

**CRIMES LEGISLATION (UNSWORN EVIDENCE)
AMENDMENT ACT 1994 No. 26**

NEW SOUTH WALES

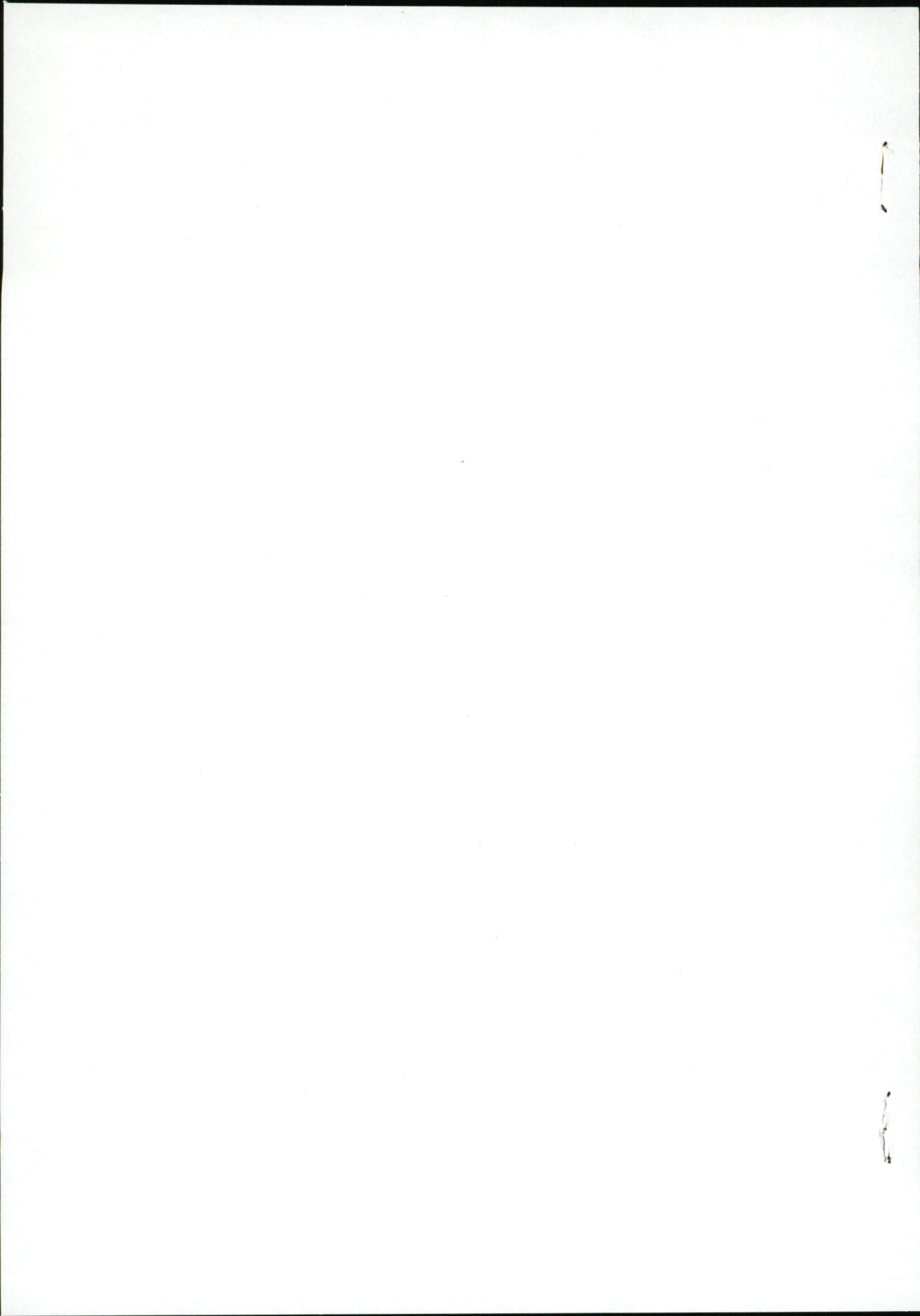


TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Amendment of Mental Health (Criminal Procedure) Act 1990 No. 10

