

FIRST PRINT

## OATHS AND CROWN REFERENCES BILL 1993

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The objects of this Bill are:

- (a) to revise the forms of various oaths or affirmations of allegiance and of office to be taken by, among others, the Governor, Members of Parliament, Executive Councillors, judicial officers, police and prison officers and special constables by omitting references to the sovereign and by modernising the language employed; and
- (b) to enable certain criminal proceedings to be instituted in the name of the State; and
- (c) to change the titles of the offices of Crown Advocate, Crown Prosecutor and Crown Solicitor to New South Wales Government Advocate, State Prosecutor and New South Wales Government Solicitor respectively; and
- (d) to change the description of Crown land to State land; and
- (e) to make consequential amendments.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act 6 months after assent, unless an earlier commencement date is proclaimed.

Clauses 3 and 4 are formal provisions that give effect to the Schedules of amendments relating to oaths and proceedings by the State.

Clauses 5 and 6 are formal provisions that give effect to the Schedules of provisions dealing with the change of the titles of offices and the description of Crown land.

Clause 7 saves oaths or affirmations already taken or made by office holders covered by the proposed Act and provides that fresh oaths or affirmations need not be taken or made by these persons.

*Oaths and Crown References 1993*

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Clause 8 provides that the words "God save the Queen" are not to be used in proclamations and other documents prepared by or on behalf of the State.

Schedule 1 makes the amendments referred to above relating to oaths to the Constitution Act 1902, Oaths Act 1900, Police Offences Act 1901, Police Service Act 1990, Police Service Regulation 1990, Police Service (Volunteer Police) Amendment Act 1992 and Prisons Act 1952.

Schedule 2 makes the amendment referred to above relating to the institution of criminal proceedings by the State to the Criminal Procedure Act 1986.

Schedules 3 and 4 contain the provisions referred to above relating to the change in the titles of certain offices and in the description of Crown land.

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FIRST PRINT

**OATHS AND CROWN REFERENCES BILL 1993**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendments relating to oaths
4. Amendment relating to proceedings by the State
5. Provisions relating to titles of certain offices
6. Provisions relating to State land
7. Oaths not to be affected
8. Omission of certain words from proclamations

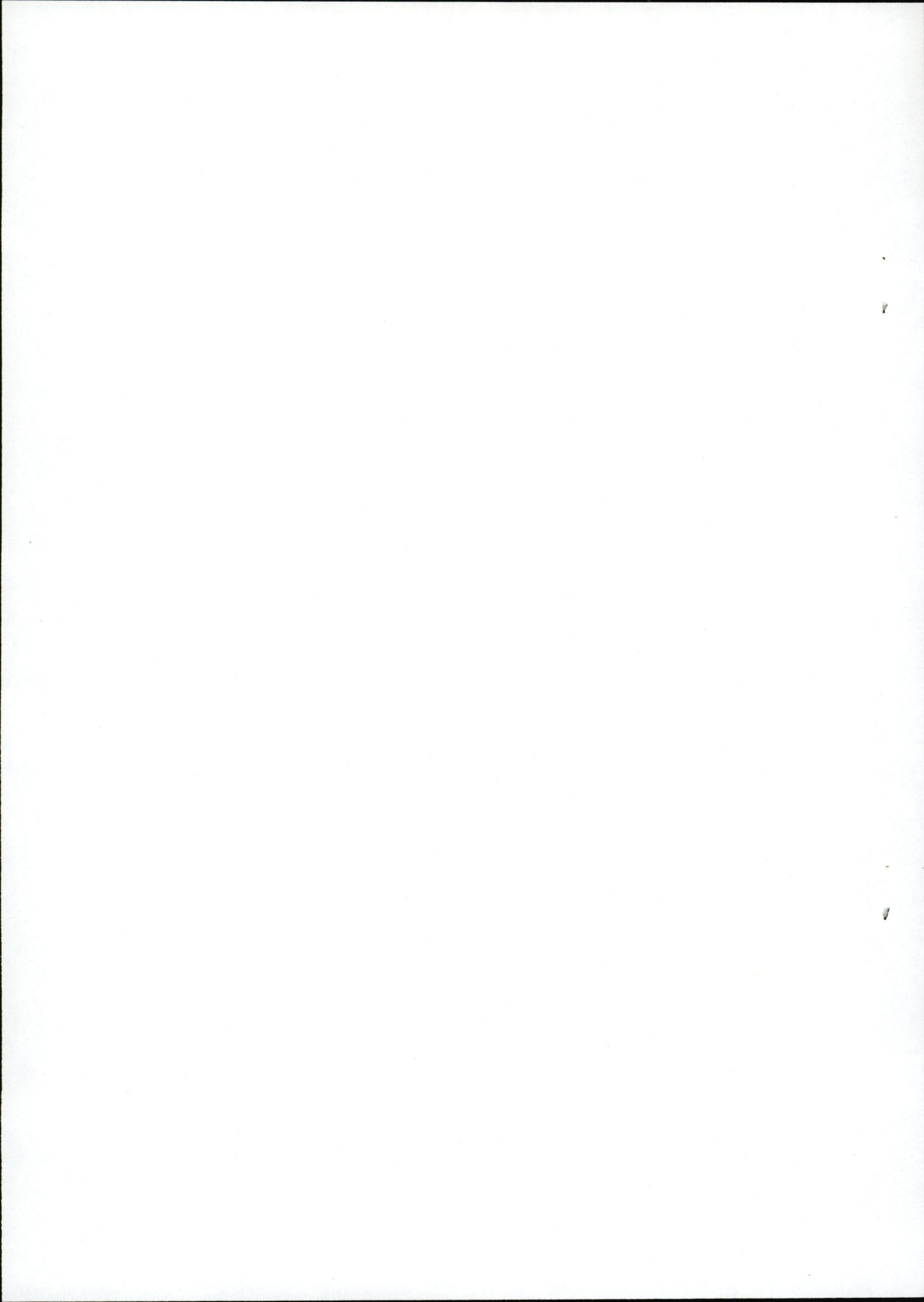
**SCHEDULE 1—AMENDMENTS RELATING TO OATHS**

