



SAMOA

**OATHS, AFFIDAVITS AND DECLARATIONS
ACT 1963**

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**OATHS, AFFIDAVITS AND DECLARATIONS ACT 1963
1963** **No. 9**

AN ACT to make provisions for the swearing and making of oaths, affirmations, affidavits and declarations.

[Assent and commencement date: 30 October 1963]

**PART 1
PRELIMINARY**

1. Short title – This Act may be cited as the Oaths, Affidavits and Declarations Act 1963.

2. Interpretation – In this Act, unless the context otherwise requires:

“Commonwealth country” means a country that is a member of the Commonwealth of Nations; and includes a territory for whose international relations the Government of any Commonwealth country is responsible, and also includes the Republic of Ireland as if that country were a member of the Commonwealth of Nations;

“Constitution” means the Constitution of Samoa;

“court” includes a court constituted under any enactment;

“enactment” includes the Constitution;

“foreign country” means a country other than Samoa that is not a Commonwealth country, and includes every territory for whose international relations the Government of any foreign country is responsible;

“*Gazette*” means the Samoa *Gazette*;

“oath” means an oath administered or taken for any purpose, whether in judicial proceedings or otherwise;

“person acting judicially” means a person having in Samoa by law or by consent of parties authority to hear, receive and examine evidence;

“proceeding” includes any action, trial, inquiry, cause or matter, whether civil or criminal or otherwise, in any Court or before any person acting judicially;

“Samoa or British or New Zealand representative” means a person appointed by the Government of Samoa or of the United Kingdom or of New Zealand to act as its representative in any overseas country and includes any Ambassador, High Commissioner, Commissioner, Minister, Counsellor, Charge d'Affaires, Head of

Mission, Consular Officer, pro-Consul, Trade Commissioner, or Tourist Commissioner, and includes a person lawfully acting for any such officer, and also includes a diplomatic secretary on the staff of any such officer;

“Samoa” means the Independent State of Samoa.

3. Act binds State – This Act binds the State.

PART 2 OATHS AND AFFIRMATION

4. Evidence to be an oath or affirmation – Subject to this or any other enactment, the evidence of all witnesses in any proceeding is to be given on oath or affirmation.

5. Power to administer oaths or take affirmations – A Court and a person acting judicially shall cause an oath to be administered to, or take an affirmation from, a witness in any proceeding at the commencement of his or her evidence, and may, in the case of an adjournment or recess of the proceeding, do likewise at the resumption of his or her evidence.

6. Form in which oaths may be administered and taken – An oath may be administered and taken, in all places and for all purposes where an oath is required by law, in any of the following ways:

- (a) the person taking the oath may, while holding in his or her hand a copy of the Bible, Old Testament, or New Testament, and in a Court or in the presence of a person authorised to administer oaths, repeat the words of the oath as prescribed or allowed by law; or
- (b) the person administering the oath may repeat the appropriate form of adjuration, commencing with the words “*Do you swear by Almighty God that*” or the words to the like effect, and concluding with the balance of the words of the oath as prescribed or allowed by law, and the person taking the oath shall thereupon while holding in

his or her hand a copy of the Bible, Old Testament or New Testament, indicate his or her assent to the oath so administered by saying “*I do*”, or words to the like effect; or

- (c) the oath may be administered and taken in any other manner which the person taking it shall require and shall declare to be binding on him or her.

7. Mode of administration if not objected to – In all proceedings the person administering the oath shall, unless the person about to take the oath voluntarily objects thereto, administer the oath in the form and manner set out in section 6(b), but no oath is deemed illegal or invalid by reason of a breach of this section.

8. Form of oath – An oath is to be taken in the form prescribed in the First Schedule, or to the like effect.

9. Affirmation instead of oath – (1) A person is entitled as of right to make an affirmation, instead of taking an oath in all places and for all purposes where an oath is required by law, and every such affirmation is of the same force and effect as an oath.

(2) An affirmation shall commence with the words: “*I do solemnly, sincerely, and truly declare and affirm*”, or words to the like effect, and shall then proceed with the words of the oath as prescribed or allowed by law, omitting any words of imprecation or calling to witness.

10. Evidence of children without oath – All witnesses who are or appear to be under the age of 12 years may in any proceeding be examined without oath; but any such witness is required, before being examined, to make the following declaration: “*I promise to speak the truth, the whole truth, and nothing but the truth*”, or a declaration to the like effect; and such declaration is of the same force and effect as if the witness had taken an oath.

11. Absence of religious belief – When an oath has been duly taken in a proceeding, the absence of any religious belief

does not affect the validity of the oath for the purposes of that proceeding.

12. Repeal – Part I (sections 3 to 8), of the Evidence Ordinance 1961 is repealed.

PART 3
AFFIDAVITS AND WRITTEN AFFIRMATIONS

13. Form of affidavits – (1) An affidavit for use in any proceeding shall be in the form prescribed in the Second Schedule.

(2) The full names, true place of abode, and occupation of the deponent shall be inserted in the affidavit.

(3) In an affidavit the deponent's statement shall be in the first person through the affidavit.

(4) An affidavit shall be divided into paragraphs numbered consecutively, and each paragraph shall, as nearly as may be, be confined to a distinct portion of the subject.

(5) An affidavit shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except that affidavits for use on interlocutory motions may make statements as to the deponent's belief, with the grounds thereof.

(6) The deponent shall sign his or her affidavit, or if the deponent cannot write set his or her mark thereto.

(7) The place and date of swearing the affidavit shall be stated in the jurat.

(8) The jurat shall be signed by the person before whom the affidavit is sworn.

(9) In an affidavit made by 2 or more persons, it shall be shown by appropriate words that they swore the affidavit separately or severally.

