



New South Wales

Evidence Legislation Amendment Act 2001 No 109

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Evidence Act 1995 No 25	2
4 Amendment of Evidence (Children) Act 1997 No 143	2
Schedules	
1 Amendment of Evidence Act 1995	3
2 Amendment of Evidence (Children) Act 1997	6



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Evidence Legislation Amendment Act 2001 No 109

Act No 109, 2001

An Act to make amendments to the *Evidence Act 1995* and the *Evidence (Children) Act 1997* in respect of the taking of oaths and the making of affirmations and in respect of the giving of evidence by children; and for other purposes. [Assented to 14 December 2001]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Evidence Legislation Amendment Act 2001*.

2 Commencement

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

3 Amendment of Evidence Act 1995 No 25

The *Evidence Act 1995* is amended as set out in Schedule 1.

4 Amendment of Evidence (Children) Act 1997 No 143

The *Evidence (Children) Act 1997* is amended as set out in Schedule 2.

Schedule 1 Amendment of Evidence Act 1995

(Section 3)

[1] Section 22 Interpreters to act on oath or affirmation

Insert after section 22 (1):

- (1A) An oath taken, or an affirmation made, by a person before acting as an interpreter on a day is taken for the purposes of subsection (1) to be an oath taken or affirmation made by that person for the purposes of any subsequent proceedings in that court on that day in which the person acts as an interpreter.

[2] Section 22

Insert at the end of the section:

Note. The Commonwealth Act does not include subsection (1A).

[3] Section 23 Choice of oath or affirmation

Insert “, unless the court is satisfied that the person has already been informed or knows that he or she has the choice” after “choice” in section 23 (2).

[4] Section 23

Insert at the end of the section:

Note. Subsection (2) differs from section 23 of the Commonwealth Act.

[5] Section 24A

Insert after section 24:

24A Alternative oath

- (1) A person may take an oath even if the person’s religious or spiritual beliefs do not include a belief in the existence of a god.
- (2) Despite anything to the contrary in this Act, the form of oath taken by a person:
 - (a) need not include a reference to a god, and

- (b) may instead refer to the basis of the person's beliefs in accordance with a form prescribed by the regulations.

Note. The Commonwealth Act does not include an equivalent provision to section 24A.

[6] Section 165 Unreliable evidence

Insert after section 165 (5):

- (6) Subsection (2) does not permit a judge to warn or inform a jury in proceedings before it in which a child gives evidence that the reliability of the child's evidence may be affected by the age of the child. Any such warning or information may be given only in accordance with section 165B.

[7] Section 165

Insert at the end of the section:

Note. The Commonwealth Act does not include subsection (6).

[8] Sections 165A and 165B

Insert after section 165:

165A Warnings about children's evidence

- (1) A judge in any proceeding in which evidence is given by a child must not warn a jury, or make any suggestion to a jury, that children as a class are unreliable witnesses.
- (2) Without limiting subsection (1), that subsection prohibits a general warning to a jury of the danger of convicting on the uncorroborated evidence of any child witness.
- (3) Sections 164 and 165 are subject to this clause.

Note. The Commonwealth Act does not include an equivalent provision to section 165A.

165B Warnings about a particular child's evidence

- (1) This section applies to evidence given by a child in proceedings before a jury.

- (2) A judge in any proceedings in which evidence to which this section applies is given may:
- (a) warn or inform the jury that the evidence of the particular child may be unreliable because of the child's age, and
 - (b) warn the jury of the need for caution in determining whether to accept the evidence of the particular child and the weight to be given to it.
- (3) Such a warning or information may be given only:
- (a) if a party has requested that it be given, and
 - (b) if that party has satisfied the court that there are circumstances particular to that child in those proceedings that affect the reliability of the child's evidence and that warrant the giving of a warning or the information.
- (4) This section does not affect any other power of a judge to give a warning to, or to inform, the jury.

Note. The Commonwealth Act does not include an equivalent provision to section 165B.

Schedule 2 Amendment of Evidence (Children) Act 1997

(Section 4)

[1] Section 28 Children have a right to alternative arrangements for giving evidence when accused is unrepresented

Omit “any” from section 28 (3) where secondly occurring.

Insert instead “only the”.

[2] Section 28 (3A)

Insert after section 28 (3):

(3A) A person appointed under this section, when acting in the course of his or her appointment, must not independently give the accused or the defendant legal or other advice.

[Minister's second reading speech made in—
Legislative Assembly on 28 November 2001
Legislative Council on 11 December 2001]