## LEGISLATIVE COUNCIL

Read 1° 4 November 1992

(Brought in by the Honourable Haddon Storey)

# A BILL

to amend the **Evidence Act 1958** and the **Crimes Act 1958** with respect to unsworn evidence and unsworn statements and for other purposes.

## **Evidence (Unsworn Evidence) Act 1992**

The Parliament of Victoria enacts as follows:

### 1. Purpose

The purpose of this Act is to abolish the right of an accused to give unsworn evidence or to make an unsworn statement in a criminal proceeding.

### 2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

Section headings appear in bold italics and are not part of the Act. (See Interpretation of Legislation Act 1984.)

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No. 6246. Reprinted to No. 8/1991 and subsequently amended by Nos 78/1991 and 81/1991.

### 3. Amendment of the Evidence Act

For section 25 of the Evidence Act 1958 substitute—

# "25. Abolition of accused's right to make unsworn statement or to give unsworn evidence

Any rule of law or procedure or any practice permitting a person who is charged with the commission of a criminal offence to make an unsworn statement or to give unsworn evidence in answer to the charge is abolished."

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No. 6231. Reprinted to No. 49/1991 and subsequ ntly am nded by No 65/1991, and 81/1991 and 13/1992.

### 4. Amendment of the Crimes Act

The **Crimes Act 1958** is amended as follows:

- (a) In section 398, for the words commencing "You now have the right to answer the charge against you and ending at the end of the section substitute—
  - "You now have the right to answer the charge against you and may take either of the following courses:
  - (a) You may enter the witness box, take the oath, and say what you want to say in answer to the charge. This is known as giving sworn evidence and when you have given your evidence you may be asked questions about it by counsel for the prosecution or the Court;
  - (b) You may say nothing in answer to the charge. In either of these cases you may call any witness or witnesses to give sworn evidence for you. What do you desire to do?";
- (b) Section 398A is repealed;
- (c) In section 399 (3) **omit** "unless the accused person elects to make a statement not on oath or elects to give unsworn evidence,";
- (d) Section 399 (7A) is repealed;

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(e) In section 399 (8) **omit** "or any right of the person charged to make a statement or give evidence without being sworn":

- (f) In section 417 (1) omit "(including any unsworn statement by the accused)":
- (g) In section 417 (3) for "evidence or unsworn statement" substitute "sworn evidence":
- (h) In section 418—
  - (i) **omit** paragraph (b); and
  - (ii) in paragraph (c) **omit** "or (b)"; and
  - (iii) in paragraph (c) (i) **omit** "or may exercise his right to make an unsworn statement"; and
  - (iv) in paragraph (c) (ii) (B) omit "and any unsworn statement by the accused"; and
  - (v) **omit** paragraph (e).

### 5. Amendment of the Magistrates' Court Act

The Magistrates' Court Act 1989 is amended as follows:

- (a) In section 129 (1) **omit** "or 25 (1) (b)";
- (b) In clause 2 (1) of Schedule 2 omit "398A,".

#### 6. Statute law revision

In the Evidence Act 1958—

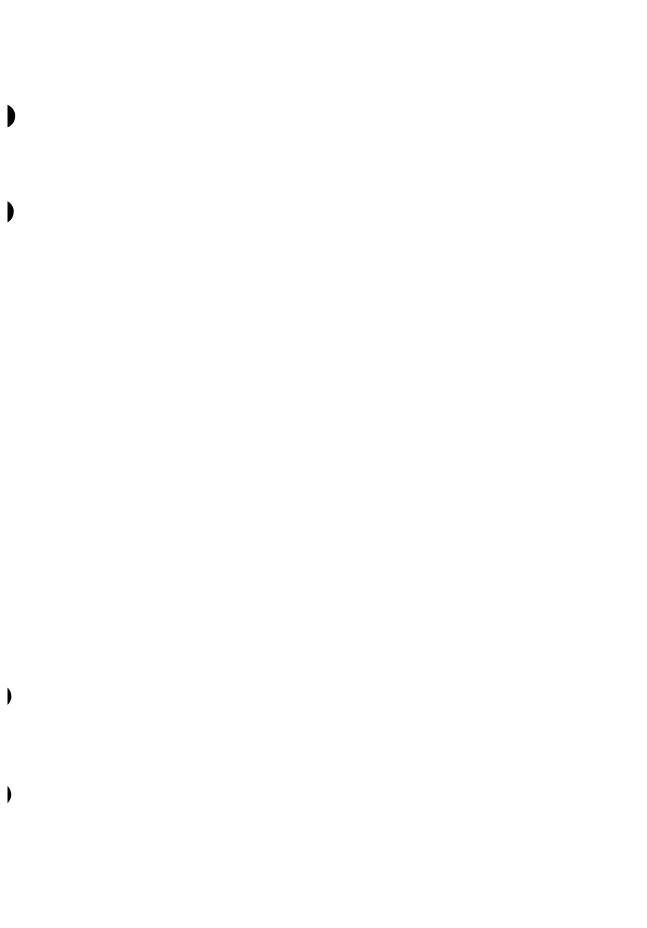
- (a) section 2 is repealed; and
- (b) the First Schedule is **repealed**.

### 7. Transitional

The amendments made by this Act to the Evidence Act 1958, the Crimes Act 1958 and the Magistrates' Court Act 1989 apply to the trial or hearing of a charge offence that occurs on or after the commencement of this Act, irrespective of when the offence was committed or alleged to have been committed.

By Authority L. V. North, Government Printer Melbourne

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