

No. , 1916.

A BILL

To provide for the reception as evidence in certain cases of the depositions of persons on war service ; to provide that the sentence of death shall not be passed on persons convicted on evidence solely contained in such depositions ; for those purposes to amend certain Acts ; and for purposes consequent thereon or incidental thereto.

BE it enacted by the King'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 (War Service) Act, 1916."

Definition
"on war
service."
Vict. Act,
No. 2828,
s. 1 (2).

2. For the purposes of this Act a person shall be deemed to be engaged on war service if in connection with the present war—

- (a) he is engaged on naval or military service with His Majesty's naval or military forces or with the naval or military forces of the Commonwealth; or
- (b) he is engaged on service outside New South Wales in any work of any Red Cross Society or Ambulance Association or any other body with similar objects; or
- (c) he is a prisoner of war in the enemy's country, or interned in the country of a neutral Power.

Admission of
deposition of
witnesses on
war service.
cf. 5 and 6
Geo. V.,
c. 94, s. 1.
Vict. Act,
No. 2828,
s. 2 (1).

3. If, during the continuance of the present war and for a period of three months thereafter, upon the trial of a person accused of an indictable offence it is proved that any person whose deposition has been duly taken before the justice or justices by whom the accused was committed for trial is unable to attend the trial, having regard to the necessities of the public service, by reason of being engaged on war service, and if also it is proved that such deposition was taken in the presence of the person so accused, and that (except in the case of a deposition by a witness on behalf of the accused) he or his counsel or solicitor had a full opportunity of cross-examining the witness, then if such deposition purports to be signed by any justice by or before whom the same purports to have been taken such deposition may be read as evidence at the trial without further proof thereof unless it is proved that such deposition was not in fact signed by the justice purporting to sign the same.

Evidence in
appeals under
Justices Act.

4. During the continuance of the present war and a period of three months thereafter, in any appeal under the Justices Act, 1902, to a court of quarter sessions against

against any conviction or order of a justice or justices the depositions of any witness called and examined before the justice or justices who made the conviction or order appealed against may be read as evidence for either
 5 party at the hearing of the appeal if it is proved on oath that such witness is unable to attend the hearing of the appeal by reason of being engaged on war service.

5. The provisions of the next preceding two sections are in addition to and not in substitution for the provisions of any other Act dealing with the admission as
 10 evidence of depositions. Provisions to be additional.

6. A certificate signed by a secretary or any acting secretary to the Naval Board, or a secretary or any acting secretary to the Department of Defence of the Commonwealth of Australia that a person is unable to attend
 15 any trial or appeal as aforesaid, having regard to the necessities of the public service, by reason of his being engaged on war service, shall for the purposes of this Act be conclusive evidence of the fact so certified, and
 20 a certificate purporting to be signed by such a secretary or acting secretary shall be deemed to be such a certificate as aforesaid unless the contrary is proved. Proof of war service. cf. 5 & 6, Geo. V, c. 94, s. 5. Vict. Act, No. 2828, s. 4.

7. Where any person has been convicted of an offence punishable by death upon evidence solely contained in
 25 depositions which have been read in evidence at the trial under the powers conferred by this Act, the punishment of death shall not be inflicted, but the court may pass such sentence of imprisonment as it thinks just. Lesser punishment than death. cf. 5 & 6, Geo. V, c. 94, s. 3. Vict. Act, No. 2828, s. 3.