

OATHS (CHILDREN) AMENDMENT BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Justices (Committal Statements) Amendment Bill 1990 is cognate with this Bill.

The object of this Bill is to amend the Oaths Act 1900 to change the law governing the receipt of evidence in court from children who are under 12 years of age and not competent to take an oath.

Currently the child's evidence is not received unless the court is satisfied that:

- the child is of sufficient intelligence to justify receiving the evidence; and
- the child understands the duty of speaking the truth before the court.

If the Court decides that the child's evidence is to be received, the child makes a declaration instead of an oath.

Under the proposed amendments, the child's evidence is to be received so long as the Court has explained to the child the importance of telling the truth and a new form of declaration is made by the child.

However, the child's evidence will not be received if the court is satisfied that:

- the child does not understand the difference between the truth and a lie; or
- the child is not able to respond rationally to questions.

It is to be presumed, unless the contrary is established to the satisfaction of the court, that the child has that understanding and ability.

Both the current and the proposed new law also apply to statements, affidavits and depositions by children.

Oaths (Children) Amendment 1990

Clause 1 — short title.

Clause 2 — commencement (a day to be appointed by proclamation).

Clause 3 — gives effect to Schedule 1.

Clause 4 is a transitional provision which makes it clear that the proposed amendments apply to children's evidence even if the evidence relates to proceedings commenced before or events that occurred before, the amendments commence.

Schedule 1 contains the amendments described above.
