





# **Attorney-General's Portfolio Miscellaneous Measures Act 2024**

**No. 41, 2024**

**An Act to amend the law in relation to federal courts, marriage and other matters in the Attorney-General's portfolio, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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## Contents

1	Short title.....	1
2	Commencement .....	2
3	Schedules .....	2
<b>Schedule 1—Federal Court criminal jurisdiction</b>		<b>3</b>
Part 1—Conferral of criminal jurisdiction		3
<i>Australian Securities and Investments Commission Act 2001</i>		3
<i>Corporations Act 2001</i>		4
<i>Judiciary Act 1903</i>		4
<i>National Consumer Credit Protection Act 2009</i>		6
<i>Superannuation Industry (Supervision) Act 1993</i>		7
Part 2—Criminal procedure		8
<i>Corporations Act 2001</i>		8
<i>Federal Court of Australia Act 1976</i>		8
<i>Judiciary Act 1903</i>		11
<i>National Consumer Credit Protection Act 2009</i>		13
<b>Schedule 2—Federal Court juries</b>		<b>14</b>
<i>Federal Court of Australia Act 1976</i>		14
<b>Schedule 3—Amendment of the Marriage Act 1961</b>		<b>41</b>
Part 1—Deputy Registrars of Marriage Celebrants		41
<i>Marriage Act 1961</i>		41
Part 2—Timeframes for considering application for registration as authorised celebrant		43
<i>Marriage Act 1961</i>		43
Part 3—Refund of registration application fee		45
<i>Marriage Act 1961</i>		45
Part 4—Celebrant to be physically present at marriage		46
<i>Marriage Act 1961</i>		46
Part 5—Identity requirements		48
<i>Marriage Act 1961</i>		48

---

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Part 6—Notice of intended marriage and consent	49
<i>Marriage Act 1961</i>	49
Part 7—Single registration as authorised celebrant	52
<i>Marriage Act 1961</i>	52
<b>Schedule 4—Other amendments</b>	54
Part 1—Arbitration	54
<i>Family Law Act 1975</i>	54
Part 2—Assistance from Attorney-General	55
<i>Native Title Act 1993</i>	55
Part 2A—Membership of Parliamentary Joint Committee on Human Rights	56
<i>Human Rights (Parliamentary Scrutiny) Act 2011</i>	56
Part 3—Corrections	57
<i>Federal Circuit and Family Court of Australia Act 2021</i>	57
<i>Federal Court of Australia Act 1976</i>	57



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**An Act to amend the law in relation to federal  
courts, marriage and other matters in the  
Attorney-General's portfolio, and for related  
purposes**

*[Assented to 11 June 2024]*

The Parliament of Australia enacts:

## **1 Short title**

*This Act is the Attorney-General's Portfolio Miscellaneous  
Measures Act 2024.*

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	11 June 2024
2. Schedules 1 and 2	The day after this Act receives the Royal Assent.	12 June 2024
3. Schedule 3, Parts 1 to 6	The day after this Act receives the Royal Assent.	12 June 2024
4. Schedule 3, Part 7	The 28th day after this Act receives the Royal Assent.	9 July 2024
5. Schedule 4	The day after this Act receives the Royal Assent.	12 June 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Federal Court criminal jurisdiction**

### **Part 1—Conferral of criminal jurisdiction**

#### *Australian Securities and Investments Commission Act 2001*

##### **1 Section 12HC (at the end of the heading)**

Add “for offences against this Division etc.”.

##### **2 At the end of section 12HC**

Add:

- (4) Nothing in subsection (3) affects the operation of the *Director of Public Prosecutions Act 1983*.

##### **3 Before section 243B**

Insert:

##### **243A Prosecutions for indictable offences against this Act**

- (1) Subject to subsection (2), jurisdiction is conferred on the Federal Court to hear and determine prosecutions for indictable offences against this Act.
- (2) Subsection (1) does not apply to prosecutions for offences:
- (a) against Division 2 of Part 2; or
  - (b) against Part 3 in its application in relation to an investigation of a contravention of that Division.

Note: For the jurisdiction of the Federal Court in relation to prosecutions for these offences, see section 12HC.

- (3) Proceedings before the Federal Court under this section, other than proceedings instituted by:
- (a) ASIC; or
  - (b) a person authorised in writing by ASIC;
- must not be instituted except with the consent in writing of the Minister or of a person authorised by the Minister in writing to give such consents.

(4) Nothing in subsection (3) affects the operation of the *Director of Public Prosecutions Act 1983*.

### ***Corporations Act 2001***

#### **4 After section 1338A**

Insert:

##### **1338AA Criminal jurisdiction of the Federal Court**

Jurisdiction is conferred on the Federal Court to hear and determine prosecutions for indictable offences against this Act.

#### **5 Section 1338B (heading)**

Repeal the heading, substitute:

##### **1338B Criminal jurisdiction of State and Territory courts**

### ***Judiciary Act 1903***

#### **6 Section 2**

Insert:

*related summary offence* has the meaning given by subsection 67G(3).

#### **7 Subsection 39B(1A) (note)**

Repeal the note, substitute:

Note: Section 67G of this Act, along with certain other laws of the Commonwealth, confer criminal jurisdiction on the Federal Court of Australia.

#### **8 Before Division 1 of Part X**

Insert:

## **Division 1A—Criminal jurisdiction of the Federal Court of Australia**

### **67G Criminal jurisdiction of the Federal Court of Australia**

#### *Jurisdiction in relation to related summary offences*

- (1) If, in proceedings before the Federal Court of Australia (the **Federal Court**):
- (a) a person pleads guilty to an indictable offence; or
  - (b) a person is found guilty or not guilty of an indictable offence;
- the Federal Court has jurisdiction to hear and determine prosecutions for a related summary offence.

Note: Other laws of the Commonwealth apart from this section also confer criminal jurisdiction on the Federal Court of Australia.

- (2) If all charges for an indictable offence against a person before the Federal Court have been discontinued, the Federal Court has jurisdiction to hear and determine prosecutions for a related summary offence.
- (3) An offence is a **related summary offence**, in relation to an indictable offence, if:
- (a) the offence is a summary offence against a law of the Commonwealth; and
  - (b) the offence arises from substantially the same facts and circumstances as those from which the indictable offence has arisen; and
  - (c) the Federal Court has jurisdiction in relation to the indictable offence.

#### *Jurisdiction in relation to certain Criminal Code indictable offences*

- (4) Subject to subsection (5), the Federal Court has jurisdiction to hear and determine prosecutions for indictable offences against any of the following provisions of the *Criminal Code*:
- (a) Division 70 of Chapter 4 (about bribery of foreign public officials);
  - (b) Part 7.7 of Chapter 7 (about forgery and related offences);

**Schedule 1** Federal Court criminal jurisdiction  
**Part 1** Conferral of criminal jurisdiction

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- (c) Part 9.5 of Chapter 9 (about identity crime);
  - (d) Part 10.2 of Chapter 10 (about money laundering);
  - (e) Part 10.7 of Chapter 10 (about computer offences);
  - (f) Part 10.8 of Chapter 10 (about financial information offences);
  - (g) Part 10.9 of Chapter 10 (about accounting records).
- (5) Proceedings before the Federal Court under subsection (4) may only be instituted:
- (a) by the Australian Securities and Investments Commission; or
  - (b) by a person authorised in writing by the Australian Securities and Investments Commission; or
  - (c) with the written consent of:
    - (i) the Minister administering the *Australian Securities and Investments Commission Act 2001*; or
    - (ii) a person authorised in writing by that Minister to give such consents.
- (6) Nothing in subsection (5) affects the operation of the *Director of Public Prosecutions Act 1983*.

*Relationship with associated matters jurisdiction*

- (7) Nothing in this section is intended in any way to limit or affect the jurisdiction the Federal Court has under subsection 32(4) of the *Federal Court of Australia Act 1976*.

***National Consumer Credit Protection Act 2009***

**9 Before section 204**

Insert:

**203A Criminal jurisdiction of the Federal Court**

The Federal Court has jurisdiction to hear and determine prosecutions for indictable offences against this Act.

**10 Section 204 (heading)**

Repeal the heading, substitute:

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**204 Criminal jurisdiction of State and Territory courts**

***Superannuation Industry (Supervision) Act 1993***

**11 Before section 202**

Insert:

**201A Criminal jurisdiction of the Federal Court of Australia in relation to certain indictable offences**

The Federal Court of Australia has jurisdiction to hear and determine prosecutions for indictable offences against provisions of this Act that are administered by ASIC.

**12 After section 324A**

Insert:

**324B Instituting criminal proceedings**

- (1) Proceedings before the Federal Court of Australia for an offence against a provision of this Act must not be instituted except with the written consent of the Minister, or of a person authorised in writing by the Minister to give such consents.
- (2) Subsection (1) does not apply to proceedings instituted by the Regulator or a person authorised in writing by the Regulator.
- (3) Nothing in this section affects the operation of the *Director of Public Prosecutions Act 1983*.

