

WESTERN AUSTRALIA

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# **JURIES ACT 1957**

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WESTERN AUSTRALIA

**JURIES ACT 1957**

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WESTERN AUSTRALIA

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## JURIES ACT 1957

**AN ACT to consolidate and amend the Law relating to Juries,  
and for other purposes**

*[Long title amended by No. 59 of 1984 s. 3.]*

### **Short title and commencement**

1. (1) This Act may be cited as the *Juries Act 1957*.
- (2) This Act shall come into operation on a date to be fixed by proclamation<sup>1</sup>.

*[Section 1 amended by No. 6 of 1981 s. 3; No. 59 of 1984 s. 4.]*

### **PART I—INTRODUCTORY**

#### **Repeal and transitional**

2. (1) The Acts mentioned in the First Schedule are repealed to the extent prescribed by that Schedule.

(2) Notwithstanding subsection (1),

- (a) panels of jurors required shall, until the first Jurors' Books under this Act are completed and brought into use, be prepared as if the enactments repealed by subsection (1) were still in operation; and

- (b) where jurors have been summoned before the day of the coming into operation of this Act<sup>1</sup> to attend for any session or sittings, the provisions of the enactments repealed by subsection (1), shall continue to operate in respect of the jurors so summoned and in respect of trials to be held at the session or sittings, notwithstanding that this Act comes into operation before, or during, any of those trials; and
- (c) where a trial with a jury has commenced before the day of the coming into operation of this Act<sup>1</sup>, and is not completed at that day, the trial shall be continued as if the enactments repealed by subsection (1) were still in operation; and
- (d) proclamations, rules, regulations, orders, notices, summonses and precepts made or issued under the authority of any enactment repealed by subsection (1) and being in force immediately before the coming into operation of this Act<sup>1</sup> shall enure for the purposes of this Act; and
- (e) paragraphs (a), (b), (c), and (d) of this subsection do not affect the application to this Act of the provisions of the *Interpretation Act 1918*<sup>2</sup>, in general, or of sections 15 and 16 of that Act in particular.

### Interpretation

3. In this Act unless inconsistent with the subject matter or context—

“Assembly district” means an Electoral district for the election of a member of the Legislative Assembly;

“Circuit Court” means a court held in a circuit town by virtue of the provisions of section 46 of the *Supreme Court Act 1935*;

“civil trial” means trial in the civil jurisdiction of the Supreme Court, a Circuit Court, or the District Court;

“Court town” means any place where a sitting of the Supreme Court or a Circuit Court or of the District Court is appointed to be held;

“criminal trial” means a trial of issues required by The Criminal Code to be tried by a jury, but does not include a trial in a Children’s Court or in summary proceedings;

“District Court” means The District Court of Western Australia established under the *District Court of Western Australia Act 1969*;

“general jury precept” means a precept issued under section 20;

“Judge”—

- (a) in relation to the Supreme Court, means Judge or acting Judge of that Court and includes a Commissioner appointed under section 49 of the *Supreme Court Act 1935*;

- (b) in relation to a Circuit Court, means Judge or acting Judge of that Court and includes a Commissioner appointed under section 49 of the *Supreme Court Act 1935*; and
- (c) in relation to the District Court, means Judge or acting Judge of that Court and includes a Commissioner appointed under section 24 of the *District Court of Western Australia Act 1969*;

“jury assembly room” means a place specified in the summons for the assembly of jurors summoned to attend at a jury pool;

“jury district” means a part of the State proclaimed under this Act to be a jury district;

“jury officer” means jury officer ascertained in accordance with section 13;

“jury pool” means a pool of jurors from which juries may be selected for trials to which the pool relates;

“jury pool supervisor” means a person, appointed by the jury officer, for the time being in charge of a jury pool;

“panel” means a panel of jurors chosen under section 26 or 29;

“police officer” means an officer or member of the Police Force of Western Australia;

“pool precept” means a precept issued under section 32G;

“Sheriff” means the Sheriff of Western Australia and includes any deputy or under sheriff or any person appointed by the Sheriff in writing under his hand and seal to act for him or in his stead;

“summoning officer” means the Sheriff, jury officer or other person whose duty it is to summon jurors, and their deputies respectively;

“Supreme Court” does not include Circuit Court;

“tickets” means distinct pieces of card, parchment, or durable material;

“trial” means any trial, issue, inquiry, assessment of damages or other proceeding, whether civil or criminal, for which a jury is or may be lawfully required.

[Section 3 amended by No. 44 of 1973 s. 3; No. 64 of 1975 s. 3; No. 6 of 1981 s. 4.]

### **Application of this Act to District Court**

**3A.** Subject to the *District Court of Western Australia Act 1969*, and to the other provisions of this Act, this Act applies in respect of the District Court, a Judge thereof, and any civil or criminal trial held in the District Court as they apply in respect of the Supreme Court, a Judge thereof, and any such trial held in the Supreme Court and without limiting the generality of the foregoing, the provisions of this Act relating

to the constitution and procuring of juries, the summoning and challenging of jurors, the discharge of juries, and the verdicts of juries extend and apply to the constituting and procuring of juries, the summoning and challenging of jurors, the discharge of juries, and the verdicts of juries in the District Court.

[Section 3A inserted by No. 44 of 1973 s. 4.]

## PART II—LIABILITY TO SERVE AS JURORS

[Heading amended by No. 59 of 1984 s. 5.]

### **Liability to serve as juror**

4. Subject to this Act, a person who is enrolled on any of the rolls of electors entitled to vote at an election of members of the Legislative Assembly of the Parliament of the State is liable to serve as a juror at trials in the jury district in which the person is shown to live by any of those rolls of electors.

[Section 4 substituted by No. 59 of 1984 s. 6.]

### **Persons who are not eligible or not qualified or who are excused**

5. Notwithstanding that a person is liable to serve as a juror by virtue of section 4 that person—

- (a) is not eligible to serve as a juror if—
  - (i) he or she is a person within the classes of person listed in Part I of the Second Schedule;
  - or
  - (ii) he or she has attained the age of 65 years;
- (b) is not qualified to serve as a juror if he or she—
  - (i) has been convicted of an offence in Western Australia or elsewhere and sentenced to—
    - (I) death whether or not that sentence has been commuted;
    - (II) strict security life imprisonment referred to in section 679 of The Criminal Code;
    - (III) imprisonment for life;
    - or
    - (IV) imprisonment for a term exceeding 2 years or for an indeterminate period,
 unless he or she has received a free pardon;

- (ii) has at any time within 5 years in Western Australia or elsewhere—
    - (I) served any part of a sentence of imprisonment or been on parole in respect of any such sentence;
    - (II) been found guilty of an offence and detained in an institution for juvenile offenders;or
    - (III) been the subject of a probation order made by any court;
  - (iii) does not understand the English language; or
  - (iv) is incapacitated by any disease or infirmity of mind or body, including defective hearing, that affects him or her in discharging the duty of a juror;
- (c) is excused from serving as a juror—
- (i) as of right, if he or she is a person within the classes of person listed in Part II of the Second Schedule and claims to be excused by virtue of that fact; or
  - (ii) if, pursuant to the provisions of this Act, the Court, Judge, Sheriff or summoning officer excuses him or her from serving as a juror.

[Section 5 substituted by No. 59 of 1984 s. 6.]

[6. Section 6 repealed by No. 59 of 1984 s. 7.]

[7. Section 7 repealed by No. 59 of 1984 s. 8.]

### **Verdict not affected**

8. The fact that a person who—

- (a) is not eligible or not qualified to serve as a juror; or
- (b) is excused from serving as a juror,

has served as a juror in a trial, whether civil or criminal, is not a ground for questioning, and does not invalidate or affect, the verdict.

[Section 8 substituted by No. 59 of 1984 s. 9.]

## PART III—JURY DISTRICTS

### **Jury districts**

9. For the Supreme Court, and for each Circuit Court, the Governor shall constitute a jury district.

[Section 9 amended by No. 44 of 1973 s. 6.]

**Area of jury districts**

10. (1) A jury district shall consist of the whole or such part or parts of such Assembly district or Assembly districts as is or as are, from time to time, determined in accordance with the provisions of this Part.

(2) The jury district for the Supreme Court, and for each Circuit Court, shall consist of such Assembly district or districts, or such part or parts of such Assembly district or districts, as the Governor determines and declares, and is hereby authorized to determine and declare by proclamation from time to time.

(3) Where a circuit town is declared after the coming into operation of this Act<sup>1</sup> pursuant to the power conferred by section 46 of the *Supreme Court Act 1935*, or any other Act for the time being in operation, the Governor may by the proclamation declaring the circuit town, or by subsequent proclamation, declare what Assembly district or districts or part or parts of an Assembly district or districts, shall constitute the jury district for the Circuit Court of the circuit town so proclaimed.