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

SCHEDULE 2—AMENDMENT OF MENTAL HEALTH (CRIMINAL
PROCEDURE) ACT 1990



**CRIMES LEGISLATION (UNSWORN EVIDENCE)
AMENDMENT ACT 1994 No. 26**

NEW SOUTH WALES



Act No. 26, 1994

An Act to abolish the right of an accused person to give unsworn evidence or to make unsworn statements in criminal proceedings and to make consequential amendments to the Crimes Act 1900 and the Mental Health (Criminal Procedure) Act 1990. [Assented to 30 May 1994]

Crimes Legislation (Unsworn Evidence) Amendment Act 1994 No. 26

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes Legislation (Unsworn Evidence) Amendment Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

Amendment of Mental Health (Criminal Procedure) Act 1990 No. 10

4. The Mental Health (Criminal Procedure) Act 1990 is amended as set out in Schedule 2.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

(Sec. 3)

(1) Section 404A:

Before section 405, insert:

Abolition of an accused's right to make unsworn statement or to give unsworn evidence

404A. (1) Any rule of law or procedure or 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.

(2) Nothing in this section prevents a person from giving unsworn evidence under Part 6 of the Oaths Act 1900.

(2) Section 405 (**Address to jury by accused**):

- (a) From section 405 (1), omit "make any statement at the close of the case for the prosecution, and before calling any witness in his defence, without being liable to examination thereupon by counsel for the Crown or by the Court and".
- (b) From section 405 (1), omit "may,".
- (c) From section 405 (3), omit "or unsworn statement".

Crimes Legislation (Unsworn Evidence) Amendment Act 1994 No. 26

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(3) Section 405A (**Notice of alibi**):

From section 405A (1), omit “or assert in any statement made by him under section 405 (1) that he has an alibi”.

(4) Section 409C (**Limitation on dock statements in certain sexual offence proceedings**):

Omit the section.

(5) Eleventh Schedule (**Savings and transitional provisions**)

After Part 4, insert:

**Part 5—Crimes Legislation (Unsworn Statements)
Amendment Act 1994**

Application of abolition of accused persons’s right to give unsworn evidence or to make unsworn statement

13. Section 404A, and the amendments to sections 405, 405A and 409C made by the Crimes Legislation (Unsworn Evidence) Amendment Act 1994, apply to the trial of a person charged with an offence on or after the commencement of that section and those amendments.

**SCHEDULE 2—AMENDMENT OF MENTAL HEALTH
(CRIMINAL PROCEDURE) ACT 1990**

(Sec. 4)

(1) Section 21 (**Nature and conduct of special hearing**):

From section 21 (3) (d), omit “or to make an unsworn statement”.

(2) Section 41:

After section 40, insert:

Savings and transitional provisions

41. Schedule 1 has effect.

Crimes Legislation (Unsworn Evidence) Amendment Act 1994 No. 26

SCHEDULE 2—AMENDMENT OF MENTAL HEALTH
(CRIMINAL PROCEDURE) ACT 1990—*continued*

(3) Schedule 1:

At the end of the Act, insert:

**SCHEDULE 1—SAVINGS AND TRANSITIONAL
PROVISIONS**

(Sec. 41)

**Application of abolition of accused person's right to make
unsworn statement**

1. The amendment to section 21 made by the Crimes Legislation (Unsworn Evidence) Amendment Act 1994 applies to a special hearing conducted in respect of an offence with which a person is charged on or after the commencement of the amendment.

[*Minister's second reading speech made in—
Legislative Council on 13 April 1994
Legislative Assembly on 21 April 1994 a.m.*]

FIRST PRINT

**CRIMES LEGISLATION (UNSWORN EVIDENCE)
AMENDMENT BILL 1994**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to abolish the right of an accused person to give unsworn evidence or to make an unsworn statement in criminal proceedings (commonly known as a "statement from the dock"). The abolition of an accused person's right to make an unsworn statement will bring New South Wales into line with other Australian jurisdictions. The right has been abolished in Queensland (1975), Western Australia (1976), the Northern Territory (1983), South Australia (1985), Victoria (1993) and Tasmania (1993).

