

Western Australia

## **Juries Legislation Amendment Act 2011**

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No. 13 of 2011

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# Juries Legislation Amendment Act 2011

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Western Australia

## **Juries Legislation Amendment Act 2011**

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**No. 13 of 2011**

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***An Act to amend the *Juries Act 1957* and the *Criminal Procedure Act 2004*.***

*[Assented to 2 May 2011]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary matters**

**1. Short title**

This is the *Juries Legislation Amendment Act 2011*.

**2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.



## **Part 2 — Amendments about peremptory challenges**

### **Division 1 — *Criminal Procedure Act 2004* amended**

**3. Act amended**

This Division amends the *Criminal Procedure Act 2004*.

**4. Section 104 amended**

(1) Delete section 104(3) and insert:

(3) The prosecutor may challenge peremptorily —

- (a) if there is one accused, 3 jurors;
- (b) if there are 2 or more accused, the number of jurors equal to 3 times the number of accused, whether or not any of the accused consent to join in their challenges.

(2) In section 104(4) delete “5 jurors” and insert:

3 jurors

### **Division 2 — *Juries Act 1957* amended**

**5. Act amended**

This Division amends the *Juries Act 1957*.

**6. Section 32G amended**

In section 32G(3) delete “shall be the sum of 20 and the number of peremptory challenges available to the accused person or persons in the trial.” and insert:

is 20 plus the total number of peremptory challenges available to the accused person or persons and to the prosecutor in the trial.

## **Part 3 — Amendments about liability to serve as a juror and being excused**

### **Division 1 — *Juries Act 1957* amended**

**7. Act amended**

This Division amends the *Juries Act 1957*.

**8. Section 3 amended**

In section 3(1) insert in alphabetical order:

*Australian legal practitioner* has the meaning given by the *Legal Profession Act 2008* section 5;

*Electoral Commissioner* means the Electoral Commissioner appointed under the *Electoral Act 1907*;

*mental illness* means an underlying pathological infirmity of the mind, whether of short or long duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary stimuli;

*mental impairment* means intellectual disability, mental illness, brain damage, dementia or senility;

*proper officer* has the meaning given by subsection (2);

**9. Section 4 amended**

(1) In section 4 delete “Subject” and insert:

(1) Subject

(2) At the end of section 4 insert:

- (2) Subsection (1) does not apply to a person who is enrolled as stated in that subsection and who is —
- (a) a person to whom the *Electoral Act 1907* section 17A applies; or
  - (b) a person who is enrolled by virtue of the *Electoral Act 1907* section 17B(1).

**10. Section 5 amended**

(1) At the beginning of section 5 insert:

- (1) In this section —
- conviction** does not include —
- (a) a conviction that has been quashed or set aside; or
  - (b) a conviction in respect of which a pardon has been granted; or
  - (c) a conviction that is a spent conviction —
    - (i) for the purposes of the *Spent Convictions Act 1988*; or
    - (ii) if the conviction is for an offence under the law of a place outside Western Australia, for the purposes of a law of that place that substantially corresponds with the *Spent Convictions Act 1988*;
- relevant period** has the meaning given by subsection (2).

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**Part 3** Amendments about liability to serve as a juror and being excused

**Division 1** Juries Act 1957 amended

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- (2) For the purposes of determining under this section if a person is eligible to serve as a juror, the relevant period is the 5 years immediately before —
- (a) if a summons has been issued under Part VA or VB to the person, the first date on which the person is required by the summons to attend; or
  - (b) if a summons has not been so issued, the first date on which the person would have to attend under a summons if it were so issued.
- (2) In section 5:
- (a) delete “Notwithstanding” and insert:
- (3) Notwithstanding
- (b) delete paragraph (a) and insert:
    - (a) is not eligible to serve as a juror at a trial if he or she has reached 75 years of age; and
    - (ba) is not eligible to serve as a juror at a trial if he or she is within a class of person listed in Schedule 1 Division 1; and
    - (bb) is not eligible to serve as a juror at a criminal trial if he or she is within a class of person listed in Schedule 1 Division 2; and
  - (c) in paragraph (b) after “as a juror” insert:  
  
at a trial
  - (d) in paragraph (b)(i)(IV) delete “period,” and insert:  
  
period;

