

OATHS (CHILDREN) AMENDMENT ACT 1990 No. 93

NEW SOUTH WALES



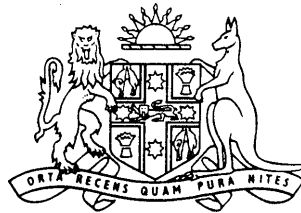
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SCHEDULE 1 - AMENDMENTS

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
Legislative Council on 28 November 1990]*