## Part 2—Criminal procedure

### *Corporations Act 2001*

#### **13 At the end of subsection 1338A(3)**

Add “or sections 68A to 68D of that Act in relation to proceedings in relation to an offence against the Corporations legislation that are brought before the Federal Court”.

### *Federal Court of Australia Act 1976*

#### **14 Section 4**

Insert:

*related summary offence* has the same meaning as in the *Judiciary Act 1903*.

#### **15 Subsection 23AB(4)**

Repeal the subsection (including the note).

#### **16 After Division 1A of Part III**

Insert:

### **Division 1B—Original jurisdiction (related summary offences)**

#### **23K Practice and procedure applicable to proceedings for related summary offences**

Unless the Court orders otherwise:

- (a) the laws of the Commonwealth; and
- (b) the laws of the State or Territory applying under subsection 68(1) of the *Judiciary Act 1903*; and
- (c) the Rules of Court;

relating to the practice and procedure to be followed during proceedings for the prosecution of a person for a related summary offence are to be those in force at the time the draft summons for the related summary offence is filed with the Court.

### **23L Evidence in proceedings for related summary offences**

- (1) Without affecting the admissibility of any evidence which might be given apart from this subsection, in proceedings for the prosecution of a person for a related summary offence, the Court may admit as evidence in relation to the prosecution:
  - (a) evidence given during a trial of the person in respect of the indictable offence; or
  - (b) in the case of a plea of guilty to the indictable offence, evidence given by witnesses and documents tendered in evidence during the committal proceedings for the indictable offence; or
  - (c) in the case of a discontinuance of prosecution of an indictable offence against the person, evidence given by witnesses and documents tendered in evidence during the committal proceedings for the indictable offence.
- (2) On the hearing of a prosecution against a person for a related summary offence, a party may adduce further evidence only with the leave of the Court.

### **17 After subsection 30AA(2)**

Insert:

- (2A) The Court has jurisdiction to hear and determine an appeal from a judgment of the Court constituted by a single Judge in proceedings for a related summary offence.

### **18 At the end of subsection 30BF(1)**

Add “or (2A)”.

### **19 After section 32AD**

Insert:

### **32AE Discretionary transfer of certain criminal proceedings**

- (1) This section applies to a proceeding in a court if:
  - (a) all or part of the proceeding is for a corporate crime offence; and
  - (b) the court is the Court or a court of a State or Territory.

- (2) If it appears to the court (the *first court*) that it is more appropriate for the proceeding or a part of the proceeding to be determined by another court (the *second court*) that has jurisdiction to hear and determine the proceedings, the first court may transfer the proceeding or part to the second court.
- (3) In considering whether to make an order under subsection (2), the first court must have regard to:
- (a) the interests of justice; and
  - (b) any laws of the State or Territory in which the first court is located that provide for particular courts of that State or Territory to hear and determine the proceeding or part of the proceeding.
- (4) A court may make an order under subsection (2):
- (a) on application by the prosecutor; or
  - (b) on its own initiative.
- (5) If an order is made under subsection (2):
- (a) the first court may make such orders as it considers necessary pending the disposal of the proceeding or part by the second court; and
  - (b) further proceedings must be as directed by the second court.
- (6) Without limiting paragraph (5)(b), the second court may order that it proceed as if:
- (a) the proceeding had been commenced in the second court; and
  - (b) the same or similar steps in the proceeding had been taken in the second court as were taken in the first court; and
  - (c) the orders and directions made by the first court in the proceeding had been made by the second court.
- (7) An appeal does not lie from a decision of a court in relation to the transfer of a proceeding, or part of a proceeding, under subsection (2).
- (8) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.
- (9) In this section:
- corporate crime offence* means:

- (a) an indictable offence against the *Australian Securities and Investments Commission Act 2001*; or
- (b) an indictable offence against the *Corporations Act 2001*; or
- (c) an indictable offence against any of the following provisions of the *Criminal Code*:
  - (i) Division 70 of Chapter 4 (about bribery of foreign public officials);
  - (ii) Part 7.7 of Chapter 7 (about forgery and related offences);
  - (iii) Part 9.5 of Chapter 9 (about identity crime);
  - (iv) Part 10.2 of Chapter 10 (about money laundering);
  - (v) Part 10.7 of Chapter 10 (about computer offences);
  - (vi) Part 10.8 of Chapter 10 (about financial information offences);
  - (vii) Part 10.9 of Chapter 10 (about accounting records); or
- (d) an indictable offence against the *National Consumer Credit Protection Act 2009*; or
- (e) an indictable offence against a provision of the *Superannuation Industry (Supervision) Act 1993* that is administered by the Australian Securities and Investments Commission; or
- (f) a related summary offence.

**20 After paragraph 35A(1)(e)**

Insert:

- (ea) the power to make orders under section 32AE (about transferring certain criminal proceedings to other courts);

***Judiciary Act 1903***

**21 Subsection 68B(2)**

Omit “section 68C”, substitute “sections 68C and 68D”.

**22 Section 68C (heading)**

After “applying to”, insert “indictable primary”.

**23 At the end of Division 1 of Part X**

Add:

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**68D Adjustments to State and Territory laws applying to proceedings for related summary offences before Federal Court of Australia**

- (1) This section applies if:
- (a) an offence referred to in subsection 68(1) is a related summary offence; and
  - (b) the Federal Court of Australia (the *Federal Court*) has jurisdiction to try a person for the offence; and
  - (c) proceedings commence in the Federal Court in relation to the offence that are:
    - (i) proceedings for the prosecution of a person for the offence (*primary proceedings*); or
    - (ii) criminal appeal proceedings (within the meaning of the *Federal Court of Australia Act 1976*) that relate to primary proceedings; or
    - (iii) proceedings under section 30CA of that Act that relate to primary proceedings.

*Which State's or Territory's laws are to apply?*

- (2) The laws to be applied under subsection 68(1) in relation to the proceedings are those referred to in the following table.

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**Laws applicable in relation to the proceedings**

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<b>Item</b>	<b>If the proceedings are ...</b>	<b>the laws to be applied are ...</b>
1	primary proceedings (other than proceedings for the sentencing of the person following a trial in the Federal Court)	the laws of the State or Territory in which the Federal Court hears the proceedings.
2	primary proceedings for the sentencing of the person following a trial in the Federal Court	the laws of the State or Territory applying in relation to the trial at the end of the trial.
3	appeal proceedings covered by subparagraph (1)(c)(ii)	the laws of the State or Territory applying in relation to the corresponding primary proceedings at the end of those primary proceedings.
4	proceedings covered by subparagraph (1)(c)(iii) in relation to	the laws of the State or Territory applying in the proceedings during

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**Laws applicable in relation to the proceedings**

<b>Item</b>	<b>If the proceedings are ...</b>	<b>the laws to be applied are ...</b>
	a case stated, or question reserved, by a court	which the court stated the case or reserved the question.

*What those laws include*

- (3) The laws of that State or Territory are taken:
- (a) to include the Rules of the Supreme Court of that State or Territory that apply in relation to criminal proceedings; and
  - (b) not to include the Rules of any other court of that State or Territory.

*How those laws apply*

- (4) The laws of that State or Territory apply as if any reference in those laws to the Supreme Court of that State or Territory, and any reference to a court that includes a reference to the Supreme Court of that State or Territory, were a reference to the Federal Court.
- (5) The laws of that State or Territory apply to the proceedings only to the extent to which they are:
- (a) not inconsistent with the laws of the Commonwealth; and
  - (b) not inconsistent with the Rules of the Federal Court.

**24 Subsection 70(2)**

Omit “section 68C”, substitute “sections 68C and 68D”.

***National Consumer Credit Protection Act 2009***

**25 At the end of subsection 203(2)**

Add “or sections 68A to 68D of that Act in relation to proceedings in relation to an offence against this Act that are brought before the Federal Court”.

## Schedule 2—Federal Court juries

### *Federal Court of Australia Act 1976*

#### **1 Section 4 (definition of *applicable jury district*)**

Omit “section 23DL”, substitute “section 23DH”.

#### **2 Section 4 (definition of *jury district*)**

Omit “section 23DF”, substitute “subsection 23EAA(1)”.

#### **3 Section 4**

Insert:

*jury list* has the meaning given by subsection 23DJ(2).

*jury roll* means a jury roll prepared under subsection 23EAA(4).

*Sheriff* means Sheriff of the Court.

#### **4 Section 4 (definition of *sitting place*)**

Omit “subsection 23DK(2)”, substitute “subsection 23DC(2)”.

