

**EVIDENCE AND OATHS (AMENDMENT) ACT.**

**New South Wales**



ANNO VICESIMO SECUNDO

**ELIZABETHÆ II REGINÆ**

\*\*\*\*\*

**Act No. 10, 1973.**

An Act to make further provision with respect to the law of evidence, oaths, affirmations and affidavits; for these and other purposes to amend the Evidence Act, 1898, the Oaths Act, 1900, and the Justices Act, 1902; and for purposes connected therewith. [Assented to, 10th April, 1973.]

BE

*Evidence and Oaths (Amendment).*

No. 10, 1973 **BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. **1.** This Act may be cited as the "Evidence and Oaths (Amendment) Act, 1973."

Amendment of Act No. 11, 1898. **2.** The Evidence Act, 1898, is amended—

New sec. 15A. (a) by inserting next after section 15 the following new section : —

Proof of service of statutory notice, etc.

15A. (1) The service, giving or sending, pursuant to an Act, regulation, rule, ordinance or by-law, of a written notification, notice, order or direction may, in any legal proceeding, be proved by the oath of the person who served, gave or sent it, or by affidavit.

(2) A person who, for the purposes of a legal proceeding, makes an affidavit referred to in subsection (1) is not, by reason of his making the affidavit, exonerated from attending for cross-examination if required so to do by a party to the proceeding.

New sec. 24A. (b) by inserting next after section 24 the following new section : —

Judicial notice of signature of holders of certain offices.

24A. Judicial and official notice shall be taken of—

(a) the fact that a person holds, or at any time held, the office of Minister of the Crown, Solicitor-General or any other office

declared

*Evidence and Oaths (Amendment).*

declared by the Governor by order published in the Gazette to be an office to which this section applies; and

- (b) the signature of such a person purporting to be attached or appended to a judicial or official document.
- (c) (i) by omitting from section 26 (1) (a) the words "Colonial Secretary" and by inserting instead the words "Chief Secretary";
- (ii) by omitting from section 26 (1) the words "under the seal of the Colony duly recorded and signed by the Governor";
- (iii) by omitting from section 26 (2) the words "Colonial Secretary" and by inserting instead the words "Chief Secretary".

Sec. 26.  
(Letters patent and Crown grants.)

3. The Oaths Act, 1900, is amended—

Amendment of Act No. 20, 1900.

- (a) by inserting next after section 3 (2) the following new subsection :—
- (2A) Without prejudice to the operation of subsection (2) the oaths prescribed in the Second and Fourth Schedules may be taken and subscribed at any hour—
- (a) by a stipendiary magistrate—before the Chairman of the Bench of Stipendiary Magistrates or the person for the time being acting in that office; or
- (b) by a justice of the peace—before a stipendiary magistrate.

Sec. 3.  
(Before whom the scheduled oaths may be taken.)

(b)

*Evidence and Oaths (Amendment).*

- No. 10, 1973  
 Sec. 9.  
 (District Court Judges and other judicial officers.)  
 Subst. sec. 12.  
 Affirmations.
- (b) by inserting in section 9 after the word "Judges" the words ", stipendiary magistrates";
- (c) by omitting section 12 and by inserting instead the following section :—
12. Subject to sections 13 and 14, when an oath is required to be taken, any person who objects to take an oath may instead of taking such oath make a solemn affirmation in the form of such oath substituting the words "solemnly, sincerely and truly declare and affirm" for the word "swear" or for any other word or words to the like effect and omitting the words "so help me God" or any other word or words to the like effect.
- New sec. 26B.
- (d) by inserting next after section 26A the following new section :—
- 26B. (1) In this section "foreign authority" means a court, judge, person or body authorised by the law of a place outside New South Wales to take or receive evidence in that place.
- (2) For the purpose of proceedings (other than criminal proceedings) before a foreign authority, the foreign authority, or a person authorised by the foreign authority to take and receive evidence in New South Wales, may administer an oath to a person in New South Wales for the purpose of taking and receiving that evidence subject, in the case of a foreign authority that is not a court or judge, to the consent of the Chief Justice of the Supreme Court being first obtained.
- Appointee of foreign authority may, in certain circumstances, administer oath.
- Sec. 27.  
 (Authority to take and receive affidavits.)
- (e) by inserting in section 27 (1) after the word "court" the words "or required for the purpose of registering an instrument in New South Wales";
- (f)

*Evidence and Oaths (Amendment).*

(f) by omitting from section 28 the words “any such commission” and by inserting instead the words “a commission issued pursuant to subsection (2) of section 27”;

No. 10, 1973  
Sec. 28.  
(Fees.)

(g) by inserting next after section 29 the following new sections :—

New secs.  
30, 31.

30. Where a person wilfully makes and subscribes a document that purports to be, but is not, an affidavit taken and received in accordance with the requirements of section 11A, knowing it to be untrue in a material particular not related to any requirement or formality necessary for the making of an affidavit, that person is guilty of an offence and—

Untrue document purporting to be affidavit.

(a) upon conviction on indictment—liable to be punished as for a misdemeanour; or

(b) upon conviction by a court of petty sessions constituted by a stipendiary magistrate—liable to a penalty not exceeding five hundred dollars or imprisonment for a term not exceeding six months.

31. Where, on the trial of a person for false swearing in an affidavit, it appears that the document purporting to be the affidavit was not taken in accordance with the requirements of section 11A but the jury is satisfied that the accused wilfully made and subscribed the document knowing it to be untrue in a material particular not related to any requirement or formality necessary for the making of an affidavit the accused may be acquitted of the offence charged and convicted of a misdemeanour.

Alternative verdict where false swearing not proved.

*Evidence and Oaths (Amendment).*

---

No. 10, 1973      4. The Justices Act, 1902, is amended by omitting from  
Amendment of Act No. 27, 1902. section 9 the words "oath of office required of Justices" and  
by inserting instead the words "oaths prescribed by the Oaths  
Act, 1900, for Justices".

Sec. 9.

(Qualifica-  
tion and  
oath of  
Stipendiary  
Magi-  
strates.)

---

JUSTICES