**SCHEDULE 2—AMENDMENT RELATING TO PROCEEDINGS BY THE STATE**

**SCHEDULE 3—PROVISIONS RELATING TO TITLES OF CERTAIN OFFICES**

**SCHEDULE 4—PROVISIONS RELATING TO STATE LAND**

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OATHS AND CROWN REFERENCES BILL 1993

NEW SOUTH WALES



No. , 1993

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**A BILL FOR**

An Act to revise the form of various oaths; to enable certain proceedings to be taken in the name of the State; to change the titles of certain offices; to make provision as to State land; and for other purposes.

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*Oaths and Crown References 1993*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Oaths and Crown References Act 1993.

**5 Commencement**

2. This Act commences 6 months after the date of assent, unless commenced sooner by proclamation.

**Amendments relating to oaths**

10 3. Each Act and Regulation specified in Schedule 1 is amended as set out in that Schedule.

**Amendment relating to proceedings by the State**

4. The Criminal Procedure Act 1986 is amended as set out in Schedule 2.

**Provisions relating to titles of certain offices**

15 5. Schedule 3 has effect.

**Provisions relating to State land**

6. Schedule 4 has effect.

**Oaths not to be affected**

20 7. Nothing in this Act affects an oath or affirmation of allegiance or of office, including a judicial oath or affirmation and an Executive Councillor's oath or affirmation, taken or made by a person before the commencement of this Act or requires that, because of the enactment of this Act, another oath or affirmation of allegiance or of office is to be taken or made by the person.

**25 Omission of certain words from proclamations**

8. The words "God save the Queen!" are not to be used at the end of a proclamation or any other document prepared by or on behalf of the State or any instrumentality of the State, and the omission of these words does not affect the validity of any such document.

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**SCHEDULE 1—AMENDMENTS RELATING TO OATHS**

(Sec. 3)

**Constitution Act 1902 No. 32**

## (1) Section 9E:

Omit the section, insert instead: 5

**Oaths or affirmations of allegiance and of office**

9E. For the purposes of this Part:

(a) a reference to the oath or affirmation of allegiance is a reference to an oath or affirmation swearing or affirming to be loyal to Australia; and 10

(b) a reference to the oath or affirmation of office is a reference to an oath or affirmation swearing or affirming to perform the functions and duties of the particular office faithfully and to the best of one's ability and to do right to all people in accordance with the laws and usages of the State, without fear or favour, affection or ill-will. 15

## (2) Section 12:

Omit the section, insert instead:

**No Member to sit or vote until oath of allegiance taken** 20

12. (1) No Member of either the Legislative Council or the Legislative Assembly is to be permitted to sit or vote in the House to which the Member has been elected until the Member has taken and subscribed the oath of allegiance in the form prescribed by the Oaths Act 1900 before the Governor or other person authorised by the Governor to administer the oath. 25

(2) A person authorised by law to make an affirmation instead of taking an oath may make an affirmation when an oath is required to be taken for the purposes of this section. 30

**Oaths Act 1900 No. 20**(1) Section 4 (**Oath of allegiance**):

Omit “, subject to section 6,”.