#### **5 Section 4**

Insert:

*State/Territory jury official* means:

(a) an officer or member of staff of the Supreme Court of a State or Territory; or

(b) an officer or employee of a State or Territory;

who is responsible for preparing jury panels (however described) for the purposes of the trial on indictment of an offence in the Supreme Court of the State or Territory.

#### **6 Subdivision D of Division 1A of Part III**

Repeal the Subdivision, substitute:

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## **Subdivision D—Election in relation to a jury panel**

### **23DA Simplified outline of this Subdivision**

If the Court directs the Sheriff to arrange a jury panel for indictable primary proceedings, the Sheriff must elect that either:

- (a) Subdivision DA applies in relation to the provision of a jury panel (in which case the Sheriff provides a jury panel to the Court under this Act); or
- (b) Subdivision DB applies in relation to the provision of a jury panel (in which case the Sheriff requests a State/Territory jury official to provide a jury panel to the Court prepared under State or Territory laws).

### **23DB Application of Subdivision**

This Subdivision applies in relation to juries for indictable primary proceedings.

### **23DC Direction to arrange for a jury panel**

- (1) The Court may give the Sheriff a written direction to arrange for a jury panel for indictable primary proceedings.
- (2) The direction must specify the place (the *sitting place*) in the State or Territory where the jury is to sit.
- (3) The Sheriff must comply with the direction.

### **23DD Election in relation to a jury panel**

- (1) This section applies if the Court gives the Sheriff a written direction under subsection 23DC(1) to arrange for a jury panel for indictable primary proceedings.
- (2) The Sheriff must, in writing to the Chief Executive Officer, elect that either Subdivision DA or DB applies in relation to the provision of the jury panel to the Court for the purposes of the proceedings.
- (3) An election under subsection (2) is not a legislative instrument.

**23DE Validity of anything done by jury**

Anything done by a jury is not invalid merely because of any defect or irregularity in relation to the provision of a jury panel to the Court.

**Subdivision DA—Provision of a jury panel prepared under this Act**

**23DF Simplified outline of this Subdivision**

The Sheriff arranges for a jury panel under this Act by determining the applicable jury district for the proceedings, preparing a jury list, and summoning the persons on that list to attend court for jury service.

The Sheriff prepares a jury list by randomly selecting persons from the jury roll for the applicable jury district.

A person must be qualified to serve as a juror in order to be included on a jury panel. Not everyone is qualified to serve as a juror.

**23DG Application of Subdivision**

This Subdivision applies in relation to indictable primary proceedings if the Sheriff elects under subsection 23DD(2) that this Subdivision applies in relation to the provision of a jury panel to the Court for the purposes of the proceedings.

**23DH Sheriff to select the jury district for the proceedings**

- (1) The Sheriff must, in writing, determine which jury district is to apply to the indictable primary proceedings. This jury district (the ***applicable jury district***) must be:
- (a) the jury district (if any) that includes the sitting place; or
  - (b) another jury district, in the same State or Territory as the sitting place, that is near the sitting place.

Note: For the determination of jury districts, see subsection 23EAA(1).

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- (2) A determination made under subsection (1) is not a legislative instrument.

### **23DJ Sheriff to prepare the jury list for the proceedings**

- (1) The Sheriff must prepare a jury list for the indictable primary proceedings.
- (2) The *jury list* consists of:
- (a) the names and addresses; and
  - (b) if readily available to the Sheriff—the dates of birth and sex; of persons that the Sheriff selects from the jury roll for the applicable jury district.

Note 1: For the preparation of jury rolls, see subsection 23EAA(4).

Note 2: The jury list may be supplemented under subsection (5).

Note 3: The Sheriff may remove a person's name from the jury list under section 23DP.

- (3) The persons to be included in the jury list are to be selected at random from the jury roll.
- (4) The number of persons to be selected is the number the Sheriff thinks is adequate to allow a jury to be empanelled.
- (5) If:
- (a) a jury list has been prepared under subsection (1); and
  - (b) the jury list no longer contains the number of persons the Sheriff thinks is adequate to allow a jury to be empanelled;
- the Sheriff may supplement the list by selecting additional persons, who have not already been summonsed under section 23DQ for the jury, at random from the jury roll for the applicable jury district.
- Note: The situation described in paragraph (b) may arise because of a larger than expected number of persons being removed from the list under section 23DP.
- (6) A jury list is not a legislative instrument.

### **23DK Investigation and questionnaires**

- (1) The Sheriff may make such enquiries as the Sheriff thinks necessary to determine whether a person included on the jury list:
-

- (a) is not qualified to serve as a juror; or
- (b) should be excused from serving as a juror.

Note 1: Sections 23DL, 23DM and 23DN deal with the qualification of jurors in the indictable primary proceedings.

Note 2: Sections 23DZD and 23DZE deal with the Sheriff excusing a person from serving as a juror.

- (2) Without limiting subsection (1), the Sheriff may send a questionnaire to some or all of the persons included in the jury list.
- (3) A person who receives a questionnaire under subsection (2) must complete the questionnaire in the manner specified and return it to the Sheriff within 14 days.

Note: It is an offence if the person fails to return, or properly complete, the questionnaire (see section 58AE).

- (4) A failure by a person to comply with subsection (3) does not affect the retention of the person's name on the jury list.
- (5) After preparing the jury list, the Sheriff may:
  - (a) give the Commissioner of the Australian Federal Police the name and other details of any or all of the persons included in the jury list; and
  - (b) request the Commissioner to give information about the criminal history (if any) of each of those persons.

- (6) If the Sheriff makes a request under subsection (5), the Commissioner must give the information to the Sheriff.

- (7) The Sheriff may give the Court any information that the Commissioner gives the Sheriff under this section.

Note: If the information indicates that the person is not qualified, the Sheriff has power to remove the person's name from the jury list under section 23DP and there is no need to pass the information on to the Court.

- (8) The Sheriff must not disclose information given to the Sheriff by the Commissioner under this section except:
  - (a) to the Court under subsection (7); or
  - (b) otherwise for the purposes of this Act.

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**23DL Qualification to serve as a juror**

Subject to sections 23DM and 23DN, a person is qualified to serve as a juror in the indictable primary proceedings if:

- (a) the person's name is on the jury roll for the applicable jury district; and
- (b) the person is entitled to vote at elections of Members of the House of Representatives in accordance with subsection 93(2) of the *Commonwealth Electoral Act 1918*.

**23DM Disqualification from serving on jury (convictions, charges, detention orders etc.)**

*When a person is not qualified*

- (1) A person is not qualified to serve as a juror in the indictable primary proceedings if:
  - (a) the person has been:
    - (i) convicted of an offence against a law of the Commonwealth, a State or a Territory; and
    - (ii) sentenced to imprisonment for life, or to serve a term of imprisonment of more than 12 months, as a result of the conviction; or
  - (b) the person has been:
    - (i) convicted of an offence against a law of a foreign country; and
    - (ii) sentenced to death, imprisonment for life, or to serve a term of imprisonment of more than 12 months, as a result of the conviction; or
  - (c) the person has been:
    - (i) tried for an offence against a law of the Commonwealth, a State, a Territory or a foreign country; and
    - (ii) ordered to be detained for life, or for a period of more than 12 months, in a hospital, juvenile facility or other detention facility as a result of the trial; or
  - (d) the person has, within the last 10 years, been:
    - (i) convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country; and

- (ii) sentenced to serve a term of imprisonment (including by way of periodic detention) as a result of the conviction; or
- (e) the person has, within the last 10 years, been:
  - (i) tried for an offence against a law of the Commonwealth, a State, a Territory or a foreign country; and
  - (ii) ordered to be detained in a hospital, juvenile facility or other detention facility as a result of the trial; or
- (f) the person is currently:
  - (i) serving a term of imprisonment (including by way of periodic detention); or
  - (ii) being detained in a hospital, juvenile facility or other detention facility; or
  - (iii) subject to an order for periodic home detention or periodic detention in a hospital, juvenile facility or other detention facility; or
- (g) the person is currently subject to:
  - (i) a good behaviour bond or community service order; or
  - (ii) a similar order; or
- (h) the person is currently being held in custody for the commission, or suspected commission, of a criminal offence; or
- (i) the person:
  - (i) has been charged with an offence against a law of the Commonwealth, a State, a Territory or a foreign country; and
  - (ii) is currently at liberty in respect of the offence until the person is required to appear before a court in respect of the offence.

Note: For paragraph (i), the person will be at liberty in respect of the offence if bail is granted for the offence.

*Extended meaning of serving a term of imprisonment*

- (2) For the purposes of subsection (1), ***serving a term of imprisonment*** includes:
  - (a) the case where:
    - (i) a person has been sentenced to a term of imprisonment; and

- (ii) the sentence has been suspended; and
- (iii) the period of suspension has not ended; and
- (b) the case where:
  - (i) a person has been sentenced to a term of imprisonment; and
  - (ii) the person has started serving the sentence; and
  - (iii) the person has been released on parole or probation or on a similar basis; and
  - (iv) that period of release has not ended.