- (e) in paragraph (b)(i) delete the passage beginning with “unless” and ending with “1988;”;
- (f) in paragraph (b)(ii) delete “has at any time within 5 years” and insert:  
  
has, in the relevant period
- (g) delete paragraph (b)(iii) and (iv) and insert:
  - (iii) has, in the relevant period in Western Australia, been convicted of 2 or more offences the statutory penalty for which is or includes imprisonment; or
  - (iv) has, in the relevant period in Western Australia, been convicted of 3 or more offences against the *Road Traffic Act 1974*;
- (h) delete paragraph (c) and insert:
  - (c) is not qualified to serve as a juror at a trial if he or she is on bail or in custody awaiting trial on a charge of an offence or sentence for an offence; and
  - (d) is not qualified to serve as a juror at a trial if he or she is any of the following —
    - (i) an involuntary patient as defined in the *Mental Health Act 1996* section 3;
    - (ii) a represented person as defined in the *Guardianship and Administration Act 1990* section 3(1);
    - (iii) a mentally impaired accused as defined in the *Criminal Law (Mentally Impaired Accused) Act 1996* section 23;

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**Division 1** Juries Act 1957 amended

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(iv) a person who, under the *Criminal Law (Mentally Impaired Accused) Act 1996* Part 3, is not mentally fit to stand trial.

(i) after paragraph (b)(i) and (ii) insert:

or

(j) after paragraph (b) insert:

and

(3) At the end of section 5 insert:

(4) Notwithstanding that a person is liable to serve as a juror at a trial by virtue of section 4, that person is not liable to serve as a juror at the trial if he or she is excused under Part VC.

**11. Part IV heading replaced**

Delete the heading to Part IV and insert:

**Part IV — Jurors' books, boxes and tickets**

**12. Section 14 amended**

(1) Delete section 14(2)(b) and insert:

(b) have not reached 75 years of age.

- (2) In section 14(3) delete “cause to be printed and sent to the sheriff before 30 April in each year such number of each list as the sheriff requisitions.” and insert:

ensure the sheriff is given each list before 30 April in each year.

- (3) Delete section 14(3a)(b) and insert:

(b) have not reached 75 years of age.

- (4) Delete section 14(8), (10), (11) and (12).

**13. Section 16A inserted**

After section 15 insert:

**16A. Sheriff to prepare jurors’ book for each district**

- (1) Before 1 July in each year the sheriff, in accordance with this section, must cause to be prepared for each jury district a list of names of persons in the district called the jurors’ book.
- (2) The jurors’ book for a jury district must be compiled from the jury list prepared for the district under section 14.
- (3) If subsection (4)(d) or section 26(3)(d) or 32D(1AA)(d) or 34G(2)(d) applies to a person, the name of the person must be included in the jurors’ book for the jury district in which the person does reside.
- (4) In preparing the jurors’ book for a jury district, the sheriff must omit the name of any person whom the sheriff is satisfied —
  - (a) is not eligible or not qualified to serve as a juror under section 5; or

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**Part 3** Amendments about liability to serve as a juror and being excused

**Division 1** Juries Act 1957 amended

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- (b) has a certificate issued under section 34E; or
  - (c) is a person who, under the *Jury Exemption Act 1965* (Commonwealth), shall not be summoned to serve as a juror in this State; or
  - (d) no longer resides in the district; or
  - (e) has no known address; or
  - (f) has died.
- (5) Each person's name in a jurors' book shall be numbered in a regular arithmetical series.
- (6) The persons whose names appear in the jurors' book for a jury district are, subject to this Act, the persons liable to serve on all juries empanelled for any trial within the jury district.
- (7) Subject to subsection (8) and any adjustment made under section 34E(3)(b) or 34G(3)(a)(iii), a jurors' book compiled in accordance with this Act for a jury district on or before 1 July in a year shall be used —
- (a) for the selection of the names of persons to be on panels of jurors or in jury pools, as the case requires, in the district from and including that 1 July until a new jurors' book is prepared for the district; and
  - (b) notwithstanding any alteration in the boundaries of the jury district in that period.
- (8) 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.
- (9) The jury officer for a district shall keep the jurors' book for the district for use whenever required.



