

OATHS (CHILDREN) AMENDMENT ACT 1990 No. 93

NEW SOUTH WALES

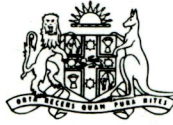


TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Oaths Act 1900 No. 20
4. Transitional

SCHEDULE 1 - AMENDMENTS



OATHS (CHILDREN) AMENDMENT ACT 1990 No. 93

NEW SOUTH WALES



Act No. 93, 1990

An Act to amend the Oaths Act 1900 to make further provision with respect to the giving of evidence by children and related matters.
[Assented to 7 December 1990]

See also Justices (Committal Statements) Amendment Act 1990.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Oaths (Children) Amendment Act 1990.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Oaths Act 1900 No. 20

3. The Oaths Act 1900 is amended as set out in Schedule 1.

Transitional

4. (1) The amendments made by this Act apply to the reception of evidence from a child, and the allowance of a statement, affidavit or deposition made by a child, after the commencement of this Act even if:

- (a) the evidence is to be received in proceedings commenced before the commencement of this Act; or
- (b) the evidence, statement, affidavit or deposition relates to events that occurred before the commencement of this Act.

(2) The fact that a child's evidence, statement, affidavit or deposition was not received or allowed because of the operation of section 33 of the Oaths Act 1900 before the commencement of this Act does not prevent the child's evidence, statement, affidavit or deposition being received or allowed after that commencement.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Sections 33, 34:

Omit the sections, insert instead:

Children may make declaration instead of oath

33. (1) This section applies to:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) the giving of evidence by a child as a witness in a court or before a justice of the peace or other person authorised to administer an oath, whether in a civil or criminal proceeding; and
- (b) the making of a statement by a child in an information, complaint or proceeding in a court or before a justice of the peace; and
- (c) the making of an affidavit or deposition by a child, when the court, justice or person is satisfied, having regard to the child's age and any other matters thought relevant, that the child is not competent to take an oath.

(2) The evidence of the child is to be received or the statement, affidavit or deposition by the child is to be allowed, as if it were given or made on oath, so long as:

- (a) the court, justice or person tells the child that it is important to tell the truth; and
- (b) a declaration in the form of the Tenth Schedule is made by the child (instead of an oath).

(3) However, the child's evidence, statement, affidavit or deposition is not to be received or allowed if the court, justice or person is satisfied that:

- (a) the child does not understand the difference between the truth and a lie; or
- (b) the child is not able to respond rationally to questions.

(4) It is to be presumed, unless the contrary is established to the satisfaction of the court, justice or person, that the child understands the difference between the truth and a lie and is able to respond rationally to questions.

(5) This section does not make evidence admissible if it would otherwise be inadmissible.

Manner of making declaration

34. The required declaration is sufficiently made for the purposes of section 33 if the child indicates, by responding

SCHEDULE 1 - AMENDMENTS - *continued*

appropriately when asked, that he or she will not tell lies in the court or document.

(2) Tenth Schedule:

Omit the Schedule, insert instead:

TENTH SCHEDULE - DECLARATION

(Sec. 33)

I will not tell any lies in this court/document (*omit whichever is inapplicable*).

[*Minister's second reading speech made in -
Legislative Assembly on 21 November 1990
Legislative Council on 28 November 1990*]





FIRST PRINT

OATHS (CHILDREN) AMENDMENT BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Justices (Committal Statements) Amendment Bill 1990 is cognate with this Bill.

The object of this Bill is to amend the Oaths Act 1900 to change the law governing the receipt of evidence in court from children who are under 12 years of age and not competent to take an oath.

Currently the child's evidence is not received unless the court is satisfied that:

- . the child is of sufficient intelligence to justify receiving the evidence; *and*
- . the child understands the duty of speaking the truth before the court.

If the court decides that the child's evidence is to be received, the child makes a declaration instead of an oath.

Under the proposed amendments, the child's evidence is to be received so long as the court has explained to the child the importance of telling the truth and a new form of declaration is made by the child.

However, the child's evidence will not be received if the court is satisfied that:

- . the child does not understand the difference between the truth and a lie; *or*
- . the child is not able to respond rationally to questions.

It is to be presumed, unless the contrary is established to the satisfaction of the court, that the child has that understanding and ability.

Both the current and the proposed new law also apply to statements, affidavits and depositions by children.

Oaths (Children) Amendment 1990

Clause 1 - short title.

Clause 2 - commencement (a day to be appointed by proclamation).

Clause 3 - gives effect to Schedule 1.

Clause 4 is a transitional provision which makes it clear that the proposed amendments apply to children's evidence even if the evidence relates to proceedings commenced before, or events that occurred before, the amendments commence.

Schedule 1 contains the amendments described above.

