanation make between the prisoner at the bar and the court to the best of your knowledge skill and ability and you shall true answer make to all such questions as the court shall demand of you So help you God.’.

- (2) And whenever on the trial of such person it may be necessary to examine a witness who does not speak the English language on the voire dire the interpreter's oath may be in the form given in section 27 or to the like effect retaining the word ‘witness’ throughout.

**29 Interpreter's oath to interpret between a prisoner, defendant or witness and others**

- (1) Interpreters may be sworn for the purposes of a criminal trial in open court in the following form or to the like effect—

NON-ENGLISH SPEAKING PRISONER

‘You swear that you understand the language of the prisoner [*or prisoners or defendant*] at the bar [*or the defendant*] and are able to interpret between the prisoner [*or prisoners or defendant*] and the court and jury and between the prisoner [*or prisoners or defendant*] and all persons conversant with the English language So help you God.’

‘You shall well and truly interpret and true explanation make between the prisoner [*or prisoners or defendant*] at the bar [*or the defendant*] and the court and jury and between the prisoner [*or prisoners or defendant*] and all persons conversant with the English language to the best of your knowledge skill and

ability and the evidence which you shall give to the court and jury sworn between our Sovereign Lady the Queen and the prisoner [*or* prisoners] at the bar shall be the truth the whole truth and nothing but the truth So help you God.’.

NON-ENGLISH SPEAKING WITNESS

‘You swear that you understand the language of the witness and are able to interpret between the witness and the court and jury and the prisoner and all persons conversant with the English language.’

‘You shall well and truly interpret and true explanation make between the witness the court and jury and the prisoner and all persons conversant with the English language and the evidence which you shall give to the court and jury sworn between our Sovereign Lady the Queen and the prisoner at the bar shall be the truth the whole truth and nothing but the truth So help you God.’.

- (2) However, when the witness and the prisoner do not speak English fluently but speak different languages and the interpreter is unable to interpret to the prisoner the reference to the prisoner shall be omitted and an additional interpreter sworn to interpret the English interpretation of the first interpreter to the prisoner.

**30 Where witness and prisoner are of different languages—first interpreter’s oaths**

- (1) When on any criminal trial a witness and the prisoner do not speak English fluently but speak different languages and an interpreter can be found conversant with the languages of the prisoner and the witness and able to interpret between them and a second interpreter can be found conversant with the English and with any language with which the first interpreter is conversant and able to interpret from the lastnamed language into English the first interpreter may be sworn through the second interpreter in open court in the following form or to the like effect—

‘You swear that you understand the several languages of the witness and the prisoner and are able to interpret between them So help you God.’

‘You shall well and truly interpret and true explanation make between the witness and the prisoner at the bar and the prisoner at the bar and the witness and between them and each of them and the court and jury and all interpreters witnesses and persons whatsoever to the best of your knowledge skill and ability and the evidence you shall give to the court and jury sworn between our Sovereign Lady the Queen and the prisoner at the bar shall be the truth the whole truth and nothing but the truth So help you God.’.

- (2) And whatever be the number of interpreters necessary before the statements of the prisoner and the witness can be interpreted into one and the same language and into English the same forms of oath shall be administered *mutatis mutandis* to each interpreter in the succession and the like provision shall apply in civil causes as far as may be.

### **30A Intermediaries’ oath**

- (1) Intermediaries may be sworn in the criminal proceedings in which they are appointed in the following form or in a form to the same effect—

‘You swear that you will well and truly communicate and explain the questions put to the witness and the answers given by the witness to the best of your knowledge, skill and ability So help you God.’.

- (2) In this section—

*intermediary* means a person appointed as an intermediary under an order made under the *Evidence Act 1977*, section 21AZL.

### **31 Oath of bailiff in charge of jury**

Bailiffs may be sworn to take charge of juries in the following form or in a form to the same effect—

You swear that you will not communicate with the jury nor allow anyone else to communicate with the jury unless the communication is authorised by the court, or is otherwise authorised by law. So help you God.

### **31A Oath of police officer assisting bailiff in charge of jury**

- (1) Police officers may be sworn to assist bailiffs in charge of juries in the following form or to the like effect—

‘You swear that you will assist the bailiff in charge of this jury in keeping them in some safe and private place and allow no-one but the bailiff to communicate with them and not communicate with them yourself without leave of the court So help you God.’.