**14. Section 17 amended**

In section 17 after “persons not” insert:

eligible or

**15. Section 24 amended**

In section 24 after “she is” insert:

eligible and

**16. Section 26 amended**

Delete section 26(2), (3) and (4) and insert:

(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 do the following —

(a) firstly —

- (i) read aloud the name of any person whose name is required to be on the panel by virtue of section 34H(5)(b) or (6); and
- (ii) obtain from the box for the jury district marked “Jurors in Use” the ticket the number of which corresponds to that name, if there is such a ticket; and
- (iii) except in the case of an omission authorised by subsection (3), write or

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**Division 1** Juries Act 1957 amended

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- cause to be written that number and name on a panel;
- (b) secondly, cause the tickets in the box for the jury district marked “Jurors in Use” to be intermixed and then —
- (i) draw one ticket from the box and read its number; and
  - (ii) 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
  - (iii) except in the case of an omission authorised by subsection (3), write or cause to be written that number and name on a panel; and
  - (iv) repeat the steps in subparagraphs (i) to (iii) until the panel, including any name included under paragraph (a), has on it the number of persons to be summoned as jurors;
- (c) thirdly, sign the panel and keep the tickets corresponding to the numbers and names so written on the panel until after the precept is returnable;
- (d) fourthly, draw out of the box, one at a time, a sufficient number of additional tickets to be kept for use under section 27(1).
- (3) If the number on a ticket corresponds in the jurors’ book to the name of a person who the summoning officer is satisfied —
- (a) is not eligible or not qualified to serve as a juror under section 5; or
  - (b) has a certificate issued under section 34E; or

- (c) is a person who, under the *Jury Exemption Act 1965* (Commonwealth), shall not be summoned to serve as a juror in this State; or
- (d) no longer resides in the district; or
- (e) has no known address; or
- (f) has died,

the summoning officer must omit that name from the panel and draw from the box a ticket in place of the ticket representing the person whose name is so omitted.

**17. Section 27 replaced**

Delete section 27 and insert:

**27. Extra people to be summoned to make up for people not attending**

- (1) If at any time before the panel for a criminal trial is returnable the summoning officer —
  - (a) ascertains that a person on the panel to whom a summons was issued under section 26(5) cannot be served with the summons; or
  - (b) under Part VC Division 2, excuses a person on the panel who has been served with a summons,

the officer shall choose in rotation from the jurors whose names correspond with the numbers on the additional tickets drawn out under section 26(2)(d) 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 persons who have not been served or who have been excused, as the case may be.

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**Division 1** Juries Act 1957 amended

**s. 18**

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- (2) A person whose name is so substituted shall be summoned accordingly and is bound to attend pursuant to the summons notwithstanding that the summons was not served on the person within the prescribed time.

**18. Section 28 amended**

Delete section 28(1) and insert:

- (1) If a person to whom a summons is issued under section 26(5) cannot be served or does not attend when summoned, the summoning officer shall forthwith place the ticket bearing the number of that person in the box marked "Jurors in Reserve".

**19. Section 29 amended**

In section 29(2H):

- (a) delete "for any reason";  
(b) delete "attendance," and insert:

the summons under Part VC Division 2,

**20. Section 29A amended**

- (1) In section 29A(1)(a) delete "sections 26(2), (3), (4), (5) and (6)," and insert:

section 26(2) to (6),

- (2) In section 29A(2):

- (a) in paragraph (a) delete "or (4)" and insert:

or (3)

(b) in paragraph (b) delete “or (4),” and insert:

or (3),

(c) in paragraph (b) delete “26(3)” and insert:

26(2)

**21. Section 30 replaced**

Delete section 30 and insert:

**30. Rights of parties in criminal trials to inspect list of summoned jurors**

Subject to any order made under section 43A, the summoning officer must ensure a copy of every panel or pool of jurors who have been summoned to attend for a criminal trial is available to be inspected by the parties to the trial from 8 a.m. on the day on which the trial is listed to begin.

**22. Section 32 deleted**

Delete section 32.