The proposed abolition will not affect the right of a defendant to make any submission on sentencing.

Clause 1 specifies the short title of the proposed Act.

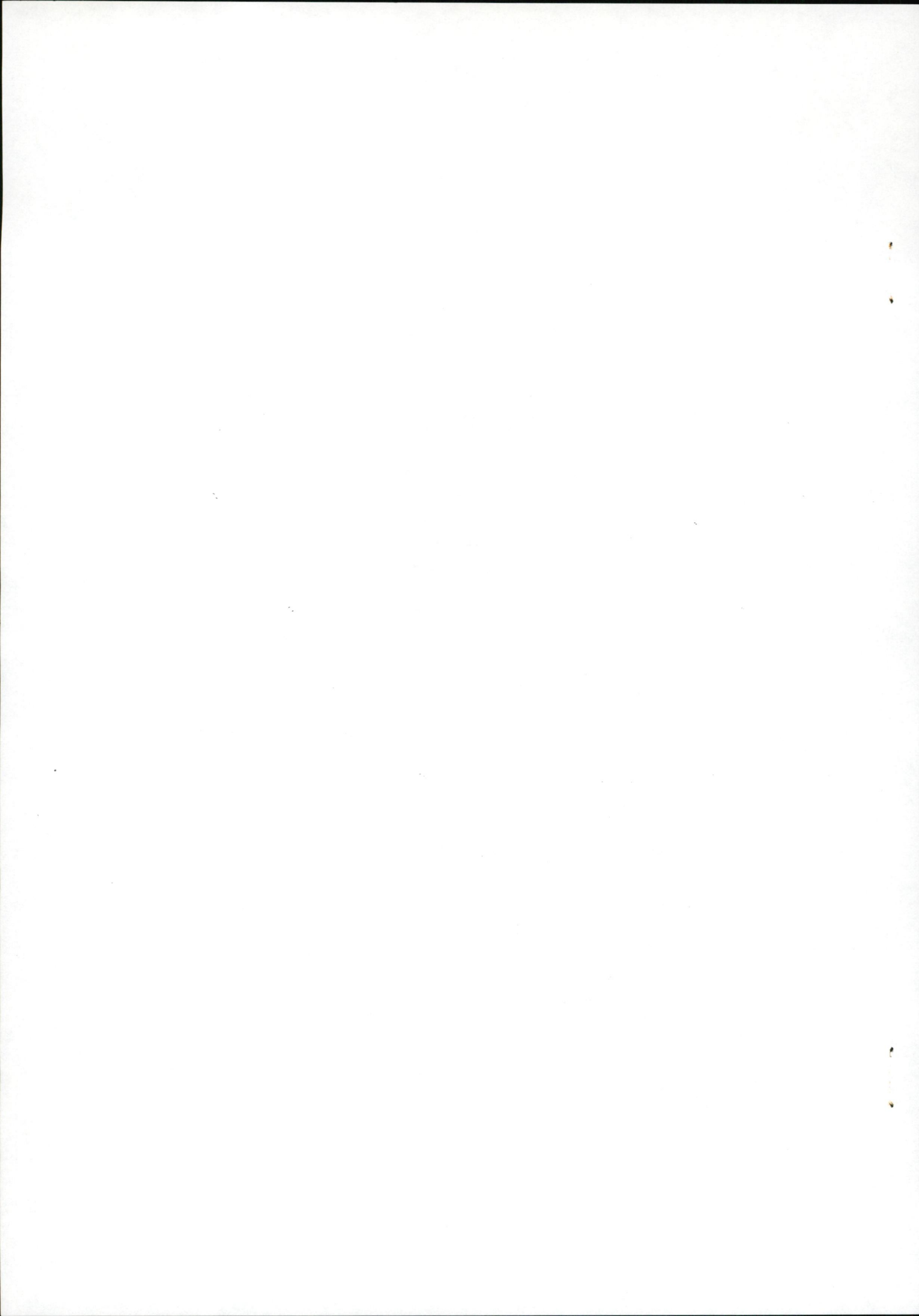
Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 gives effect to the amendments to the Crimes Act 1900 set out in Schedule 1.