(10) If the affidavit is sworn by a person who from his or her signature or mark appears to be illiterate or ill, the person taking the affidavit shall certify in the jurat that he or she read over and explained the affidavit to the deponent and that the deponent appeared perfectly to understand the same.

(11) Nevertheless, a court or person acting judicially may receive any affidavit sworn for the purpose of being used in a

proceeding despite non-compliance with any of the foregoing subsections or other defect or irregularity of form.

14. Manner of swearing affidavits in Samoa – (1) An affidavit shall be sworn before a solicitor of the Supreme Court of Samoa, Notary Public, Registrar or Assistant Registrar of the Supreme Court or District Court, Postmaster, Comptroller of Customs, Medical Officer or other person authorised for that purpose by the Head of State by notice in the *Gazette*:

PROVIDED THAT no affidavit is to be read or used in any contentious proceedings if it was sworn before a solicitor who, at the time it was sworn, was acting as the solicitor, or as clerk or agent, of the person on whose behalf or against whom it was intended to be read or used.

(2) A person so authorised by the Head of State to swear affidavits may be a person designated by name or as the holder of any specified position or office in the service of the Government of Samoa.

15. Manner of swearing affidavits in Commonwealth countries – An affidavit may be sworn in a Commonwealth country before a Judge, court, Notary Public, Commissioner of the Supreme Court of a Commonwealth country, person lawfully authorised to administer oaths in that country or Samoa or British or New Zealand representative exercising his or her functions in that country.

16. Manner of swearing affidavits in foreign countries – An affidavit may be sworn in a foreign country before a Commissioner of the Supreme Court of a Commonwealth country, Samoa or British or New Zealand representative exercising his or her functions in that country (if allowed to administer oaths by the law of that country), or person lawfully authorised to administer oaths in that country.

17. Judicial notice – Judicial notice shall be taken of the seal or signature and of the official character, of a person authorised by section 15 or 16 to swear an affidavit:

PROVIDED THAT judicial notice need not be taken of the official character of a person purporting to be lawfully authorised

to administer oaths in any country unless it is stated in the affidavit or jurat that he or she is so authorised.

18. Written affirmation – Sections 13 to 17 apply, with any necessary modifications, to written affirmations.

PART 4 DECLARATIONS

19. Making of declarations – (1) A person may voluntarily make and subscribe a declaration in the manner provided in sections 20 and 21 or section 22, as the case may require.

(2) If by any law in force in Samoa (whether made before or after the commencement of this Act) a person is authorised or required to make a declaration or a statutory declaration, that declaration shall be made and subscribed in the manner provided by section 20, 21 or 22, as the case may require.

20. Form of declarations – A declaration made in Samoa is to be in the form prescribed in the Third Schedule.

21. Manner of making declarations in Samoa – (1) A declaration made in Samoa shall be made before a solicitor of the Supreme Court of Samoa, Notary Public, Registrar or Assistant Registrar of the Supreme Court or District Court of Samoa, Comptroller of Customs, Postmaster, Medical Officer, Marriage Officer, Member of Parliament, or other person authorised for that purpose by the Head of State by notice in the *Gazette*.

(2) A person so authorised by the Head of State to take declarations may be a person designated by name or as the holder of any specified position or office in the service of the Government of Samoa.

22. Manner of making declarations outside Samoa – (1) A declaration may be made in a Commonwealth country before a Judge, Notary Public, Justice of the Peace, person lawfully authorised to administer oaths in that country or Samoa or British or New Zealand representative exercising his or her functions in that country, or Commissioner or solicitor of the Supreme Court of a Commonwealth country.

(2) A declaration may be made in a foreign country before a Judge, Notary Public of Samoa or British or New Zealand representative exercising his or her functions in that country, or Commissioner of the Supreme Court of a Commonwealth country.

(3) Judicial notice shall be taken of the seal or signature, and of the official character, of any person authorised by this section to take a declaration:

PROVIDED THAT judicial notice need not be taken of the official character of a person purporting to be lawfully authorised to administer oaths in a Commonwealth country unless it is stated in the declaration that he or she is so authorised.

23. Offence and penalty – If a declaration made in the manner provided by section 20, 21 or 22 is false in any material particular, the person wilfully making that false declaration commits an offence punishable by imprisonment for 2 years.

24. Repeal and savings – (1) As from the date of coming into force of this Act, section 365 of the Samoa Act 1921 (NZ) shall cease to have effect as part of the law of Samoa.

(2) Sections 20, 20A and 21 of the Acts Interpretation Act 1924 (NZ), section 20A having been inserted therein by section 2 of the Acts Interpretation Amendment Act 1960 (NZ), apply with respect to section 365 of the Samoa Act 1921 (NZ) as if that section had been repealed by this section.

SCHEDULES

FIRST SCHEDULE

(Section 8)

FORM OF OATH

I, swear by Almighty God that the evidence I shall give in these proceedings (or in this affidavit) shall be the truth the whole truth and nothing but the truth.

So help me God.

SECOND SCHEDULE

(Section 13)

REVISION NOTES 2008 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2008 to 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to up-date references to offices, officers and statutes. (e.g. reference to the Constitution of the Independent of Samoa)
- (b) Insertion of the commencement date
- (c) Part numbering changed to decimal
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” and “any” changed to “a/an”
 - (ii) Present tense drafting style:
 - “shall be” changed to “is/are” or “is/are to be”
 - “hereby”, “for the time being” and “from time to time” removed
 - (iii) Offence provisions: “shall be guilty” changed to “commits”
 - (iv) Removal of superfluous terms
 - “of this section”
 - “the provisions of”

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

*This Act is administered by
the Ministry of Justice and Courts Administration.*