**23. Section 32C amended**

Delete section 32C(1) and insert:

(1) If a jury pool is required in a jury district for trials to which the pool relates, the summoning officer shall, from time to time as occasion requires —

(a) select any person who, under section 34H(5)(b) or (6), is required for the pool; and

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**Division 1** Juries Act 1957 amended

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- (b) select at random from the jurors' book for the jury district additional persons so that, including any name included under paragraph (a), the number of persons selected will, in the officer's estimation, ensure the attendance of sufficient persons at the jury pool.

**24. Section 32D amended**

(1) After section 32D(1) insert:

- (1AA) If the summoning officer is satisfied a person whose name is selected for the purposes of section 32C —
  - (a) is not eligible or not qualified to serve as a juror under section 5; or
  - (b) has a certificate issued under section 34E; or
  - (c) is a person who, under the *Jury Exemption Act 1965* (Commonwealth), shall not be summoned to serve as a juror in this State; or
  - (d) no longer resides in the district; or
  - (e) has no known address; or
  - (f) has died,

the summoning officer must not issue the person a summons, despite subsection (1).

(2) Delete section 32D(3).

**25. Section 32E amended**

In section 32E(2) delete “manually.” and insert:

manually or by computer.

**26. Section 32F amended**

In section 32F(1)(a) delete “duly excused by the summoning officer; and” and insert:

excused from the summons under Part VC  
Division 2; and

**27. Section 32FA amended**

In section 32FA(1) delete “factors referred to in the Fourth Schedule.” and insert:

matters listed in Schedule 2.

**28. Section 32H amended**

Delete section 32H(5) and insert:

- (5) If a person selected in pursuance of a pool precept is excused under Part VC Division 2 and the court so directs, the jury pool supervisor shall select a replacement person in accordance with subsection (1), include the person’s name and identification number on the list referred to in subsection (2) and furnish a card on which is the person’s identification number to the court.

**29. Part VC heading replaced**

Delete the heading to Part VC and insert:

**Part VC — Serving summonses and excusing  
people**

**Division 1 — Serving summonses**

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**Part 3** Amendments about liability to serve as a juror and being excused

**Division 1** Juries Act 1957 amended

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**30. Section 33 amended**

Delete section 33(6).

**31. Section 33A replaced**

Delete section 33A and insert:

**33A. Information to be given to summoned people**

The summoning officer must ensure that every summons issued under this Act to a person requiring attendance as a juror has in it or with it a notice informing the person of the following —

- (a) the manner in which a claim that he or she is not eligible or not qualified to serve as a juror may be made;
- (b) the grounds on which and the procedure by which he or she may apply to be excused from serving as a juror;
- (c) the matters in Schedule 2 that he or she is obliged to disclose to the summoning officer or the court.

**32. Section 34A deleted**

Delete section 34A.

**33. Section 34B amended**

In section 34B(3) delete “existence of any of the factors referred to in the Fourth Schedule.” and insert:

matters in Schedule 2.



**34. Part VC Division 2 inserted**

After section 34B insert:

**Division 2 — Excusing people**

**34C. Term used: summoned**

In this Division —

*summoned* means summoned under Part VA or VB.

**34D. Division does not affect rights to challenge for cause**

This Division does not affect the operation of the  
*Criminal Procedure Act 2004* section 104(5).

**34E. Certificates permanently excusing people**

- (1) If the sheriff is satisfied that a person is permanently incapable of serving effectively as a juror because of a physical disability or mental impairment, the sheriff may issue a certificate to the person stating that the person is permanently excused from serving as a juror.
- (2) For the purposes of subsection (1) the sheriff may require a person to provide information in a statutory declaration.
- (3) On issuing a certificate to a person under subsection (1), the sheriff must —
  - (a) notify the Electoral Commissioner of that fact; and
  - (b) cause the person's name to be removed from the jurors' book and omitted from any future jurors' book.
- (4) If the Electoral Commissioner is notified under subsection (3), he or she must ensure the name of the

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**Division 1** Juries Act 1957 amended

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person concerned is not on any jury list prepared under section 14.

- (5) The sheriff, for good reason, may cancel a certificate issued under subsection (1).
- (6) If a person's certificate is cancelled under subsection (5), then, subject to sections 14 and 16A, the person's name may be included in a jury list or juror's book.

