

TASMANIA

PROMISSORY OATHS BILL 2015

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SCHEDULE 1 – LEGISLATION REPEALED

PROMISSORY OATHS BILL 2015

*(Brought in by the Premier, the Honourable William Edward
Felix Hodgman)*

A BILL FOR

An Act to make provision in relation to certain oaths and affirmations, to validate and save certain oaths and affirmations purportedly taken under various Acts, to repeal the *Promissory Oaths Act 1869*, and for related matters

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

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Promissory Oaths Act 2015*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

THIS BILL IS COGNATE WITH THE *PROMISSORY OATHS (CONSEQUENTIAL AMENDMENTS) BILL 2015*

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Part 2 – Persons Required to Take and Subscribe Oaths

**PART 2 – PERSONS REQUIRED TO TAKE AND
SUBSCRIBE OATHS**

3. Members of Houses of Parliament

- (1) A Member of a House of Parliament must, as soon as practicable after becoming such a Member, take and subscribe the oath of allegiance.
- (2) The oath of allegiance to be taken under subsection (1) by a Member of a House of Parliament is to be –
 - (a) tendered to the Member by the Governor or by a person who is authorised by the Governor to be a person who may tender such an oath; and
 - (b) taken, and subscribed, by the Member in the presence of the Governor or in the presence of a person who is authorised by the Governor to be a person before whom such an oath may be taken and subscribed.

4. Members of Executive Council

- (1) A person must, as soon as practicable after being appointed as a Member of the Executive Council, take and subscribe the executive councillor's oath.

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- (2) The executive councillor's oath to be taken under subsection (1) by a Member of the Executive Council is to be –
 - (a) tendered to the Member by the Clerk of the Executive Council or the Clerk Assistant of the Executive Council; and
 - (b) taken, and subscribed, by the Member in the presence of the Governor or in the presence of a person who is authorised by the Governor to be a person before whom such an oath may be taken and subscribed.
- (3) If a Member of the Executive Council declines or neglects to take and subscribe an oath tendered to him or her under subsection (2), his or her office as Member of the Executive Council is vacated.
- (4) A Member of the Executive Council who holds an office, including the office of Premier, Deputy Premier, Attorney-General or Minister of the Crown, must, as soon as practicable after being appointed to hold the office, take and subscribe the oath of allegiance and the official oath.
- (5) The oaths to be taken under subsection (4) by a Member of the Executive Council who holds an office are to be –
 - (a) tendered to the Member by the Clerk of the Executive Council or the Clerk Assistant of the Executive Council; and

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- (b) taken, and subscribed, by the Member in the presence of the Governor or in the presence of a person who is authorised by the Governor to be a person before whom such oaths may be taken and subscribed.
- (6) If a Member of the Executive Council who holds an office declines or neglects to take and subscribe an oath tendered to him or her under subsection (5), the office is vacated.

5. Secretary to Cabinet

- (1) The Secretary to Cabinet must, as soon as practicable after being appointed, take and subscribe the oath of allegiance and the official oath.
- (2) The oaths to be taken under subsection (1) by the Secretary to Cabinet are to be –
 - (a) tendered to the Secretary to Cabinet by the Clerk of the Executive Council or a Clerk Assistant of the Executive Council; and
 - (b) taken, and subscribed, by the Secretary to Cabinet in the presence of the Governor or in the presence of a person who is authorised by the Governor to be a person before whom such oaths may be taken and subscribed.

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- (3) If the Secretary to Cabinet declines or neglects to take and subscribe an oath tendered to him or her under subsection (2), his or her office is vacated.

6. Clerk, and Clerk Assistant, of Executive Council

- (1) The Clerk of the Executive Council and a Clerk Assistant of the Executive Council must, as soon as practicable after being appointed, take and subscribe the oath of allegiance and the clerk of executive council's oath.
- (2) The oaths to be taken under subsection (1) by the holder of an office referred to in that subsection are to be –
- (a) tendered to the holder of the office by the Governor or by a person who is authorised by the Governor to be a person who may tender such oaths; and
 - (b) taken, and subscribed, by the holder of the office in the presence of the Governor or in the presence of a person who is authorised by the Governor to be a person before whom such oaths may be taken and subscribed.
- (3) If the holder of an office referred to in subsection (1) declines or neglects to take and subscribe an oath tendered to him or her under subsection (2), his or her office is vacated.

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7. Judges

- (1) The Chief Justice, a Puisne Judge, and an Associate Judge of the Supreme Court must, as soon as practicable after being appointed, take and subscribe the judicial oath.
- (2) The judicial oath to be taken under subsection (1) by the holder of an office referred to in that subsection is to be –
 - (a) tendered to the holder of the office by the Clerk of the Executive Council or a Clerk Assistant of the Executive Council; and
 - (b) taken, and subscribed, by the holder of the office in the presence of the Governor or in the presence of a person who is authorised by the Governor to be a person before whom such an oath may be taken and subscribed.
- (3) If the holder of an office referred to in subsection (1) declines or neglects to take and subscribe the judicial oath tendered to him or her under subsection (2), his or her office is vacated.

