

Crimes (Amendment) Bill (No. 2)

No.

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LEGISLATIVE COUNCIL

Read 1° 25 March 1986

(Brought in by the Honourable J. H. Kennan)

(No. 2)

A BILL

to abolish the right of a legally represented accused person to make an unsworn statement, to make provision with respect to the punishment of persons convicted of murder and certain other offences, to amend the *Crimes Act 1958*, the *Evidence Act 1958* and the *Magistrates (Summary Proceedings) Act 1975* and for other purposes.

Crimes (Amendment) Act 1986

The Parliament of Victoria enacts as follows:

PART 1--PRELIMINARY

Purposes.

1. The purposes of this Act are—

- 5 (a) to give accused persons who are legally represented the right to give unsworn evidence but to remove from them the right to make an unsworn statement; and
- 10 (b) to give courts discretion in the sentencing of persons convicted of murder and other offences for which a mandatory sentence of life imprisonment must now be imposed.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

Principal Act.

3. In this Act, the *Crimes Act* 1958 is called the Principal Act.

No 6231.
Reprinted to
No 10094.
Subsequently
amended by Nos.
10152, 10233,
10244, 10249 and
10260.

PART 2—UNSWORN STATEMENTS IN CRIMINAL TRIALS**New section 25 substituted in *Evidence Act* 1958.**

4. For section 25 of the *Evidence Act* 1958, substitute—

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Right of unrepresented accused to make unsworn statement and of represented accused to give unsworn evidence.

No. 6246.
Reprinted to No.
9945.
Subsequently
amended by Nos.
10084, 10087,
10191, 10231
and 10257.

“25. (1) A person who in any criminal proceeding is charged with the commission of an indictable offence or an offence punishable on summary conviction may—

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- (a) if not represented by counsel or a solicitor, make an unsworn statement of fact instead of giving sworn evidence in answer to the charge; or
- (b) if represented by counsel or a solicitor, give unsworn evidence in answer to the charge instead of giving sworn evidence.

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(2) Notwithstanding anything in this or any other Act or any rule of law or procedure or any practice to the contrary, no cross-examination shall be permitted of a person who gives unsworn evidence by virtue of sub-section (1) (b).

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(3) Any rule of law or procedure or any practice permitting a person who is charged with the commission of a criminal offence and who is represented by counsel or a solicitor to make an unsworn statement in answer to the charge is abolished.”

Amendment of the Principal Act.

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5. The Principal Act is amended as follows:

(a) After section 398, insert—

Procedure where person charged chooses to give unsworn evidence.

“398A. (1) If a person who is charged with an offence is represented by counsel or a solicitor and intends to give unsworn evidence by virtue of section 25 (1) (b) of the

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Evidence Act 1958, that person's counsel or solicitor must inform the presiding judge or magistrate of that intention at the close of the case for the prosecution.

- 5 (2) If a person intends to give unsworn evidence in a trial before a jury, the judge must, before that person gives the unsworn evidence, inform the jury of the choices that the person had with respect to the giving or not giving of evidence and of the consequences attached to each of those choices.
- 10 (3) Unsworn evidence shall not, unless otherwise ordered by the presiding judge or magistrate, be given from the witness-box or other place from which the other witnesses give their evidence.”;
- 15 (b) In section 399—
- (i) in sub-section (3)—
- (A) for “evidence” substitute “sworn evidence”;
- (B) after “oath” insert “or elects to give unsworn evidence”;
- 20 (ii) in sub-section (8) after “statement” insert “or give evidence”;
- (c) In section 417 (3) omit “sworn”;
- (d) In section 418—
- (i) in paragraph (c) (ii) (A) omit “, or unsworn statement by,”;
- 25 (ii) after paragraph (d) insert—
- “(e) if the accused has made an unsworn statement or given unsworn evidence the presiding judge, in summing up the evidence for the benefit of the jury—
- 30 (i) must inform the jury of the choices that the accused had with respect to the giving or not giving of evidence and of the consequences attached to each of those choices; and
- 35 (ii) may comment on any matter contained in the statement or unsworn evidence.”.

Amendment of the *Magistrates (Summary Proceedings) Act 1975*.

