

## Perjury

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The prosecution must prove that:

1. The defendant was lawfully sworn as a witness in a judicial proceeding;<sup>1</sup>
2. The defendant made a statement wilfully – that is to say he made the statement deliberately and not inadvertently or by mistake or at cross purposes with the person questioning him;<sup>2</sup>
3. The statement was false;
4. The defendant knew it was false;
5. The statement was material, that is, it was of such significance that it was capable of affecting the decision of the court. In this case, the statement was, as a matter of law, material. <sup>3</sup>

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<sup>1</sup> See definition in s 119 *Code*; and see *R v Deemal* [\[2010\] 2 Qd R 70](#) as to its application to investigative agencies.

<sup>2</sup> *R v Lowe* [\[1917\] VLR 155](#).

<sup>3</sup> The question of whether there is evidence of materiality is a question of law for the judge to decide: *R v Traino* [\(1987\) 45 SASR 473](#). That judgment from South Australia (King CJ, Jacobs & Millhouse JJ) deals with the common law offence of perjury, however in *Mellifont v Attorney-General* [\(1991\) 173 CLR 289](#); [57 A Crim R 256](#) at 267-268 a majority of the High Court (Mason CJ, Deane, Dawson, Gaudron, McHugh JJ) considered the test for materiality under s 123, and referred to *Traino*. The court held that (unlike the necessity at common law to establish the materiality of the false statement itself) under s 123 the question is whether the false testimony relates to a matter which was itself material to a question then pending in the proceeding and not whether the false testimony itself was material to such a question. A “question depending” is one which arises, but is not necessarily to be determined, in the proceedings: *R v Deemal* at [30] and [46].

A person cannot be convicted of committing perjury upon the uncorroborated evidence of one witness: s 125.

And as from 1 July 1997, it is no longer necessary for the jury to be satisfied beyond a reasonable doubt that a statement was false, provided that they are satisfied that one of two contradictory statements made under oath by the defendant was deliberately false: s 123A.