- (2) A police officer who is about to assume the duty another police officer has sworn (in accordance with subsection (1)) to carry out in respect of a jury may be sworn to carry out that duty by the bailiff in charge of the jury in the form prescribed by that subsection or to the like effect.

## **Part 6A Audio visual links**

### **Division 1 Preliminary**

#### **31B Definitions for part**

In this part—

*administer* includes—

- (a) in relation to an oath or affirmation—take, receive and swear; and
- (b) in relation to a declaration—take and receive.

*confirm*, a document, means attest or otherwise confirm a document by signing the document.

*copy*, of an electronic document, means a reproduction of the document in either electronic or hard copy form.

*make*, in relation to a document, includes execute.

*official version*, of a document, see section 31Y(2) and (3).

*originating version*, of a document, see section 31Y(4).

*witness*, a document, includes—

- (a) witness the signing of the document; and
- (b) for an affidavit—administer an oath or affirmation for the affidavit; and
- (c) for a declaration—administer the declaration.

### **31C References to witnesses, signatories and substitute signatories**

(1) In this part—

- (a) a reference to a witness in relation to a document is a reference to a person witnessing the making of the document; and
- (b) a reference to a signatory in relation to a document is a reference to the person for whom the document is made, whether signed by the person or by a substitute signatory at the direction of the person; and
- (c) a reference to a substitute signatory in relation to a document is a reference to a person signing the document at the direction of the signatory.

(2) Also, for an affidavit or a declaration—

- (a) a reference to a witness in relation to the affidavit or declaration is a reference to the person who administers an oath or affirmation to the person making the affidavit or declaration before the affidavit or declaration is made; and
- (b) a reference to a signatory in relation to the affidavit or declaration is a reference to the person who makes or

gives an oath or affirmation for the person's affidavit or declaration before the affidavit or declaration is made.

## **Division 2                      Affidavits**

### **31D      Application of division**

This division applies to an affidavit made, signed or witnessed under this Act or another law.

### **31E      Presence by audio visual link**

A requirement under this Act or another law for the presence of a witness, signatory, substitute signatory or other person in relation to the making, signing or witnessing of an affidavit is taken to be satisfied if—

- (a) the witness, signatory, substitute signatory or other person is present by audio visual link; and
- (b) the signatory's oath or affirmation for the affidavit is administered by a special witness for the affidavit or another person prescribed by regulation under section 31S; and
- (c) the making, signing or witnessing of the affidavit is carried out in accordance with division 5.

### **31F      Affidavit may be in form of electronic document and electronically signed**

An affidavit may be in the form of an electronic document, and may be electronically signed, if—

- (a) the witness, signatory, substitute signatory or another person in relation to the making, signing or witnessing of the affidavit is present by audio visual link; and
- (b) the affidavit is made, signed and witnessed in accordance with division 5.

[s 31G]

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**31G Admission of affidavit not complying with requirements**

- (1) This section applies in relation to a purported affidavit that does not comply with the requirements under this Act, another law or any regulation, rule of court or practice direction made, given, issued or approved under section 13A if—
  - (a) a court is satisfied compliance with the requirements in relation to the purported affidavit was not reasonably practicable; and
  - (b) the purported affidavit states the reasons why compliance with the requirements was not reasonably practicable.
- (2) The court may admit the purported affidavit in evidence in a proceeding if the court considers it is desirable in the interests of justice.

**31H Disapplication of s 33**

Section 33 does not apply in relation to an affidavit made, signed or witnessed under this division.

**Division 3 Declarations**

**31I Application of division**

This division applies to a declaration made, signed or witnessed under this Act or another law.

**31J Presence by audio visual link**

A requirement under this Act or another law for the presence of a witness, signatory, substitute signatory or other person in relation to the making, signing or witnessing of a declaration is taken to be satisfied if—

- (a) the witness, signatory, substitute signatory or other person is present by audio visual link; and

- (b) the signatory's oath or affirmation for the declaration is administered by a special witness for the declaration or another person prescribed by regulation under section 31S; and
- (c) the making, signing or witnessing of the declaration is carried out in accordance with division 5.