*Disregard convictions etc. that have been set aside*

- (3) For the purposes of this section, disregard a conviction, sentence or order if the conviction, sentence or order has been set aside on appeal or as a result of a pardon.

**23DN Disqualification from serving on jury (professional ineligibility)**

- (1) A person is not qualified to serve as a juror in the indictable primary proceedings if the person is:
  - (a) the Governor or Administrator of a State or Territory; or
  - (b) a judge, or other judicial officer, of a court of a State or Territory; or
  - (c) a member of the Parliament or Legislative Assembly of a State or Territory; or
  - (d) a qualified legal practitioner who holds a legal practising certificate in a State or Territory; or
  - (e) a person whose duties or activities involve or are connected with:
    - (i) the investigation or prosecution of criminal offences; or
    - (ii) the administration of justice; or
    - (iii) the punishment of offenders; or
  - (f) a person who:
    - (i) is excluded by a State or Territory law from serving as a juror in a court of that State or Territory; and
    - (ii) is so excluded because the person's current duties or activities involve or are connected with public administration or emergency services.

- (2) Subsection (1) has effect in addition to:
- (a) section 89 of the *Navigation Act 2012* and any other law that exempts other categories of persons from serving as jurors; or
  - (b) the *Jury Exemption Act 1965* and any other law that provides that other categories of persons are not liable to serve as jurors.
- For the purposes of this Division, a person exempt from serving, or not liable to serve, as a juror under a law referred to in paragraph (a) or (b) is taken to be not qualified to serve as a juror.
- (3) Subsection (1) applies whether the position the person holds is paid or not.

### **23DP Removing names from jury list**

The Sheriff must remove a person's name from the jury list if the Sheriff is satisfied that:

- (a) the person is not qualified to serve as a juror; or
- (b) the Sheriff would excuse the person from serving on the jury:
  - (i) under section 23DZD if the person were a potential juror who had applied under that section to be excused; or
  - (ii) under section 23DZE if the person were a potential juror.

### **23DQ Jury summonses**

- (1) The Sheriff must issue summonses to a sufficient number of persons on the jury list to allow the empanelment of the jury.
- Note: It is an offence if a person served with a summons fails to attend for jury service in accordance with the summons, and the person has not been excused (see section 58AA).
- (2) The persons to be summonsed are to be selected at random from the jury list.
- (3) A summons to a person must be in the form, and be served, as provided for in the Rules of Court.
- (4) The Sheriff may withdraw a summons issued under this section.

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**23DR Preparing the jury panel**

- (1) The Sheriff must prepare a jury panel by listing the names, addresses and dates of birth of:
  - (a) each potential juror who has attended in accordance with a jury summons; or
  - (b) an adequate number of potential jurors, selected at random, from those who have attended in accordance with a jury summons.
- (2) Only potential jurors who:
  - (a) are qualified to serve as a juror; and
  - (b) are not excused from serving on the jury;are to be included on the jury panel.
- (3) The Sheriff must assign a number to each potential juror who is included on the jury panel, indicating the number next to the person's name on the list prepared.
- (4) A potential juror, who is not excused by the Sheriff, remains liable to be included on the jury panel until the potential juror is discharged.

Note: A potential juror will be discharged if excused or successfully challenged (see section 23EI).

**Subdivision DB—Provision of a jury panel prepared under State or Territory laws****23DS Simplified outline of this Subdivision**

Where there is consent to do so, the Sheriff may request the Supreme Court of a State or Territory to provide a jury panel to the Court for a trial in that State or Territory.

The laws in force in the State or Territory concerned will generally apply in relation to the preparation of the jury panel for provision to the Court and juror qualification.

The Court must pay the State or Territory concerned a fee for the provision of the jury panel as agreed between the Court and the State and Territory (including a nil fee).

### **23DT Application of Subdivision**

- (1) This Subdivision applies in relation to indictable primary proceedings if:
  - (a) the Sheriff elects under subsection 23DD(2) that this Subdivision applies in relation to the provision of a jury panel to the Court for the purposes of the proceedings; and
  - (b) the State or Territory in which the Court is to sit for the purposes of the proceedings has consented to preparing, and providing to the Sheriff, a jury panel for the purposes of such proceedings if the Sheriff makes an election of that kind; and
  - (c) the consent is in force.
- (2) Without limiting paragraph (1)(b), an arrangement in force under section 23DZ may constitute consent for the purposes of that paragraph.

### **23DU Provision of jury panel by State/Territory jury official**

#### *Request for a jury panel*

- (1) The Sheriff may, in writing, for the purposes of indictable primary proceedings under this Division, request a State/Territory jury official to:
  - (a) prepare and provide a jury panel to the Sheriff; and
  - (b) issue summonses to a sufficient number of persons mentioned in subsection (2) to allow the empanelment of a jury for the purposes of the proceedings.
- (2) The persons are persons who may be summoned under a law of the State or Territory concerned relating to juries for the purposes of the trial on indictment of an offence in the Supreme Court of the State or Territory concerned.

#### *Complying with request*

- (3) If a request is made under subsection (1), the official:

- (a) must comply with the request; and
- (b) is authorised to issue the summonses under this subsection.

Note: It is an offence if a person served with a summons fails to attend for jury service in accordance with the summons, and the person has not been excused (see section 58AA).

- (4) In complying with the request, the official must apply the same processes the official would apply in preparing a jury panel (however described), and issuing summonses, for the purposes of the trial on indictment of an offence in the Supreme Court of the State or Territory concerned.
- (5) The official may comply with the request under subsection (3) concurrently with any of the official's powers, functions or duties under a law of the State or Territory relating to the preparation of a jury panel (however described), or relating to the issuing of summonses, for the purposes of the trial on indictment of an offence in the Supreme Court of the State or Territory concerned.
- (6) For the purposes of this section and subsections 23DZL(3) to (5), the laws in force in a State or Territory relating to:
  - (a) the preparation of jury lists and jury panels (however described); and
  - (b) the processes associated with issuing summonses;
 that apply for the purposes of the trial on indictment of an offence in the Supreme Court of the State or Territory concerned extend and are to be applied for the purposes of the indictable primary proceedings.
 

Note 1: Subsections 23DZL(3) to (5) deal with supplementing a jury panel if the jury panel was provided to the Sheriff under this section.

Note 2: A person who is not excused from inclusion on a jury panel (however described) under a law of a State or Territory may later be excused from serving as a juror for the purposes of the indictable primary proceedings (see sections 23DZD, 23DZE and 23DZK).
- (7) For the purposes of subsection (6), the laws mentioned in that subsection apply with such changes as are necessary, and without limiting this, references to a court are taken to be references to the Court.
- (8) If a law of a State or Territory requires the Supreme Court of the State or Territory to issue a jury precept or direction (however described) before a State/Territory jury official is authorised to

prepare a jury list or jury panel (however described), the request under subsection (1) is taken to satisfy that requirement.

*When a jury panel is provided*

- (9) A State/Territory jury official provides a jury panel to the Sheriff under this section by providing a list of the potential jurors on the jury panel to the Sheriff.
- (10) The list must include:
  - (a) the name of each potential juror; and
  - (b) any other information necessary to identify each potential juror; and
  - (c) a number assigned to each potential juror, located next to the potential juror's name on the list.

### **23DV Qualification to serve as a juror**

- (1) The laws in force in a State or Territory relating to the qualification of jurors that apply for the purposes of the trial on indictment of an offence in the Supreme Court of the State or Territory concerned extend and are to be applied for the purposes of the indictable primary proceedings.
- (2) For the purposes of subsection (1), the laws mentioned in that subsection apply with such changes as are necessary and, without limiting this, references to a court are taken to be references to the Court.

### **23DW Certain other laws of a State or Territory apply, and Part VIA does not apply, before provision of jury panel**

- (1) If the Sheriff makes a request under subsection 23DU(1) for the preparation and provision of a jury panel, subsections (2) to (4) of this section apply during the period:
  - (a) beginning when the request is made; and
  - (b) ending when the State/Territory jury official provides the jury panel to the Sheriff under section 23DU.

Note: See subsection 23DU(9) for when a jury panel is provided to the Sheriff.

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- (2) The laws in subsection (3) extend and are to be applied, with such changes as are necessary, in respect of conduct engaged in by, or in relation to, persons or potential jurors in the indictable primary proceedings.
- (3) The laws are the laws in force in the State or Territory concerned, including laws that create offences, that:
- (a) relate to the trial on indictment of an offence in the Supreme Court of the State or Territory concerned; and
  - (b) are equivalent to Part VIA of this Act; and
  - (c) apply in respect of conduct engaged in by, or in relation to, persons or potential jurors in the trial.

Note: Part VIA of this Act creates offences relating to juries.