(2) Section 6 (**Name of Sovereign**):

Omit the section. 35

*Oaths and Crown References 1993*

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SCHEDULE 1—AMENDMENTS RELATING TO OATHS—  
*continued*

(3) Section 11A (**Manner of taking oath**):

After section 11A (3), insert:

- 5           (3A) For the purposes of indicating assent to an oath of allegiance, official oath, judicial oath or Executive Councillor's oath, it is sufficient if the person taking the oath repeats the words of the oath, as prescribed, without uttering the words referred to in subsection (2).

10       (4) Section 12 (**Affirmations**):

At the end of the section, insert:

- 15           (2) Subsection (1) is complied with in the case of an affirmation of allegiance, official affirmation, judicial affirmation or Executive Councillor's affirmation if the person making the affirmation repeats the words of the oath, as prescribed, without uttering the words "Under God".

(5) Second Schedule (**Oath of allegiance**):

Omit the oath, insert instead:

Under God I pledge my loyalty to Australia.

20       (6) Third Schedule (**Official oath**):

Omit the oath, insert instead:

Under God I, \_\_\_\_\_, promise to perform the functions and duties of \_\_\_\_\_ faithfully and to the best of my ability.

25       (7) Fourth Schedule (**Judicial oath**):

Omit the oath, insert instead:

- 30           Under God I, \_\_\_\_\_, promise to perform the functions and duties of \_\_\_\_\_ faithfully and to the best of my ability, and to do right to all people in accordance with the laws and usages of the State of New South Wales, without fear or favour, affection or ill-will.



*Oaths and Crown References 1993*

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SCHEDULE 1—AMENDMENTS RELATING TO OATHS—  
*continued*

(8) Fifth Schedule (**Executive Councillor's oath**):

Omit the oath, insert instead:

Under God I, \_\_\_\_\_, being appointed 5  
as a member of the Executive Council of New South Wales,  
promise to perform the functions and duties of an Executive  
Councillor faithfully and to the best of my ability and, when  
required to do so, freely to give my counsel and advice to the 10  
Governor or officer administering the Government of New  
South Wales for the time being for the good management of  
public affairs of New South Wales, and that I will not  
directly or indirectly reveal matters debated in the Council  
and committed to me in secret, but that I will in all things be  
a true and faithful councillor. 15

**Police Offences Act 1901 No. 5**

(1) Section 101 (**Appointment of special constables**):

(a) From section 101 (1A), omit "as in the next subsection  
provided", insert instead "or made the affirmation as in the  
next subsections provided". 20

(b) From section 101 (2), omit the oath, insert instead:

Under God I, \_\_\_\_\_, promise to perform  
the functions and duties of a special constable for the [*city,  
town or place, as the case may be*] faithfully and to the best  
of my ability without favour or affection, malice or ill-will, 25  
that I will cause the peace to be kept and preserved, and that  
I will prevent to the best of my power all offences against the  
peace and that, while I continue to be a special constable, I  
will to the best of my skill and knowledge discharge all my  
duties faithfully and according to law. 30

(c) After section 101 (2), insert:

(2A) The affirmation is the same as the oath, except that  
the words "Under God" are to be omitted.

(2) Section 104 (**Penalty for refusing to take oath or make  
affirmation of office**): 35

After "oath", insert "or make the affirmation".

*Oaths and Crown References 1993*

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SCHEDULE 1—AMENDMENTS RELATING TO OATHS—  
*continued*

(3) Section 105 (**Penalty for refusing to serve or for disobeying orders**):

- 5           (a) After “oath”, insert “or making the affirmation”.  
             (b) After “sworn”, insert “or affirmed”.

**Police Service Act 1990 No. 47**

Section 13:

Omit the section, insert instead:

10           **Oath to be taken by persons exercising police functions**

13. (1) Before a person exercises any of the functions of a police officer, the person must take the oath or make the affirmation of office set out in this section.