**31K Declaration may be in form of electronic document and electronically signed**

- (1) A declaration may be in the form of an electronic document, and may be electronically signed, if—
  - (a) the witness, signatory, substitute signatory or another person in relation to the making, signing or witnessing of the declaration is present by audio visual link; and
  - (b) the declaration is made, signed and witnessed in accordance with division 5.
- (2) Subsection (1) does not apply to a declaration lodged or deposited in the land registry or water allocations register.
- (3) To remove any doubt, it is declared that subsection (1) applies to a declaration that is supporting evidence under the participation rules within the meaning of the Electronic Conveyancing National Law (Queensland) for a document lodged under section 7 of that Law.

**31L Disapplication of s 33**

Section 33 does not apply in relation to a declaration made, signed or witnessed under this division.

**Division 4 Oaths and affirmations**

**31M Application of division**

- (1) This division applies to an oath or affirmation, however described, that is administered or made anywhere, including,

[s 31N]

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for example, in open court, under this Act or another law and in the presence of an authorised person if the authorised person is present by audio visual link.

- (2) However, this division does not apply to—
- (a) an oath or affirmation administered or made in relation to an affidavit under division 2 or a declaration under division 3; or
  - (b) an oath of allegiance or oath of office under part 2.

### **31N Presence by audio visual link**

A requirement under this Act or another law for the presence of an authorised person in relation to a person's oath or affirmation is taken to be satisfied if the authorised person is present by audio visual link.

### **31O Disapplication of s 33**

Section 33 does not apply in relation to an oath or affirmation administered or made under this division.

## **Division 5 Signing or witnessing documents by audio visual link**

### **Subdivision 1 Requirements about signing documents by audio visual link**

#### **31P Persons who may be directed to sign**

- (1) This section applies in relation to a substitute signatory who—
- (a) is directed by a signatory in the signatory's physical presence to sign a document for the signatory that is to be witnessed by audio visual link; or

- (b) is directed by audio visual link to sign a document for a signatory.
- (2) The following persons are excluded from signing a document as a substitute signatory—
  - (a) a person excluded under an Act or other law from signing the document as a signatory;
  - (b) without limiting paragraph (a)—
    - (i) a person witnessing the document; or
    - (ii) for an affidavit or a declaration to be used in a proceeding by or for a party—a person who is another party to the proceeding or a relation of a person who is another party to the proceeding.
- (3) Also, a person may be directed by audio visual link to sign a document for a signatory only if the person is—
  - (a) an Australian legal practitioner; or
  - (b) a government legal officer under the *Legal Profession Act 2007* who is an Australian lawyer but not an Australian legal practitioner and who witnesses documents in the course of the government work engaged in by the officer; or
  - (c) an employee of the public trustee.
- (4) In this section—

*relation*, of a person, see the *Powers of Attorney Act 1998*, schedule 3.

### **31Q Substitute signatory signing in physical presence of witness requires special witness**

- (1) This section applies in relation to a substitute signatory directed by audio visual link to sign a document for a signatory if the substitute signatory is to sign the document in the physical presence of a witness.

[s 31R]

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*Note—*

See section 31S in relation to the signing of a document to be witnessed by audio visual link.

- (2) The signing of the document by the substitute signatory must be witnessed by a special witness for the document.
- (3) This section does not—
  - (a) affect any requirement under an Act or other law about the number of witnesses required or permitted to witness a document; or
  - (b) authorise or permit a person who is excluded from witnessing a document under an Act or other law to witness the document.

**31R Witness must observe direction and verify particular matters**

- (1) This section applies if a substitute signatory is directed by the signatory by audio visual link to sign a document.
- (2) The witness for the signing of the document by the substitute signatory must—
  - (a) observe the signatory direct the substitute signatory to sign the document; and
  - (b) be satisfied that the substitute signatory is permitted under section 31P to be a substitute signatory for the document; and
  - (c) be satisfied that the signatory is freely and voluntarily directing the substitute signatory to sign the document.

*Note—*

For additional requirements for witnessing an affidavit or a declaration, see section 13D.