**34F. Summoned people may apply to be excused**

- (1) A person who is summoned may apply to be excused from the summons under section 34G, 34H, 34I or 34J or under more than one of those sections.
- (2) An application to be excused under section 34G, 34H, 34I or 34J must be made to the summoning officer.
- (3) The summoning officer may refer the application to a judge to decide.
- (4) If the summoning officer refuses an application to be excused under section 34G, 34H, 34I or 34J, the applicant may renew the application before a judge.
- (5) The summoning officer or judge may require an applicant to provide evidence on oath or in a statutory declaration to substantiate the grounds on which the person seeks to be excused.

**34G. General powers to excuse summoned people**

- (1) A judge or summoning officer may excuse a person under this section —
  - (a) on his or her own initiative or an application made by the person under section 34F; and
  - (b) even if an application by the person to be excused under section 34H has been refused.

- (2) If a judge or the summoning officer is satisfied that a person who is summoned —
- (a) is not eligible or not qualified to serve as a juror under section 5; or
  - (b) has a certificate issued under section 34E; or
  - (c) is a person who, under the *Jury Exemption Act 1965* (Commonwealth), shall not be summoned to serve as a juror in this State; or
  - (d) does not reside in the district concerned; or
  - (e) does not understand spoken or written English, or cannot speak English, well enough to be capable of serving effectively as a juror; or
  - (f) is not capable of serving effectively as a juror because he or she has a physical disability or a mental impairment,

the judge or summoning officer must excuse the person from the summons.

- (3) As soon as practicable after a person is excused under this section, the judge or summoning officer must —
- (a) if the person is excused under subsection (2)(a), (b), (c) or (d), ensure that —
    - (i) the person's name, jurors' book number and identification number are removed from any panel of jurors or jury pool, as the case requires; and
    - (ii) every ticket and card bearing the person's jurors' book number or identification number is removed from every box in use under this Act; and
    - (iii) the person's name and jurors' book number are removed from the jurors' book for the district concerned;

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- (b) if the person is summoned for one or more criminal trials and is excused under subsection (2)(e) or (f), ensure that —
  - (i) the person's name, jurors' book number and identification number are removed from the panel of jurors or the jury pool, as the case requires; and
  - (ii) the card bearing the person's identification number is removed from every box being used to select or choose jurors at the trials;
- (c) if the person is summoned for a civil trial and is excused under subsection (2)(e) or (f), ensure that the ticket bearing the person's jurors' book number is dealt with in accordance with section 29(3)(b).
- (4) The name of a person excused under subsection (2)(e) or (f) must not be removed from the jurors' book for the district concerned by reason only of the excusal.

**34H. Deferring jury duty for summoned people or excusing them for good reason**

- (1) A judge or summoning officer cannot excuse a person under this section except on an application made by the person under section 34F.
- (2) For the purposes of this section a person who is summoned has a good reason to be excused from the summons if, because of any of the following —
  - (a) the nature of the person's business or occupation;
  - (b) a special or pressing commitment that the person has;
  - (c) mental impairment affecting the person;
  - (d) a physical disability that the person has;

- (e) the person's state of physical health;
  - (f) other circumstances personal to the person,  
attendance in accordance with the summons would  
cause undue hardship or serious inconvenience to the  
person, the person's family or the general public.
- (3) If a judge or the summoning officer is satisfied a  
person who is summoned has a good reason to be  
excused from the summons, the judge or officer  
may —
- (a) unless the summons was issued as a result of  
the person having been previously granted a  
deferral of jury duty, grant the person a deferral  
of jury duty and excuse the person from the  
summons; or
  - (b) excuse the person from the summons.
- (4) A judge or summoning officer must not excuse a  
person from a summons under subsection (3)(b) unless  
satisfied —
- (a) the summons was issued as a result of the  
person having been previously granted a  
deferral of jury duty; and
  - (b) either —
    - (i) the reason for the person wanting to be  
excused from the summons was not  
reasonably foreseeable when that  
previous deferral was granted; or
    - (ii) there are exceptional reasons why the  
person should again be excused under  
this section from a summons.
- (5) As soon as practicable after a person who is summoned  
for one or more criminal trials is granted a deferral of  
jury duty under this section, the summoning officer  
must —