8. Magistrates

- (1) A magistrate appointed under the *Magistrates Court Act 1987* must, as soon as practicable after being appointed, take and subscribe the judicial oath.

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- (2) The judicial oath to be taken under subsection (1) by a magistrate is to be –
- (a) tendered to the magistrate by –
 - (i) the Chief Magistrate within the meaning of the *Magistrates Court Act 1987*; or
 - (ii) if there is no Chief Magistrate or the person to whom the oath is to be tendered is the Chief Magistrate – the Chief Justice; or
 - (iii) if there is no Chief Magistrate or the person to whom the oath is to be tendered is the Chief Magistrate, and there is no Chief Justice – the Governor; and
 - (b) taken, and subscribed, by the magistrate in the presence of the person who tendered the oath.
- (3) A person before whom an oath is subscribed in accordance with subsection (2) must, as soon as practicable, forward it to the Registrar of the Supreme Court to be recorded in the Supreme Court.
- (4) If a magistrate declines or neglects to take and subscribe the judicial oath tendered to him or her under subsection (2), his or her office is vacated.

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9. Justices

- (1) A justice appointed under section 4 of the *Justices Act 1959* must, as soon as practicable after being appointed, take and subscribe the judicial oath.
- (2) The judicial oath to be taken under subsection (1) by a justice is to be –
 - (a) tendered to the justice by a magistrate within the meaning of the *Magistrates Court Act 1987*; and
 - (b) taken, and subscribed, by the justice in the presence of the magistrate.
- (3) A magistrate before whom an oath is subscribed in accordance with subsection (2) must, as soon as practicable, forward it to the Registrar of the Supreme Court to be recorded in the Supreme Court.
- (4) If a justice appointed under section 4 of the *Justices Act 1959* declines or neglects to take and subscribe the judicial oath tendered to him or her under subsection (2), his or her office is vacated.
- (5) A justice appointed under section 11 of the *Justices Act 1959* (an *extra-territorial justice*) must, as soon as practicable after being appointed, take and subscribe the official oath.
- (6) The official oath to be taken under subsection (5) by an extra-territorial justice is to be –

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- (a) tendered to the extra-territorial justice by an approved official in relation to the extra-territorial justice; and
 - (b) taken, and subscribed, by the extra-territorial justice in the presence of the approved official.
- (7) For the purposes of subsection (6), an approved official in relation to an extra-territorial justice is –
- (a) a person who is appointed as a justice under section 11 of the *Justices Act 1959* and who is resident in the State or country in which the extra-territorial justice resides; or
 - (b) a person who is a justice for the State or country in which the extra-territorial justice resides; or
 - (c) a person who is the holder of an office that is prescribed and who is resident in the State or country in which the extra-territorial justice resides.
- (8) A person before whom an oath is subscribed in accordance with subsection (6) must, as soon as practicable, forward it to the Registrar of the Supreme Court to be recorded in the Supreme Court.
- (9) If an extra-territorial justice declines or neglects to take and subscribe the official oath tendered to him or her under subsection (6), his or her office is vacated.

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10. Coroner

- (1) A coroner appointed under the *Coroners Act 1995* must, as soon as practicable after being appointed, take and subscribe the judicial oath.
- (2) The judicial oath to be taken under subsection (1) by a coroner is to be –
 - (a) tendered to the coroner by a magistrate within the meaning of the *Magistrates Court Act 1987*; and
 - (b) taken, and subscribed, by the coroner in the presence of the magistrate.
- (3) A magistrate before whom an oath is subscribed in accordance with subsection (2) must, as soon as practicable, forward it to the Registrar of the Supreme Court to be recorded in the Supreme Court.
- (4) If a coroner declines or neglects to take the judicial oath tendered to him or her under subsection (2), his or her office is vacated.

11. Sheriff

- (1) A Sheriff appointed under the *Sheriff Act 1873* must, as soon as practicable after being appointed, take and subscribe the official oath.
- (2) The official oath to be taken under subsection (1) by a Sheriff is to be –
 - (a) tendered to the Sheriff by a judge; and

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- (b) taken, and subscribed, by the Sheriff in the presence of the judge.
- (3) A judge before whom an oath is subscribed in accordance with subsection (2) must, as soon as practicable, forward it to the Registrar of the Supreme Court to be recorded in the Supreme Court.
- (4) If a Sheriff declines or neglects to take and subscribe the official oath tendered to him or her under subsection (2), his or her office is vacated.

12. Persons appointed to office not required to take oath again in relation to that appointment

If a person has, on appointment to an office, taken and subscribed an oath that he or she is required under this Act to take and subscribe on appointment to that office –

- (a) he or she is not required to take or subscribe the oath again in relation to the same appointment to that office; and
- (b) he or she does not incur any penalty or forfeiture for not taking or subscribing the oath again in relation to the same appointment to that office.