## **Subdivision 2      Requirements about witnessing documents by audio visual link**

### **31S      Witness must be special witness or another prescribed person**

- (1) A document may be witnessed by audio visual link only if the witness is a special witness for the document or another person prescribed by regulation for this section.
- (2) However, a regulation made under subsection (1) may provide that a person prescribed for this section—
  - (a) may witness a document only of a prescribed type and subject to any prescribed conditions; or
  - (b) may not witness a document of a prescribed type.
- (3) This section does not—
  - (a) affect any requirement under an Act or other law about the number of witnesses required or permitted to witness a document; or
  - (b) authorise or permit a person who is excluded from witnessing a document under an Act or other law to witness the document.

### **31T      General requirements for witnessing documents**

A document may be witnessed by audio visual link only if—

- (a) the witness observes the signatory direct the substitute signatory to sign the document, if applicable; and
- (b) the audio visual link enables the witness to be satisfied, by the sounds and images made by the link, that the signatory or substitute signatory is signing the document; and
- (c) the witness forms the satisfaction under paragraph (b) in real time; and

[s 31U]

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- (d) the witness is satisfied that the signatory is freely and voluntarily signing the document or directing the substitute signatory to sign the document.

*Note—*

See also sections 13D and 13E for additional requirements for a witness for an affidavit or a declaration.

### **31U Confirmation of signed document by witness**

- (1) A person who witnesses a document by audio visual link must confirm the document as soon as practicable after witnessing it, which may or may not be the day on which the document is witnessed.
- (2) The person may confirm a document as the document witnessed by the person only if the person is satisfied the document—
- (a) is the document signed by the signatory or substitute signatory; or
- (b) is a true copy of the document signed by the signatory or substitute signatory; or

*Examples for paragraph (b)—*

- a scanned copy of a signed document sent electronically to the witness
  - a printout of an electronically signed document sent to the witness
- (c) is a counterpart for the document signed by the signatory or substitute signatory.

*Note—*

Affidavits and declarations in the form of electronic documents may be electronically signed—see sections 31F (for affidavits) and 31K (for declarations).

- (3) If a justice or commissioner for declarations confirms an electronic document, the justice or commissioner for declarations is not required to insert on the document the imprint of a seal of office issued to the person under the

*Justices of the Peace and Commissioners for Declarations Act 1991.*

### **31V Action after witness confirms document**

- (1) After a witness confirms a document witnessed by the witness by audio visual link, the witness must give the document, a true copy or a counterpart of the document to the relevant person for the document.

*Examples of giving a true copy of a document to a person—*

- scanning the document and emailing the scanned copy to the person
- giving a hard copy printout of the document to the person

- (2) In this section—

**give** includes—

- (a) give by electronic means; and
- (b) give by allowing online computer access; and

*Example for paragraph (b)—*

allowing a person to access and download a document from an online file-sharing website

- (c) give by post.

**relevant person**, for a document, means—

- (a) the signatory for the document; or
- (b) a person to whom the signatory directs the document, true copy or counterpart be given.

## **Subdivision 3 Other provisions**

### **31W When document starts to be effective**

- (1) A document made, signed and witnessed under this part starts to be effective when the signatory or substitute signatory signs the document.

[s 31X]

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- (2) Subsection (1) applies even if the witness confirms the document on a later day than the day the signatory or substitute signatory signs the document.

### **31X Presumptions**

In a proceeding, the following must be presumed in relation to a document made, signed or witnessed under this part, unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the validity of the document, to the extent it is made, signed or witnessed under this part;
- (b) the eligibility of a witness to witness the document;
- (c) the eligibility of a substitute signatory to sign the document at the direction of the signatory;
- (d) that a signature on or in the document purporting to be the signature of a witness, signatory or substitute signatory for the document is the signature of the witness, signatory or substitute signatory.

### **31Y Official and originating versions of document**

- (1) This section applies to a document, or a true copy of a document—
- (a) that is confirmed by a person as the document witnessed by the person under section 31U(2)(a) or (b); and
  - (b) given to a relevant person for the document under section 31V(1).

*Note—*

For a document made using counterparts, see section 31Z.

- (2) If the document or true copy is given in the form of a physical document, the document or true copy is the *official version* of the document.
- (3) If the document or true copy is given in the form of an electronic document, the document or true copy, or a printout

of the document or true copy, is the *official version* of the document.