15           (2) The oath required to be taken by a person under this section is as follows:

             Under God I, \_\_\_\_\_, promise to perform the functions and duties of a [*police officer, or as the case may be*] faithfully and to the best of my ability without favour or affection, malice or ill-will until I am legally discharged, that I will cause the peace to be kept and preserved, and that I will prevent to the best of my power all offences against the peace and that, while I continue to be a [*police officer, or as the case may be*], I will to the best of my skill and knowledge discharge all my duties faithfully according to law.

25           (3) The affirmation is the same as the oath, except that the words “Under God” are to be omitted.

30           (4) A police officer is not required to take a further oath or make a further affirmation under this section after a change in the officer’s position in the Police Service, so long as the officer remains in the Police Service.

**Police Service Regulation 1990**

Clause 12 (**Oath or affirmation of office for police officers**):

Omit the clause.

*Oaths and Crown References 1993*

SCHEDULE 1—AMENDMENTS RELATING TO OATHS—  
*continued*

**Police Service (Volunteer Police) Amendment Act 1992 No. 54**

Schedule 1 (Amendment of Police Service Act 1990):

Omit items (5) and (16).

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**Prisons Act 1952 No. 9**

(1) Schedule 6 (Oath of office):

Omit the oath, insert instead:

Under God I, \_\_\_\_\_, promise to perform the functions and duties of Commissioner of Corrective Services or Deputy Commissioner of Corrective Services or Prison Officer [*as the case may be*] faithfully and to the best of my ability and to do right to all people in accordance with the laws and usages of the State of New South Wales without fear or favour, affection or ill-will.

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15

Sworn and subscribed at this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ Signature

before me—

.....  
A Justice of the Peace

20

(2) Schedule 7 (Affirmation of office):

Omit the affirmation, insert instead:

I, \_\_\_\_\_, promise to perform the functions and duties of Commissioner of Corrective Services or Deputy Commissioner of Corrective Services or Prison Officer [*as the case may be*] faithfully and to the best of my ability and to do right to all people in accordance with the laws and usages of the State of New South Wales without fear or favour, affection or ill-will.

25

Subscribed at this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ Signature

30

before me—

.....  
A Justice of the Peace

*Oaths and Crown References 1993*

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**SCHEDULE 2—AMENDMENT RELATING TO PROCEEDINGS  
BY THE STATE**

(Sec. 4)

**Criminal Procedure Act 1986 No. 209**

5       Section 16 (**Name in which prosecutions may be instituted**):

At the end of the section, insert:

10       (2) Any prosecution or proceedings instituted by the  
Attorney General or the Director of Public Prosecutions  
under this section may, despite subsection (1), be instituted  
under the title "State of New South Wales".

**SCHEDULE 3—PROVISIONS RELATING TO TITLES OF  
CERTAIN OFFICES**

(Sec. 5)

**Change of titles of certain offices**

15       1. The titles of the offices of Crown Advocate, Crown Prosecutor,  
Crown Solicitor, Deputy Crown Solicitor and Assistant Crown Solicitor  
are changed to New South Wales Government Advocate, State  
Prosecutor, New South Wales Government Solicitor, New South Wales  
Deputy Government Solicitor and New South Wales Assistant  
20 Government Solicitor respectively on and from the commencement of  
this Act.

**References to titles of certain offices**

25       2. A reference in another Act, in an instrument made under an Act or  
in any document to the Crown Advocate, a Crown Prosecutor, the Crown  
Solicitor, the Deputy Crown Solicitor or an Assistant Crown Solicitor is  
to be read as a reference to the New South Wales Government Advocate,  
a State Prosecutor, the New South Wales Government Solicitor, the New  
South Wales Deputy Government Solicitor or a New South Wales  
Assistant Government Solicitor respectively.