(4) The jury district for the District Court sitting at Perth shall be the same as the jury district for the Supreme Court.

(5) The jury district for the District Court sitting at a place other than Perth shall be the same as the jury district for a Circuit Court at that place.

[Section 10 amended by No. 44 of 1973 s. 7; No. 64 of 1975 s. 4.]

**Transitional provisions for alterations or abolition of Assembly Districts**

11. (1) If an Assembly district part or the whole of which forms or is comprised in a jury district is altered or abolished pursuant to the *Electoral Distribution Act 1947*<sup>2</sup>, or any other law for the time being in operation; the jury district, as constituted immediately prior to the alteration or abolition of the Assembly district, shall nevertheless remain as so constituted until varied by proclamation under this Act, and any Jurors' Book in force immediately prior to the alteration or abolition of the Assembly district shall continue to be the Jurors' Book for the jury district until a new Jurors' Book is prepared under this Act.

(2) If a jury district is altered or abolished by proclamation under section 12,

- (a) jurors for whom summonses have been issued before the day on which the proclamation takes effect to attend for any sittings, shall on being served attend in accordance with the summons;
- (b) trials to be held at the sittings shall be held, or if commenced before that day, shall be continued; and
- (c) jurors for those trials shall be chosen,

as if the proclamation had not taken effect.

[Section 11 amended by No. 44 of 1973 s. 8.]

**Power to vary jury districts**

12. The Governor may from time to time by proclamation
- (a) alter the area of any jury district as for the time being constituted; and
  - (b) include in, or exclude from, the area, the whole or any part of an Assembly district; and
  - (c) abolish a jury district and include the area of the jury district wholly or partly in any other jury district.

PART IV—JURORS' BOOKS, BOXES AND CARDS

**Jury officers**

13. The jury officers for the respective jury districts are—
- (a) for the Supreme Court, and the District Court sitting at Perth, the Sheriff; and
  - (b) for the District Court sitting at a place other than Perth, and a Circuit Court at that place, the Registrar of the District Court at that place.

*[Section 13 substituted by No. 44 of 1973 s. 9.]*

**Electoral Commissioner to prepare jury lists**

14. (1) On or about 1 March in each year the Sheriff—
- (a) shall notify the Electoral Commissioner<sup>3</sup> of the number of jurors that in his estimate will be required for jury service for each jury district; and
  - (b) shall requisition from the Electoral Commissioner<sup>3</sup> the number of copies of lists of jurors which he requires for each jury district.
- (2) Before 30 April in each year the Electoral Commissioner<sup>3</sup> shall by ballot in accordance with the provisions of subsection (2a) select jurors to the number so notified to him by the Sheriff for each jury district from all of the electors who—
- (a) are shown in the electoral rolls for the Assembly district or districts which, or parts of which, comprise the jury district; and
  - (b) subject to section 5, appear to be liable to serve as jurors.

(2a) The Electoral Commissioner<sup>3</sup> shall select from each Assembly district or each part of an Assembly district which is comprised in a jury district a quota of the jurors required by the Sheriff ascertained to the nearest whole number by—

- (a) multiplying the number of electors on the roll of such Assembly district or shown on the roll to be residing in such part, by the number of jurors required by the Sheriff for the jury district; and
- (b) dividing the product obtained under paragraph (a) by the total number of electors in the jury district.

(2b) The selection of jurors required by subsections (2) and (2a) may be made by computer.

(3) The Electoral Commissioner<sup>3</sup> shall prepare a separate list of persons so selected for each jury district, and shall cause to be printed and sent to the Sheriff before 30 April in each year such number of each list as the Sheriff requisitions.

(3a) Notwithstanding anything in subsections (1) to (2a), where in relation to a particular jury district the Sheriff considers that the number of persons in a jury district who are liable to serve as jurors would be too small for the purposes of applying the provisions of subsections (1) to (2a) for the purposes of selecting persons for service as jurors, the Sheriff shall require the Electoral Commissioner<sup>3</sup> instead of providing him with a copy of lists of names of persons in accordance with the provisions of subsections (1) to (2a) in relation to such a jury district, to provide him with a list of the names of all the persons who—

- (a) are shown in the electoral rolls for the Assembly district or districts which, or parts of which, comprise the jury district referred in the requisition to be living in the jury district; and
- (b) appear not to be, pursuant to section 5, not eligible or not qualified to serve as jurors.

(4) The lists so prepared by the Electoral Commissioner<sup>3</sup> are the jury lists for the respective jury districts.

*[(5), (6) and (7) repealed]*

(8) If it appears to the Sheriff that a person whose name appears on the jury list is pursuant to section 5 not eligible or not qualified to serve as a juror, is dead, or no longer resides in the jury district or that the address of the person is unknown, the Sheriff shall cause the person's name to be removed from the jury list.

*[(9) repealed]*

(10) Before 1 July in every year the Sheriff shall cause to be prepared for, and sent to the jury officer of, each jury district the list compiled pursuant to subsections (1) to (8) to be called the Jurors' Book containing the names duly numbered in regular arithmetical series appearing on the list; and the list shall be the Jurors' Book for the jury district until a new

Jurors' Book has been prepared for the jury district in accordance with the provisions of this Act notwithstanding any alteration in the boundaries of the jury district during that year and shall be kept by the jury officer among the records of his office for use whenever required.

(11) Persons whose names appear in the Jurors' Book for a jury district are, subject to this Act, the jurors liable to serve on all juries empanelled for any trial, whether civil or criminal, within the jury district.

(12) A Jurors' Book compiled in accordance with the provisions of this Act on or before 1 July in a year shall be used, subject to any adjustment made pursuant to section 34A for one year next following and thenceforward until a new Jurors' Book has been completed, but

- (a) without prejudice to the operation of section 11 of the *Interpretation Act 1918*<sup>4</sup>, a Jurors' Book may be compiled at any time after the passing of this Act, and before 1 July 1960, being the date on which this Act was proclaimed to come into operation, and may be used until 30 June in the year next following the year in which this Act was proclaimed to come into operation<sup>5</sup>; and
- (b) the names of jurors summoned before 1 July in any year, for any trial to be held on and after that 1 July shall be taken from the Jurors' Book in use under this Act at the date when those jurors were so summoned.

[Section 14 amended by No. 35 of 1959 s. 2; No. 44 of 1973 s. 10; No. 6 of 1981 s. 7; No. 59 of 1984 s. 10.]

### **Electoral Commissioner to prepare jury lists for new districts**

15. (1) On any place being newly appointed to be a Court town the Electoral Commissioner<sup>3</sup> shall on the request in writing of the Attorney General prepare forthwith a list for the jury district assigned to the town; and shall deal with the list in the same manner as is required by this Act in respect of the preparation of annual jury lists.

[(2) repealed]

[Section 15 amended by No. 6 of 1981 s. 8; No. 59 of 1984 s. 11.]

### **Jurors' tickets to be placed in boxes**

16. (1) The Sheriff shall provide for each jury district 2 suitable boxes of a type to be approved by the Attorney General for use for the purposes of this Act, marked with the name of the district and labelled respectively, "Jurors in Use" and "Jurors in Reserve".

(2) The summoning officer shall cause to be printed or written upon separate tickets of as nearly as may be the same size and shape the name of the jury district and the several numbers contained in the Jurors' Book for the district, so that the tickets form a regular arithmetical series corresponding to the numbers in the Jurors Book and shall then place the tickets in the box marked with the name of the jury district and labelled "Jurors in Use".

(3) The summoning officer shall lock the box and keep the keys so that unless this Act provides otherwise, no other person shall have access to it.

(4) If at any time any of the tickets are lost the summoning officer shall replace them within 2 days after discovery of the loss.

### **Duty of Police**

17. Police officers shall render such assistance in the compilation of the jury lists and Jurors' Books and shall undertake such inquiries, and shall supply such information, as the Sheriff, or the Electoral Commissioner<sup>3</sup> or any jury officer, or summoning officer, requires, whether for the purpose of ascertaining the names of persons not qualified to serve as jurors, or for any other purpose of the administration of this Act.

## PART V—NUMBERS OF JURY

*[Heading amended by No. 6 of 1981 s. 9.]*

### **Number of jurors for a criminal trial**

18. (1) A jury for a criminal trial shall, subject to this Act and to section 646 of The Criminal Code, consist of 12 persons who shall be chosen and returned according to the provisions of this Act from the Jurors' Book for the jury district in which the trial is to take place.

(2) A Judge of the Court in which a criminal trial is to be held may direct that, in addition to the 12 jurors not more than 3 persons shall be chosen and returned as reserve jurors.

(3) Reserve jurors—

- (a) shall have the same qualifications;
- (b) shall be called and empanelled in the same manner;
- (c) shall be subject to the same challenges, stand asides, and liability to discharge;
- (d) shall take the same oath; and
- (e) shall have the same functions, powers, facilities, and privileges,

as jurors and for that purpose the law in respect of jurors shall apply to and in relation to reserve jurors with such modifications as are required by this section.

