

# Parliamentary Evidence Act 1901 No 43

[1901-43]



New South Wales

## Status Information

### Currency of version

Current version for 17 July 2009 to date (accessed 12 September 2024 at 20:51)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**

[Parliamentary Evidence Amendment \(Ministerial Accountability\) Bill 2023](#) [Non-government Bill— the Hon D F Tudehope, MLC]

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Parliamentary Evidence Act 1901 No 43



New South Wales

An Act to consolidate the law relating to the summoning, attendance, and examination of witnesses before either House of Parliament or any Committee thereof.

## 1 Name of Act

This Act may be cited as the *Parliamentary Evidence Act 1901*.

## 2 (Repealed)

## 3 Definitions

(1) In this Act:

**Assembly** means the Legislative Assembly.

**Committee** means a Committee of the Council or Assembly.

**Council** means the Legislative Council.

**President** means the President of the Council.

**Speaker** means the Speaker of the Assembly.

(2) Notes included in this Act do not form part of this Act.

## 4 Witnesses how summoned

(1) Any person not being a Member of the Council or Assembly may be summoned to attend and give evidence before the Council or Assembly by notice of the order of the Council or Assembly signed by the Clerk of the Parliaments or Clerk of the Assembly, as the case may be, and personally served upon such person.

(2) Any such person may be summoned to attend and give evidence before a committee by an order of such committee signed by the Chair thereof and served as aforesaid.

## 5 Members of Parliament

The attendance of a Member of the Council or Assembly to give evidence before the Council or Assembly or a committee shall be procured in conformity (so far as practicable)

with the mode of procedure observed in the British House of Commons.

## **6 Expenses of witnesses**

- (1) Every witness summoned as aforesaid shall be entitled to be paid at the time of service of such notice or order the witness's reasonable expenses consequent upon the witness's attendance in obedience thereto according to the witness's condition or profession, to be calculated in accordance with the scale in force for the time being for the payment of witnesses in actions in the Supreme Court.
- (2) The expenses of any witness summoned at the instance of a party shall be defrayed by such party; but if the witness be summoned for any public inquiry to be examined either by the Council or Assembly or by a committee, the witness's expenses shall be paid by the Colonial Treasurer out of the Consolidated Revenue Fund on the receipt by the Treasurer of a written authority in that behalf signed by the Clerk of the Parliaments or Clerk of the Assembly or Chair of the Committee respectively, according to the nature of the summons.

## **7 Non-attendance of witness to be certified to a Judge**

If any witness so summoned fails to attend and give evidence in obedience to such notice or order, the President or the Speaker, as the case may be, upon being satisfied of the failure of such witness so to attend and that the witness's non-attendance is without just cause or reasonable excuse, may certify such facts under the President's or the Speaker's hand and seal to a Judge of the Supreme Court, according to the form in Schedule 2, or to the like effect.

## **8 Issue of warrant**

Upon such certificate any Judge of the said Court shall issue a warrant in the form in Schedule 3, or to the like effect, for the apprehension of the person named in such certificate, for the purpose of bringing the person before the Council, Assembly, or Committee to give evidence.

## **9 Warrant and order of President or Speaker to be sufficient authority for acts thereunder**

- (1) Such warrant shall be a sufficient authority for all persons acting thereunder to apprehend the person named in such warrant, and to retain the person in custody, to the intent that the person may from time to time be produced for the purpose of giving evidence, or be remanded and finally be discharged from custody, pursuant to any order under the hand and seal of the President or Speaker, as the case may be.
- (2) Every such order shall be a sufficient warrant for all persons acting thereunder.

## **10 Administration of oath**

- (1) Every witness attending to give evidence before the Council, Assembly, or a Committee of the Whole shall be sworn at the bar of the House; and the customary

oath shall be administered by the Clerk of the Parliaments or Clerk of the Assembly, as the case may be (or in the Clerk's absence by the officer acting for the Clerk).

