

First print



New South Wales

Oaths and Crown References Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to replace the oath of allegiance with a pledge of loyalty to Australia and to revise the oaths of office to be taken by, among others, the Governor, Executive Councillors, members of Parliament, judicial officers and police and prison officers by omitting references to the Sovereign and by modernising the language employed, and
 - (b) to enable certain criminal proceedings to be instituted under the title "State of New South Wales", and
 - (c) to change the titles of the offices of Crown Advocate, Crown Prosecutor, Crown Solicitor, Director, Crown Legal Services and Assistant Crown Solicitor to State Advocate, State Prosecutor, State Solicitor, Director, State Legal Services and Assistant State Solicitor respectively, and
 - (d) to make related amendments to various Acts and Regulations.
-

Outline of provisions

Clause 1 sets out the name (also known as the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments relating to pledges of loyalty and oaths and associated matters.

A pledge of loyalty is treated as being of a different nature from an oath or affirmation. A pledge of loyalty may be tendered or administered to, and taken, or taken and subscribed, in accordance with the law imposing the requirement to take a pledge of loyalty, by the person who is required to take the pledge.

The Acts and Regulations amended are:

Constitution Act 1902

Coroners Act 1980

Coroners (Amendment) Act 1993

Drainage Act 1939

Government and Related Employees Appeal Tribunal Act 1980

Industrial Relations Regulation 1992

Interpretation Act 1987

Local Courts Act 1982

Local Courts Regulation 1994

Oaths Act 1900

Police Offences Act 1901

Police Service Act 1990

Police Service Regulation 1990

Police Service (Volunteer Police) Amendment Act 1992

Prisons Act 1952.

The amendment to the *Drainage Act 1939* repeals a provision requiring directors of drainage unions or trusts to take an oath of allegiance and declaration of office before assuming office. This requirement is considered to be unnecessary and not in keeping with current practice for the holders of offices of this kind.

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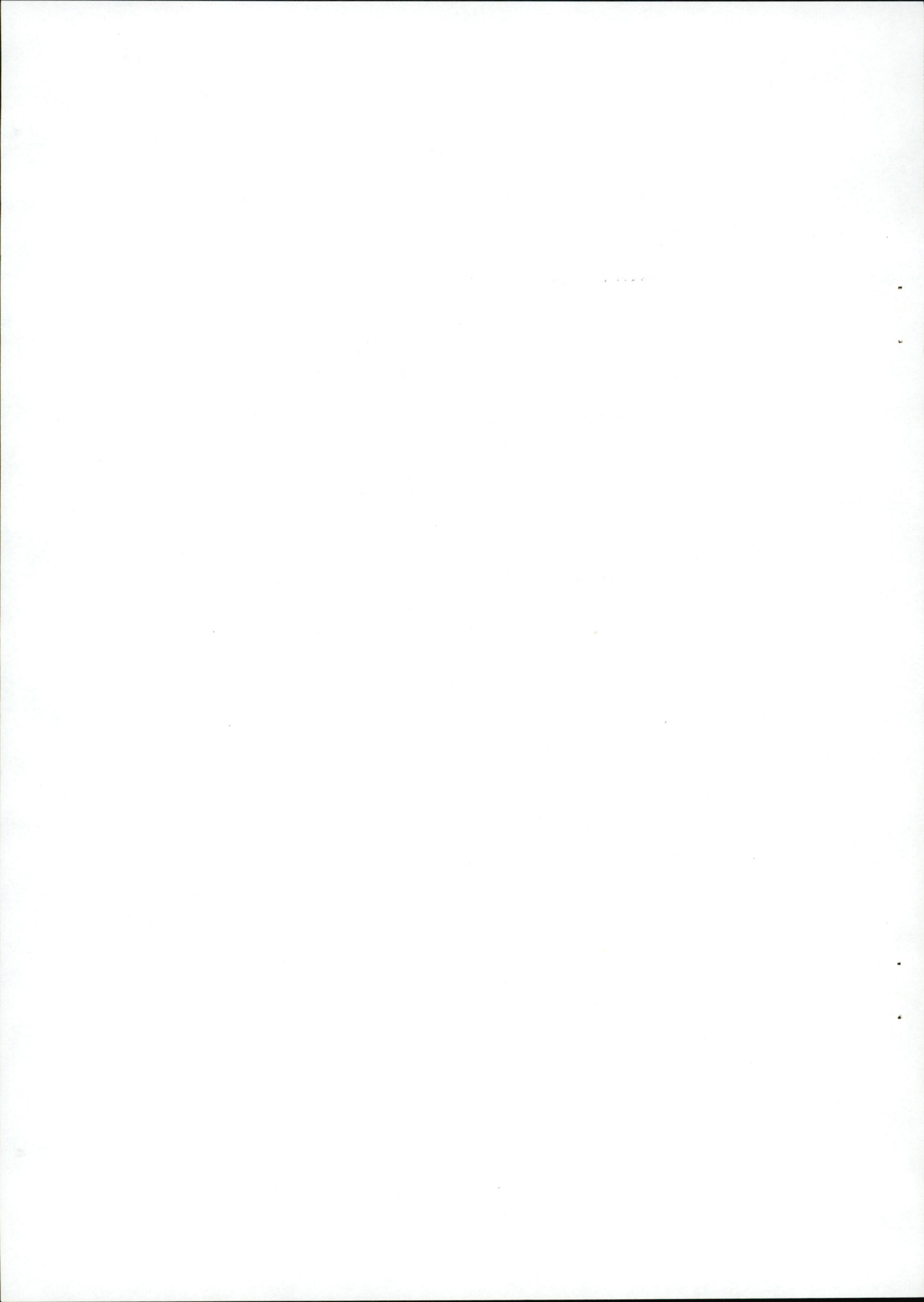
Explanatory note