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Part 3 – Forms of Oaths

PART 3 – FORMS OF OATHS

13. Form of oath of allegiance

The form of the oath of allegiance is as follows:

“I [*insert name*] do swear that I will be faithful and bear true allegiance to Her Majesty the Queen, according to law. So help me God.”

14. Form of official oath

The form of the official oath is as follows:

“I [*insert name*] do swear that I will faithfully execute the office of [*insert office*]. So help me God.”

15. Form of judicial oath

The form of the judicial oath is as follows:

“I [*insert name*] do swear that I will faithfully execute the office of [*insert office*] and do equal right and justice to all persons to the best of my judgment and ability according to law. So help me God.”

16. Form of executive councillor’s oath

The form of the executive councillor’s oath is as follows:

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“I [*insert name*] being chosen and admitted of Her Majesty’s Executive Council of this State, do swear that I will, to the best of my judgment, at all times when thereto required, freely give my counsel and advice to the Governor or officer administering the Government of this State for the time being, for the good management of the public affairs of this State: that I will not directly or indirectly reveal such matters as shall be debated in Council and committed to my secrecy, but that I will in all things be a true and faithful councillor. So help me God.”

17. Form of clerk of executive council’s oath

The form of the clerk of executive council’s oath is as follows:

“I [*insert name*] being appointed [*name of office*] of Her Majesty’s Executive Council of this State, do swear that I will serve the Council to the best of my ability, and that I will not directly or indirectly reveal such matters as shall be debated in Council and committed to my secrecy, and that I will in all things be a true and faithful servant. So help me God.”

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Part 4 – Affirmations, Prohibitions and References to Sovereign

**PART 4 – AFFIRMATIONS, PROHIBITIONS AND
REFERENCES TO SOVEREIGN**

18. References to Sovereign

If, at a time when an oath required to be taken and subscribed under this Act is taken, the Sovereign is a King, a reference in this Act to the Queen or Her Majesty is deemed to be a reference to the King, or to His Majesty, respectively.

19. Power to make affirmations

- (1) If an oath is required to be taken and subscribed under this Act, a person may, instead of taking and subscribing that oath, make and subscribe an affirmation in the form of that oath prescribed by this Act –
 - (a) with the word “swear” omitted and substituted by the words “solemnly, sincerely and truly declare and affirm,”; and
 - (b) with the words “so help me God” omitted.
- (2) A reference in another Act to the taking of an oath under this Act, or of an oath prescribed by this Act, includes a reference to the making of an affirmation in accordance with subsection (1).

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20. Prohibition of oath of allegiance, &c., except in accordance with Act

- (1) No person, except as required to do so under this Act or another Act, may be required or authorised –
 - (a) to take or subscribe the oath of allegiance, supremacy or abjuration; or
 - (b) to take or subscribe any oath substituted for the oath of allegiance, supremacy or abjuration; or
 - (c) to make or subscribe any declaration to the like effect of any oath referred to in paragraph (a) or (b).
- (2) Subsection (1) applies despite any charter, or custom, to the contrary.

PART 5 – MISCELLANEOUS PROVISIONS

21. Validation of certain oaths and affirmations

If, on a day (the *relevant day*) before the day on which this Act commences, a person who, on the relevant day, held an office to which this Act applies –

- (a) took, or purported to take, a judicial oath, oath of allegiance, or oath of office, in relation to the holding of the office or the appointment of the person to the office; or
- (b) made, or purported to make, an affirmation of a judicial oath, oath of allegiance, or oath of office, in relation to the holding of the office or the appointment of the person to the office –

the oath or affirmation is deemed for the purposes of any Act –

- (c) to have been validly taken, or made, by the person on the relevant day; and
- (d) to have always been validly taken, or made, by the person on the relevant day; and
- (e) to have been validly subscribed, and to have always been validly subscribed, by the person on the relevant day; and
- (f) to have been validly taken or made before the person took an action, or

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performed or exercised a function, duty or power, in relation to that office –

and no action taken or omitted to be taken by the person after the taking, or purported taking of the oath or the making, or purported making, of the affirmation is invalid by reason only that, at the time at which the action was taken or omitted to be taken, this section was not in force.

22. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may –
 - (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and
 - (b) provide for any of those savings or transitional matters to take effect when this Act commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

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Part 5 – Miscellaneous Provisions

23. Administration of Act

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

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

24. Saving of various oaths and affirmations taken or made or deemed to be taken or made

If an oath or affirmation is deemed by section 21 to have been validly taken, or made, on a day (*the relevant day*), by a person in relation to the appointment of the person to, or the holding by the person of, an office, the person is not required to take, or subscribe, after the day on which this Act commences, another oath or affirmation under this Act in relation to the same appointment to that office or, if that person has not ceased to hold the office after the relevant day, to the continued holding of that office.

25. Legislation repealed

The legislation specified in Schedule 1 is repealed.

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SCHEDULE 1 – LEGISLATION REPEALED

Section 25

Promissory Oaths Act 1869 (No. 25 of 1869)