

## EVIDENCE (No. 2).

No. 142 of 1976.

### AN ACT to amend the Evidence Act, 1906-1975.

[Assented to 13th December, 1976.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Evidence Act Amendment Act (No. 2), 1976.*

Short title  
and citation.

(2) In this Act the Evidence Act, 1906-1975 is referred to as the principal Act.

Reprinted as  
approved for  
reprint 2nd  
July, 1971  
and amended  
by Acts Nos.  
41 of 1971  
and 61 of  
1975.

(3) The principal Act as amended by this Act may be cited as the Evidence Act, 1906-1976.

Section 97  
repealed and  
re-enacted.

2. Section 97 of the principal Act is repealed and re-enacted with amendments as follows—

Sworn  
evidence.

97. (1) Subject to any other Act in which express provision is made to the contrary, in any civil or criminal proceeding, or in any inquiry or examination in any Court or before any person acting judicially, every witness other than—

- (a) a witness, the evidence of whom may be received pursuant to this Act though not given on oath;
- (b) a witness called for the purpose only of producing a document, where there is another witness called or to be called who can identify the document;
- (c) counsel giving evidence of the terms of a compromise reached between the parties to litigation in which he acted for one of those parties; and
- (d) a Judge, or counsel, giving evidence by way of explanation of a case in which he acted as such,

shall give evidence on oath.

(2) In any criminal proceeding, no accused person shall be entitled to make a statement of fact at his trial, otherwise than by way of admission of a fact alleged against him so as to dispense with proof of that fact, unless such statement is made by him as a witness.

(3) Every oath shall be binding which is administered and taken in a form and manner that—

- (a) the person taking it declares to be binding on his conscience; and
- (b) the Court or person acting judicially, on being satisfied that the person taking it understands the nature and intent of the oath, approves.

(4) Where a person is tendered as a witness and—

- (a) it is found not to be reasonably practicable without inconvenience or delay, at the time and place when and where he is so tendered, to administer to him an oath in the form and manner required to make it binding on his conscience;
- (b) he declares that the taking of an oath is contrary to his religious belief or conscience; or
- (c) for any other sufficient reason the taking of an oath is found not to be appropriate,

he may be required to make solemn affirmation in the form provided by section ninety-nine of this Act. .

3. Section 99 of the principal Act is amended by deleting subsection (4). Section 99 amended.

4. The principal Act is amended by inserting a new section, to stand as section 100A, as follows— New section added.

100A. (1) Where in any civil or criminal proceeding, or in any inquiry or examination in any Court or before any person acting judicially the Court or that person is satisfied that a person who is tendered as a witness does not understand the nature of, or the obligation imposed by, an oath or solemn affirmation but does understand— Where an oath or affirmation may not be used.

- (a) that he is required to speak the truth and, where the witness is a compellable witness, to tell what he knows about the matter to which the testimony relates; and

- (b) that he will be liable to punishment if he does not do so,

the evidence of that person may be received without an oath and without formality.

(2) In taking into account the weight and credibility that ought to be afforded to testimony given by a witness otherwise than on oath or solemn affirmation regard shall be had to the manner and circumstances in which it is given and received and to the fact that it was given without the sanction of an oath or solemn affirmation.

(3) Where it appears to a justice that any person who desires to lay a complaint or information is a person to whom the provisions of subsection (1) of this section may apply, the justice may ascertain by inquiry the subject matter thereof and reduce it into the form of a complaint or information and any action or proceedings may be taken upon that complaint or information in all respects as if the complainant or informant had deposed to the truth of the contents thereof upon oath.

(4) Before evidence is received or a complaint or information is laid pursuant to this section the Court or person acting judicially, or the justice, as the case may be, shall explain or cause to be explained to the person tendered as a witness or seeking to lay that complaint or information that he is required to speak the truth and, where the witness is a compellable witness, to tell what he knows about the matter in question and that he will be liable to punishment if he does not do so.

(5) A person who, in giving evidence or laying any complaint or information pursuant to this section, knowingly makes a false statement material to the subject matter thereof is guilty of a misdemeanour and liable on conviction to imprisonment for a term of not more than five years. .

5. Section 101 of the principal Act is amended by deleting the words "of tender years who is tendered as a witness", in lines three and four, and substituting the words "who has not attained the age of twelve years is tendered as a witness and".

Section 101  
amended.

6. The principal Act is amended by inserting a new section, to stand as section 102, as follows—

New section  
added.

102. (1) Where a person is called to act as an interpreter in any Court, or before any person acting judicially, and that person, had he been tendered as a witness, would have been required to take an oath or make a solemn affirmation he shall be required to take an oath or make a solemn affirmation to well and truly translate the evidence given, but if any such person objects to so doing, or is objected to as incompetent so to do, such person may be admitted to act as interpreter, if the Court or person acting judicially is satisfied as to his ability to do so competently and as to his impartiality, in the same way as if he had taken the usual oath required of a person so called, on his making the following promise or declaration—

Interpreta-  
tion on,  
oath or  
affirmation,  
or on  
declaration.

I, A.B., of ....., solemnly promise and declare that I will well and truly translate such of the evidence given to..... as I shall be asked to interpret. ,

and such declaration shall be of the same force and effect as an oath.

(2) A person who, having taken the oath or made a solemn affirmation or declaration as an interpreter under this section, in interpreting any testimony pursuant to this section knowingly fails to translate or translates falsely any material matter is guilty of a crime and liable on conviction to imprisonment for a term of not more than fourteen years. .

Section 103  
repealed and  
a new  
section  
added.

7. Section 103 of the principal Act is repealed and a new section substituted, as follows—

Interpreta-  
tion  
otherwise  
than on  
oath, or  
affirmation.

103. (1) If any person is called to act as an interpreter in any Court, or before any person acting judicially, and for any reason is not required to take an oath or make a solemn affirmation such person may be admitted to act as interpreter, if the Court or person acting judicially is satisfied as to his ability to do so competently and as to his impartiality, in the same way as if he had taken the usual oath required of a person so called where, had he been a person tendered as a witness, his evidence might have been received pursuant to this Act without an oath and without formality, and the provisions of section one hundred A of this Act shall apply to and in relation to any such person and to the testimony interpreted by him *mutatis mutandis*.

(2) Any person who, in interpreting any testimony pursuant to this section, knowingly fails to translate or translates falsely any material matter is guilty of a misdemeanour and liable on conviction to imprisonment for a term of not more than five years. .

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