The object of the first amendment to the *Interpretation Act 1987* is to facilitate the interpretation of a provision in a law to the effect that the law binds the State (rather than the Crown). It is not intended that the substitution of references to the State for references to the Crown should affect the operation or meaning of provisions of this kind. The second amendment to that Act provides that the validity of proclamations and other documents prepared by the State is not affected if the words "God save the Queen" are not included.

The amendments to the *Oaths Act 1900* save oaths or affirmations already taken or made by office holders covered by the proposed Act, and the efficacy of those oaths, and provide that fresh oaths or affirmations, or pledges of loyalty, need not be taken or made by those persons in relation to the offices that they currently hold.

Clause 4 is a formal provision that gives effect to the Schedule amending the *Criminal Procedure Act 1986* in relation to proceedings by the State.

Clause 5 is a formal provision that gives effect to the Schedule of amendments relating to the change of the titles of the offices referred to above. The Acts amended by this Schedule are the *Crown Advocate Act 1979*, the *Crown Prosecutors Act 1986* and the *Public Sector Management Act 1988*. The appointments of the current holders of the offices concerned are saved, and provision is made that references in Acts and other documents to these offices under the superseded titles are to be read as references to the new titles.





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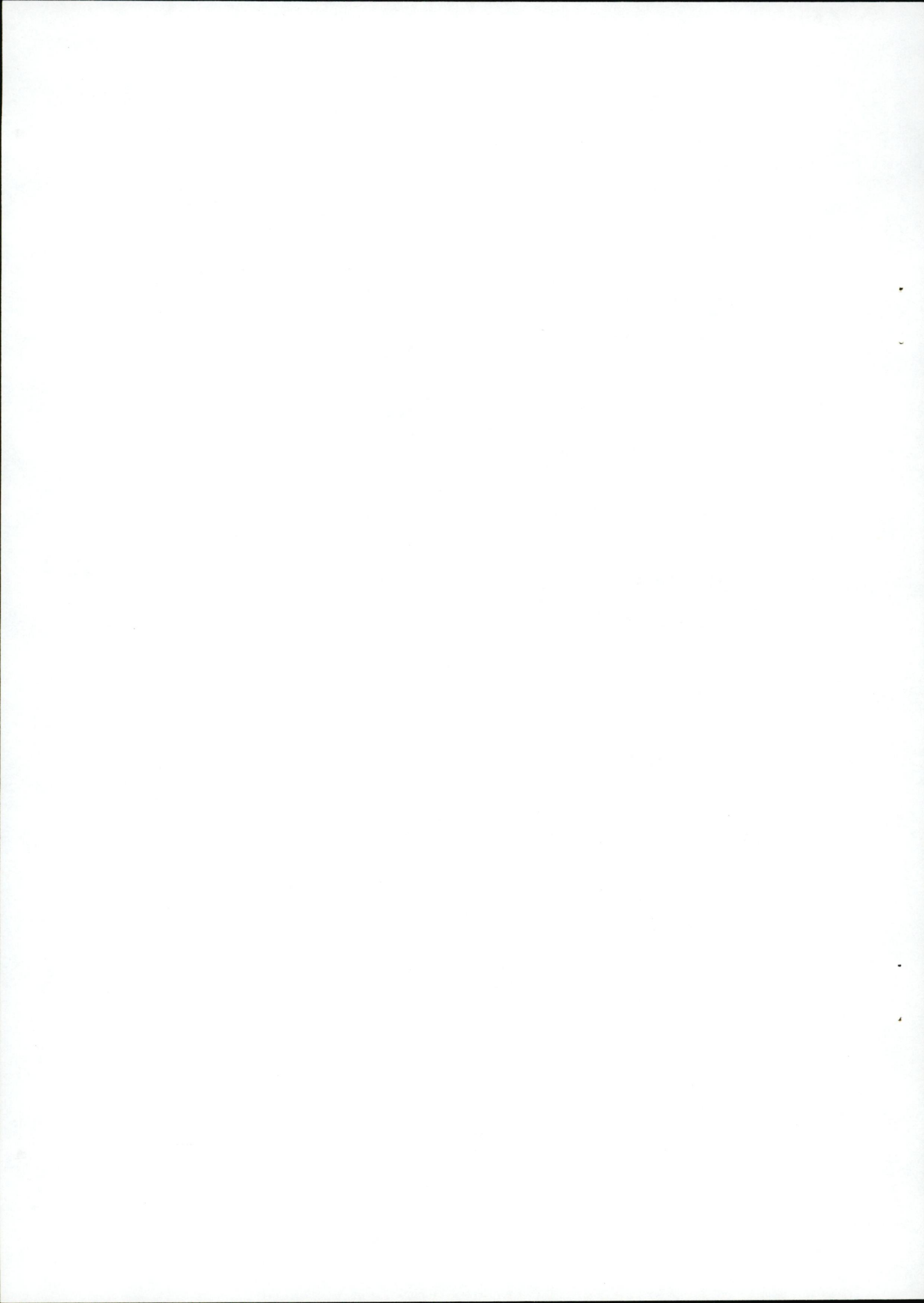
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New South Wales

Oaths and Crown References Bill 1995

No , 1995

A Bill for

An Act to replace the oath of allegiance with a pledge of loyalty; to revise the form of various oaths of office; to enable certain proceedings to be taken in the name of the State; to change the titles of certain offices; to amend the *Constitution Act 1902* and certain other Acts; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Oaths and Crown References Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendments relating to oaths

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

4 Amendment relating to proceedings by State

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

5 Amendments relating to titles of certain offices

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

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Schedule 1 Amendments relating to oaths

(Section 3)

1.1 Constitution Act 1902 No 32

[1] Section 9A Appointment of Governor

Omit "the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office" from section 9A (3). 5
Insert instead "the pledge of loyalty and the oath or affirmation of office".

[2] Section 9B Appointment of Lieutenant-Governor and Administrator 10

Omit "the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office" from section 9B (5).
Insert instead "the pledge of loyalty and the oath or affirmation of office".

