

**EVIDENCE (EVIDENCE ON COMMISSION)
AMENDMENT BILL 1988**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to amend the Evidence Act 1898, so as—
- to provide machinery for the examination of witnesses abroad, for the purposes of proceedings in the State; and
 - to provide machinery for the examination of witnesses outside the State but within Australia, for the purposes of proceedings in the State; and
 - to provide machinery for the examination of witnesses in the State, for the purposes of proceedings outside the State; and
- (b) to amend the Crimes Act 1900, to make it an offence for a witness to make a false statement when being examined in the State in accordance with that machinery; and
- (c) to repeal imperial legislation dealing with the taking of evidence for use in proceedings elsewhere.

The Bill is uniform with legislation introduced or proposed to be introduced in other States and Territories.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days appointed by the Governor-in-Council and notified in the Gazette.

Clauses 3 and 4 are formal provisions giving effect to the Schedules of amendments.

Clause 5 repeals imperial legislation dealing with the taking of evidence for use in proceedings elsewhere.

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SCHEDULE 1—AMENDMENT OF EVIDENCE ACT 1898

Schedule 1 (1) substitutes section 1, for the purpose of removing the material showing how the Act is divided into Parts. Current practice is for details of the arrangement of an Act to be comprehensively set out in the Table of Provisions.

Schedule 1 (2) inserts three new Parts into the Act, as follows:

Part 7—Examination of Witnesses Abroad

The provisions of this Part (proposed sections 64–69) provide machinery for the examination of witnesses abroad, for the purposes of non-federal proceedings in the State.

These provisions are modelled on Part IIIB of the Evidence Act 1905 of the Commonwealth, as inserted by the Evidence Amendment Act 1985 No. 198. Part IIIB of that Act provides machinery for the examination of witnesses abroad, for the purposes of federal proceedings.

Proposed section 64 contains definitions used in the Part.

Proposed section 65 provides machinery for the Supreme Court to make orders for the examination of witnesses abroad for the purposes of civil or criminal proceedings in the Supreme Court. For this purpose, the Supreme Court is defined as that Court except when exercising federal jurisdiction.

Proposed section 66 provides similar machinery for the Supreme Court to make orders for the examination of witnesses abroad for the purposes of civil or criminal proceedings in other courts of the State (except when exercising federal jurisdiction).

Proposed section 67 states that the Part does not affect the discretion of a court in criminal proceedings to exclude illegally obtained evidence or evidence that would operate unfairly.

Proposed section 68 makes it clear that the provisions of the Part are additional to any other method of examining a witness.

Proposed section 69 authorises the making of regulations and rules of court for the purposes of the Part.

Part 8—Examination of Witnesses outside the State but within Australia

The provisions of this Part (proposed sections 70–76) provide machinery for the examination of witnesses outside the State but within Australia, for the purposes of non-federal proceedings in the State.

These provisions are modelled on those contained in the proposed Part 7, with suitable modifications.

Proposed section 70 provides that the Part does not apply to examinations outside Australia (proposed Part 7 provides for such examinations).

Proposed sections 71–76 correspond to proposed sections 64–69.

Part 9—Taking of Evidence for Foreign and Australian Courts

The provisions of this Part (proposed sections 77–82) provide machinery for the examination of witnesses in the State, for the purposes of proceedings outside the State.

The Part is modelled on model provisions proposed by the Commonwealth Secretariat (in the United Kingdom) for adoption in Commonwealth jurisdictions, in connection with the Hague Convention on the Taking of Evidence Abroad.

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Proposed section 77 contains definitions used in the Part.

Proposed section 78 provides for the making of an application by a court or tribunal (a "requesting court") outside the State for an order of the Supreme Court for the taking of evidence for use in proceedings before the requesting court. Section 78 (2) provides that evidence may not be taken for use in criminal proceedings outside Australia and New Zealand.

Proposed section 79 empowers the Supreme Court to make orders pursuant to such an application made by a requesting court. An order may provide for the examination of witnesses, the production of documents, the inspection etc. of property, the taking of samples, medical examinations, blood testing etc. However, proposed section 79 (4) stipulates that an order may not provide for anything to be done that could not be done by way of taking evidence for proceedings in the Supreme Court. Proposed section 79 (5) contemplates that evidence may be given otherwise than on oath, if the requesting court asks for this.

Proposed section 80 preserves privileges that a witness has in relation to the giving of evidence, whether the privilege is one arising in similar proceedings in the State or in the place where the requesting court exercises jurisdiction.

Proposed section 81 makes it clear that the provisions of the Part are additional to any other method of taking evidence in the State for external proceedings.

Proposed section 82 authorises the making of rules of court for the purposes of the proposed Part.

SCHEDULE 2—AMENDMENT OF CRIMES ACT 1900

Schedule 2 (1) inserts a new section 338, making it an offence to make a false statement when giving evidence (otherwise than on oath) under the proposed Part 9 of the Evidence Act 1898.

Schedule 2 (2) inserts a reference to the new section 338 into the Tenth Schedule. The result will be that proceedings for an offence against the section may be dealt with by the Supreme Court in its summary jurisdiction.
