



# Oaths Act 1867

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## Queensland

# Oaths Act 1867

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1A	Short title .....	3
1B	Definitions .....	3
<b>Part 2</b>	<b>Oaths of office and allegiance</b>	
1	Oath substituted for the oaths and declaration now prescribed by law	3
2	Before whom the oath may be taken .....	4
3	Oaths for justices of the peace and others .....	4
4	Name of the Sovereign .....	5
5	Affirmation in lieu of oath .....	5
5A	Form of oath of allegiance .....	5
<b>Part 3</b>	<b>Declarations substituted for certain official oaths</b>	
6	Declarations substituted for oaths and affirmations .....	6
7	Act not to extend to oath of allegiance .....	7
8	Nor to oaths in judicial proceeding .....	7
9	Such substitution to be notified in gazette .....	7
10	Oaths or affirmations not to be made or taken thereafter .....	8
<b>Part 4</b>	<b>Statutory declarations</b>	
13	Who may take declarations .....	8
14	Form of declaration .....	8
15	Fees payable .....	9
<b>Part 5</b>	<b>Solemn affirmations and declarations</b>	
17	Affirmation instead of oath in certain cases .....	9
18	Quakers and Moravians permitted to make a solemn affirmation or declaration instead of oath .....	10
19	Separatists instead of an oath may make the following affirmation	10
<b>Part 6</b>	<b>Other oaths</b>	
21	Swearing of jurors in civil trials .....	11

Contents

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22	Swearing of jurors in criminal trials . . . . .	11
23	Witnesses' oath in civil causes . . . . .	11
23A	Witnesses' oath in proceedings not otherwise specified . . . . .	12
24	Voire dire . . . . .	12
25	Witnesses' oath on criminal trials . . . . .	12
26	Interpreters' oath in civil causes . . . . .	12
27	Interpreters' oath in civil causes on the voire dire . . . . .	13
28	Interpreters' oath for the arraignment—to interpret between prisoner and others . . . . .	13
29	Interpreter's oath to interpret between a prisoner, defendant or witness and others . . . . .	14
30	Where witness and prisoner are of different languages—first interpreter's oaths . . . . .	15
31	Oath of bailiff in charge of jury . . . . .	16
31A	Oath of police officer assisting bailiff in charge of jury . . . . .	16
<b>Part 7</b>	<b>Miscellaneous</b>	
32	General provision . . . . .	17
33	Special provision as to oaths . . . . .	17
35	Mode of binding interpreters to interpreting certain cases . . . . .	17
36	Interruption of trial by reason of failure of interpreters not to entitle to acquittal . . . . .	18
37	Mode of taking evidence of persons objecting or incompetent to take an oath . . . . .	18
38	Interpreters . . . . .	19
39	Mode of taking evidence of witness who can not be sworn in manner required by witness's religion—schedule . . . . .	19
40	Interpreter . . . . .	19
41	Who may take affidavits . . . . .	19
42	Mode of pleading affirmation instead of oath . . . . .	20
43	References to Oaths Act Amendment Acts . . . . .	20
<b>Schedule</b>	<b>Form of solemn affirmation . . . . .</b>	<b>22</b>

# Oaths Act 1867

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

### Part 1 Preliminary

#### 1A Short title

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

#### 1B Definitions

In this Act—

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

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

*State* includes a Territory.

### 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 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 Statutory declarations**

## **13 Who may take declarations**

- (1) A person's declaration may be taken 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.
- (2) This section applies to a declaration taken for Queensland law, whether it is taken inside or outside Queensland (including outside Australia).
- (3) In this section—

*taken* includes received.

## **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.

# 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 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.’



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‘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.

### **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.

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## **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

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.

### **41 Who may take affidavits**

- (1) A person's affidavit may be taken 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 taken outside Australia—a person authorised to administer an oath under the law of the place in which the affidavit is taken.
- (2) This section applies to an affidavit taken for Queensland law, whether it is taken inside or outside Queensland (including outside Australia).
- (3) In this section—  
*taken* includes received and sworn.

## **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.*

## **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.