[3] Section 9E 15

Omit the section. Insert instead:

9E Pledge of loyalty and oath or affirmation of office

For the purposes of this Part:

- (a) a reference to the pledge of loyalty is a reference to a pledge of loyalty to Australia, and 20
- (b) a reference to the oath or affirmation of office is a reference to an oath or affirmation of office 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. 25

[4] Section 12

Omit the section. Insert instead:

12 No Member to sit or vote until pledge of loyalty taken

No Member of either the Legislative Council or the Legislative Assembly is permitted to sit or vote in the House to which the Member has been elected until the Member has taken and subscribed the pledge of loyalty prescribed by the *Oaths Act 1900* before the Governor or other person authorised by the Governor to administer the pledge. 5
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[5] Section 49A Demise of the Crown

Section 49A (2)

Omit "any oath".

Insert instead "any oath or pledge of loyalty".

[6] Section 49A (2)

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Insert "or pledge" after "that oath" where firstly occurring.

[7] Section 49A (2)

Omit "that oath" where secondly occurring.

Insert instead "any such oath".

1.2 Coroners Act 1980 No 27

Section 7

Omit the section, insert instead:

7 Pledge of loyalty and judicial oath

- (1) A coroner or deputy coroner is not to act as such unless he or she has: 5
- (a) taken and subscribed the pledge of loyalty prescribed by the *Oaths Act 1900*, and
 - (b) taken and subscribed the judicial oath prescribed by the *Oaths Act 1900* or made and subscribed a solemn affirmation in the form of that oath, 10
- and has transmitted them to the Minister.
- (2) Any such pledge, oath or affirmation may be taken or made before and may be administered and received by any justice. 15
- (3) A coroner or deputy coroner who does not, within 3 months after appointment, take the pledge and take the oath or make the affirmation referred to in subsection (1) ceases to hold office as coroner or deputy coroner, as the case may be, when that period ends. 20

1.3 Coroners (Amendment) Act 1993 No 79

[1] Schedule 1 Amendment of Coroners Act 1980

Omit proposed section 7 (1A) from item (13) (b). Insert instead:

- (1A) An assistant coroner is not to act as such unless he or she has taken and subscribed the pledge of loyalty prescribed by the *Oaths Act 1900*, and has transmitted it to the Minister. 25

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Schedule 1 Amendments relating to oaths

[2] Schedule 1, item (13) (d)

Omit "the oath or make the affirmation" from proposed section 7 (4) in item (13) (d).

Insert instead "the pledge".

1.4 Drainage Act 1939 No 29

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Section 19 Oath and declaration of office

Omit the section.

1.5 Government and Related Employees Appeal Tribunal Act 1980 No 39

[1] Schedule 1 Provisions relating to the offices of Senior Chairperson and Chairperson

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Clause 3 Taking of pledge of loyalty and judicial oath

Omit "oath of allegiance" from clause 3 (1).

Insert instead "pledge of loyalty".

[2] Schedule 1, clause 3 (2)

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Omit the subclause. Insert instead:

- (2) Sections 11, 11A, 11B and 12 of the *Oaths Act 1900* apply to and in respect of a pledge of loyalty or oath required to be taken under subclause (1) in the same way as they apply to and in respect of a pledge of loyalty or oath required to be taken under Part 2 of that Act.

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1.6 Industrial Relations Regulation 1992

Clause 21A Pledges of loyalty and oaths of office of members of Commission

Omit "oath of allegiance". Insert instead "pledge of loyalty".

1.7 Interpretation Act 1987 No 15

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[1] Section 32A

Insert after section 32:

32A Construction of references to Act binding State or other political entities

- (1) A provision in an Act to the effect that the Act binds the State is to be construed as if the reference to the State were a reference to the Crown in right of the State. 10
- (2) A provision in an Act to the effect that the Act binds the State and all other Australian political entities is to be construed as if the reference to the State and those entities were a reference to the Crown in right of the States, of the Territories and of the Commonwealth. 15
- (3) A provision in an Act to the effect that the Act binds the State and all other political entities is to be construed as if the reference to the State and those entities were a reference to the Crown in all its rights or capacities. 20
- (4) This section applies to provisions in instruments in the same way as it applies to provisions in Acts.