(4) Where reserve jurors are called the number of peremptory challenges, or the number of stand asides, permitted by section 38 is not increased.

(5) Reserve jurors in the order in which they are called shall replace jurors, who, prior to the time the jury retires to consider its verdict, die or become incapable of, or disqualified from, or discharged from, performing their duties and section 646 of The Criminal Code does not apply prior to that time if there are sufficient reserve jurors to have a jury of 12 persons including replacements.

(6) When a reserve juror, who has not replaced a juror, dies or becomes incapable of, or disqualified from, or discharged from, performing his duties, the trial is not affected thereby.

(7) Immediately before the jury retires to consider its verdict, a reserve juror who has not replaced a juror shall be discharged.

*[Section 18 amended by No. 64 of 1975 s. 5.]*

### **Number of jurors for a civil trial**

**19.** A jury for a civil trial shall, subject to this Act, consist of 6 persons who shall be chosen and returned, according to the provisions of this Act, from the Jurors' Book for the jury district in which the trial is to take place.

## **PART VA—GENERAL JURY PRECEPTS AND PANELS**

*[Heading inserted by No. 6 of 1981 s. 10.]*

### **General jury precepts**

**20.** Subject to this Act, where jurors are required for any criminal or civil trial or trials in the Supreme Court, a Circuit Court, or the District Court, a general jury precept in the prescribed form shall be issued to the appropriate summoning officer referred to in section 21 or in section 25 requiring him to summon a sufficient number of jurors to attend on the trial or trials—

- (a) by a Supreme Court Judge, in the case of a general jury precept returnable in the Supreme Court or a Circuit Court; or
- (b) by a District Court Judge, in the case of a general jury precept returnable in the District Court,

but where a sitting of the Supreme Court or a Circuit Court, and of the District Court coincide wholly or in part at the same place, a Supreme Court Judge may issue a general jury precept for summoning jurors to attend both those sittings.

*[Section 20 substituted by No. 44 of 1973 s. 11; amended by No. 6 of 1981 s. 11.]*

**Summoning officer**

**21.** Subject to section 25—

- (a) the Sheriff is the summoning officer in respect of general jury precepts returnable in the Supreme Court or returnable in the District Court sitting at Perth; and
- (b) the Registrar of the District Court sitting at a place other than Perth is the summoning officer in respect of general jury precepts returnable in that Court or returnable in a Circuit Court at that place.

[Section 21 substituted by No. 44 of 1973 s. 12; amended by No. 6 of 1981 s. 12.]

**Contents and issue of general jury precept**

**22.** A general jury precept—

- (a) shall specify the time when and the place where the attendance of the jurors is required; and
- (b) shall be issued and delivered to the summoning officer to whom it is directed 21 days at least before it is returnable.

[Section 22 amended by No. 6 of 1981 s. 13.]

**Number of jurors to be summoned**

**23.** Upon the receipt of a general jury precept in respect of a criminal trial the summoning officer, unless otherwise directed by the precept, shall summon not less than 20 nor more than 40 jurors.

[Section 23 amended by No. 6 of 1981 s. 14.]

**Oral precepts and amending or enlarging panel**

**24.** The Supreme Court and every Judge thereof, and every Circuit Court and the Judge thereof, have and may exercise such power and authority as they have prior to the coming into operation of this Act had and exercised, or as similar courts in England have, in making any award or order, orally or otherwise, for the return of a jury for the trial of any issue before any of those respective Courts, or for the amending or enlarging of any panel hereinafter mentioned; and the return to any award or order so made shall be made in the accustomed manner

heretofore used in such or similar Courts respectively in England, but a person shall not be so returned as a juror unless he or she is qualified according to this Act to serve as a juror.

*[Section 24 amended by No. 44 of 1973 s. 13.]*

**Power of appointment of alternative  
summoning officer where summoning  
officer has interest in trial**

**25.** (1) If it appears

to a Judge

that a summoning officer

to whom, but for this section, he would issue a general jury precept to  
summon jurors for the trial of any issue,

has any direct or indirect interest in the result of the trial

other than an interest in his capacity as summoning officer or other  
than an interest in common with the public,

he may issue the general jury precept to such other person as he thinks fit  
to appoint and is hereby authorized to appoint as summoning officer.

(2) A person who is appointed as summoning officer, and to whom a  
general jury precept is issued, under subsection (1), has and may exercise  
the powers conferred, and shall carry out the duties imposed, on a  
summoning officer by this Act in respect of the general jury precept.

*[Section 25 amended by No. 44 of 1973 s. 14; No. 6 of 1981 s. 15.]*

**Proceedure for choosing jurors  
for criminal trials**

**26.** (1) Where a general jury precept is delivered to the summoning  
officer for a jury for the trial of issues in a criminal trial he shall, in the  
manner prescribed by the succeeding subsections of this section, choose  
the persons to be summoned from those whose names appear in the  
Jurors' Book for the jury district in which the attendance of jurors is  
required by the general jury precept.

(2) At a time and place which the summoning officer shall appoint, and  
in the presence of one of the senior officers of the Supreme Court if the  
summoning officer is the Sheriff, or, if not the Sheriff, in the presence of  
a Justice of the Peace, the summoning officer shall cause the box for the  
jury district on which the words "Jurors in Use" are marked to be  
agitated, or to be rotated, sufficiently to intermix the tickets in the box,  
and shall then draw out of the box one after another as many of the  
tickets in the box as are required to make up the number of persons to be

summoned as jurors and in every case draw out of the box a sufficient number of additional tickets one after another to be kept by him for use pursuant to section 27 (3).

(3) As each ticket not being an additional ticket is drawn the summoning officer shall refer to the corresponding number in the Jurors' Book and read aloud the name to which that number is assigned in the Jurors' Book, and shall, except in the case of an omission authorized by subsection (4) or by section 27 (1), write or cause to be written on a panel which he shall sign, the number, and the name with the addition shown in the Jurors' Book in connection with that name, and shall keep the tickets corresponding to the numbers and names so written on the panel until after the precept is returnable.

(4) Where the number on a ticket corresponds in the Jurors' Book to the name of a juror whom the summoning officer knows to be dead, or to have left the district, or to have attended at a jury pool during the currency of that Jurors' Book having been summoned so to attend, or to be not eligible, the summoning officer shall omit that name from the panel; and shall draw from the box a ticket in place of the ticket representing the person whose name is so omitted and shall make a special return to the court of the names of the jurors whose names appear on the panel, and of the names of the jurors so omitted, stating the reason for the omission.

(5) The persons whose names appear on the panel shall be the jurors to be summoned and the summoning officer shall forthwith cause to be issued to each juror named in the panel a summons in the prescribed form.

*[Section 26 amended by No. 6 of 1981 s. 16; No. 59 of 1984 s. 12.]*

### **Summoning officer may omit name from panel and excuse juror from attendance**

**27.** (1) The summoning officer, of his own motion in the jury district for the Supreme Court, a Circuit Court, or the District Court, may on the grounds specified in the Third Schedule and on such evidence as he deems sufficient, omit from a panel any name in the Jurors' Book and excuse from attendance at any criminal trial any person who has been summoned as a juror.

*[(2) repealed]*

(3) If at any time before the panel for any criminal trial is returnable the summoning officer excuses any juror from attendance, or ascertains that any juror cannot be served with a summons, he shall choose in rotation from the jurors whose names correspond with the numbers on the additional tickets drawn out by him pursuant to section 26 (2), such number of persons as is required to complete the panel and shall place their names on the panel in substitution for the names of the jurors who

are so excused, or who cannot be so served, and a juror whose name is so substituted shall be summoned accordingly and shall be bound to attend pursuant to summons notwithstanding that the summons was not served on him within the prescribed time.

*[Section 27 amended by No. 44 of 1973 s. 15; No. 59 of 1984 s. 13.]*

**Ticket of juror not attending  
to be returned to box**

**28.** (1) If the summoning officer ascertains that any ticket drawn from a box bears a number corresponding to the name of a juror who cannot be served or does not attend when summoned, the summoning officer shall forthwith place the ticket in the box marked "Jurors in Reserve".

(1a) If any ticket drawn from a box has not been used for the purpose of completing the panel the summoning officer shall forthwith return the ticket to the box from which it was drawn.

(2) The residue of the tickets drawn shall be placed by the summoning officer into the box marked "Jurors in Reserve" there to remain until all of the tickets in the box marked "Jurors in Use" have been drawn out in which case the summoning officer shall transfer the tickets then in the box marked "Jurors in Reserve" to the box marked "Jurors in Use", or until the tickets are required to be used afresh in connection with a new Jurors' Book.