- (2) Every witness attending to give evidence before a Committee other than a Committee of the Whole shall be sworn by the Chair of such Committee.
- (3) Provided that in any case where a witness, if examined before the Supreme Court, would be permitted to make a solemn declaration or to give evidence in any other way than upon oath, a witness summoned under this Act shall be in like manner allowed to give evidence upon declaration or otherwise, as aforesaid.

### **11 Penalty for refusal to answer**

- (1) Except as provided by section 127 (Religious confessions) of the *Evidence Act 1995*, if any witness refuses to answer any lawful question during the witness's examination, the witness shall be deemed guilty of a contempt of Parliament, and may be forthwith committed for such offence into the custody of the usher of the black rod or serjeant-at-arms, and, if the House so order, to gaol, for any period not exceeding one calendar month, by warrant under the hand of the President or Speaker, as the case may be.
- (2) Such warrant shall be a sufficient authority for all gaolers and other officers to hold the body of the person therein named for the term therein stated.
- (3) No person acting under the authority of this section shall incur any liability, civil or criminal, for such act.

### **12 Privilege of witness**

- (1) No action shall be maintainable against any witness who has given evidence, whether on oath or otherwise, under the authority of this Act, for or in respect of any defamatory words spoken by the witness while giving such evidence.
- (2) This section operates in addition to, and not in derogation of, any defence available to any such witness under the *Defamation Act 2005* for the publication of defamatory matter.

#### **Note—**

For example, section 27 (2) (a) (iii) of the *Defamation Act 2005* provides that the publication of defamatory matter while giving evidence before a parliamentary body attracts the defence of absolute privilege in defamation proceedings. Section 4 of that Act defines a **parliamentary body** to include a parliament or legislature, a house of a parliament or legislature and committees of any such parliament, legislature or house.

### **13 Penalty for false evidence**

If any such witness wilfully makes any false statement, knowing the same to be false, the witness shall, whether such statement amounts to perjury or not, be liable to imprisonment for a term not exceeding five years.

## 14 Joint committees

A reference in this Act to a **committee** shall extend to include a reference to a joint committee of the Council and the Assembly appointed either before or after the commencement of the *Parliamentary Evidence (Amendment) Act 1939*.

In the application of the provisions of this Act to and in respect of any such joint committee, such provisions shall be construed as if the joint committee were a committee of that House of the Parliament in which the proposal for the appointment of the joint committee originated.

## First Schedule (Repealed)

### Schedule 2 Certificate

Section 7

#### Form of certificate

To His Honour/Her Honour

In the matter of the "*Parliamentary Evidence Act 1901*," and A.B. of

THIS is to certify to your Honour that it hath been made to appear to me that the said A.B. has been duly summoned to attend and give evidence before the pursuant to the "*Parliamentary Evidence Act 1901*," and that the said A.B. has failed to appear, and that his or her non-appearance is without just cause or reasonable excuse.

Given under my hand and seal at this day of in the year one thousand nine hundred and .

President of the Legislative Council

or

Speaker of the Legislative Assembly

(as the case may be).

### Schedule 3 Warrant

Section 8

#### Form of Judge's warrant

In the Supreme Court of New South Wales.

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In the matter of the "*Parliamentary Evidence Act 1901*," and A.B. of

To the Sheriff of New South Wales, the Sheriff's deputy and assistants, and to all constables and other His Majesty's officers and ministers of the peace whom it may concern.

WHEREAS it hath this day been certified under the hand of\* that of has been duly summoned to attend and give evidence before the pursuant to the "*Parliamentary Evidence Act 1901*," but hath failed to appear.

This is to require you forthwith to apprehend the said \_\_\_\_\_ and to detain him or her in custody for the purpose of being brought before \_\_\_\_\_ to give evidence and there to obey all further orders under the hand of the\* \_\_\_\_\_ for his or her remand or for his or her final discharge from custody.

Given under my hand and seal at \_\_\_\_\_ aforesaid this \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand nine hundred and \_\_\_\_\_

A Judge of the Supreme Court of New South Wales.

\*President or Speaker (*as the case may be*)