- (4) Except for section 58AA, Part VIA of this Act does not apply in respect of conduct engaged in by, or in relation to, persons or potential jurors in the indictable primary proceedings.

Note: Section 58AA provides that it is an offence if a person served with a summons fails to attend for jury service in accordance with the summons, and the person has not been excused.

### **23DX Disclosure of personal information by Sheriff or State/Territory jury official**

- (1) The Sheriff may disclose to a State/Territory jury official, and a State/Territory jury official may disclose to the Sheriff, personal information (within the meaning of the *Privacy Act 1988*) about a potential juror or juror in the indictable primary proceedings for the purpose of performing functions or duties under this Act.
- (2) Subsection (1) applies despite any other provision of this Act or any other law of the Commonwealth, a State or a Territory.

### **23DY Payments to State or Territory**

- (1) If a State/Territory jury official provides to the Sheriff a jury panel as mentioned in section 23DU, the Court must pay to the State or Territory concerned, for the provision of that panel, either:
- (a) a fee worked out in accordance with an arrangement under section 23DZ; or

- (b) if there is no such arrangement—a fee agreed between the Court and the State or Territory.
- (2) An amount of a fee for the purposes of subsection (1) may be nil.
- (3) If the Court considers it appropriate to do so, the Court may pay a fee to a State or Territory if:
  - (a) the Sheriff makes a request under subsection 23DU(1) for a State/Territory jury official in the State or Territory concerned to prepare and provide a jury panel to the Sheriff; and
  - (b) the Sheriff later rescinds the request before the official provides the jury panel.

### **23DZ Arrangements with State or Territory**

- (1) The Chief Justice or Chief Executive Officer may, in writing, make an arrangement with a State or Territory for and in relation to State/Territory jury officials in that State or Territory preparing, and providing to the Sheriff, a jury panel for the purposes of indictable primary proceedings under this Division.
- (2) If an arrangement under subsection (1) is in force in relation to a State/Territory jury official in a State or Territory, a State/Territory jury official in that State or Territory may prepare and provide the jury panel despite any other provision of this Act or any other law of the Commonwealth.

### **Subdivision DC—Liability to serve on jury and Sheriff’s excusal**

#### **23DZA Simplified outline of this Subdivision**

A person who is qualified to serve as a juror is liable to do so unless excused or discharged.

The Sheriff may excuse a potential juror from serving on a jury.

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**23DZB Application of Subdivision**

This Subdivision applies in relation to juries for indictable primary proceedings.

**23DZC Liability to serve on jury**

- (1) A person who is qualified to serve as a juror for particular indictable primary proceedings is liable to serve as a juror for those proceedings unless the person:
  - (a) is excused from that service for those proceedings under:
    - (i) a law applying under subsection 23DU(6); or
    - (ii) section 23DZD; or
    - (iii) section 23DZE; or
    - (iv) section 23DZK; or
  - (b) is discharged as a juror or potential juror for those proceedings under Subdivision E.

Note: See sections 23DL and 23DV for when a person is qualified to serve as a juror for particular proceedings.

*Lack of qualification does not affect validity of verdict*

- (2) Anything done by a jury is not invalid merely because a juror on the jury was not qualified to serve as a juror for the particular proceedings.

**23DZD Sheriff's power to excuse—on application**

*Excusal when Subdivision DA applies*

- (1) Subsections (2) and (5) apply if Subdivision DA applies in relation to the provision of a jury panel to the Court for the purposes of indictable primary proceedings.
- (2) A potential juror (or an interested person on the potential juror's behalf) may apply to the Sheriff for the potential juror to be excused from serving on a jury at any time before the potential juror is seated in the jury box under subsection 23DZJ(3).

*Excusal when Subdivision DB applies*

- (3) Subsections (4) and (5) apply if Subdivision DB applies in relation to the provision of a jury panel to the Court for the purposes of indictable primary proceedings.
- (4) A potential juror (or an interested person on the potential juror's behalf) may apply to the Sheriff for the potential juror to be excused from serving on a jury at any time within the period:
  - (a) beginning when the State/Territory jury official provides the jury panel to the Sheriff under section 23DU; and
  - (b) ending before the potential juror is seated in the jury box under subsection 23DZJ(3).

Note: See subsection 23DU(9) for when a jury panel is provided to the Sheriff.

*Grounds for excusal*

- (5) The Sheriff may excuse the potential juror if the Sheriff is satisfied that there is good cause to excuse the potential juror because of:
  - (a) the potential juror's health; or
  - (b) undue hardship, financial or otherwise, to the potential juror, or to another person, if the potential juror is not excused; or
  - (c) the potential juror's recent service on a jury in any jurisdiction in Australia; or
  - (d) substantial inconvenience to the public resulting from the potential juror serving on the jury; or
  - (e) the potential juror's inability, in all the circumstances, to perform the duties of a juror to a reasonable standard.

Note: For paragraph (e), the Sheriff must have regard to the *Disability Discrimination Act 1992*.

**23DZE Sheriff's power to excuse—on own initiative**

- (1) At any time before a potential juror is seated in the jury box under subsection 23DZJ(3), the Sheriff may excuse the potential juror from serving on the jury if the Sheriff is satisfied that the potential juror:
  - (a) is, in all the circumstances, unable to perform the duties of a juror to a reasonable standard; or
  - (b) is otherwise not required for jury service.

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Note: The Sheriff must have regard to the *Disability Discrimination Act 1992*.

- (2) If the Sheriff becomes aware that a potential juror is not qualified to serve as a juror, the Sheriff must excuse the potential juror from serving on the jury.

## **Subdivision DD—Empanelling the jury**

### **23DZF Simplified outline of this Subdivision**

A jury is selected from potential jurors on a jury panel. A jury panel may be supplemented with additional potential jurors in the event the jury panel does not have enough potential jurors to empanel a jury.

A potential juror on a jury panel will not become a juror if they are excused from jury service by the Court, or if their inclusion on the jury is successfully challenged.

A potential juror may also be asked to temporarily stand aside during the selection of the jury.

### **23DZG Application of Subdivision**

This Subdivision applies in relation to juries for indictable primary proceedings.

### **23DZH Preparing to empanel the jury**

- (1) Before the selection of persons to be empanelled as the jury for a trial, the Sheriff must:
- (a) give the Court the list of potential jurors on the jury panel that was:
    - (i) prepared under subsection 23DR(1); or
    - (ii) provided to the Sheriff under subsection 23DU(9), with the details of any person the Sheriff has excused from serving on the jury removed from the list; and
  - (b) facilitate the attendance in court of those potential jurors.

- (2) Before the selection of persons to be empanelled as the jury for the trial, the Court must inform each party to the trial that:
  - (a) the potential jurors whose names and/or numbers are to be called may become jurors for the trial; and
  - (b) if the party wishes to challenge any of them, the party must make the challenge before the potential juror sits in the jury box.
- (3) Before the selection of persons to be empanelled as the jury for the trial, the Court must:
  - (a) inform the potential jurors on the jury panel of the nature of the trial in question, including the offences for which the accused is being tried; and
  - (b) inform the potential jurors on the jury panel of the identities of:
    - (i) the parties; and
    - (ii) to the extent known to the Court, the principal witnesses to be called during the trial; and
  - (c) call on the potential jurors on the jury panel to apply to be excused if they consider that:
    - (i) they are not able to give impartial consideration to the case; or
    - (ii) they should be excused for any other reason.

### **23DZJ Empanelling the jury**

- (1) The Court must ensure that an officer of the Court calls:
  - (a) the name; or
  - (b) if a direction of a kind referred to in paragraph 23EB(2)(a) is in force—the number;of a potential juror, selected at random, from the jury panel.
- (2) If:
  - (a) 2 or more potential jurors have the same name; and
  - (b) their name is required to be called under subsection (1);the officer of the Court must call their name and number.
- (3) If a potential juror's name and/or number is called, the potential juror must sit in the jury box unless, before the potential juror can do so, the potential juror is:

- (a) excused under this Subdivision or Subdivision DC from serving on the jury; or
- (b) stood aside under section 23DZQ; or
- (c) discharged under subsection 23EI(2).

Note: A potential juror is discharged under subsection 23EI(2) if the potential juror's inclusion on the jury is successfully challenged (see sections 23DZM to 23DZP).

- (4) The officer of the Court must continue to call the names and/or numbers of potential jurors, as provided under subsection (1), until the required number of jurors under section 23EAB are seated in the jury box.
- (5) When the required number of jurors under section 23EAB are seated in the jury box, those potential jurors must be sworn or make an affirmation.
- (6) When every potential juror seated in the jury box has been sworn, or has made an affirmation, those potential jurors are taken to have been empanelled as the jury for the trial.

