

# LEGISLATIVE COUNCIL

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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.

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

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.”.

No. 6231.  
Reprinted to  
No. 49/1991  
and  
subsequently  
amended 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- (b) Section 398A is **repealed**;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- (d) Section 399 (7A) is **repealed**;

- (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)”;
  - (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 for an offence that occurs on or after the commencement of this Act, irrespective of when the offence was committed or alleged to have been committed.

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