*[Section 28 amended by No. 44 of 1973 s. 16; No. 59 of 1984 s. 14.]*

**Choosing of jurors for civil trials**

**29.** (1) Where an issue in a civil trial is to be tried or damages are to be assessed by a jury, the jury shall be chosen in the manner prescribed by subsection (2).

(2) (a) At a time and place which the summoning officer shall appoint for the striking of the jury, he shall in the presence of the parties and of their respective solicitors if they choose to attend and if not, then in their absence, cause the box marked "Jurors in Use" to be agitated, or to be rotated sufficiently to intermix the tickets in the box, and shall draw out of the box one after another as many tickets as are required.

(b) The numbers so required shall be ascertained by adding to 20 so many more as will enable each separate party to object to 6 names.

(c) Persons joining in claim, defence, or counter claim, shall be regarded as forming one party; and a person who is introduced under third party procedure and who disputes the plaintiff's claim shall be regarded as separate from the other parties, but if 2 or more persons so introduced join in defence they shall be regarded as collectively forming a separate party.

(d) The summoning officer upon drawing the tickets out of the box shall prepare a list of the names corresponding with the numbers set against the names in the Jurors' Book and shall hand a copy of such list to each party.

(e) Each separate party may object to 6 names on the list and shall object by making a note in writing of the names to which he objects and shall hand the note to the summoning officer.

(f) Where any party does not appear either in person or by his solicitor, the list of jurors may be reduced on his behalf by the summoning officer.

(g) The summoning officer without disclosing to any other party the names so objected to, shall strike out those names from the list, and out of the residue the summoning officer shall summon 6 jurors and no more, and shall not disclose to any of the parties the names of the persons summoned or to be summoned.

(h) If for any reason a juror so summoned cannot be served or is excused from attendance, the summoning officer may if any names not objected to remain on the list, summon another juror whose name remains on the list to serve instead of the juror who cannot be served or who has been excused, and the juror so substituted shall be bound to attend pursuant to summons notwithstanding that the summons was not served on him within the prescribed time.

(3) The summoning officer

(a) shall restore to the box marked "Jurors in Use" all of the tickets the numbers of which are set against the names of the jurors who have been objected to, and against the names of those who are not summoned;

(b) shall place the residue of the tickets in the box marked "Jurors in Reserve" there to remain until all of the tickets in the box marked "Jurors in Use" have been drawn out in which case the summoning officer shall transfer the tickets then in the box marked "Jurors in Reserve" to the box marked "Jurors in Use", or until the tickets are required to be used afresh in connection with a new Jurors' Book.

(4) On the day appointed for the trial the summoning officer shall deliver to the proper officer the list of jurors summoned and not excused and the proper officer shall call the jurors one by one from the list and the jurors so called on being duly sworn shall be the jury.

[Section 29 amended by No. 44 of 1973 s. 17; No. 6 of 1981 s. 17; No. 59 of 1984 s. 15.]

**Rights of parties to inspect panels  
for criminal trials**

**30.** The summoning officer shall cause a copy of every panel or pool of jurors who have been summoned to attend at any session or sittings for criminal trials to be kept in his office for 4 clear days at least before the day appointed for the attendance of the jurors and the parties in all criminal trials at that session or sittings and their respective solicitors may inspect the panel or pool without fee.

[*Section 30 amended by No. 6 of 1981 s. 18.*]

**Summoning of jurors**

**31.** Each juror whose name appears on any panel shall be summoned by the summoning officer by summons in or substantially in, the prescribed form which shall, except where this Act prescribes a shorter period, be served 5 clear days at least before his or her attendance is required, by the delivery of the summons to the juror in accordance with section 33.

[*Section 31 amended by No. 44 of 1973 s. 18; No. 6 of 1981 s. 19.*]

**Power of court to excuse jurors**

**32.** The Court before which or the Judge before whom a jurors' panel is returnable, whether for a criminal trial or for a civil trial, may on the grounds specified in the Third Schedule excuse from attendance any person whose name is included in the panel.

[*Section 32 amended by No. 59 of 1984 s. 16.*]

**PART VB—JURY POOLS**

[*Part VB inserted by No. 6 of 1981 s. 20.*]

**Trials for which jury pools  
may be summoned**

**32A.** (1) Juries for criminal trials in the jury districts for the Supreme Court sitting at Perth and the District Court sitting at Perth may be selected from a jury pool summoned under this Part.

(2) The Governor may, by order published in the *Gazette*, direct that juries for criminal trials in the Supreme Court, a Circuit Court or the District Court, in addition to those referred to in subsection (1), may be selected from a jury pool summoned under this Part.

(3) An order made under subsection (2) shall specify the jury district or districts to which it applies.

(4) The Governor may from time to time revoke or vary in whole or in part an order made under subsection (2).

(5) Notwithstanding that pursuant to subsection (1) or an order made under subsection (2) a jury for a trial may be selected from a jury pool in accordance with this Part, jurors for that trial may be chosen and summoned under Part VA and in that event the summoning officer shall cause the names of the persons so summoned to be noted in the Jurors' Book in the same manner as if those persons were summoned under this Part.

[*Section 32A: See note under Part heading.*]

### **Summoning officer for jury pools**

**32B.** Subject to an appropriate order having been made under section 32A in respect of the relevant jury district—

- (a) the Sheriff is the summoning officer in respect of jury pools required for trials by the Supreme Court or the District Court sitting at Perth; and
- (b) the Registrar of the District Court sitting at a place other than Perth is the summoning officer in respect of jury pools required for trials to be held at that place.

[*Section 32B: See note under Part heading.*]

### **Selection of jury pool**

**32C.** (1) Where a jury pool is required for trials to which the pool relates, the summoning officer shall, from time to time as occasion requires, select at random from the Jurors' Book for the jury district in which the trials are to be held the number of persons which in his estimate will ensure the attendance of sufficient persons at the jury pool.

(2) A selection under subsection (1) may be made by ballot manually or by computer.

(3) An officer of a court in which trials to which a jury pool relates are held shall, upon request by a summoning officer, furnish to him such particulars as he requires relating to trials to be held in that court for the purposes of determining the number of persons required to be summoned to attend at the jury pool.

[*Section 32C: See note under Part heading. S. 32C amended by No. 59 of 1984 s. 17.*]

**Summoning officer to issue summons**

**32D.** (1) The summoning officer shall issue to each person selected for the purposes of section 32C a summons in the prescribed form requiring the person to attend at a place specified for the assembly of the jurors in the jury pool and at the time specified in the summons until discharged pursuant to section 32I.

(2) A summons issued under subsection (1) shall be served on the person to whom it is issued at least 5 days before the time specified therein for his attendance at the jury pool unless a judge of the court in which trials to which the jury pool relates are held otherwise orders in which case the person to whom the summons is issued shall be bound to attend notwithstanding that the summons was not served on him within the time specified by this subsection.

(3) The summoning officer may on such evidence as he deems sufficient, omit from a jury pool any name in the Jurors' Book and excuse from attendance at any criminal trial any person who has been summoned as a juror.

*[Section 32D: See note under Part heading.]*

**Summoning officer may withdraw summons**

**32E.** (1) Where it appears to the summoning officer after the issue of summonses to the persons selected to attend at a jury pool and before the attendance of such persons that the number of persons so selected is greater than the number that will be required, the summoning officer may reduce the number of persons required to attend at the jury pool.

(2) A reduction under subsection (1) shall be performed by ballot manually.

(3) A person who is excluded under this section from the number of persons required to attend at the jury pool shall be informed accordingly by the summoning officer and informed that the summons is withdrawn and his name shall forthwith be restored to the Jurors' Book.

*[Section 32E: See note under Part heading.]*

**Summoning officer to provide details to jury pool supervisor**

**32F.** (1) The summoning officer shall furnish to the jury pool supervisor of a jury pool to which persons have been summoned under section 32D at the time and place at which the persons are required to assemble—

- (a) a list of the names of the persons so summoned, being persons who are liable to serve as jurors and who have not been duly excused by the summoning officer; and
- (b) the names of the persons on the list on separate cards each card being as nearly as possible of equal size.

(2) The jury pool supervisor shall place the cards furnished to him under subsection (1) in a box to be kept at the jury assembly room.

[*Section 32F: See note under Part heading. S. 32F amended by No. 59 of 1984 s. 18.*]

### **Jury pool supervisor to explain certain matters to persons answering summons**

**32FA.** Immediately after calling the roll of persons summoned to form a jury pool the jury pool supervisor shall explain or cause to be explained to the persons who have appeared in answer to the summons their obligation to disclose to him or to the Court the existence of any of the factors referred to in the Fourth Schedule.

[*Section 32FA inserted by No. 59 of 1984 s. 19.*]

### **Pool precept**

**32G.** (1) Where a jury is required at any trial to which a jury pool relates, the presiding judge or a person appointed by him for that purpose may issue a pool precept directed to the jury pool supervisor for that jury pool requiring him to allocate jurors from the jury pool for that trial.

