

OATHS (CHILDREN) AMENDMENT BILL 1985

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Crimes (Child Assault) Amendment Bill 1985.

The object of this Bill is to allow a child who does not comprehend the meaning of an oath to give evidence in any proceedings if he or she understands the duty of speaking the truth.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Oaths Act 1900.

Schedule 1 (1) replaces section 1 of the Principal Act with 2 sections dealing, respectively, with the short title of the Principal Act and the commencement of the Principal Act. That part of the matter formerly contained in section 1 which dealt with the arrangement of the Principal Act is omitted by way of statute law revision.

Schedule 1 (2) inserts a Part VI into the Principal Act, dealing with "Declarations by Children". The Part contains the following provisions:

Proposed section 32 is an interpretation provision which defines a child as being a person under the age of 12 years.

Proposed section 33 provides that, where a court or other specified person is satisfied that a child is of sufficient intelligence to justify the reception of evidence from the child or the making of a statement by the child and that the child understands the duty of speaking the truth, the court or other person may allow the child to give evidence or make the statement upon the making of the declaration set out in the proposed Tenth Schedule to the Principal Act.

Proposed section 34 provides for the declaration to be sufficiently made if a child gives an affirmative response when asked whether he or she makes the promise in the declaration.

Proposed section 35 states that a child who gives false evidence or makes a false statement after making the promise in the declaration is guilty of perjury. The sanction of the Attorney General will be necessary before a child can be prosecuted.

Schedule 1 (3) inserts a Tenth Schedule into the Principal Act which specifies the declaration which a child may make. The declaration states "I, (name), promise to tell the truth at all times in this court/document".

OATHS (CHILDREN) AMENDMENT BILL 1985

No. , 1985

A BILL FOR

An Act to amend the Oaths Act 1900 in relation to the giving of evidence
by children.

Oaths (Children) Amendment 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Oaths (Children) Amendment Act 1985".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

10 (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 20, 1900

15 3. The Oaths Act 1900 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE OATHS ACT 1900

(1) Sections 1, 1A—

20 Omit section 1, insert instead:

Short title

1. This Act may be cited as the "Oaths Act 1900".

Commencement

1A. This Act shall commence on 1 January 1901.

*Oaths (Children) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE OATHS ACT 1900—*continued*

(2) Part VI—

After Part V, insert:

PART VI

DECLARATIONS BY CHILDREN

5 **Interpretation**

32. In this Part—

“child” means a person under the age of 12 years.

Child may make declaration instead of oath

33. (1) This section applies to a child where the child—

- 10 (a) is called as a witness in any court or before any justice of the peace or other person authorised to administer an oath, whether in a civil or criminal proceeding;
- (b) has to make a statement in any information, complaint or proceeding in any court or before any justice of the peace;
- 15 or
- (c) is required or desires to make an affidavit or deposition.

(2) Where—

- 20 (a) a court, justice of the peace or person authorised to administer an oath is satisfied that, having regard to the child's age and any other matter which the court, justice of the peace or person thinks relevant, a child is not competent to take an oath but that—
- (i) the child is of sufficient intelligence to justify the reception of evidence from the child or the making of a statement, affidavit or deposition by the child; and
- 25 (ii) the child understands the duty of speaking the truth before the court, justice of the peace or person; and

*Oaths (Children) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE OATHS ACT 1900—*continued*

- (b) the court, justice of the peace or person states that it, he or she is satisfied as to the matters referred to in paragraph (a) (i) and (ii),

5 the court, justice of the peace or person may receive the evidence or allow the statement, affidavit or deposition upon the child's making, instead of an oath, a declaration in, or to the effect of, the form of the Tenth Schedule as if the evidence were given or the statement, affidavit or deposition were made upon oath.

Manner of making declaration

10 34. A declaration made by a child under section 33 is sufficiently made if the child gives an affirmative response when asked whether he or she makes the promise specified in the Tenth Schedule.

False statements

15 35. (1) A child who, having made a declaration under section 33, wilfully—

- (a) gives any false evidence before the court, justice of the peace or person to whom the declaration was made; or
- (b) makes a false statement in the information, complaint, proceeding, affidavit or deposition in respect of which the
- 20 declaration was made,

knowing the evidence or statement to be false, shall be deemed to be guilty of perjury if the giving of the evidence or the making of the statement, had it been upon oath, would by law have been perjury.

Oaths (Children) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE OATHS ACT 1900—*continued*

(2) No prosecution for an offence referred to in subsection (1) shall be commenced without the sanction of the Attorney General.

(3) Tenth Schedule—

After the Ninth Schedule, insert:

5

TENTH SCHEDULE

(Sec. 33)

DECLARATION

I, _____, promise to tell the truth at all times in this court/
document (*Omit whichever inapplicable*).

BY AUTHORITY

D. WEST. GOVERNMENT PRINTER, NEW SOUTH WALES—1985

OATHS (CHILDREN) AMENDMENT ACT 1985 No. 151

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 151, 1985

An Act to amend the Oaths Act 1900 in relation to the giving of evidence by children. [Assented to, 28th November, 1985.]

Oaths (Children) Amendment 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Oaths (Children) Amendment Act 1985".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 20, 1900

3. The Oaths Act 1900 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

AMENDMENTS TO THE OATHS ACT 1900

(Sec. 3)

(1) Sections 1, 1A—

Omit section 1, insert instead:

Short title

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Oaths (Children) Amendment 1985

SCHEDULE 1—*continued*AMENDMENTS TO THE OATHS ACT 1900—*continued*

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After Part V, insert:

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- (a) is called as a witness in any court or before any justice of the peace or other person authorised to administer an oath, whether in a civil or criminal proceeding;
- (b) has to make a statement in any information, complaint or proceeding in any court or before any justice of the peace; or
- (c) is required or desires to make an affidavit or deposition.

(2) Where—

- (a) a court, justice of the peace or person authorised to administer an oath is satisfied that, having regard to the child's age and any other matter which the court, justice of the peace or person thinks relevant, a child is not competent to take an oath but that—
 - (i) the child is of sufficient intelligence to justify the reception of evidence from the child or the making of a statement, affidavit or deposition by the child; and
 - (ii) the child understands the duty of speaking the truth before the court, justice of the peace or person; and

Oaths (Children) Amendment 1985

SCHEDULE 1—*continued*AMENDMENTS TO THE OATHS ACT 1900—*continued*

- (b) the court, justice of the peace or person states that it, he or she is satisfied as to the matters referred to in paragraph (a) (i) and (ii),

the court, justice of the peace or person may receive the evidence or allow the statement, affidavit or deposition upon the child's making, instead of an oath, a declaration in, or to the effect of, the form of the Tenth Schedule as if the evidence were given or the statement, affidavit or deposition were made upon oath.

Manner of making declaration

34. A declaration made by a child under section 33 is sufficiently made if the child gives an affirmative response when asked whether he or she makes the promise specified in the Tenth Schedule.

False statements

35. (1) A child who, having made a declaration under section 33, wilfully—

- (a) gives any false evidence before the court, justice of the peace or person to whom the declaration was made; or
- (b) makes a false statement in the information, complaint, proceeding, affidavit or deposition in respect of which the declaration was made,

knowing the evidence or statement to be false, shall be deemed to be guilty of perjury if the giving of the evidence or the making of the statement, had it been upon oath, would by law have been perjury.

Oaths (Children) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE OATHS ACT 1900—*continued*

(2) No prosecution for an offence referred to in subsection (1) shall be commenced without the sanction of the Attorney General.

(3) Tenth Schedule—

After the Ninth Schedule, insert:

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(Sec. 33)

DECLARATION

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