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- (a) remove —
    - (i) the person's name, jurors' book number and identification number from the panel of jurors or the jury pool, as the case requires; and
    - (ii) the card bearing the person's identification number from any box being used to select or choose jurors at the trials;and
  - (b) place the person's name and jurors' book number on either —
    - (i) a panel of jurors or a jury pool the persons on which are to be summoned to attend on a date within the 6 months after the date on which the person, but for the deferral, should have first attended; or
    - (ii) if no jury is required within that period, the first panel of jurors or jury pool that is selected after that period.
- (6) As soon as practicable after a person who is summoned for a civil trial is granted a deferral of jury duty under this section, the summoning officer must place the person's name and jurors' book number on either —
- (a) a panel of jurors or a jury pool the persons on which are to be summoned to attend on a date within the 6 months after the date on which the person, but for the deferral, should have first attended; or
  - (b) if no jury is required within that period, the first panel of jurors or jury pool that is selected after that period.

- (7) In complying with subsection (5)(b) or (6) the summoning officer —
- (a) must place the person's name and jurors' book number on a panel or pool that is required for the jury district in which the person resides, or will reside, when summonses are issued to the persons on the panel or pool; and
  - (b) must do so even if the name is not in the jurors' book for that jury district.

**34I. People who are not indifferent, excusing**

- (1) A summoning officer cannot excuse a person under this section except on an application made by the person under section 34F.
- (2) A judge may excuse a person under this section on his or her own initiative or an application made by the person under section 34F.
- (3) If a judge or summoning officer is satisfied that a person who is summoned would not be indifferent as between the parties in a trial if he or she were to serve as a juror at the trial, the judge or officer must excuse the person from serving as a juror at that trial.
- (4) If a person is excused under this section from serving as a juror in a criminal trial, the judge or summoning officer must ensure —
  - (a) the card bearing the person's identification number is removed from the ballot-box being used under Part VI to choose jurors at that trial; and
  - (b) the person's name, jurors' book number and identification number remains on the panel of jurors or the jury pool, as the case requires, until the persons on the panel or pool are no longer required to attend under this Act.

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- (5) As soon as practicable after a person is excused under this section from serving as a juror in a civil trial, the judge or summoning officer must ensure the ticket bearing the person's jurors' book number is dealt with in accordance with section 29(3)(b).

**34J. People who have done jury duty in previous 5 years, excusing**

- (1) A judge or summoning officer cannot excuse a person under this section except on an application made by the person under section 34F.
- (2) If a judge or the summoning officer is satisfied —
- (a) that a person who is summoned has, in accordance with an earlier summons or under section 52 —
    - (i) attended any place in order to serve as a juror; or
    - (ii) served as a juror,in this State in the 5 years prior to the date on which the person is required to first attend under the current summons; and
  - (b) that a sufficient number of other persons who have been summoned is present for the purposes of choosing persons to be jurors,
- the judge or officer may excuse the person from the summons.
- (3) As soon as practicable after a person summoned for one or more criminal trials is excused under this section, the judge or summoning officer must ensure —
- (a) the person's name, jurors' book number and identification number are removed from the panel of jurors or the jury pool, as the case requires; and



- (b) the card bearing the person's identification number is removed from any box being used to select or choose jurors at the trials.
- (4) As soon as practicable after a person summoned for a civil trial is excused under this section, the judge or summoning officer must ensure the ticket bearing the person's jurors' book number is dealt with in accordance with section 29(3)(b).

**35. Section 52 amended**

- (1) In section 52(1) delete "qualified and liable" and insert:

liable, eligible and qualified

- (2) After section 52(3) insert:

- (4) Part VC Division 2 applies to and in respect of a person appointed under subsection (1) as if the person had been summoned under Part VA or VB and as if the appointment were a summons.

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**36. First, Second, Third and Fourth Schedules replaced**

Delete the First Schedule, Second Schedule, Third Schedule and Fourth Schedule and insert:

**Schedule 1 — Classes of persons not eligible to be jurors**

[s. 5(3)(ba) and (bb)]

**Division 1 — Civil and criminal trials**

**1. Vice-regal and parliamentary officers**

A person who is any of the following —

- (a) the Governor or the Lieutenant-Governor or an Administrator administering the government of the State or a deputy of the Governor;
- (b) a member of the Parliament of Western Australia;
- (c) the Clerk of the Legislative Council, Clerk of the Legislative Assembly, Deputy Clerk of the Legislative Council, Deputy Clerk of the Legislative Assembly, Clerk Assistant, Usher of the Black Rod or Sergeant-at-Arms of the Parliament of Western Australia.