(2) A pool precept shall—

- (a) be in the prescribed form;
- (b) specify the time and the court at which the attendance of the jurors is required; and
- (c) subject to subsection (3), specify the number of jurors required to be allocated from the jury pool.

(3) Unless the judge or other person issuing a pool precept otherwise orders in particular circumstances, the number of jurors to be specified in a pool precept shall be the sum of 20 and the number of peremptory challenges available to the accused person or persons in the trial.

[*Section 32G: See note under Part heading.*]

### **Selection of jurors from jury pool**

**32H.** (1) Where a pool precept is delivered to a jury pool supervisor, he shall select by ballot from the box referred to in section 32F (2) the number of jurors specified in the pool precept.

(2) At the time and court specified in the pool precept for the attendance of the jurors, the jury pool supervisor, or an officer on his behalf, shall return the pool precept and annex to it a list of the names of the persons selected by the jury pool supervisor in pursuance of the pool precept.

(3) The jury pool supervisor shall also furnish with a pool precept furnished under subsection (2) the cards relating to the persons selected in pursuance of the pool precept.

(4) The persons selected in pursuance of a pool precept shall attend at the court and at the time specified in the pool precept.

(5) The court before which a pool precept is returnable may excuse from attendance any person whose name is included in the list of persons selected by the jury pool supervisor in pursuance of the pool precept and in that event, if the court so directs, the jury pool supervisor shall in accordance with this section select a further person in place of the person excused.

(6) A person selected in pursuance of a pool precept who is not sworn as a member of the jury for which the precept was issued or who served on that jury shall, unless discharged from attending at the jury pool, return to the jury assembly room and the proper officer shall return the card relating to every such person to the jury pool supervisor.

*[Section 32H: See note under Part heading.]*

### **Period of attendance at jury pool and discharge**

**32I.** (1) Subject to this section, a person summoned to attend at a jury pool shall attend for such period, not exceeding 5 consecutive court sitting days, as the summoning officer determines in respect of that jury pool.

(2) A person who is sworn as a member of a jury shall be required to attend at the court until discharged notwithstanding that he has attended at the jury pool for a longer period than 5 consecutive court sitting days.

(3) The summoning officer may discharge any person from attending at a jury pool for the whole or any part of the period determined under subsection (1) if it appears to the summoning officer that the number of jurors in the jury pool exceeds the number required for trials to which the pool relates and persons to be discharged under this subsection shall be selected by ballot.

*[Section 32I: See note under Part heading.]*

PART VC—SERVICE OF SUMMONSES  
AND CLAIMS FOR EXEMPTION

[Heading inserted by No. 6 of 1981 s. 21.]

**Service of summons**

**33.** (1) A summons or notice required or authorized by or under this Act to be sent, served or given to any person by a summoning officer shall be deemed to have been duly sent, served or given—

- (a) if delivered personally to that person, or if left at the address appearing in the Jurors' Book in respect of that person; or
- (b) if sent by prepaid post addressed to that person at that address.

(2) Service of a summons or notice in accordance with subsection (1) (a) shall be effected by a police officer or a Sheriff's officer who shall prepare and complete, in the manner required by subsection (3), a list (referred to in this section as a "summons and notice list") in the prescribed form.

(3) The officer who serves the summons or notice—

- (a) shall insert in the respective columns of the summons and notice list the particulars indicated by the heading to each of those columns;
- (b) shall certify the summons and notice list in, or substantially in, the manner indicated in that form and shall sign and date the certificate; and
- (c) shall then send or deliver the certified summons and notice list, together with any summonses or notices that he has not been able to serve, to the summoning officer.

(4) Production of a summons and notice list so certified, signed and dated, is *prima facie* evidence of the service of the summonses or notices stated to have been served, and of the other facts stated, in the summons and notice list.

(5) Service of a summons or notice in accordance with subsection (1) (b) shall be *prima facie* deemed to have been effected at the time when it would be delivered in the ordinary course of post.

[Section 33 substituted by No. 6 of 1981 s. 22.]

**Notice to be attached to summons**

**33A.** The summoning officer shall cause to be served with every summons for attendance as a juror issued under this Act a notice informing the person to whom the summons is issued that that person's name has been recorded in the Jurors' Book and the grounds on which and the procedure by which that person may be excused from serving as a

juror, as of right, or, on the grounds specified in the Third Schedule, and the manner in which a claim that that person is not eligible or not qualified to serve as a juror may be made.

[*Section 33A substituted by No. 59 of 1984 s. 20.*]

### **Duty of secrecy in summoning jurors**

**34.** (1) Except for the purpose of carrying the provisions of this Act into effect, or in answer to any questions which he is lawfully compellable to answer, a police officer or Sheriff's officer who, having been entrusted with the serving of a summons to a juror, communicates or makes known, whether directly or indirectly, to any person any information or matter relating to jurors which has come to his knowledge in carrying out his duties in relation to the service of summonses to jurors commits an offence.

Penalty: \$100.

(2) If a summoning officer, or any of his assistants, or any officer or Justice of the Peace taking part in, or present at the choosing of a jury panel or a jury pool, including any person concerned in the operation of or having access to a computer used for the purpose, reveals the names of persons on the panel or the jury pool, or any of them to any person, except for the purpose of carrying this Act into effect, or in answer to a question which he is lawfully compellable to answer, he commits an offence.

Penalty: \$100.

[*Section 34 amended by No. 113 of 1965 s. 8 (1); No. 44 of 1973 s. 20; No. 6 of 1981 s. 23.*]

### **Claims for exemption and adjustment of Jurors' Books**

**34A.** (1) A person summoned as a juror who claims to be not eligible or not qualified for such service—

- (a) may send to the summoning officer a claim in writing supported by a statutory declaration as to the facts on which the claim is based; or
- (b) may send to the summoning officer a certificate issued with respect to him or her under subsection (2).

(2)<sup>6</sup> Where the Sheriff is satisfied that a person—

- (a) is suffering from an infirmity which appears to him will permanently disable that person from serving as a juror;
- (b) is not qualified to serve as a juror by virtue of section 5 (b) (i); or
- (c) is not eligible to serve as a juror because of the age of that person,

the Sheriff shall issue a certificate to that person declaring that that person is not eligible or not qualified to serve as a juror, as the case requires, but if a person who is not qualified to serve as a juror by virtue of section 5 (b) (i) receives a free pardon the Sheriff shall cancel the certificate.

(2a) Where, pursuant to subsection (2), the Sheriff issues a certificate that a person is not eligible or not qualified to serve as a juror, the Sheriff shall notify the Electoral Commissioner<sup>3</sup> of that fact and the Electoral Commissioner<sup>3</sup> shall remove the name of that person from any list of persons liable to serve as a juror under this Act.

(3) If it appears to the Sheriff that a person whose name appears in a Jurors' Book is not eligible or not qualified to serve as a juror from serving as a juror, is dead, or no longer resides in the jury district or that the address of the person is unknown, the Sheriff shall cause the person's name to be removed from the Jurors' Book.

[Section 34A inserted by No. 6 of 1981 s. 24; amended by No. 59 of 1984 s. 21.]

### **Summoning officer to explain certain matters to persons answering summons**

**34B.** Immediately after calling the roll of persons summoned by a general jury precept the summoning officer shall explain or cause to be explained to the persons who have appeared in answer to the summons their obligation to disclose to him or to the Court the existence of any of the factors referred to in the Fourth Schedule.

[Section 34B inserted by No. 59 of 1984 s. 22.]

## **PART VI—PROCEEDINGS AT CRIMINAL TRIALS**

### **Summoning officer to return precept and panel with cards**

**35.** On the day named in a general jury precept for the appearance of the jurors for a criminal trial the summoning officer or his deputy shall in open court deliver the precept with the panel annexed to the proper officer; and give to the proper officer the names of the jurors written upon separate cards each card being as nearly as may be of equal size, and the proper officer shall then put the cards into a ballot-box to be used in accordance with the provisions of this Part.

[Section 35 amended by No. 44 of 1973 s. 21; No. 6 of 1981 s. 25.]

**Mode of empanelling jury for a criminal trial**

**36.** (1) (a) On any criminal trial the proper officer shall in open court agitate the ballot-box sufficiently to intermix the cards in the box, and shall then according to the practice of the Court proceed to draw cards one after another out of the box and call aloud the name on each card.

(b) Where a person whose name is called is present he or she shall indicate his or her presence.

(c) The proper officer shall continue thus until persons to the full number necessary to constitute a jury after excluding those who are challenged or excused, are present to serve as jurors at the trial.

(2) This Act does not affect the power of any Court at the prayer of those prosecuting for the Crown, to order any juror to stand aside until the panel has been gone through to the extent authorized by section 38 (2).