- (4) If the official version of the document is not the version of the document that was signed by the signatory or substitute signatory (the *originating version*), the originating version must be kept with the official version.
- (5) Once the witness gives the document or true copy to the relevant person, there is no requirement to keep any version of the document confirmed by the witness that has not been given to the relevant person.
- (6) If a document made, signed or witnessed in accordance with this part is required to be given, produced or used for any purpose, the official version of the document may be—
  - (a) given, produced or used for the purpose; and
  - (b) relied on as evidence of the document.

*Example for subsection (6)—*

The official version of an affidavit or a declaration may be given to a court or other entity, and relied on by the court or other entity, as evidence of the affidavit or declaration.

- (7) Subsection (6) does not limit the power of a court to require production of the originating version of the document in a proceeding.

### **31Z Documents made using counterparts**

- (1) This section applies to a document that is made using counterparts if a counterpart—
  - (a) is confirmed by a person as the counterpart witnessed by the person under section 31U(2)(c); and
  - (b) is given to a relevant person for the document under section 31V(1).
- (2) The counterpart confirmed by the witness for the document must be kept with the counterpart signed by the signatory or substitute signatory.
- (3) The counterparts together constitute the document.

[s 31ZA]

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- (4) If a document made using counterparts is required to be given, produced or used for any purpose, the counterparts constituting the document, or a printout of the counterparts if they are in the form of an electronic document, may be—
  - (a) given, produced or used for the purpose; and
  - (b) relied on as evidence of the document.

### **31ZA Lodgement or deposit of document in land registry or water allocations register**

- (1) If an official version of a document is lodged or deposited in the land registry or water allocations register, the registrar of titles under the *Land Title Act 1994* or the registrar of water allocations under the *Water Act 2000* may require the originating version of the document to be given to the registrar for lodgement or depositing with the official version.
- (2) If a document made using counterparts is lodged or deposited in the land registry or water allocations register, each counterpart must be lodged or deposited.

### **31ZB Audio visual recording of signing or witnessing of document**

- (1) An audio visual recording of the signing or witnessing of a document may be made only with the consent of the signatory, witnesses and, if applicable, the substitute signatory.
- (2) Whether an audio visual recording of the signing or witnessing of the document is or is not made under subsection (1) does not affect the validity of the document or the signing or witnessing of the document.

## **Part 7                      Miscellaneous**

### **32            General provision**

Nothing herein contained shall invalidate any oath sworn or taken in a sufficient and lawful form and any oath of allegiance or office sworn before a judge of the Supreme Court may be certified or recorded by the associate or judge's clerk.

### **33            Special provision as to oaths**

- (1) Any person taking any oath on the Bible or 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 a Bible or Testament in the person's 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 the person's hand a copy of the Bible or Testament, indicate the person's assent to the oath so administered by uttering the words 'So help me, God'; or the person taking the oath may, while holding in the person's hand a copy of the Bible or Testament, repeat the words of the oath as prescribed or allowed by law.

### **35            Mode of binding interpreters to interpreting certain cases**

- (1) If in any criminal proceeding in any court of justice it shall be necessary to call an interpreter whether for the purpose of the arraignment of any person accused or for the interpretation of the evidence of witnesses and it shall appear to the presiding judge that the person called as interpreter understands the language of the accused or other person between whom and the court the interpreter is called to interpret sufficiently to be able to make true explanation of the evidence and other proceedings but that such interpreter can not for any cause be

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sworn in the form and manner prescribed by the *Oaths Act 1867* in that behalf it shall be the duty of the presiding judge to declare in what manner such interpreter shall be sworn or otherwise bound to make true declaration.

- (2) And it shall in such case be the further duty of the presiding judge to ascertain that true explanation of the evidence and all other proceedings is made to the accused person.
- (3) And if the presiding judge shall be satisfied that such true explanation is so made the trial and any verdict given thereat shall be as valid as if the interpreter had been sworn in the ordinary manner.

**36      Interruption of trial by reason of failure of interpreters not to entitle to acquittal**

If on any trial for a criminal offence it shall appear to the presiding judge after the accused person shall have been given in charge to the jury that true explanation of the evidence can not by reason of the incompetence of any interpreter be made to such accused person the person shall not by reason thereof be entitled to be acquitted but it shall be the duty of the presiding judge to discharge the jury from giving any verdict and the accused person shall be liable to be again tried as if such first trial had not been commenced.