**2. Judicial and court officers**

(1) A person who is any of the following —

- (a) a judge, auxiliary judge, commissioner, master or registrar of the Supreme Court or an associate to any such officer;
- (b) a judge, auxiliary judge or registrar of the District Court or an associate to any such officer;
- (c) a judge of the Family Court of Western Australia;
- (d) a magistrate, registrar or judicial support officer of the Magistrates Court;

- (e) a judge, magistrate, registrar or judicial support officer of the Children's Court or an associate to a judge of the Court;
  - (f) the State Coroner or Deputy State Coroner or a coroner, appointed under the *Coroners Act 1996*;
  - (g) the President or a commissioner of the Western Australian Industrial Relations Commission, appointed under the *Industrial Relations Act 1979*;
  - (h) the sheriff;
  - (i) a summoning officer.
- (2) A person who holds an appointment to act in an office listed in subclause (1).

**3. Australian legal practitioners**

A person who is an Australian legal practitioner.

**Division 2 — Criminal trials**

**4. Certain public officers**

A person who is any of the following —

- (a) an authorised officer, as defined in the *Corruption and Crime Commission Act 2003* section 184(1);
- (b) the Parliamentary Inspector of the Corruption and Crime Commission, or an acting Parliamentary Inspector of the Corruption and Crime Commission, appointed under the *Corruption and Crime Commission Act 2003*;
- (c) an officer of the Parliamentary Inspector, as defined in the *Corruption and Crime Commission Act 2003* section 3(1).

**5. Officers in the WA Police**

A person who is any of the following —

- (a) the Commissioner of Police appointed under the *Police Act 1892*;

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- (b) a person appointed under the *Police Act 1892* Part I to be a member of the Police Force of Western Australia;
- (c) a special constable appointed under the *Police Act 1892* Part III;
- (d) an Aboriginal police liaison officer appointed under the *Police Act 1892* Part IIIA;
- (e) a police auxiliary officer appointed under the *Police Act 1892* Part IIIB;
- (f) a police cadet employed by the Commissioner of Police.

**Schedule 2 — Matters to be disclosed by a person appearing in answer to a summons to be a juror**

[s. 32FA, 33A and 34B]

1. That the person has reached 75 years of age.
2. If the person is summoned for a civil trial, that the person is in a class of person listed in Schedule 1 Division 1.
3. If the person is summoned for a criminal trial, that the person is in a class of person listed in Schedule 1.
4. That the person has a criminal record that means he or she is not qualified to serve as a juror under section 5(3)(b).
5. That the person is a person referred to in section 5(3)(c).
6. That the person is a person referred to in section 5(3)(d).
7. That the person is a person who, under the *Jury Exemption Act 1965* (Commonwealth), shall not be summoned to serve as a juror in this State.
8. That the person has a physical disability or mental impairment that may mean he or she is not capable of serving effectively as a juror.
9. That the person's ability to understand spoken or written English, or to speak English, may mean he or she is not capable of serving effectively as a juror.

10. Any reason why the person may not be indifferent between the parties in a trial at which the person may be liable to serve as a juror.

**Division 2 — *Criminal Procedure Act 2004* amended**

**37. Act amended**

This Division amends the *Criminal Procedure Act 2004*.

**38. Section 104 amended**

Delete section 104(5)(a) and insert:

- (a) that under the *Juries Act 1957* section 5 the juror is not eligible or not qualified to serve as a juror; or

## Part 4 — Miscellaneous amendments

**39. Act amended**

This Part amends the *Juries Act 1957*.

**40. Section 2 deleted**

Delete section 2.

**41. Section 32H amended**

Delete section 32H(4) and insert:

- (4) The jury pool supervisor, or an officer on his or her behalf, shall also direct the persons selected in pursuance of the pool precept to attend at the court, and at the time, specified in the precept.