**SCHEDULE 4—PROVISIONS RELATING TO STATE LAND**

(Sec. 6)

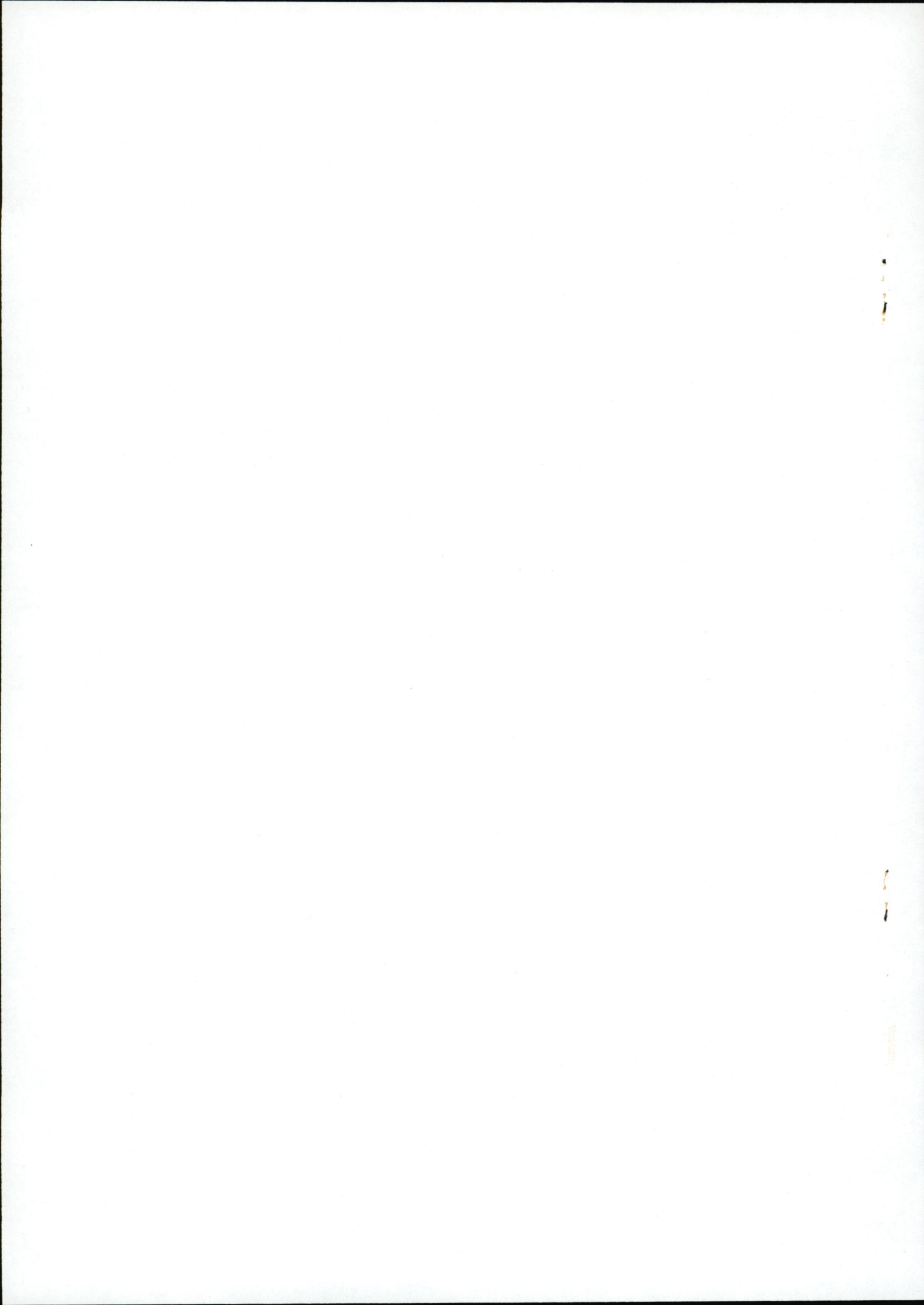
**Change of description of Crown land**

1. The description of land as Crown land is changed to State land on and from the commencement of this Act.

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**References to Crown land**

2. A reference in another Act, in an instrument made under an Act or in any document to Crown land is to be read as a reference to State land.
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SECOND PRINT