(3) If before the full number of jurors has been empanelled for the trial, all of the cards have been drawn out of the ballot-box, the cards of those jurors who have been so ordered to stand aside shall be returned to the box and shall be redrawn and thereafter those prosecuting for the Crown shall not be entitled to pray the Court to order those jurors to stand aside but may still exercise any remaining right of challenge peremptorily or for cause.

(4) The full number so drawn and present on being duly sworn shall be the jury to try the issues on the trial.

(5) The cards relating to persons who constitute a jury for a criminal trial shall be kept apart until the jury has given its verdict and the verdict has been recorded or until the jury is discharged at which time the cards shall be dealt with in the manner set out in subsection (6).

(6) After the jurors for a trial are sworn, the card relating to a person who was summoned but not sworn shall forthwith be returned—

(a) where that person was summoned pursuant to a general jury precept, to the box from which it was drawn; or

(b) where that person was summoned to attend at a jury pool, to the jury pool supervisor for return to the box referred to in section 32F (2),

unless that person has been, or is entitled to be, discharged from further attendance as a juror under section 42 or has otherwise been excused from further attendance.

(7) Subject to sections 32I (1) and 42, a person whose card has been returned to a box under subsection (6) shall be liable to serve as a juror for so long as the trial of any indictment remains to be commenced.

*[Section 36 amended by No. 44 of 1973 s. 22; No. 6 of 1981 s. 26.]*

**Proceeding with another criminal trial when jury has retired**

**37.** Where a jury has retired to consider its verdict in a criminal trial, the Court may before the jury which has retired has brought in its verdict or been discharged, proceed with any other criminal trial with a new jury drawn in manner prescribed by section 36, from the residue of the jurors other than the members of the jury which has retired, and other than jurors who have served for the limit of time prescribed by section 42.

**Right of challenge**

**38.** (1) Without affecting the right of challenge to the array or for cause shown which might have been claimed or exercised immediately prior to the coming into operation of this Act<sup>1</sup>, and without affecting the right of those prosecuting for the Crown to pray for an order to stand jurors aside to the extent authorized by subsection (2), any party at any criminal trial may challenge peremptorily 8 jurors, except where 2 or more than 2 persons are charged with the same offence and are put on trial together in which case each of those persons may challenge peremptorily 6 jurors.

(2) Those prosecuting for the Crown have and may exercise in any case the right of challenge peremptorily of 8 jurors and the right to pray for an order to stand 4 jurors aside.

(3) A right to challenge a juror must be exercised before the officer of the Court who is administering the oath, has begun to recite the words of the oath to the juror or where the juror reads the words of the oath from a card before the juror begins to recite those words, but not afterwards.

[Section 38 amended by No. 44 of 1973 s. 23.]

**Accused persons severing in their challenges**

**39.** Where several persons charged with the same offence are put on trial together and do not consent to join in their challenges, the proper officer of the Court shall draw out of the ballot-box a sufficient number of cards to permit each of the several persons, or each combination of those persons who consent to challenge jointly to exercise the right of peremptory challenge to the appropriate number prescribed by section 38.

**Incorporation of certain provisions  
of The Criminal Code**

40. The law in the case of criminal trials respecting notice to an accused person of his right of challenge, and challenge to the array and to individual jurors for cause, and the ascertainment of facts as to challenge, and the swearing of the jury and informing them of the charge, and the discharge, death, or incapacity of a juror and the separation and confinement of the jury, and view by the jury, and special and general verdicts, and the discharge of the jury, is that which is set forth in The Criminal Code.

**Number of jurors required to agree on  
verdict in criminal trials**

41. Where a jury in a criminal trial, not being a trial for an offence punishable with strict security life imprisonment or for the offence of murder, has retired to consider its verdict and remained in deliberation for at least 3 hours and has not then arrived at a unanimous verdict, the decision of not less than 10 of the jurors shall be taken as the verdict; and if after the jury has deliberated for 3 hours 10 or more of the jurors have not agreed upon their verdict the jury may be discharged from giving a verdict unless in the opinion of the Judge or Chairman it is desirable that the jury should deliberate further, and he so directs.

*[Section 41 amended by No. 30 of 1961 s. 2; No. 52 of 1984 s. 44.]*

**Limit of attendance of jurors**

42. A juror is not liable and shall not be required to attend for more than 5 days at the same sittings of the Supreme Court, a Circuit Court, or the District Court except for the purpose of finishing a part heard case.

*[Section 42 substituted by No. 44 of 1973 s. 24.]*

**Informalities in summoning jurors  
not to be cause for challenge**

43. (1) An omission, error, irregularity, or informality, in the time or mode of service of a jury summons, or in the summoning or return of a juror by a wrong name where there is no question as to his or her identity, or in or with respect to any precept, ticket, or panel, or any Jurors' list or Book or the preparation thereof, is not cause of challenge either to the array or to any juror, and does not invalidate or affect any verdict in any trial, whether civil or criminal.

(2) A matter which may have been objected to by way of challenge to the polls, or to the array, as the case may be, but which was not objected to by way of challenge, does not invalidate or affect any verdict in any trial, whether civil or criminal.

## PART VII—PROCEEDINGS AT CIVIL TRIALS

### **Deposit of expenses of a civil jury**

44. (1) (a) The party applying for or requiring a jury in a civil trial shall deposit with the summoning officer the prescribed sum per juror per diem and the deposit to cover the first day's payments shall be made on the striking of the jury.

(b) Unless a deposit is so made, the suit or action shall, notwithstanding the provisions of any other Act, proceed as if the application for a jury had not been made.

(2) That party shall also on the second and every subsequent day of the trial and before 10.00 a.m. on each of those days pay to the summoning officer the prescribed sum to cover the fees and travelling expenses of the jurors for each of those days.

(3) If the sums mentioned in subsection (2) are not paid as required by that subsection in respect of any day, the Court or Judge may, unless those sums are paid by any other party, discharge the jury and proceed to finish the hearing of, and determine, the trial without a jury, notwithstanding that the trial commenced with a jury, and notwithstanding the provisions of any other Act.

### **Challenge to the array**

45. (1) In a civil trial if a party desires to challenge the array, he must do so before any juror is sworn for the trial.

(2) A party in a civil trial has no right of challenge other than that which is provided under section 29, or under subsection (1).

### **Discharge of juror**

46. In a civil trial, if after a juror has been sworn it appears to the Court that he is not indifferent as between the parties, or that for any other good cause he ought not to be allowed or required to act as a juror on the trial, the Court may without discharging the whole of the jury, discharge that particular juror, and the trial shall proceed with the remaining jurors, being not less than 4 in number, and their verdict shall be taken as the verdict of a full jury and shall be a sufficient verdict.

**Jurors may be allowed heating and refreshment**

47. Jurors in a civil case after having been sworn may in the discretion of the Judge be allowed, at any time before giving their verdict and when out of Court, the use of a fire or heating appliance and reasonable refreshment.

**Incapacity or non-attendance of juror**

48. In the event of death or illness of any juror during any civil trial, or if for any reason fewer than 6 of the jurors summoned attend at the commencement of the trial the Judge may, if he thinks fit, direct that the trial shall proceed with a number of the jurors reduced in no case to less than 4, and any verdict given by, or answer to any question given by, or assessment of any damages made by, the reduced number of jurors shall be taken as the verdict, answer, or assessment of a full jury and shall be a sufficient verdict.

**Majority decision to be accepted after 3 hours**

49. Where the jury upon any civil trial has remained for at least 3 hours in deliberation and all of the jurors are unable to agree as to the verdict to be given or the answer to be given to any question submitted to them by the Court or Judge, or as to the amount of damages to be assessed, the decision of 5 of them if the jury consists of 6 jurors at the time when the decision is made; or the decision of 4 of them if the jury consists of 5 jurors or of 4 jurors at the time when the decision is made; as to the verdict, answer, or assessment, shall be taken and entered as the verdict, answer, or assessment, of the whole of the jury.

**New trial on disagreement**

50. (1) Where a jury in a civil trial has remained in deliberation for such period as the Judge thinks reasonable, being not less than 4 hours, and 5 of the jurors of a jury of 6, or 4 of a jury of 5 or of 4, do not agree in any such verdict, answer, or assessment, as is referred to in section 49, the Judge may discharge the jury.

(2) The case may then without any new process for that purpose be again set down for trial or assessment as the case may be, either at the same or any subsequent sittings as the Court or Judge orders and is hereby empowered to order.

(3) The costs of any trial of a case or of any issue in respect of which a jury is discharged without returning a verdict, answer, or assessment, shall follow the order made as to costs on the final determination of the case or issue.

## PART VIII—VIEW, TALES

### **View by jury on a civil trial**

**51.** (1) The Supreme Court or a Judge thereof or the District Court or a Judge thereof, as the case may be, may, on the application of a party to any civil trial, grant an order, before or at the trial, that any 2 or more of the jury shall at the expense in all things in the first instance of the party applying, have a view of any place or property in question; but the expenses of the view and of such order shall be costs in the cause.

