

[Act 2001 No 109]



New South Wales

Evidence Legislation Amendment Bill 2001

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to allow an interpreter who assists in a number of proceedings heard in the same court on the same day to take a single oath or make a single affirmation, and
 - (b) to remove the need for a court to explain to witnesses and interpreters the choice between an oath and an affirmation if it is satisfied that the choice has already been explained, and
 - (c) to make it clear that people who are religious or who hold spiritual beliefs can take an oath whether or not their beliefs include a belief in the existence of a god, and
 - (d) to prevent a judge from warning or suggesting to a jury that children are an unreliable class of witnesses, and
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- (e) to set out the circumstances in which a judge can warn or inform a jury about the reliability of a particular child's evidence, and
- (f) to make it clear that a person appointed as an intermediary for the purpose of asking questions of a child witness is not appointed for the purpose of giving legal or other advice to an unrepresented accused person or defendant.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Evidence Act 1995* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Evidence (Children) Act 1997* set out in Schedule 2.

Schedule 1 Amendment of Evidence Act 1995

Swearing in of interpreters

Section 22 of the *Evidence Act 1995* requires a person to take an oath or make an affirmation before acting as an interpreter in a proceeding.

Schedule 1 [1] enables an interpreter to take a single oath or make a single affirmation before acting as an interpreter in several proceedings conducted before the same court on the same day.

Choice of oath or affirmation

Section 23 of the *Evidence Act 1995* provides that a person who is to be a witness or act as an interpreter in a proceeding may choose whether to take an oath or make an affirmation. The section requires the court to inform the person that he or she has this choice.

Schedule 1 [3] allows the court to satisfy itself that the witness or interpreter has been made aware of the right to make a choice, instead of explaining the right itself.

Alternative oaths

Schedule 1 [5] makes it clear that an oath can be taken by a person who is religious or who holds spiritual beliefs whether or not the person's religious or spiritual beliefs include a belief in the existence of a god. This will make it clear that, for example, a Buddhist can take an oath.

Warnings relating to children's evidence

Schedule 1 [8] prevents a judge in a proceeding in which a child gives evidence from warning or suggesting to any jury that child witnesses are an unreliable class of witnesses and sets out the circumstances in which a judge can warn or inform a jury about the reliability of a particular child's evidence.

Schedule 1 [6] makes a consequential amendment.

Other amendments

Schedule 1 [2], [4] and [7] insert notes explaining departures from the *Evidence Act 1995* of the Commonwealth.

Schedule 2 Amendment of Evidence (Children) Act 1997

Section 28 of the *Evidence (Children) Act 1997* makes special provision for the asking of questions of a child who is a witness in criminal proceedings, or in civil proceedings arising from the commission of a personal assault offence, in which the accused or defendant is not represented by a lawyer. In those cases, the child is to be examined in chief, cross-examined or re-examined by a person appointed by the court instead of by the accused or the defendant. Section 28 (3) provides that if such a person is appointed, that person is to ask the child any questions that the accused or the defendant requests the person to put to the child.

Schedule 2 [1] makes it clear that the appointed person may only ask the child questions that the accused or the defendant requests the person to put to the child, and may not ask other questions.

Schedule 2 [2] prohibits an appointed person from giving any legal advice or other advice to the accused or defendant.