**OATHS AND CROWN REFERENCES BILL 1993**

NEW SOUTH WALES



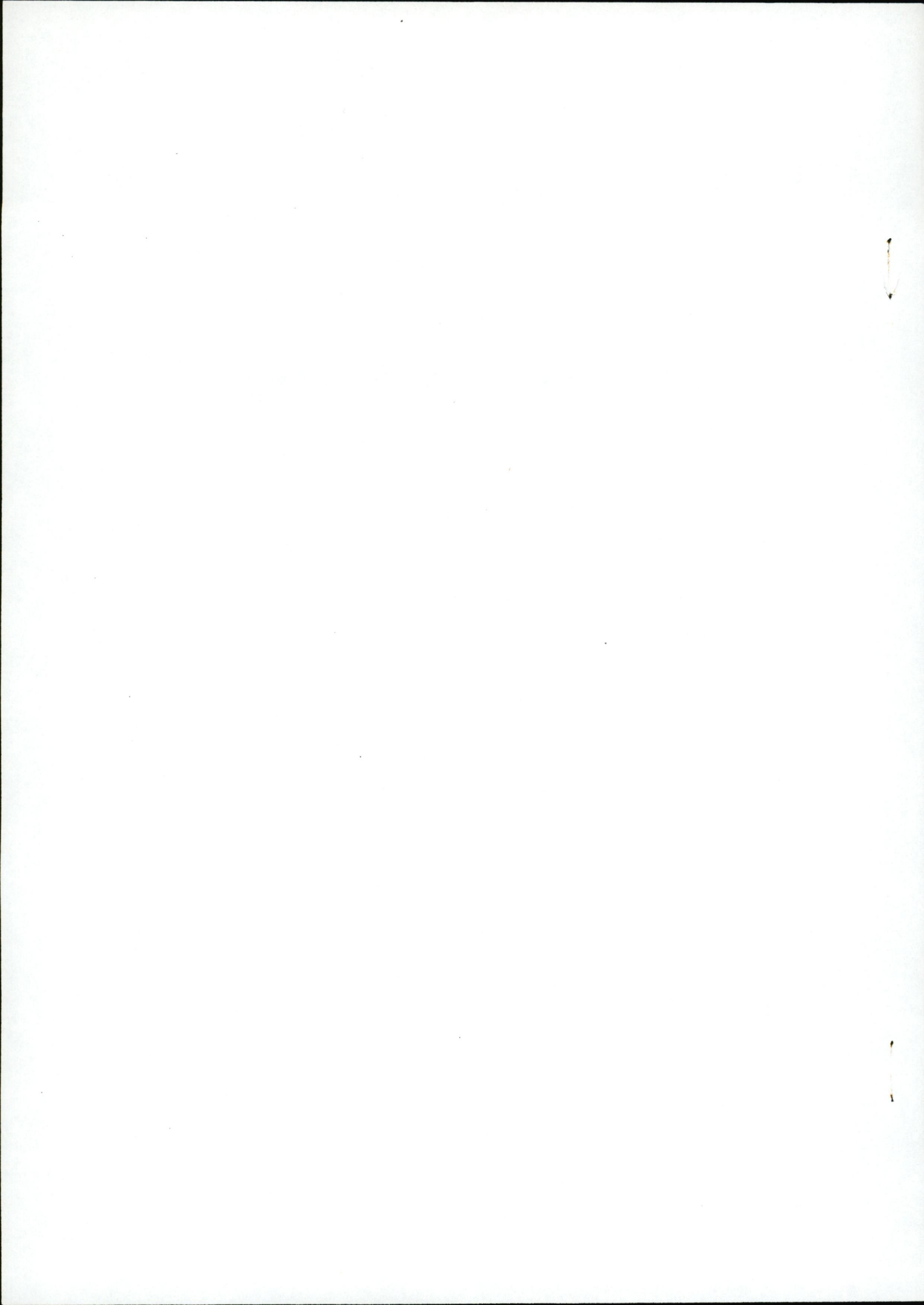
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1. Short title
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6. Former oaths to remain available
7. Omission of certain words from proclamations

**SCHEDULE 1—AMENDMENTS RELATING TO OATHS**

**SCHEDULE 2—AMENDMENT RELATING TO PROCEEDINGS BY THE STATE**

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*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly*

*Clerk of the Legislative Assembly.*

NEW SOUTH WALES



Act No.           , 1993

An Act to revise the form of various oaths; to enable certain proceedings to be taken in the name of the State; and for other purposes.

*Oaths and Crown References 1993*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Oaths and Crown References Act 1993.

**5 Commencement**

2. This Act commences 6 months after the date of assent, unless commenced sooner by proclamation.

**Amendments relating to oaths**

3. Each Act and Regulation specified in Schedule 1 is amended as set out in that Schedule.

**Amendment relating to proceedings by the State**

4. The Criminal Procedure Act 1986 is amended, as set out in Schedule 2.

**Oaths not to be affected**

5. Nothing in this Act affects an oath or affirmation of allegiance or of office, including a judicial oath or affirmation and an Executive Councillor's oath or affirmation, taken or made by a person before the commencement of this Act or requires that, because of the enactment of this Act, another oath or affirmation of allegiance or of office is to be taken or made by the person.