[2] Section 45A

Insert after section 45:

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45A Absence of certain words from proclamations and other documents

The absence of the words "God save the Queen!" does not affect the validity of a proclamation or any other document prepared by or on behalf of the State or any instrumentality of the State. 30

1.8 Local Courts Act 1982 No 164

Section 16

Omit the section. Insert instead:

- 16 Pledge of loyalty and judicial oath to be taken by Magistrates** 5
- (1) A person appointed under section 12 (1) is not to exercise the functions of a Magistrate, or of the Chief Magistrate or a Deputy Chief Magistrate, unless the person has:
- (a) taken and subscribed the pledge of loyalty prescribed by the *Oaths Act 1900*, and 10
- (b) taken and subscribed the judicial oath prescribed by the *Oaths Act 1900* or made and subscribed a solemn affirmation in the form of that oath, and has transmitted them to the Minister. 15
- (2) Any such pledge, oath or affirmation may be taken or made before and may be administered and received by:
- (a) a Judge of the Supreme Court or of the District Court of New South Wales, or
- (b) except where the pledge, oath or affirmation is taken or made by the Chief Magistrate—the Chief Magistrate, or 20
- (c) the holder of an office prescribed by the regulations for the purposes of this paragraph.
- (3) A Magistrate who does not, within 3 months after appointment, take the pledge and take the oath or make the affirmation referred to in subsection (1) and transmit them to the Minister ceases to hold office as a Magistrate when that period ends. 25

1.9 Local Courts Regulation 1994

Clause 7 Prescribed oaths: sec 16

Omit the clause.

1.10 Oaths Act 1900 No 20

[1] Heading to Part 2

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Omit the heading.

Insert instead "**Part 2 Oaths and pledges of loyalty**".

[2] Section 3 Form and manner of taking pledges of loyalty and oaths

Section 3 (1)

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Omit "oath of allegiance". Insert instead "pledge of loyalty".

[3] Section 3 (2)

Insert "pledge of loyalty and" after "The".

[4] Section 3 (2A)

Omit "oaths". Insert instead "the pledge of loyalty and the oath".

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[5] Section 3 (3)

Insert "pledge of loyalty or" after "any such".

[6] Section 4

Omit the section. Insert instead:

4 Pledge of loyalty

- (1) The form in the Second Schedule is the form of the pledge of loyalty to be taken by all persons who are required to take that pledge. 5
- (2) A pledge of loyalty may be taken and may be administered and received by any justice. However, if another procedure for taking or for administering and receiving a pledge of loyalty is prescribed by another Act or law, that procedure is to be adopted. 10

[7] Section 5 Definitions

Omit the definition of *oath of allegiance*. Insert instead:

pledge of loyalty means a pledge in the form in the Second Schedule. 15

[8] Section 6 Name of Sovereign

Omit the section.

[9] Section 7 Public officers

Omit "oath of allegiance" from section 7 (1).
Insert instead "pledge of loyalty". 20

[10] Section 8 Judges and justices of the peace

Omit "oath of allegiance" from section 8 (1).
Insert instead "pledge of loyalty".

[11] Section 9 District Court Judges and other judicial officers

Omit "oath of allegiance" from section 9 (1). 25
Insert instead "pledge of loyalty".

[12] Section 10 Executive councillors

Omit "oath of allegiance" from section 10 (1).
Insert instead "pledge of loyalty".

[13] Section 11 Penalty on not taking required pledge or oath

Omit "such oath" wherever occurring.
Insert instead "such pledge or oath".

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[14] Sections 11B–11D

Insert after section 11A:

11B Manner of taking pledge of loyalty

A person may take the pledge of loyalty in any manner in which an oath may be taken or by repeating the words of the pledge, except that the words "Under God" may be omitted.

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11C Oaths and affirmations already taken are saved

(1) Nothing in the *Oaths and Crown References Act 1995*:

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(a) requires the holder of an office who has taken an oath or made an affirmation prescribed or provided for by this or any other Act or law to take that oath or to make that affirmation again or to take a pledge of loyalty in relation to that office,
or

20

(b) affects the efficacy of an oath or affirmation taken before the commencement of this section.

