



New South Wales

Constitution Amendment (Pledge of Loyalty) Bill 2004

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 to the Queen and her successors taken by Members of Parliament with a pledge of loyalty to Australia and to the people of New South Wales, and
- (b) to replace the oath of allegiance, the oath of service to the Queen and the special Executive Councillor's oath taken by Members of Parliament when they become Ministers and members of the Executive Council with the pledge of loyalty and a single Executive Councillor's oath.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Constitution Act 1902* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Oaths Act 1900* set out in Schedule 2.

Schedule 1 Amendment of Constitution Act 1902

Members of Parliament

Section 12 of the *Constitution Act 1902* provides that a Member of the Legislative Council or the Legislative Assembly is not permitted to sit or vote until the Member has taken an oath or affirmation of allegiance to the Queen and her successors in the form prescribed by the *Oaths Act 1900*. **Schedule 1 [1]** substitutes section 12 to provide instead that a Member will be required to take a pledge of loyalty to Australia and to the people of New South Wales. A similar change was made in 1993 when the oath of allegiance for new Australian citizens was changed to a pledge of commitment under Commonwealth law.

Proposed section 12 also sets out the form of the pledge of loyalty. As with the pledge of commitment for new citizens, the form of pledge permits a person to make the pledge “Under God” or without using those words. The new requirement is only to apply to Members elected after the commencement of the proposed Act. Procedures with respect to the taking of the pledge can be set out in the standing orders, rules and resolutions of each House.

Ministers and Executive Councillors

Section 10 of the *Oaths Act 1900* requires Executive Councillors (that is, all Ministers of the Crown) to take three oaths (or affirmations): an oath of allegiance to the Queen, an oath of service to the Queen, and an Executive Councillor’s oath to give counsel and advice to the Governor and to maintain the confidentiality of matters debated in the Executive Council. **Schedule 1 [2]** moves the oath requirements for members of the Executive Council from the *Oaths Act 1900* to the *Constitution Act 1902*, and alters the oaths to be taken. The amendment:

- (a) replaces the oath of allegiance to the Queen with a pledge of loyalty to Australia and to the people of New South Wales, and
- (b) replaces the oath of service to the Queen and the Executive Councillor’s oath with a single oath that combines a promise to perform the functions and duties of an Executive Councillor faithfully and to the best of the person’s ability with the traditional Executive Councillor’s oath to give advice and counsel to the Governor and to maintain the confidentiality of matters debated in the Council.

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The amendment preserves the right of an Executive Councillor to make an affirmation instead of taking an oath.

Schedule 2 Consequential amendments to Oaths Act 1900

Schedule 2 [1]–[3] make amendments to the *Oaths Act 1900* consequential on the amendments made by Schedule 1.

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No. , 2004

A Bill for

An Act to amend the *Constitution Act 1902* to require Members of Parliament and Ministers to take a pledge of loyalty to Australia and to the people of New South Wales instead of swearing allegiance to the Queen, and to revise the oaths taken by Executive Councillors.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Constitution Amendment (Pledge of Loyalty) Act 2004</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Constitution Act 1902 No 32	7
The <i>Constitution Act 1902</i> is amended as set out in Schedule 1.	8
4 Consequential amendments to Oaths Act 1900 No 20	9
The <i>Oaths Act 1900</i> is amended as set out in Schedule 2.	10

Schedule 1 Amendment of Constitution Act 1902

(Section 3)

[1] Section 12

Omit the section. Insert instead:

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

- (1) A Member of the Legislative Council or the Legislative Assembly is not permitted to sit or vote in the House to which the Member has been elected until the Member has taken the pledge of loyalty before the Governor or other person authorised by the Governor for that purpose.
- (2) The pledge of loyalty is to be in the following form:
Under God, I pledge my loyalty to Australia and to the people of New South Wales.
- (3) A Member may omit the words “Under God” when taking the pledge of loyalty.
- (4) A Member is not required, despite any other Act or law, to swear allegiance to Her Majesty Queen Elizabeth II or her heirs and successors before sitting or voting in the Legislative Council or the Legislative Assembly.
- (5) This section applies only to Members elected after the commencement of the *Constitution Amendment (Pledge of Loyalty) Act 2004*.

[2] Section 35CA

Insert after section 35C:

35CA Executive Councillor’s pledge of loyalty and oath of office

- (1) Before assuming office, a person appointed as a member of the Executive Council is to take:
 - (a) the pledge of loyalty, and
 - (b) the Executive Councillor’s oath of office,before the Governor or other person authorised by the Governor for that purpose.

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Schedule 1 Amendment of Constitution Act 1902

- (2) The pledge of loyalty is to be in the following form: 1
Under God, I pledge my loyalty to Australia and to the people 2
of New South Wales. 3
- (3) A member of the Executive Council may omit the words 4
“Under God” when taking the pledge of loyalty. 5
- (4) The Executive Councillor’s oath of office is to be in the 6
following form: 7
I, being appointed as a member of the Executive 8
Council of New South Wales, do swear that I will perform the 9
functions and duties of an Executive Councillor faithfully and 10
to the best of my ability and, when required to do so, freely 11
give my counsel and advice to the Governor or officer 12
administering the Government of New South Wales for the 13
time being for the good management of the public affairs of 14
New South Wales, and that I will not directly or indirectly 15
reveal matters debated in the Council and committed to my 16
secrecy, but that I will in all things be a true and faithful 17
councillor. 18
So help me God. 19
- (5) A member of the Executive Council may, instead of taking 20
the Executive Councillor’s oath, make an affirmation to the 21
same effect. 22
- (6) This section applies only to members of the Executive 23
Council appointed after the commencement of the 24
Constitution Amendment (Pledge of Loyalty) Act 2004. 25

**Schedule 2 Consequential amendments to Oaths Act
1900**

(Section 4)

[1] Section 5 Definitions

Omit the definition of *Executive Councillor's oath*.

[2] Section 10 Executive councillors

Omit the section.

[3] Fifth Schedule Executive Councillor's oath

Omit the Schedule.

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