### **23DZK Court's power to excuse a person from serving on jury**

- (1) Before a potential juror sits in the jury box, the Court may:
  - (a) if the potential juror requests (including by giving a note to the Judge); or
  - (b) of the Court's own motion;
 excuse the potential juror from serving on the jury if the Court is satisfied that it is appropriate to do so in the circumstances.
- (2) A potential juror who is not empanelled as one of the jurors for the trial under section 23DZJ is taken to be excused by the Court from serving on the jury at the earlier of:
  - (a) the closing of the session of court at which the jury delivers its verdict on all counts or a judgment of acquittal under subsection 23FH(2) is delivered; or
  - (b) the day after the end of the 3 month period starting on the day on which a jury is first empanelled as the jury for the trial.

## 23DZL Supplementary jurors

### *Jury panel prepared under Subdivision DA*

- (1) If the jury panel was prepared under subsection 23DR(1) and there is an insufficient number of potential jurors available on the jury panel for empanelment of the jury under section 23DZJ, the Court may direct the Sheriff to supplement the jury panel by:
  - (a) if the original panel did not include each potential juror who attended in accordance with a jury summons—selecting additional potential jurors from those attending in the same manner as was done in the formation of the original panel under section 23DR; or
  - (b) both:
    - (i) causing additional summonses to be issued under section 23DQ to persons not already summonsed under that section for the jury; and
    - (ii) selecting additional persons from those summonsed and appearing in accordance with that section, in the same manner as was done in the formation of the original panel under section 23DR; or
  - (c) selecting a sufficient number of persons in the vicinity of the Court who are qualified to serve as a juror under section 23DL.
- (2) For the purposes of this Division, a person selected under paragraph (1)(c) of this section is taken to be a potential juror included on the jury panel.

### *Jury panel provided under Subdivision DB*

- (3) If the jury panel was provided to the Sheriff under section 23DU and there is an insufficient number of potential jurors available on the jury panel for empanelment of the jury under section 23DZJ, the Sheriff may:
  - (a) request the State/Territory jury official who provided the jury panel to the Sheriff to supplement the jury panel by selecting additional potential jurors, from those attending in accordance with a jury summons, in the same manner as was done in the formation of the original panel; or
  - (b) both:

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- (i) request the State/Territory jury official to issue summonses under subsection (4) to a sufficient number of persons mentioned in subsection (5) to supplement the jury panel; and
  - (ii) request the State/Territory jury official to select additional persons from those summonsed and attending in accordance with those summonses, in the same manner as was done in the formation of the original panel; or
  - (c) request the State/Territory jury official to supplement the jury panel by selecting a sufficient number of persons in the vicinity of the Court who are qualified to serve as a juror under a law applying under section 23DV.
- (4) If a request to issue summonses is made under subparagraph (3)(b)(i) of this section, the official:
- (a) must comply with the request by applying the same processes the official would apply in issuing summonses for the purposes of the trial on indictment of an offence in the Supreme Court of the State or Territory concerned; and
  - (b) is authorised to issue the summonses under this subsection.
- (5) The persons are persons:
- (a) who may be summoned under a law of the State or Territory concerned relating to juries for the purposes of the trial on indictment of an offence in the Supreme Court of the State or Territory concerned; and
  - (b) not already summonsed under subsection 23DU(3) for the jury.
- (6) For the purposes of this Division, a person selected under paragraph (3)(c) of this section is taken to be a potential juror included on the jury panel.

### **23DZM Challenges to potential jurors—general**

- (1) This section and sections 23DZN and 23DZP set out each party's rights to challenge the inclusion of a potential juror in a jury.
- (2) If a party wishes to challenge the inclusion of a potential juror in the jury, the party must do so:

- (a) after the potential juror's name and/or number has been called in accordance with section 23DZJ; and
  - (b) before the potential juror sits in the jury box.
- (3) If:
- (a) the inclusion of a potential juror on the jury is challenged; and
  - (b) the challenge is upheld;
- the potential juror must not be empanelled on the jury.

Note: The potential juror is taken to be discharged (see subsection 23EI(2)).

### **23DZN Challenges for cause**

- (1) Each party to the indictable primary proceedings may exercise an unlimited number of challenges for cause.
- (2) A challenge to a potential juror for cause must be tried by a Judge before whom the jury is being empanelled.

### **23DZP Peremptory challenges**

The accused is entitled to:

- (a) 4 peremptory challenges; and
- (b) an additional peremptory challenge if more than 12 jurors are to be empanelled for the indictable primary proceedings.

Note: If more than one accused is being tried (see sections 23BB and 23BD), then each accused is entitled to this number of challenges.

### **23DZQ Prosecutor may request that potential jurors be stood aside**

- (1) This section sets out the prosecutor's right to request that a potential juror be stood aside.
- (2) If:
  - (a) a potential juror's name and/or number is called in accordance with section 23DZJ; and
  - (b) before the potential juror sits in the jury box, the prosecutor requests the Court to order the potential juror to stand aside;the Court must order the potential juror to stand aside until all other potential jurors on the jury panel have been called for a first time.

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- (3) If:
- (a) all potential jurors on the jury panel have been called for a first time; and
  - (b) there is fewer than the required number of jurors under section 23EAB seated in the jury box;
- any potential juror who has been ordered to stand aside is eligible to have their name and/or number called a second time in accordance with section 23DZJ.
- Note: Subsection 23DZJ(1) requires potential jurors to be selected at random.
- (4) If a potential juror has their name and/or number called for a second time in accordance with subsection (3) the prosecutor may not request that the potential juror be stood aside.
- Note: The prosecutor may still challenge the potential juror's inclusion in the jury (see section 23DZN).
- (5) The prosecutor is entitled to:
- (a) 4 requests under subsection (2); and
  - (b) an additional request under subsection (2) if more than 12 jurors are to be empanelled for the proceedings.

## **7 Before section 23EA**

Insert:

### **23EAA Jury districts and rolls**

#### *Jury districts*

- (1) The Sheriff may, in writing, determine that the electoral Divisions specified in the determination constitute a ***jury district*** for a particular State or Territory.
- Note: Jury districts determined under this subsection are relevant for the provision of jury panels under Subdivision DA (see section 23DH).
- (2) There may be more than one jury district for a State or Territory.
- (3) A determination made under subsection (1) is not a legislative instrument.

*Jury rolls*

- (4) The Sheriff may prepare a written ***jury roll*** for a jury district composed of the Rolls (as on the day the Sheriff begins the preparation) for each electoral Division that forms part of the jury district.

Note: Jury rolls prepared under this subsection are relevant for the provision of jury panels under Subdivision DA (see section 23DJ).

- (5) A jury roll prepared under subsection (4) is not a legislative instrument.

**23EAB Number of jurors on jury**

- (1) The number of jurors on a jury is:
  - (a) 12; or
  - (b) such larger number (not exceeding 15) as the Court orders.
- (2) An order under paragraph (1)(b) must be made before the jury is empanelled under section 23DZJ for the indictable primary proceedings.

**23EAC Continuation of the trial with a reduced jury**

- (1) Subject to subsection (3), if a juror is discharged during a trial, the Court may direct that the trial continue with the remaining jurors.
- (2) If the Court gives a direction under subsection (1) after the jury has retired to consider its verdict on a count in the indictment, the verdict of the remaining jurors has the same effect as if it were the verdict of all the persons who were jurors when the jury retired to consider its verdict.

Note: There must not be more than 12 jurors when the jury retires to consider its verdict (see section 23EAD).

- (3) A trial must not continue with fewer than 10 jurors.

**23EAD Ballot to reduce additional jurors**

If, before the jury is asked to retire to consider its verdict on a count in the indictment, there are more than 12 jurors, a ballot must be conducted to select at random 11 of the jurors who, together with the jury foreperson, will consider the verdict.

Note 1: This means the jury foreperson is excluded from the ballot. For the appointment of the jury foreperson, see section 23EA.

Note 2: The jurors not selected in the ballot are discharged at the end of the conduct of the ballot (see section 23EJ).

**8 Paragraph 23EB(2)(a)**

Omit “subsection 23DU(1)”, substitute “subsection 23DZJ(1)”.

**9 Paragraph 23EH(a)**

Omit “section 23DP”, substitute “subsection 23DQ(1), 23DU(3) or 23DZL(4)”.

**10 Subsection 23EI(1)**

Omit “under Subdivision D”.

**11 Subsection 23EJ(1)**

Omit “section 23DE”, substitute “section 23EAD”.

**12 Subsection 23EL(5)**

Omit “subsection 23DD(3)”, substitute “subsection 23EAC(3)”.

**13 Paragraph 23EM(2)(a)**

Omit “section 23DU”, substitute “section 23DZJ”.

**14 Subsection 23EM(3)**

Omit “section 23DU”, substitute “section 23DZJ”.

**15 Paragraph 23EM(3)(a)**

Omit “section 23DU”, substitute “section 23DZJ”.