**Former oaths to remain available**

6. Despite an amendment made to a provision of an Act or Regulation by Schedule 1, a person is entitled to take an oath or make an affirmation under that provision in the form of the oath or affirmation that was in force under that provision immediately before the amendment.

**Omission of certain words from proclamations**

7. The words "God save the Queen!" are not to be used at the end of a proclamation or any other document prepared by or on behalf of the State or any instrumentality of the State, and the omission of these words does not affect the validity of any such document.

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*Oaths and Crown References 1993***SCHEDULE 1—AMENDMENTS RELATING TO OATHS**

(Sec. 3)

**Constitution Act 1902 No. 32**

## (1) Section 9E:

Omit the section, insert instead:

5

**Oaths or affirmations of allegiance and of office**

9E. For the purposes of this Part:

- (a) a reference to the oath or affirmation of allegiance is a reference to an oath or affirmation swearing or affirming to be loyal to Australia; and 10
- (b) a reference to the oath or affirmation of office is a reference to an oath or affirmation swearing or affirming to perform the functions and duties of the particular office faithfully and to the best of one's ability and to do right to all people in accordance with the laws and usages of the State, without fear or favour, affection or ill-will. 15

## (2) Section 12:

Omit the section, insert instead:

**No Member to sit or vote until oath of allegiance taken** 20

12. (1) No Member of either the Legislative Council or the Legislative Assembly is to be permitted to sit or vote in the House to which the Member has been elected until the Member has taken and subscribed the oath of allegiance in the form prescribed by the Oaths Act 1900 before the Governor or other person authorised by the Governor to administer the oath. 25

(2) A person authorised by law to make an affirmation instead of taking an oath may make an affirmation when an oath is required to be taken for the purposes of this section. 30

**Oaths Act 1900 No. 20**(1) Section 4 (**Oath of allegiance**):

Omit “, subject to section 6,”.

(2) Section 6 (**Name of Sovereign**):

Omit the section.

35

*Oaths and Crown References 1993*

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SCHEDULE 1—AMENDMENTS RELATING TO OATHS—  
*continued*

(3) Section 11A (**Manner of taking oath**):

After section 11A (3), insert:

- 5           (3A) For the purposes of indicating assent to an oath of allegiance, official oath, judicial oath or Executive Councillor's oath, it is sufficient if the person taking the oath repeats the words of the oath, as prescribed, without uttering the words referred to in subsection (2).

10       (4) Section 12 (**Affirmations**):

At the end of the section, insert:

- 15           (2) Subsection (1) is complied with in the case of an affirmation of allegiance, official affirmation, judicial affirmation or Executive Councillor's affirmation if the person making the affirmation repeats the words of the oath, as prescribed, without uttering the words "Under God".

(5) Second Schedule (**Oath of allegiance**):

Omit the oath, insert instead:

Under God I pledge my loyalty to Australia.

20       (6) Third Schedule (**Official oath**):

Omit the oath, insert instead:

Under God I, \_\_\_\_\_, promise to perform the functions and duties of \_\_\_\_\_ faithfully and to the best of my ability.

25       (7) Fourth Schedule (**Judicial oath**):

Omit the oath, insert instead:

- 30           Under God I, \_\_\_\_\_, promise to perform the functions and duties of \_\_\_\_\_ faithfully and to the best of my ability, and to do right to all people in accordance with the laws and usages of the State of New South Wales, without fear or favour, affection or ill-will.

*Oaths and Crown References 1993*

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SCHEDULE 1—AMENDMENTS RELATING TO OATHS—  
*continued*

(8) Fifth Schedule (**Executive Councillor's oath**):

Omit the oath, insert instead:

Under God I, \_\_\_\_\_, being appointed 5  
as a member of the Executive Council of New South Wales,  
promise to perform the functions and duties of an Executive  
Councillor faithfully and to the best of my ability and, when  
required to do so, freely to give my counsel and advice to the 10  
Governor or officer administering the Government of New  
South Wales for the time being for the good management of  
public affairs of New South Wales, and that I will not  
directly or indirectly reveal matters debated in the Council  
and committed to me in secret, but that I will in all things be 15  
a true and faithful councillor.