6. The *Magistrates (Summary Proceedings) Act 1975* is amended as follows:

- 40 (a) After section 59 (4) insert—
- “(4A) If the accused person is represented by counsel or a solicitor and elects to give unsworn evidence in answer to the charge by virtue of section 25 (1) (b) of the *Evidence Act 1958*, the justice must take the unsworn evidence of the accused person and must put or cause the evidence to be

No. 8731.
Reprinted to No. 9921.
Subsequently amended by Nos. 9945, 9947, 10007, 10020, 10063, 10077, 10082, 10084, 10087, 10152, 10249, 10257 and 10260.

put into writing or direct the evidence to be recorded and transcribed pursuant to Part VI. of the *Evidence Act 1958.*”;

(b) In section 59 (5) omit “on oath” (where first occurring);

(c) In section 78 (1) (f) after “Every person” insert “(except a person giving unsworn evidence by virtue of section 25 (1) (b) of the *Evidence Act 1958*)”.

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Application of Part.

7. The amendments made by this Part to the Principal Act and to the *Evidence Act 1958* and the *Magistrates (Summary Proceedings) Act 1975* apply only to proceedings for or with respect to an offence committed or alleged to have been committed on or after the commencement of this section.

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PART 3—ABOLITION OF MANDATORY SENTENCES OF LIFE IMPRISONMENT

New section 3 substituted in the Principal Act.

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8. For section 3 of the Principal Act, substitute—

Punishment for murder.

“3. Notwithstanding any rule of law to the contrary, a person convicted of murder is liable to imprisonment—

(a) for the term of his or her natural life; or

(b) for such other term as is fixed by the court—

as the court determines.”.

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Punishment for treason.

9. In section 9A (1) of the Principal Act for “liable to imprisonment for the term of his natural life” substitute—

“liable to imprisonment—

(a) for the term of his or her natural life; or

(b) for such other term as is fixed by the court—

as the court determines”.

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Punishment for piracy with violence.

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10. In section 70A of the Principal Act for “imprisoned for the term of his natural life” substitute—

“liable to imprisonment—

(a) for the term of his or her natural life; or

(b) for such other term as is fixed by the court—

as the court determines”.

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Punishment for piratical acts.

11. In section 70B (2) of the Principal Act for “imprisonment for life” substitute—

“imprisonment—

- 5 (a) for the term of his or her natural life; or
 (b) for such other term as is fixed by the court—
 as the court determines”.

Power to fix minimum term when imposing life sentence.

12. In section 17 (1) of the *Penalties and Sentences Act 1985*—

No. 10260.

- 10 (a) after “imposed is” (where first occurring) insert “for the term of that person’s natural life or is for a term of”;
 (b) after “that” insert “, if the term imposed is not for the term of that person’s natural life,”.

Supervision of life prisoners released on parole.

- 15 13. After section 195 (4) of the *Community Welfare Services Act 1970*, insert—

No. 8089.
 Reprinted to No.
 10152.
 Subsequently
 amended by Nos.
 10257, 10260
 and 10262.

- 20 “(4A) A parole order in relation to a prisoner sentenced to imprisonment for the term of his or her natural life must include a condition requiring the prisoner to be under the supervision of a parole officer for a period of not less than five years.”.

New section 18A inserted in *Penalties and Sentences Act 1985*.

14. After section 18 of the *Penalties and Sentences Act 1985*, insert—

Procedure for fixing minimum terms with respect to life sentences.

- 25 “18A. (1) With respect to any person who at the commencement of section 14 of the *Crimes (Amendment) Act 1986* is serving a sentence of imprisonment for the term of his or her natural life the Supreme Court may, on the application of that person or of the Director-General of Corrections, fix a minimum term in accordance with this Part in any manner in which such a term might have been fixed had that person
 30 been sentenced to imprisonment by the Supreme Court for the term of his or her natural life on or after that commencement.

(2) An application cannot be made under sub-section (1) with respect to a prisoner unless that prisoner has served at least five years of his or her natural life sentence.

(3) For the purposes of Part VI. of the *Crimes Act* 1958 “sentence” includes an order made under sub-section (1) fixing a minimum term and the provisions of that Part apply, with such modifications as are necessary, to an appeal against a minimum term fixed by the Supreme Court under sub-section (1) as they apply to an appeal against the sentence passed on a conviction.”

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