**16 Subsection 23EM(3) (note)**

Omit “section 23DN”, substitute “section 23DK”.

**17 Subsection 23EM(4) (note 1)**

Omit “Note 1”, substitute “Note”.

**18 Subsection 23EM(4) (note 2)**

Repeal the note.

**19 Paragraph 23EM(5)(b)**

Omit “section 23DT”, substitute “section 23DZH”.

**20 Subparagraph 58AA(1)(a)(i)**

Repeal the subparagraph, substitute:

- (i) subsection 23DQ(1), 23DU(3) or 23DZL(4); or.

**21 Paragraph 58AE(1)(a)**

Omit “subsection 23DN(2)”, substitute “subsection 23DK(2)”.

**22 Subparagraphs 58AE(1)(b)(i) and (ii)**

Omit “subsection 23DN(3)”, substitute “subsection 23DK(3)”.

**23 Application and saving provisions**

- (1) The amendments made by this Schedule apply in relation to directions given under subsection 23DC(1) of the *Federal Court of Australia Act 1976* on or after the commencement of this item.
- (2) Division 1A of Part III of the *Federal Court of Australia Act 1976*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a direction given under subsection 23DK(1) of that Act before that commencement.
- (3) A determination in force under subsection 23DF(1) of the *Federal Court of Australia Act 1976* immediately before the commencement of this item has effect on and after that commencement as if it were a determination in force under subsection 23EAA(1) of that Act.
- (4) A jury roll prepared under subsection 23DG(1) of the *Federal Court of Australia Act 1976* and that was in effect immediately before the commencement of this item has effect on and after that commencement as if it were a jury roll prepared under subsection 23EAA(4) of that Act.

## **Schedule 3—Amendment of the Marriage Act 1961**

### **Part 1—Deputy Registrars of Marriage Celebrants**

#### *Marriage Act 1961*

##### **1 Subsection 5(1)**

Insert:

*Deputy Registrar of Marriage Celebrants* means an APS employee who occupies a position in the Department as referred to in subsection 39AA(1).

*Registrar*, in Subdivisions C, D and E of Division 1 of Part IV, means the Registrar of Marriage Celebrants (see section 39A).

*Registrar of Marriage Celebrants*: see subsection 39A(2).

##### **2 At the end of section 39A**

Add:

###### *Delegation*

- (4) The Registrar of Marriage Celebrants may, in writing, delegate to a Deputy Registrar of Marriage Celebrants any of the functions or powers conferred on the Registrar of Marriage Celebrants by or under this Act, other than:
- (a) a function or power under a provision of the Act referred to in the table in subsection (5); or
  - (b) a function or power prescribed by regulations made for the purposes of this paragraph.

Note: See sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* in relation to delegations.

- (5) The following table sets out the functions and powers of the Registrar of Marriage Celebrants under this Act that must not be delegated to a Deputy Registrar of Marriage Celebrants.

**Schedule 3** Amendment of the Marriage Act 1961  
**Part 1** Deputy Registrars of Marriage Celebrants

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**Functions and powers under this Act that must not be delegated**

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<b>Item</b>	<b>Function or power</b>	<b>Provision</b>
1	To determine the number and basis of positions of Deputy Registrar of Marriage Celebrants	Subsection 39AA(1)
2	To determine the qualifications, and/or skills that a person must have to be registered as a marriage celebrant	Paragraph 39C(1)(b)
3	To approve the form of a notice that a person wishes to be identified as a religious marriage celebrant on the register of marriage celebrants	Subsection 39DB(2)
4	To require professional development activities	Paragraph 39G(1)(b)
5	To take disciplinary measures against a marriage celebrant	Section 39I
6	To establish complaints resolution procedures to resolve complaints about the solemnisation of marriages by marriage celebrants	Paragraph 39K(c)

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**3 After section 39A**

Insert:

**39AA Deputy Registrars of Marriage Celebrants**

- (1) There are to be such number of positions of Deputy Registrar of Marriage Celebrants occupied (on an acting, permanent, full-time or part-time basis) by APS employees in the Department as the Registrar of Marriage Celebrants from time to time determines.
- (2) A Deputy Registrar of Marriage Celebrants may perform a function, or exercise a power, that has been delegated to the Deputy Registrar by the Registrar of Marriage Celebrants under subsection 39A(4).

**4 Section 39L**

Omit “The Registrar of Marriage Celebrants is not liable”, substitute “Neither the Registrar of Marriage Celebrants, nor a Deputy Registrar of Marriage Celebrants, is liable”.

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## **Part 2—Timeframes for considering application for registration as authorised celebrant**

### *Marriage Act 1961*

#### **5 Subsection 34(5)**

Omit “3 months”, substitute “6 months”.

#### **6 After subsection 39D(3)**

Insert:

*Requests for additional information*

(3A) The Registrar may, by written notice, request:

- (a) a person (an **applicant**) who has made an application (see subsection (1A)); or
- (b) with the applicant’s consent, any other person or body who the Registrar considers may have information relevant to the application or the applicant;

to give additional information to the Registrar, within a reasonable period specified in the notice, to assist the Registrar to decide whether to register the applicant as a marriage celebrant.

(3B) If the Registrar gives a notice to an applicant or another person or body requesting additional information under subsection (3A), the Registrar is not required to consider the applicant’s application while the Registrar is waiting for the information to be given.

(3C) If the Registrar gives a notice to an applicant requesting additional information under subsection (3A), the applicant’s application is taken to have been withdrawn at the end of the period specified in the notice if the additional information is not given to the Registrar within:

- (a) the specified period; or
- (b) if the Registrar allows a longer period by written notice given to the applicant—that longer period.

#### **7 Before subsection 39D(4)**

Insert:

*Decision on application*

**8 Paragraph 39J(2)(b)**

Omit “3 months”, substitute “6 months”.

**9 Subsection 39J(2)**

Omit “3 month”, substitute “6 month”.

**10 Paragraph 39J(2A)(b)**

Omit “3 months”, substitute “6 months”.

**11 Subsection 39J(2A)**

Omit “3 month”, substitute “6 month”.

**12 Application of amendments**

- (1) The amendment of subsection 34(5) of the *Marriage Act 1961* made by item 5 applies in relation to an application for registration under Subdivision A of Division 1 of Part IV of that Act that is received after the commencement of this Part.
- (2) The amendments of the *Marriage Act 1961* made by items 6 to 11 apply in relation to an application for registration as a marriage celebrant that is received after the commencement of this Part.

## **Part 3—Refund of registration application fee**

### *Marriage Act 1961*

#### **13 After subsection 39D(1E)**

Insert:

*Refund of registration application fee*

- (1F) The Registrar may refund the whole or a part of a registration application fee that was paid in respect of an application by a person to be registered as a marriage celebrant if:
- (a) the Registrar is not satisfied that the person meets the requirement referred to in paragraph 39C(1)(b) (required qualifications or skills); or
  - (b) the person has been granted an exemption from liability to pay the registration application fee; or
  - (c) any other circumstances prescribed by the regulations for the purposes of this paragraph exist.
- (1G) The Registrar may refund the whole or a part of a registration application fee under subsection (1F):
- (a) on the initiative of the Registrar; or
  - (b) on application by the person who made the application to be registered as a marriage celebrant.

#### **14 Application of amendments**

The amendment of the *Marriage Act 1961* made by this Part applies in relation to a registration application fee that was paid in respect of an application for registration as a marriage celebrant that is received after the commencement of this Part.

## **Part 4—Celebrant to be physically present at marriage**

### ***Marriage Act 1961***

#### **15 Paragraph 5(2)(a)**

Before “presence” (wherever occurring), insert “physical”.

#### **16 Subsection 13(1)**

Omit “or in whose presence”.

#### **17 Subsection 21(2)**

Omit “or in whose presence”.

#### **18 Section 41**

Omit “by or in the presence of an authorised celebrant who is authorised to solemnise marriages at the place where the marriage takes place”, substitute “by an authorised celebrant who is physically present at the place where the marriage takes place and is authorised to solemnise marriages at that place”.

#### **19 Subsections 45(1), (2) and (3)**

Omit “or in the presence of”.

#### **20 Subsection 46(1)**

Omit “or in the presence of”.

#### **21 Subsection 71(1)**

Omit “by or in the presence of an authorised celebrant”, substitute “by an authorised celebrant who is physically present at the place where the marriage takes place and is authorised to solemnise marriages at that place”.

#### **22 Paragraph 72(1)(a)**

Before “presence”, insert “physical”.

#### **23 Subsection 72(2)**

Before “presence”, insert “physical”.

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**24 Subsection 80(8)**

Omit “, or in whose presence,”.

**25 Subsection 112(1)**

Omit “or in whose presence”.

**26 Subsection 113(3)**

Omit “, or in whose presence,”.

**27 Subsection 113(4)**

Omit “or in whose presence”.