Clause 4 gives effect to the amendments to the Mental Health (Criminal Procedure) Act 1990 set out in Schedule 2.

Schedule 1 amends the Crimes Act 1900 to abolish the right of an accused person to give unsworn evidence or to make an unsworn statement and makes other consequential amendments.

Schedule 2 contains amendments to the Mental Health (Criminal Procedure) Act 1990 that are consequential to the proposed abolition of the right of an accused person to make an unsworn statement.



FIRST PRINT

**CRIMES LEGISLATION (UNSWORN EVIDENCE)
AMENDMENT BILL 1994**

NEW SOUTH WALES

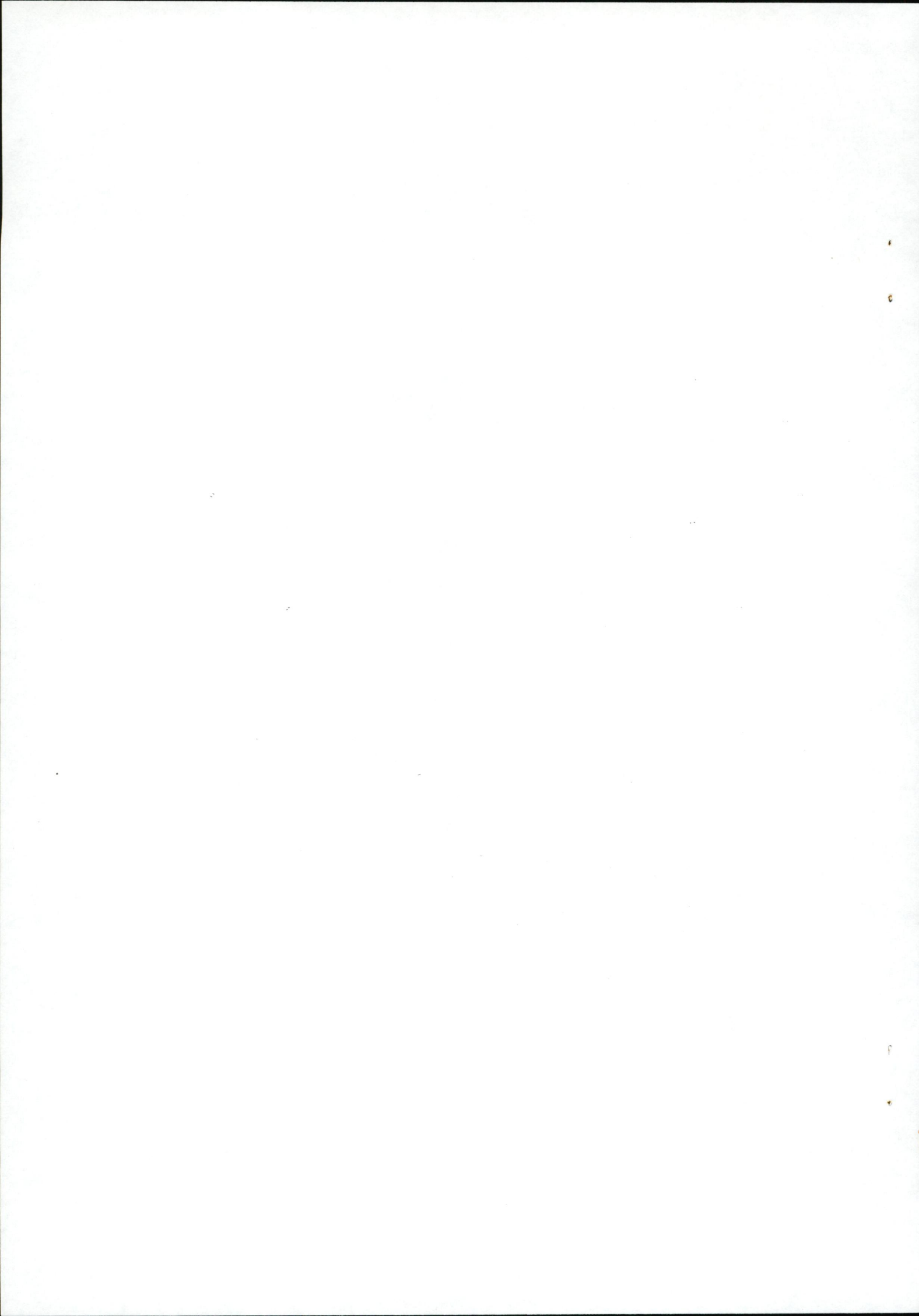


TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Amendment of Mental Health (Criminal Procedure) Act 1990 No. 10

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

SCHEDULE 2—AMENDMENT OF MENTAL HEALTH (CRIMINAL
PROCEDURE) ACT 1990



**CRIMES LEGISLATION (UNSWORN EVIDENCE)
AMENDMENT BILL 1994**

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to abolish the right of an accused person to give unsworn evidence or to make unsworn statements in criminal proceedings and to make consequential amendments to the Crimes Act 1900 and the Mental Health (Criminal Procedure) Act 1990.

Crimes Legislation (Unsworn Evidence) Amendment 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes Legislation (Unsworn Evidence) Amendment Act 1994.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

10 Amendment of Mental Health (Criminal Procedure) Act 1990 No. 10

4. The Mental Health (Criminal Procedure) Act 1990 is amended as set out in Schedule 2.

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900

(Sec. 3)

15 (1) Section 404A:

Before section 405, insert:

Abolition of an accused's right to make unsworn statement or to give unsworn evidence

20 404A. (1) Any rule of law or procedure or 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.

(2) Nothing in this section prevents a person from giving unsworn evidence under Part 6 of the Oaths Act 1900.

25 (2) Section 405 (Address to jury by accused):