**Police Offences Act 1901 No. 5**

(1) Section 101 (**Appointment of special constables**):

(a) From section 101 (1A), omit "as in the next subsection 20  
provided", insert instead "or made the affirmation as in the  
next subsections provided".

(b) From section 101 (2), omit the oath, insert instead:

Under God I, \_\_\_\_\_, promise to perform 25  
the functions and duties of a special constable for the [*city,  
town or place, as the case may be*] faithfully and to the best  
of my ability without favour or affection, malice or ill-will,  
that I will cause the peace to be kept and preserved, and that  
I will prevent to the best of my power all offences against the  
peace and that, while I continue to be a special constable, I  
will to the best of my skill and knowledge discharge all my 30  
duties faithfully and according to law.

(c) After section 101 (2), insert:

(2A) The affirmation is the same as the oath, except that  
the words "Under God" are to be omitted.

(2) Section 104 (**Penalty for refusing to take oath or make 35  
affirmation of office**):

After "oath", insert "or make the affirmation".

*Oaths and Crown References 1993*

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SCHEDULE 1—AMENDMENTS RELATING TO OATHS—  
*continued*

(3) Section 105 (**Penalty for refusing to serve or for disobeying orders**):

- 5           (a) After “oath”, insert “or making the affirmation”.  
             (b) After “sworn”, insert “or affirmed”.

**Police Service Act 1990 No. 47**

Section 13:

Omit the section, insert instead:

10           **Oath to be taken by persons exercising police functions**

13. (1) Before a person exercises any of the functions of a police officer, the person must take the oath or make the affirmation of office set out in this section.

15           (2) The oath required to be taken by a person under this section is as follows:

             Under God I, \_\_\_\_\_, promise to perform the functions and duties of a [*police officer, or as the case may be*] faithfully and to the best of my ability without favour or affection, malice or ill-will until I am legally discharged, that I will cause the peace to be kept and preserved, and that I will prevent to the best of my power all offences against the peace and that, while I continue to be a [*police officer, or as the case may be*], I will to the best of my skill and knowledge discharge all my duties faithfully according to law.

25           (3) The affirmation is the same as the oath, except that the words “Under God” are to be omitted.

30           (4) A police officer is not required to take a further oath or make a further affirmation under this section after a change in the officer’s position in the Police Service, so long as the officer remains in the Police Service.

**Police Service Regulation 1990**

Clause 12 (**Oath or affirmation of office for police officers**):

Omit the clause.

Oaths and Crown References 1993

SCHEDULE 1—AMENDMENTS RELATING TO OATHS—  
*continued*

**Police Service (Volunteer Police) Amendment Act 1992 No. 54**

Schedule 1 (Amendment of Police Service Act 1990):

Omit items (5) and (16). 5

**Prisons Act 1952 No. 9**

(1) Schedule 6 (Oath of office):

Omit the oath, insert instead:

Under God I, \_\_\_\_\_, promise to perform the functions and duties of Commissioner of Corrective Services or Deputy Commissioner of Corrective Services or Prison Officer [as the case may be] faithfully and to the best of my ability and to do right to all people in accordance with the laws and usages of the State of New South Wales without fear or favour, affection or ill-will. 10  
15

Sworn and subscribed at this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ Signature

before me—

.....  
A Justice of the Peace 20

(2) Schedule 7 (Affirmation of office):

Omit the affirmation, insert instead:

I, \_\_\_\_\_, promise to perform the functions and duties of Commissioner of Corrective Services or Deputy Commissioner of Corrective Services or Prison Officer [as the case may be] faithfully and to the best of my ability and to do right to all people in accordance with the laws and usages of the State of New South Wales without fear or favour, affection or ill-will. 25

Subscribed at this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ Signature 30

before me—

.....  
A Justice of the Peace

**SCHEDULE 2—AMENDMENT RELATING TO PROCEEDINGS  
BY THE STATE**

(Sec. 4)

**Criminal Procedure Act 1986 No. 209**

5       Section 16 (Name in which prosecutions may be instituted):

At the end of the section, insert:

10       (2) Any prosecution or proceedings instituted by the  
Attorney General or the Director of Public Prosecutions  
under this section may, despite subsection (1), be instituted  
under the title "State of New South Wales".

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