(2) The viewers shall be nominated by the parties or their respective solicitors, or in case they cannot agree, by the summoning officer and shall be shown the place by a person or by 2 persons so nominated for the purpose.

(3) If the order is made before the trial the names of the viewers shall be returned by the summoning officer, and they shall be the first in the panel who shall be called and sworn as jurors to try the issue, and shall not be challenged except for cause shown.

*[Section 51 amended by No. 44 of 1973 s. 25.]*

### **Party in criminal trial may pray a tales**

**52.** (1) If when a criminal trial is called on, a sufficient number of jurors summoned to attend the court are not present, or where because of challenges of jurors the case is likely to remain untried for want of a full jury, the Crown or any other party may pray a tales and the Court, or Judge, may command the summoning officer forthwith to appoint as many of the bystanders or as many persons as can be found, being in either case persons who are qualified and liable to serve as jurors for the jury district in which the trial is taking place, as are sufficient to make up the full number of jurors required by this Act for the trial.

(2) The Judge shall cause the names, and additions of the persons so appointed to be included in the jury panel and those persons shall be deemed to have been called upon the jury precept and shall be subject to challenge for cause and to any remaining right of challenge peremptorily.

*[Section 52 amended by No. 44 of 1973 s. 26.]*

PART IX—OFFENCES, FINES, PENALTIES

**Neglect by officials to perform duties**

53. If the Sheriff or any summoning officer or jury pool supervisor, or the Electoral Commissioner<sup>3</sup>, or any jury officer, or police officer, does not well and faithfully carry out any duty imposed upon him by this Act, the Supreme Court or a Judge thereof may, unless a sufficient cause for the omission is shown, impose on him a fine not exceeding \$100.

[Section 53 amended by No. 113 of 1965 s. 8 (1); No. 44 of 1973 s. 27; No. 6 of 1981 s. 27.]

**Offences by Sheriff and others**

54. The Supreme Court or a Judge thereof may summarily inflict such fine as the Court or Judge deems fit upon the Sheriff or other summoning officer, or any jury officer, clerk, police or other officer, who without lawful justification or excuse—

- (a) includes or omits from any jurors' list or Jurors' Book any name or names which should or should not, as the case may be, appear therein, or causes any misdescription in a jurors' list or Jurors' Book; or
- (b) causes any alteration, omission, insertion, or misdescription in a jurors' list, Jurors' Book, jury summons, panel, card, or ticket; or
- (c) substracts, destroys, or permits any person to have access to, any jurors' list, Jurors' Book, jury summons, panel, card or ticket; or
- (d) directly or indirectly, takes or receives any money or reward, or any promise of or contract for money or reward, for excusing, or under the pretence of excusing, any person from being summoned to serve, or from serving as a juror; or
- (e) fails to do or to permit the doing of any act, matter or thing in the manner or at or within the time prescribed; or
- (f) wilfully records the appearance of any person summoned and returned to serve as a juror, who did not really appear.

[Section 54 amended by No. 44 of 1973 s. 28.]

**Penalties on jurors and others**

55. (1) Any Court may impose summarily such fine as the Court thinks fit upon—

- (a) a person who, having been duly summoned to attend as a juror in the Court, does not attend in pursuance of the summons, or having been thrice called does not answer to his or her name; or
- (b) a talesman who being present and having been called does not appear, or wilfully withdraws himself or herself from the presence of the Court; or

- (c) a person who personates or attempts to personate a juror whose name is on a jury panel for the purpose of sitting as that juror; or
- (d) a viewer who, having been duly summoned, does not attend; or
- (e) a juror who knowingly receives or takes from any person whomsoever any sum whatever beyond that allowed by the prescribed scale under pretence of fees or remuneration for attending a trial.

(2) Upon consideration of a report made by a summoning officer, any Court may impose summarily such fine as the Court thinks fit upon—

- (a) a person who, having been duly summoned to attend as a juror at the jury assembly room of a jury pool, does not attend in pursuance of the summons or having been called 3 times does not answer to his or her name;
- (b) a person who having been selected as a juror in pursuance of a pool precept fails to attend at the court and at the time specified in the pool precept.

*[Section 55 amended by No. 6 of 1981 s. 28.]*

**Fine for non-attendance may be remitted on cause shown**

56. (1) Where a fine is imposed on a juror for non-attendance at a Court or jury assembly room, a summons may forthwith, or at any time afterwards, be signed and issued by the presiding Judge of the Court calling on the juror to show cause to the Court, or to the Supreme Court if the fine has been imposed for non-attendance at a Circuit Court, on a day specified in the summons, why execution should not issue for the fine.

(2) To a summons so issued a memorandum shall be attached informing the juror that cause may be shown by affidavit sworn before a commissioner for affidavits or a Justice of the Peace and transmitted by post or delivered to the Registrar or Judge of the Court imposing the fine.

(3) The Judge of the Court upon reading the affidavit may if he deems fit remit or reduce the fine but in default of any order to that effect recovery of the full amount of the fine shall be enforced.

*[Section 56 amended by No. 44 of 1973 s. 29; No. 6 of 1981 s. 29.]*

**Jurors not to be photographed**

**57.** (1) A person who takes or causes to be taken or publishes or causes to be published any photograph or likeness or other pictorial representation of any person summoned to attend or empanelled as a juror for any trial whether civil or criminal commits a contempt of the Supreme Court and is punishable accordingly by that Court.

*[(2) repealed]*

(3) Without affecting any other liability of any person under this section or otherwise, a company or other body corporate is liable to any punishment or penalty for any offence under this section as if it were a private person so far as the punishment or penalty is enforceable against a company or body corporate; and if any director, manager, secretary, or officer, of a company or any member of the managing body of a body corporate commits, or knowingly authorizes or permits, an offence under this section he also is liable to the punishment or penalty for the offence.

(4) Nothing in this section applies to the publication of information with regard to any proceedings under this section whether for contempt of court or for a punishment or penalty.

*[Section 57 amended by No. 30 of 1961 s. 3; No. 34 of 1976 s. 3.]*

PART X—MISCELLANEOUS

**Application of English procedure  
where no special provision**

**58.** On a trial by jury, when no other mode of proceeding is specially provided, the jurors and jury, and every trial by them shall, as far as may be practicable, be subject to the same rules and manner of proceeding as would be observed in the High Court of Justice in England on a like trial.

**Recovery of fines**

**59.** (1) Fines imposed under this Act by the Supreme Court, or a Circuit Court, or a Judge thereof, are enforceable in the same manner as a judgment or order of the Supreme Court for the payment of money or a penalty.

(2) Fines imposed under this Act by a District Court, or a Judge thereof, are enforceable in the same manner as a judgment or order of the District Court for the payment of money or a penalty.

(3) The provisions of subsections (1) and (2) do not derogate from those of sections 682 or 682A of The Criminal Code.

*[Section 59 amended by No. 44 of 1973 s. 30.]*

**Operation of Coroners Act**

**60.** Nothing contained in this Act alters or affects the Coroners Act, or any of the laws in operation in the State relating to coroners' inquests.

**Rules of Court**

**61.** The powers to make, alter, and annul rules conferred by Part X of the *Supreme Court Act 1935*, include power to make such rules, and prescribe such forms, as are considered necessary or convenient for the purpose of carrying into effect the provisions of this Act.

**Regulations as to jury pools**

**62.** (1) The Governor may make regulations prescribing all matters that are required or permitted to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of Part VB.

(2) Regulations may be made under subsection (1)—

- (a) so as to apply throughout the State or to a specified jury district or districts;
- (b) so as to confer on a specified person or a specified class of persons a discretionary authority.

(3) The Governor may by regulations under this Act prescribe the fees and allowances to be paid to persons summoned and attending as jurors in courts of civil jurisdiction, and as jurors in courts of criminal jurisdiction and on a coroner's inquest, and may differentiate the amount of the fees and allowances to be payable in prescribed parts of the State.

[Section 62 amended by No. 6 of 1981 s. 30.]

**FIRST SCHEDULE**

<i>No. of Act</i>	<i>Title of Act</i>	<i>Extent of Repeal</i>
50 Vict., No. 27	<i>The Kimberley Districts General Sessions Act 1886</i>	The whole.
No. 10 of 1898	<i>Jury Act 1898</i> .....	The whole.
No. 11 of 1905	<i>Jury Act Amendment Act 1905</i> .....	The whole.
No. 35 of 1911	<i>Jury Act Amendment Act 1911</i> .....	The whole.
No. 28 of 1913	<i>The Criminal Code</i> .....	Section 629.
No. 24 of 1921	<i>Courts of Session Act 1921</i> .....	Sections 21, 22, 23.
No. 12 of 1928	<i>Jury Act Amendment Act 1928</i> .....	The whole.
No. 36 of 1935	<i>Supreme Court Act 1935</i> .....	Section 47.
No. 5 of 1937	<i>Jury Act Amendment Act 1937</i> .....	The whole.
No. 10 of 1937	<i>Jury Act Amendment Act (No. 2) 1937</i> .....	The whole.
No. 10 of 1942	<i>Jury (Emergency Provisions) Act 1942</i> .....	The whole.
No. 38 of 1953	<i>Jury Act Amendment Act (No. 2) 1953</i> .....	The whole.