(a) From section 405 (1), omit "make any statement at the close of the case for the prosecution, and before calling any witness in his defence, without being liable to examination thereupon by counsel for the Crown or by the Court and".

30 (b) From section 405 (1), omit "may,".

(c) From section 405 (3), omit "or unsworn statement".

Crimes Legislation (Unsworn Evidence) Amendment 1994

SCHEDULE 1—AMENDMENT OF CRIMES ACT 1900—*continued*

(3) Section 405A (**Notice of alibi**):

From section 405A (1), omit “or assert in any statement made by him under section 405 (1) that he has an alibi”.

(4) Section 409C (**Limitation on dock statements in certain sexual offence proceedings**):

Omit the section.

(5) Eleventh Schedule (**Savings and transitional provisions**)

After Part 4, insert:

**Part 5—Crimes Legislation (Unsworn Statements)
Amendment Act 1994**

**Application of abolition of accused persons’s right to give
unsworn evidence or to make unsworn statement**

13. Section 404A, and the amendments to sections 405, 405A and 409C made by the Crimes Legislation (Unsworn Evidence) Amendment Act 1994, apply to the trial of a person charged with an offence on or after the commencement of that section and those amendments.

**SCHEDULE 2—AMENDMENT OF MENTAL HEALTH
(CRIMINAL PROCEDURE) ACT 1990**

(Sec. 4)

(1) Section 21 (**Nature and conduct of special hearing**):

From section 21 (3) (d), omit “or to make an unsworn statement”.

(2) Section 41:

After section 40, insert:

Savings and transitional provisions

41. Schedule 1 has effect.

Crimes Legislation (Unsworn Evidence) Amendment 1994

**SCHEDULE 2—AMENDMENT OF MENTAL HEALTH
(CRIMINAL PROCEDURE) ACT 1990—continued**

(3) Schedule 1:

At the end of the Act, insert:

5

**SCHEDULE 1—SAVINGS AND TRANSITIONAL
PROVISIONS**

(Sec. 41)

**Application of abolition of accused person's right to make
unsworn statement**

10

1. The amendment to section 21 made by the Crimes
Legislation (Unsworn Evidence) Amendment Act 1994
applies to a special hearing conducted in respect of an
offence with which a person is charged on or after the
commencement of the amendment.