**28 Paragraph 113(5)(a)**

Omit “or in whose presence”.

**29 Subsection 113(6)**

Omit “, or in whose presence,”.

## Part 5—Identity requirements

### *Marriage Act 1961*

#### **30 Subparagraph 42(1)(b)(ii)**

Repeal the subparagraph.

#### **31 Subparagraph 42(1)(b)(iv)**

Omit “party; and”, substitute “party; or”.

#### **32 At the end of paragraph 42(1)(b)**

Add:

- (v) if it is impracticable for the party to obtain a certificate or official extract referred to in subparagraph (i) and the party does not have a current passport referred to in subparagraph (iii) or (iv)—a statutory declaration made by the party or a parent of the party stating that, for reasons specified in the declaration, it is impracticable to obtain a certificate or official extract referred to in subparagraph (i) and stating, to the best of the declarant’s knowledge and belief and as accurately as the declarant has been able to ascertain, when and where the party was born; and

#### **33 Application of amendments**

The amendments of section 42 of the *Marriage Act 1961* made by this Part apply in relation to a notice that is given under that section after the commencement of this Part.

## **Part 6—Notice of intended marriage and consent**

### ***Marriage Act 1961***

#### **34 Paragraph 42(1)(c)**

Omit “before that authorised celebrant”, substitute “in the physical presence of that authorised celebrant”.

#### **35 Paragraph 42(2)(c)**

Omit “in the presence of”, substitute “under the observation (whether or not by means of a facility that enables audio and visual communication between persons in different places) of one of the following, who must also be in Australia”.

#### **36 Subparagraphs 42(2)(c)(i) to (iii)**

Omit “or”.

#### **37 Subparagraph 42(2)(c)(iv)**

Omit “or” (second occurring).

#### **38 Subparagraph 42(2)(c)(v)**

Omit “or”.

#### **39 Paragraph 42(2)(d)**

Omit “in the presence of”, substitute “under the observation (whether or not by means of a facility that enables audio and visual communication between persons in different places) of one of the following, who must also be outside Australia”.

#### **40 Subparagraphs 42(2)(d)(i) to (iv)**

Omit “or”.

#### **41 Subsection 42(3)**

Omit “in the presence of an authorised celebrant”, substitute “under the observation (whether or not by means of a facility that enables audio and visual communication between persons in different places) of an authorised celebrant in Australia”.

#### **42 Subsection 42(6)**

Repeal the subsection, substitute:

(6) If:

(a) a notice of intention to marry has been given to an authorised celebrant under this section; and

(b) either:

(i) because of the death, absence or illness of the authorised celebrant, or for any other reason, it is impracticable for that person to solemnise the marriage; or

(ii) the parties to the intended marriage have requested the authorised celebrant to give the notice to another authorised celebrant;

the marriage may be solemnised by another authorised celebrant who has possession of the notice.

#### **43 Subsection 42(9)**

Repeal the subsection, substitute:

(9) An authorised celebrant:

(a) may permit an error in a notice under this section to be corrected by either of the parties:

(i) under the observation (whether or not by means of a facility that enables audio and visual communication between persons in different places) of the authorised celebrant, if the authorised celebrant is in Australia; and

(ii) at any time before the marriage to which it relates has been solemnised; and

(b) may treat the corrected notice as having been originally given in its corrected form.

#### **44 After section 42A**

Insert:

#### **42B Authorised celebrant must physically meet each party to intended marriage separately**

An authorised celebrant must not solemnise a marriage unless the authorised celebrant has met separately with each party before the

intended marriage. The authorised celebrant and the party must be physically present at the meeting.

#### **45 Application of amendments**

- (1) The amendments of section 42 of the *Marriage Act 1961* made by items 34 to 41 and 43 apply in relation to a notice that is given under that section after the commencement of this Part.
- (2) The amendments of the *Marriage Act 1961* made by items 42 and 44 apply in relation to a marriage that is solemnised, or intended to be solemnised, after the commencement of this Part.

## Part 7—Single registration as authorised celebrant

### *Marriage Act 1961*

#### **46 At the end of paragraphs 29(a) and (b)**

Add “and”.

#### **47 At the end of section 29**

Add:

- ; and (e) the person is not already registered as a marriage celebrant under Subdivision C of this Division; and
- (f) the person is not authorised to solemnise marriages in a State or Territory under Subdivision B of this Division.

#### **48 Subsection 31(1)**

Omit “(1)”.

#### **49 At the end of paragraph 31(1)(a)**

Add “or”.

#### **50 Subsection 39(2)**

After “writing”, insert “and subject to subsection (2A)”.

#### **51 After subsection 39(2)**

Insert:

- (2A) The Minister must not, under subsection (2), authorise an officer of a State or Territory to solemnise marriages if the officer:
- (a) is registered as a marriage celebrant under Subdivision C of this Division; or
  - (a) is a minister of religion who is registered under Subdivision A of this Division.

#### **52 Subsection 39A(5) (after table item 5)**

Insert:

5A	To remove the name of a person from the register of marriage celebrants	Paragraph 39K(aa)
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### **53 At the end of subsection 39C(1)**

Add:

- ; and (d) is not a minister of religion who is already registered under Subdivision A of this Division; and
- (e) is not authorised to solemnise marriages in a State or Territory under Subdivision B of this Division.

### **54 After paragraph 39K(a)**

Insert:

- (aa) remove the name of a person from the register of marriage celebrants in accordance with regulations made for the purposes of this paragraph; and

### **55 Application of amendments**

- (1) The amendments of section 29 of the *Marriage Act 1961* made by this Part apply in relation to a person who applies to be registered under Subdivision A of Division 1 of Part IV of that Act if the person's application is received after the commencement of this Part.
- (2) The amendments of subsection 39(2) of the *Marriage Act 1961* made by this Part apply in relation to an instrument of authorisation that is made under Subdivision B of Division 1 of Part IV of that Act after the commencement of this Part.
- (3) The amendment of subsection 39C(1) of the *Marriage Act 1961* made by this Part applies in relation to a person who applies to be registered as a marriage celebrant under Subdivision C of Division 1 of Part IV of that Act if the person's application is received after the commencement of this Part.

## Schedule 4—Other amendments

### Part 1—Arbitration

#### *Family Law Act 1975*

**1 Section 13G (heading)**

Omit “(Division 2)”.

**2 Paragraph 13G(1)(a)**

Omit “(Division 2)”.

**3 Subsection 13G(3)**

Omit “(Division 2)”.

**4 Section 13J (heading)**

Omit “(Division 2)”.

**5 Paragraph 13J(1)(a)**

Omit “(Division 2)”.

**6 Subsection 13J(2)**

Omit “(Division 2)” (wherever occurring).

**7 Application of amendments**

- (1) The amendments of section 13G of the *Family Law Act 1975* made by this Part apply in relation to a referral made under that section on or after the day this Part commences.
- (2) The amendments of section 13J of the *Family Law Act 1975* made by this Part apply in relation to an application made under that section on or after the day this Part commences.

## **Part 2—Assistance from Attorney-General**

### *Native Title Act 1993*

#### **8 Subsection 94P(1) (table item 3)**

Repeal the item.

#### **9 Section 213A**

Repeal the section.

#### **10 Application of amendments**

- (1) Despite the repeal of item 3 of the table in subsection 94P(1) of the *Native Title Act 1993* by this Part, that item continues to apply, in relation to parties provided with funds before the commencement of this Part, as if that repeal had not happened.
- (2) If:
  - (a) a person has, before the commencement of this Part, made an application for the provision of assistance under section 213A of the *Native Title Act 1993*; and
  - (b) the Attorney-General has not, before that time, made a decision on the application;the application is taken never to have been made.

**Part 2A—Membership of Parliamentary Joint  
Committee on Human Rights**

*Human Rights (Parliamentary Scrutiny) Act 2011*

**10A Subsection 5(1)**

Omit “10”, substitute “12”.

**10B Paragraphs 5(1)(a) and (b)**

Omit “5”, substitute “6”.

## **Part 3—Corrections**

### ***Federal Circuit and Family Court of Australia Act 2021***

#### **11 Paragraph 76(4)(b)**

Omit “284”, substitute “285”.

#### **12 Subsection 174(1) (note)**

Omit “284”, substitute “285”.

#### **13 Paragraph 217(3)(b)**

Omit “284”, substitute “285”.

### ***Federal Court of Australia Act 1976***

#### **14 Subsection 23CD(2) (note)**

Repeal the note.

#### **15 Paragraph 58DB(2A)(a)**

Omit “44ZZRF”, substitute “45AF”.

#### **16 Paragraph 58DB(2A)(b)**

Omit “44ZZRG”, substitute “45AG”.

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*[Minister’s second reading speech made in—  
House of Representatives on 15 November 2023  
Senate on 8 February 2024]*

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(136/23)