

**OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS (CONSEQUENTIAL PROVISIONS)
BILL 2003**

Introduction and First Reading

Bill introduced, on motion by Mr J.A. McGinty (Attorney General), and read a first time.

Second Reading

MR J.A. MCGINTY (Fremantle - Attorney General) [7.48 pm]: I move -

That the Bill be now read a second time.

Western Australia needs a more modern and efficient system of justice. Therefore, this Bill, together with the Oaths, Affidavits and Statutory Declarations Bill 2003 will give this State comprehensive and contemporary laws regulating oaths, affirmations, affidavits and statutory declarations in WA. For example, the Bill will -

remove from the Western Australian statute book four imperial Acts dealing with oaths which date back to 1831. Those imperial Acts were adopted by WA Imperial Acts Adopting Acts of 1836 and 1844. The imperial Acts which will be repealed are the Excise Declarations Act 1831, the Quakers and Moravians Act 1833, the Quakers and Moravians Act 1838, and the Oaths Act 1838;

repeal the Declarations and Attestation Act 1913; and

abolish the office of commissioners for the taking of affidavits by repealing sections 175 and 176 of the Supreme Court Act 1935.

Importantly, the Bill will remove the requirement that members of this Parliament and local government councillors take an oath or make an affirmation of allegiance to the Queen. There are two compelling reasons for the removal of these oaths and affirmations of allegiance. The first is a legal and constitutional reason. The Crown Solicitor's Office has provided the Government with advice about oaths and affirmations of allegiance to the Queen. In particular, the advice indicated that, firstly, by virtue of the Commonwealth Australian Citizenship Act 1948, in Australia all Australian citizens owe allegiance to the Queen of Australia whether or not they have taken an oath of allegiance; and, secondly, it would be inappropriate for an oath or affirmation of allegiance, as distinct from an oath or affirmation of office, to be made to another entity such as the State of Western Australia.

A second compelling reason for removing these oaths and affirmations of allegiance is that this Bill must be seen in its historical context. This Bill is one important aspect of the natural evolution of Australia as an independent member of the community of nations and of this State as a member of our modern federation. This evolution started after the first British settlement of this country in 1788 and in Western Australia in 1829. At that time, because the Australian colonies were British colonies, it was natural that oaths and affirmations of allegiance were made to the Crown in the United Kingdom. However, there has been a gradual, but continual, movement of Australia and its colonies, which eventually became States, towards greater self-government and independence. In the parliamentary sphere, this began in Western Australia as early as the enactment in this State of the Constitution Act 1889. The State's Constitution was subsequently ratified by the United Kingdom Parliament in 1890. Movement away from reliance or dependence on the United Kingdom continued, especially with the enactment of the United Kingdom Colonial Laws Validity Act 1865, the adoption of the Balfour Declaration 1926 and the UK Statute of Westminster 1931. That Act was adopted in Australia in 1942.

Subsequently, that evolution to legislative and judicial independence was achieved through the enactment of and changes to the State's Constitution as well as other prominent examples, including the ending of appeals from State courts to the Judicial Committee of the Privy Council and the cutting of residual constitutional links between the Australian States and the United Kingdom. The latter was accomplished by the Commonwealth and United Kingdom Parliaments' enactment of the Australia Act 1986. Significantly, this legislation, which both symbolically and constitutionally recognises the Australian Federation as an independent nation where, in the words of the High Court, sovereignty resides in the Australian people, was passed at the express request and consent of this State Parliament. A more recent example is the passage through this Parliament of the Legal Practitioners Act 2003. This legislation removes references in this State's legal apparatus to the Crown - for example, in relation to prosecutions and other court proceedings - and, appropriately, renames the Crown Solicitor's Office as the State Solicitor's Office.

At both the commonwealth and state levels, Australia remains a constitutional monarchy. This Bill does not change or attempt to change that position. Rather, the Bill is part of Australia's ongoing evolution. It removes requirements originally adopted as part of our colonial heritage and that now militate against Australia being a fully independent sovereign nation. Consequently, the Bill will make the following changes. Firstly, schedule E of the Constitution Act Amendment Act 1899 requiring members of this Parliament to make an oath of allegiance to the Queen will be repealed. Secondly, a new schedule VI will be inserted into the Constitution

Acts Amendment Act 1899 so that ministers, parliamentary secretaries and members of the Executive Council will take oaths or make affirmations of office to faithfully serve the people of Western Australia. Thirdly, the Local Government Act 1995 will be amended to remove the requirement that a local government councillor take an oath or make affirmation of allegiance to the Queen. The requirement that councillors make a declaration, prescribed in the regulations, that they will faithfully serve their local district will be retained. Fourthly, judges of the Supreme, District, Children and Family Courts will take oaths or make affirmations of office that they “will faithfully serve the people and the State of Western Australia”. A similar provision for magistrates to take an oath or make affirmation of office is in the Magistrates Court Bill 2003. As a result, oaths or affirmations of office will be taken in Western Australia and outmoded oaths or affirmations of allegiance will cease. Further, those oaths will be religiously neutral.

Finally, this Bill makes a number of amendments to the Criminal Code 1913, the Evidence Act 1906, the Interpretation Act 1984 as well as legislation listed in schedule 1 that are consequential upon the Oaths, Affidavits and Statutory Declarations Bill 2003. I commend the Bill to the House.

Debate adjourned, on motion by Ms K. Hodson-Thomas.