**42. Sections 55 and 56 replaced**

Delete sections 55 and 56 and insert:

**55. Offences by jurors and others**

- (1) A person who, without a reasonable excuse, does not obey a summons that has been served on the person under this Act commits an offence.
- (2) A person who, without a reasonable excuse, does not obey a direction given under section 32H(4) commits an offence.
- (3) A talesman who, being present and having been called, without a reasonable excuse, does not appear or wilfully withdraws himself or herself from the presence of the court commits an offence.

- (4) A person who personates or attempts to personate a person whose name is on a jury panel or a jury pool for the purpose of sitting as a juror commits an offence.  
Penalty: a fine of \$5 000.

**56. Prejudicial actions against employees who do jury service**

- (1) In this section —  
*employee* includes a person employed under a contract for services;  
*employer* includes a person acting on behalf of an employer.
- (2) For the purposes of this section, an employer acts prejudicially against an employee if the employer does any of the following —
- (a) terminates the employee's employment;
  - (b) ceases remunerating the employee;
  - (c) reduces the employee's remuneration;
  - (d) otherwise acts so as to prejudice the employee in relation to his or her employment with the employer;
  - (e) threatens to take an action described in any of paragraphs (a) to (d).
- (3) For the purposes of this section, an employer who employs an employee under a contract acts prejudicially against the employee because the employee has done or is doing jury service if the employer —
- (a) does not pay the employee under the contract the earnings that the employee could reasonably expect to have been paid while doing the jury service, despite any breach of the contract caused by doing the jury service; or

- (b) threatens to do so.
  - (4) For the purposes of this section, a person does jury service if he or she, having been required under this Act to do so, attends at any place in order to serve, or does serve, as a juror.
  - (5) An employer must not act prejudicially against an employee because the employee —
    - (a) is subject to a summons issued under Part VA or VB; or
    - (b) has done or is doing jury service.
- Penalty:
- (a) for an individual, a fine of \$10 000;
  - (b) for a body corporate, a fine of \$50 000.
- (6) If, in proceedings on a charge of an offence under subsection (5), all the facts constituting the offence other than the reason for the accused's act are proved, the accused has the onus of proving the accused's act was not actuated because the employee was subject to a summons issued under Part VA or VB or had done or was doing jury service.
- (7) A court that convicts a person of an offence under subsection (5) —
  - (a) may order the person to pay the employee a sum, set by the court, by way of compensation for any prejudice (including lost remuneration) suffered by the employee; and
  - (b) if the offence involved the person terminating an employee's employment, may also —
    - (i) order the person to re-employ the employee, either in his or her old position or in a similar position; or



- (ii) if it is not practicable to make that order, order the person to pay the employee compensation for loss or injury caused by the termination;
  - and
  - (c) if the person does not obey an order made under paragraph (b)(i), may order the person to pay the employee compensation for loss or injury caused by the termination.
- (8) If under subsection (7) the court orders compensation to be paid, the amount must be set by the court but must not exceed the employee's remuneration in the 12 months immediately before the date of the offence.
- (9) An order made under subsection (7) may be enforced under the *Civil Judgments Enforcement Act 2004* as if it were a judgment given in the exercise of the court's civil jurisdiction.
- (10) This section does not prevent proceedings against, or the punishment of, a person for contempt of court but, if a person's act constitutes both an offence under this section and a contempt of court, the person cannot be punished for both.

**43. Section 58B amended**

Delete section 58B(3) to (6) and insert:

- (3) If an employer —
- (a) employs a person on a contract of service (the *employee*); and
  - (b) for any period when the employee does jury service, pays the employee the earnings that the

employee could reasonably expect to have been paid in that period under the contract,

the employer is entitled to be paid by the State the fees in accordance with the regulations for the employee's service, unless the employer is in a class of employer prescribed by the regulations.

- (4) If an employee described in subsection (3) is not paid in accordance with that subsection, the employee is entitled to be paid by the State the fees in accordance with the regulations for the jury service, unless he or she is in a class of person prescribed by the regulations.
- (5) A person who does jury service but who is not an employee described in subsection (3) is entitled to be paid by the State the fees in accordance with the regulations for the jury service, unless the person is in a class of person prescribed by the regulations.

**44. Section 59 amended**

- (1) In section 59(1) after "this Act" insert:

for an act or omission that does not constitute an offence

- (2) Delete section 59(2).
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