FIRST PRINT

OATHS (CHILDREN) AMENDMENT BILL 1990

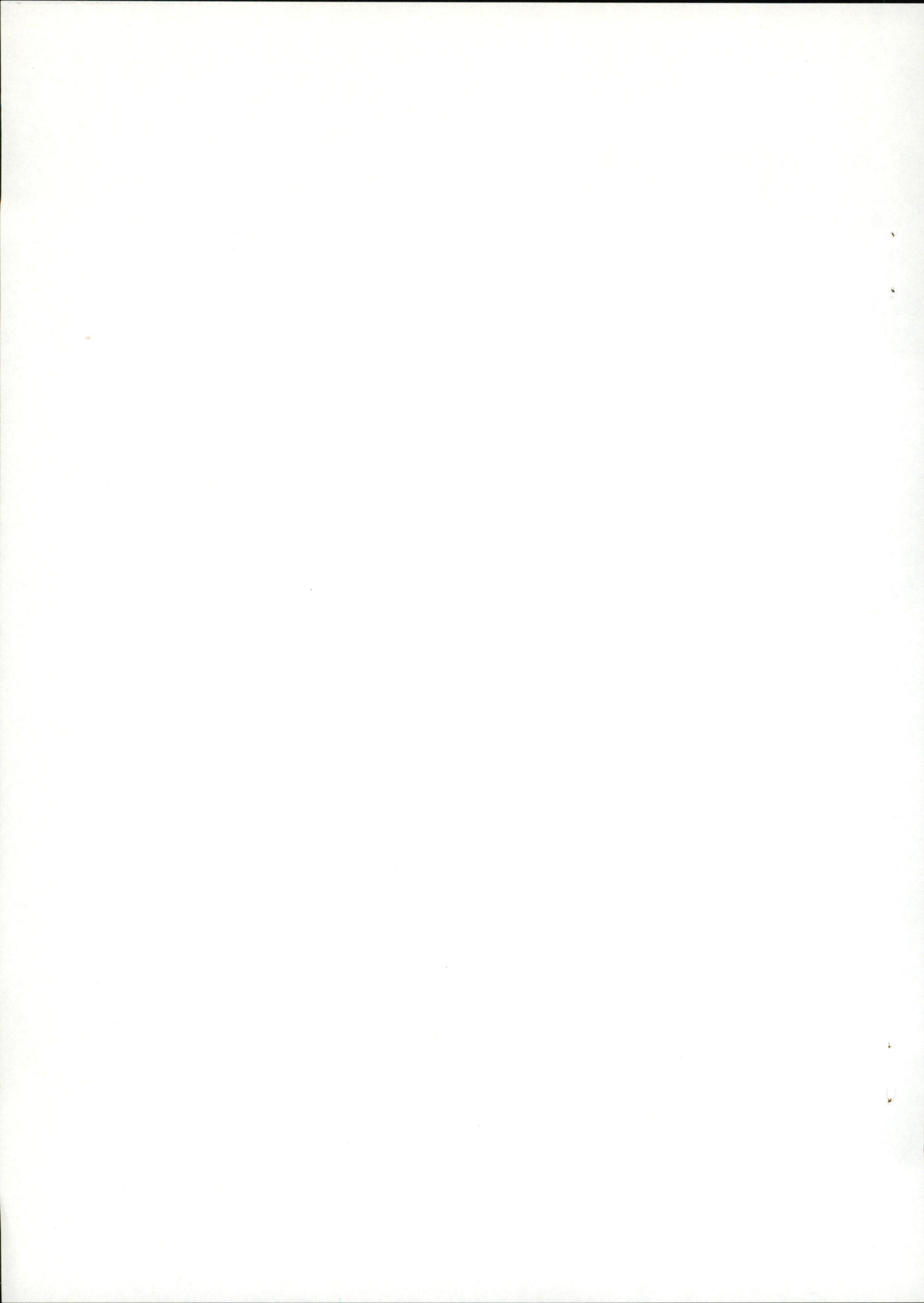
NEW SOUTH WALES



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SCHEDULE 1 - AMENDMENTS



OATHS (CHILDREN) AMENDMENT BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to amend the Oaths Act 1900 to make further provision with respect to the giving of evidence by children and related matters.

See also Justices (Committal Statements) Amendment Bill 1990.

Oaths (Children) Amendment 1990

The Legislature of New South Wales enacts:

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Commencement

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3. The Oaths Act 1900 is amended as set out in Schedule 1.

Transitional

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- (a) the evidence is to be received in proceedings commenced before the commencement of this Act; or
- (b) the evidence, statement, affidavit or deposition relates to events that occurred before the commencement of this Act.

(2) The fact that a child's evidence, statement, affidavit or deposition was not received or allowed because of the operation of section 33 of the Oaths Act 1900 before the commencement of this Act does not prevent the child's evidence, statement, affidavit or deposition being received or allowed after that commencement.

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

(1) Sections 33, 34:

Omit the sections, insert instead:

Children may make declaration instead of oath

33. (1) This section applies to:

SCHEDULE 1 - AMENDMENTS - *continued*

- (a) the giving of evidence by a child as a witness in a court or before a justice of the peace or other person authorised to administer an oath, whether in a civil or criminal proceeding; and
- (b) the making of a statement by a child in an information, complaint or proceeding in a court or before a justice of the peace; and
- (c) the making of an affidavit or deposition by a child, when the court, justice or person is satisfied, having regard to the child's age and any other matters thought relevant, that the child is not competent to take an oath.

(2) The evidence of the child is to be received or the statement, affidavit or deposition by the child is to be allowed, as if it were given or made on oath, so long as:

- (a) the court, justice or person tells the child that it is important to tell the truth; and
- (b) a declaration in the form of the Tenth Schedule is made by the child (instead of an oath).

(3) However, the child's evidence, statement, affidavit or deposition is not to be received or allowed if the court, justice or person is satisfied that:

- (a) the child does not understand the difference between the truth and a lie; or
- (b) the child is not able to respond rationally to questions.

(4) It is to be presumed, unless the contrary is established to the satisfaction of the court, justice or person, that the child understands the difference between the truth and a lie and is able to respond rationally to questions.

(5) This section does not make evidence admissible if it would otherwise be inadmissible.

Manner of making declaration

34. The required declaration is sufficiently made for the purposes of section 33 if the child indicates, by responding

Oaths (Children) Amendment 1990

SCHEDULE 1 - AMENDMENTS - *continued*

appropriately when asked, that he or she will not tell lies in the court or document.

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Omit the Schedule, insert instead:

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(Sec. 33)

I will not tell any lies in this court/document (*omit whichever is inapplicable*).