(2) For the purposes of subsection (1), a reference in this or any other Act or law to:

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(a) a pledge of loyalty is taken to include a reference to an oath or affirmation of allegiance, and

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Schedule 1 Amendments relating to oaths

- (b) to an official oath or affirmation, a judicial oath or affirmation or an Executive Councillor's oath or affirmation in the form prescribed immediately after the commencement of this section is taken to include a reference to those oaths or affirmations in the form prescribed immediately before that commencement. 5

11D References to oath of allegiance

A reference in any other Act, in any instrument made under any Act or in any other instrument to an oath of allegiance is to be read as a reference to a pledge of loyalty, except in so far as the contrary intention appears in the Act or instrument concerned. 10

[15] Section 12 Affirmations

Insert "and subsection (2)" after "section 13". 15

[16] Section 12 (2)

Insert at the end of the section:

- (2) A person who objects to taking an official oath, a judicial oath or an Executive Councillor's oath may, instead of taking the oath, make a solemn declaration in the form of the oath concerned, except that the words "Under God" may be omitted. 20

[17] Section 19 This Part not to extend to certain pledges or oaths

Omit "oath of allegiance" from section 19 (a).
Insert instead "pledge of loyalty". 25

[18] Second Schedule Pledge of loyalty

Omit the oath of allegiance. Insert instead:

Under God I pledge my loyalty to Australia.

[19] Third Schedule Official oath

Omit the oath. Insert instead:

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Under God I, _____, promise to perform the
functions and duties of

faithfully and to the best of my ability.

[20] Fourth Schedule Judicial oath

Omit the oath. Insert instead:

10

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.

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[21] Fifth Schedule Executive Councillor's oath

Omit the oath. Insert instead:

Under God I, _____, being appointed 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 Governor or officer administering the
Government of New South Wales for the time being for the good
management of the 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.

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1.11 Police Offences Act 1901 No 5

[1] Section 101 Appointment of special constables

Section 101 (1A)

Omit "as in the next subsection provided".

Insert instead "or made the affirmation as provided in this section". 5

[2] Section 101 (2)

Omit the oath. Insert instead:

Under God I, _____, promise to perform the functions and duties of a special constable for [*city, town or place, as the case may be*] faithfully and to the best of my ability, without fear or favour, affection or ill-will, to cause the peace to be kept and preserved, and to prevent to the best of my power all offences against the peace and, while I continue to be a special constable, to the best of my skill and knowledge to discharge all my duties faithfully according to law. 10
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[3] Section 101 (2A)

Insert after section 101 (2):

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

[4] Section 104 Penalty for refusing to take oath or make affirmation of office 20

Insert "or make the affirmation" after "oath".

[5] Section 105 Penalty for refusing to serve or for disobeying orders

Insert "or making the affirmation" after "oath". 25

[6] Section 105

Insert "or affirmed" after "sworn".

1.12 Police Service Act 1990 No 47

Section 13

Omit the section. Insert instead:

13 Oath to be taken by persons exercising police functions

- (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. 5
- (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 faithfully and to the best of my ability, without fear or favour, affection or ill-will until I am legally discharged, to cause the peace to be kept and preserved, and to prevent to the best of my power all offences against the peace and, while I continue to be a police officer, to the best of my skill and knowledge to discharge all my duties faithfully according to law. 10 15
- (3) The affirmation is the same as the oath, except that the words "Under God" are to be omitted. 20
- (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.

1.13 Police Service Regulation 1990

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Clause 12 Oath or affirmation of office for police officers

Omit the clause.

Schedule 1 Amendments relating to oaths

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

Schedule 1 Amendment of Police Service Act 1990

Omit items (5) and (16).

1.15 Prisons Act 1952 No 9 5

[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* 10
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.

Sworn and subscribed at
this _____ day of } 15
19 } Signature

before me

.....
A Justice of the Peace

[2] Schedule 7 Affirmation of office

Omit the affirmation. Insert instead: 20

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 25
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.

**Schedule 2 Amendment relating to proceedings
by State**

(Section 4)

2.1 Criminal Procedure Act 1986 No 209

Section 16 Name in which prosecutions may be instituted

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Insert at the end of the section:

- (2) Any such prosecution or proceedings may be instituted under the title "State of New South Wales".