SECOND SCHEDULE

PART I

*Persons not eligible to serve as jurors*

1. A person who is or has been a—
  - (a) Judge of the Supreme Court, Family Court or District Court;
  - (b) Master or Registrar of the Supreme Court, Family Court or District Court;
  - (c) President or Commissioner of the Industrial Relations Commission<sup>6</sup> established under the *Industrial Relations Act 1979*<sup>7</sup>;
  - (d) Parliamentary Commissioner for Administrative Investigations;
  - (e) Stipendiary Magistrate;
  - (f) Legal practitioner, whether or not in practice, enrolled on the Roll of Practitioners pursuant to the *Legal Practitioners Act 1893*.
2. A person who is or has been, within a period of 5 years before being summoned to serve as a juror—
  - (a) Member or Officer of the Legislative Assembly;
  - (b) Member or Officer of the Legislative Council;
  - (c) Special Magistrate or member of a Children's Court under the *Child Welfare Act 1947*;
  - (d) Justice of the Peace;
  - (e) Sheriff of Western Australia or officer of the Sheriff of Western Australia;
  - (f) Bailiff or Assistant Bailiff of any Court constituted under any Act;
  - (g) Associate or usher of a Judge of the Supreme Court, Family Court or District Court;
  - (h) Police officer, Special Constable or Aboriginal Aide appointed under the *Police Act 1892*;
  - (i) Officer in the Crown Law Department of the Public Service of the State other than an officer in the Public Trust Office or the Office of Titles;
  - (j) Officer or employee in the Department of Prisons of the Public Service of the State;
  - (k) Officer or employee in the Department for Community Services<sup>8</sup> of the Public Service of the State;
  - (l) Officer or employee in the Police Department of the Public Service of the State;
  - (m) Member of the Parole Board or honorary probation officer under the *Offenders Probation and Parole Act 1963*.

PART II.

*Persons who are excused as of right from serving as jurors if they claim to be excused by virtue of that fact, namely—*

1. Emergency services.

Full time operational staff of the State Emergency Service<sup>9</sup>.

Officers and firemen of permanent fire brigades.

Pilots employed by the Royal Flying Doctor Service.

## 2. Health.

Medical practitioners registered under the *Medical Act 1894* if actually practising.

Dentists registered under the *Dental Act 1939* if actually practising.

Veterinary surgeons registered under the *Veterinary Surgeons Act 1960* if actually practising.

Psychologists registered under the *Psychologists Registration Act 1976* if actually practising.

Nurses registered under the *Nurses Act 1968* if actually practising.

Chiropractors registered under the *Chiropractors Act 1964* if actually practising.

Physiotherapists registered under the *Physiotherapists Act 1950* and in private practice.

Pharmaceutical chemists registered under the *Pharmacy Act 1964* and actually in business whether as principal or manager for a principal.

## 3. Religion.

Persons in holy orders, or who preach or teach in any religious congregation, but only if they follow no secular occupation except that of a schoolteacher.

## 4. Family.

Pregnant women.

Persons residing with, and having full time care of, children under the age of 14 years.

Persons residing with, and having full time care of, persons who are aged, in ill-health, or physically or mentally infirm.

[*Schedule 2 substituted by No. 59 of 1984 s. 23.*]

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THIRD SCHEDULE

Sections 27, 32

*Grounds on which a person summoned to attend as a juror may be excused from such attendance by the summoning officer or the Court*

## Illness.

Undue hardship to himself or another person.

Circumstances of sufficient weight, importance or urgency.

Recent jury service.

[*Third Schedule inserted by No. 59 of 1984 s. 24.*]

FOURTH SCHEDULE

Sections 32FA, 34B

*Matters to be disclosed by persons appearing in answer to the summons to serve as jurors to the jury pool supervisor or to the summoning officer as the case requires*

Any incapacity by reason of disease or infirmity of mind or body, including defective hearing, that may affect the discharge of the duty of a juror.

Lack of understanding of the English language.

Any family relationship with, any bias or likelihood of bias by reason of being acquainted with, or employed by the judge or any legal practitioner engaged in the trial, and in the case of a civil trial, the plaintiff or defendant in the trial, and in the case of a criminal trial, the prosecutor or accused in the trial, or with the victim of the crime in question.

Any other reason why there may be bias or likelihood of bias.

[*Fourth Schedule added by No. 59 of 1984 s. 24.*]

NOTES

<sup>1</sup> This reprint is a compilation as at 2 December 1987 of the *Juries Act 1957* and includes all amendments effected by the other Acts referred to in the following Table.

**Table of Acts**

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Juries Act 1957</i>	50 of 1957	9 December 1957	1 July 1960 (see <i>Gazette</i> 6 March 1959 p. 539)	
<i>Juries Act Amendment Act 1959</i>	35 of 1959	30 October 1959	30 October 1959	
<i>Juries Act Amendment Act 1961</i>	30 of 1961	11 June 1962	11 June 1962	
<i>Decimal Currency Act 1965</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (see section 2 (2)); balance on assent	
<i>Age of Majority Act 1972, section 6(2)</i>	46 of 1972	18 September 1972	1 November 1972 (see <i>Gazette</i> 13 October 1972 p. 4069)	
<i>Juries Act Amendment Act 1973</i>	44 of 1973	18 October 1973	1 January 1974 (see <i>Gazette</i> 14 December 1973 p. 4528)	
<i>Juries Act Amendment Act 1975</i>	64 of 1975	24 October 1975	Sections 3 and 4: 1 January 1976 (see <i>Gazette</i> 7 November 1975 p. 4123); balance on assent	
<i>Juries Act Amendment Act 1976</i>	34 of 1976	9 June 1976	3 September 1976 (see section 2 and <i>Gazette</i> 3 September 1976 p. 3271)	

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Juries Amendment Act 1981</i>	6 of 1981	18 May 1981	Section 4 (a) and (b), and only that part of section 22 which repeals and substitutes section 33: 1 July 1981 (see <i>Gazette</i> 26 June 1981 p. 2285); sections 7 (a), (b), (c), (d), (e), (f), (g) and (i), and 8: 30 October 1981 (see <i>Gazette</i> 30 October 1981 p. 4467); sections 6, 7 (h) and (j), 17 and that part of section 22 which inserts section 33A: 1 July 1982 (see <i>Gazette</i> 12 March 1982 p. 801); balance 12 March 1982 (see <i>Gazette</i> 12 March 1982 p. 801)	
<i>Acts Amendment (Abolition of Capital Punishment) Act 1984, PART VI</i>	52 of 1984	5 September 1984	3 October 1984	
<i>Juries Amendment Act 1984</i>	59 of 1984	24 October 1984	1 July 1985 (see <i>Gazette</i> 14 December 1984 p. 4115)	

N.B. The *Juries Act 1957* is affected by the *Dental Act 1939* (section 62) and the *Psychologists Registration Act 1976* (section 22 (4)).

<sup>2</sup> Under the *Reprints Act 1984* section 7 (3) (g) this title was substituted for "*Electoral Districts Act 1947*" which was changed by Act No. 40 of 1987 section 86.

<sup>3</sup> Under the *Reprints Act 1984* section 7 (3) (h) this title was substituted for "Chief Electoral Commissioner" which was changed by Act No. 40 of 1987 section 19 (2).

<sup>4</sup> Repealed by Act No. 12 of 1984 section 77.

<sup>5</sup> Section 25 of Act No. 59 of 1984 reads as follows—

Saving " 25. A certificate of permanent exemption issued or purporting to have been issued pursuant to section 34A (2) of the principal Act as in force before the day that this Act comes into operation and in force before that day shall continue to have effect for the purposes of the principal Act after that day and, notwithstanding anything in the principal Act, the person with respect to whom the certificate is issued is not liable to serve as a juror. "

<sup>6</sup> Under the *Reprints Act 1984* section 7 (3) (h) this title was substituted for "the Western Australian Industrial Commission" which was changed by Act No. 94 of 1984 section 8.

<sup>7</sup> Under the *Reprints Act 1984* section 7 (3) (g) this short title was substituted for "*Industrial Arbitration Act 1979*" which was changed by Act No. 94 of 1984 section 4.

<sup>8</sup> Under the *Reprints Act 1984* section 7 (3) (h) this title was substituted for "Department for Community Welfare" which was changed by Act No. 121 of 1984 section 7.

<sup>9</sup> Under the *Reprints Act 1984* section 7 (3) (h) this title was substituted for "Western Australian Emergency Service".