**37      Mode of taking evidence of persons objecting or incompetent to take an oath**

If any person tendered for the purpose of giving evidence in respect of any civil or criminal proceeding before a court of justice, or any officer thereof, or on any commission issued out of the court, objects to take an oath, or by reason of any defect of religious knowledge or belief or other cause, appears incapable of comprehending the nature of an oath, it shall be the duty of the judge or person authorised to administer the oath, if satisfied that the taking of an oath would have no binding effect on the conscience of such person and that the person understands that he or she will be liable to punishment if the evidence is untruthful, to declare in what manner the

evidence of such person shall be taken, and such evidence so taken in such manner as aforesaid shall be valid as if an oath had been administered in the ordinary manner.

**38 Interpreters**

Section 37 shall, mutatis mutandis, extend and apply to interpreters called to interpret in any civil or criminal proceeding in any court of justice.

**39 Mode of taking evidence of witness who can not be sworn in manner required by witness's religion—schedule**

Whenever in the course of any civil or criminal proceeding in any court of justice a person is tendered as a witness, and it is found to be impracticable, at the time and place when and where the person is so tendered, to administer to the person an oath in the form and manner required by the person's religion to make it binding on the person's conscience, it shall be the duty of the presiding judge, if satisfied of the fact, to require such person to make a solemn affirmation in the form of the schedule, and upon such person making such solemn affirmation the person's evidence shall be taken, and the evidence so taken shall be as valid as if an oath had been administered in the ordinary manner.

**40 Interpreter**

The provisions of section 39 shall, mutatis mutandis, apply to interpreters called to interpret in any civil or criminal proceeding in any court of justice.

**42 Mode of pleading affirmation instead of oath**

Wherever in any legal proceeding of any kind any other legal proceedings may be set out it shall not be necessary to specify that any particular persons, who acted as jurors had made affirmation or declaration instead of oath, but if it is stated in

such firstmentioned proceedings or in any record of any kind that the jurors served and acted as jurors (in the same way as if no Act had passed for enabling persons to serve as jurors without oath) such proceedings or record shall not be held insufficient in respect thereof.

#### **43 References to Oaths Act Amendment Acts**

In an Act or document, a reference to any of the following Acts is taken to be a reference to this Act, and a reference to a provision of any of the following Acts that was relocated to this Act is taken to be a reference to the corresponding provision of this Act—

- *Oaths Act Amendment Act 1876*
- *Oaths Act Amendment Act 1884*
- *Oaths Act Amendment Act 1891.*

#### **44 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about the making, signing and witnessing of affidavits and declarations.

## **Part 8 Transitional provisions for Justice Legislation (COVID-19 Emergency Response— Permanency) Amendment Act 2021**

#### **45 Definitions for part**

In this part—

***amending Act*** means the *Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Act 2021*.

***repealed regulation*** means the repealed *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020* as in force immediately before its repeal.

**46 Repealed regulation continues to apply to affidavit or declaration in particular circumstances**

- (1) This section applies in relation to a document that is an affidavit or a declaration if—
  - (a) before the commencement, the document was signed by a signatory or substitute signatory, and a person witnessed the document, under the repealed regulation; and
  - (b) immediately before the commencement, the person—
    - (i) had not confirmed the document as the document witnessed by the person under the repealed regulation; or
    - (ii) had not complied with another requirement relating to the document under the repealed regulation.
- (2) Despite the repeal of the repealed regulation, the repealed regulation continues to apply to the person in relation to the document as if the amending Act had not been enacted.

**47 Repealed regulation continues to apply to particular documents**

- (1) This section applies to a document made, signed or witnessed under the repealed regulation, including a document to which section 46 applies.
- (2) Despite the repeal of the repealed regulation, the repealed regulation, sections 22 to 26 continues to apply in relation to the document as if the amending Act had not been enacted.

## Schedule

## Form of solemn affirmation

section 39

### Form of solemn affirmation

I solemnly affirm and declare that the evidence given by me to the court [*or* in these proceedings] shall be the truth, the whole truth, and nothing but the truth.