Schedule 3 Amendments relating to titles of certain offices

(Section 5)

3.1 Crown Advocate Act 1979 No 59

[1] The whole Act (including long title but excluding section 1) 5

Omit "Crown Advocate" wherever occurring.
Insert instead "State Advocate".

[2] Section 1

Omit the section. Insert instead:

1 Name of Act

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This Act is the *State Advocate Act 1979*.

[3] Sections 2, 4, 6 (f) and 8 (1)

Omit "Crown Advocate's" wherever occurring.
Insert instead "State Advocate's".

[4] Section 9 Duties and functions of State Advocate

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Omit "act as counsel for the Crown in the right of the State" from section 9 (c).

Insert instead "act as counsel for the State".

[5] Section 10

Insert after section 9:

10 Change of title of office of Crown Advocate

- (1) The title of the office of Crown Advocate is changed to State Advocate on and from the commencement of this section. 5
- (2) The person holding office as the Crown Advocate immediately before the commencement of section 10 is taken to be appointed as the State Advocate (for the remainder of the term to which the person was appointed) on and from that commencement. 10
- (3) A reference in any other Act, in any instrument made under any Act or in any other instrument to the Crown Advocate is to be read as a reference to the State Advocate. 15

3.2 Crown Prosecutors Act 1986 No 208

[1] Long title

Omit the long title. Insert instead:

An Act to provide for the appointment of and to confer functions on State Prosecutors; and for other purposes. 20

[2] Section 1

Omit the section. Insert instead:

1 Name of Act

This Act is the *State Prosecutors Act 1986*.

[3] The whole Act (except the long title and sections 1 and 14) 25

Omit "Crown Prosecutor" wherever occurring.
Insert instead "State Prosecutor".

[4] The whole Act (except the long title and sections 1 and 14)

Omit "Crown Prosecutors" wherever occurring.
Insert instead "State Prosecutors".

[5] Section 4 State Prosecutors

Omit "Crown Prosecutor's" from section 4 (4).
Insert instead "State Prosecutor's".

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[6] Section 14 Savings and transitional provisions

Omit section 14 (6).

[7] Section 15

Insert after section 14:

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15 Change of title of office of Crown Prosecutor

(1) The title of the office of Crown Prosecutor is changed to State Prosecutor on and from the commencement of this section.

(2) A person holding office as a Crown Prosecutor immediately before the commencement of section 14 is taken to be appointed as a State Prosecutor (for the remainder of the term to which the person was appointed) on and from that commencement.

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(3) A reference in any other Act, in any instrument made under any Act or in any other instrument to a Crown Prosecutor is to be read as a reference to a State Prosecutor.

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3.3 Public Sector Management Act 1988 No 33

[1] Schedule 3B Senior Executive Positions

Omit "Crown" wherever occurring from the matter listed under the heading "Attorney General's Department" in Part 1.

Insert instead "State".

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[2] Schedule 7 Savings, transitional and other provisions

Insert at the end of Part 3:

**Part 4 Provisions consequent on enactment of
Oaths and Crown References Act 1995**

**26 Change of titles of offices of Crown Solicitor, Director,
Crown Legal Services and Assistant Crown Solicitors** 10

(1) The titles of the offices of Crown Solicitor, Director, Crown Legal Services and Assistant Crown Solicitor are changed to State Solicitor, Director, State Legal Services and Assistant State Solicitor respectively on and from the commencement of this clause. 15

(2) The persons holding office as the Crown Solicitor, the Director, Crown Legal Services and Assistant Crown Solicitors immediately before the commencement of this clause are taken to be appointed as the State Solicitor, the Director, State Legal Services and Assistant State Solicitors respectively (for the remainder of the terms to which they were appointed) on and from that commencement. 20

- (3) A reference in any other Act, in any instrument made under any Act or in any other document to the Crown Solicitor, the Director, Crown Legal Services or an Assistant Crown Solicitor is to be read as a reference to the State Solicitor, the Director, State Legal Services or an Assistant State Solicitor respectively.

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