

# EXPOSURE DRAFT

2022

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT
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## **Federal Court of Australia Amendment (Extending Criminal Jurisdiction and Other Measures) Bill 2022**

**No.     , 2022**

*(Attorney-General)*

**A Bill for an Act to extend the criminal jurisdiction  
of the Federal Court of Australia, and for related  
purposes**

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# EXPOSURE DRAFT

1 **A Bill for an Act to extend the criminal jurisdiction**  
2 **of the Federal Court of Australia, and for related**  
3 **purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Federal Court of Australia Amendment (Extending*  
7 *Criminal Jurisdiction and Other Measures) Act 2022.*

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table  
10 commences, or is taken to have commenced, in accordance with

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No. , 2022

*Federal Court of Australia Amendment (Extending Criminal  
Jurisdiction and Other Measures) Bill 2022*

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1 column 2 of the table. Any other statement in column 2 has effect  
2 according to its terms.

3

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## Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

4

Note: This table relates only to the provisions of this Act as originally enacted.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.

5

6

7

(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.

8

9

## 3 Schedules

10

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

11

12

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14

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2

*Federal Court of Australia Amendment (Extending Criminal  
Jurisdiction and Other Measures) Bill 2022*

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Criminal jurisdiction **Schedule 1**  
Conferral of criminal jurisdiction **Part 1**

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1 **Schedule 1—Criminal jurisdiction**

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

3 *Australian Securities and Investments Commission Act 2001*

4 **1 Section 12HC (at the end of the heading)**

5 Add “for offences against this Division etc.”.

6 **2 Before section 243B**

7 Insert:

8 **243A Prosecutions for indictable offences against this Act**

9 (1) Subject to subsection (2), jurisdiction is conferred on the Federal  
10 Court to hear and determine prosecutions for indictable offences  
11 against this Act.

12 (2) Subsection (1) does not apply to prosecutions for offences:

13 (a) against Division 2 of Part 2; or

14 (b) against Part 3 in its application in relation to an investigation  
15 of a contravention of that Division.

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

18 (3) Proceedings before the Federal Court under this section must not  
19 be instituted except with the written consent of the Minister, or of a  
20 person authorised in writing by the Minister to give such consent.

21 (4) Subsection (3) does not apply to proceedings instituted by ASIC or  
22 a person authorised in writing by ASIC.

23 *Corporations Act 2001*

24 **3 After section 1338A**

25 Insert:

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## Schedule 1 Criminal jurisdiction

### Part 1 Conferral of criminal jurisdiction

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1 **1338AA Criminal jurisdiction of the Federal Court**

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

4 **4 Section 1338B (heading)**

5 Repeal the heading, substitute:

6 **1338B Criminal jurisdiction of State and Territory courts**

7 *Judiciary Act 1903*

8 **5 Section 2**

9 Insert:

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

12 **6 Subsection 39B(1A) (note)**

13 Repeal the note, substitute:

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

17 **7 Before Division 1 of Part X**

18 Insert:

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

21 **67G Criminal jurisdiction of the Federal Court of Australia**

22 *Jurisdiction in relation to related summary offences*

23 (1) If, in proceedings before the Federal Court of Australia (the  
24 **Federal Court**):

- 25 (a) a person pleads guilty to an indictable offence; or  
26 (b) a person is found guilty or not guilty of an indictable offence;
-



# EXPOSURE DRAFT

Criminal jurisdiction **Schedule 1**  
Conferral of criminal jurisdiction **Part 1**

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1 the Federal Court has jurisdiction to hear and determine  
2 prosecutions for a related summary offence.

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

5 (2) If all charges for an indictable offence against a person before the  
6 Federal Court have been discontinued, the Federal Court has  
7 jurisdiction to hear and determine prosecutions for a related  
8 summary offence.

9 (3) An offence is a *related summary offence*, in relation to an  
10 indictable offence, if:  
11 (a) the offence is a summary offence against a law of the  
12 Commonwealth; and  
13 (b) the offence arises from substantially the same facts and  
14 circumstances as those from which the indictable offence has  
15 arisen; and  
16 (c) the Federal Court has jurisdiction in relation to the indictable  
17 offence.

18 *Jurisdiction in relation to certain Criminal Code indictable*  
19 *offences*

20 (4) The Federal Court has jurisdiction to hear and determine  
21 prosecutions for indictable offences against any of the following  
22 provisions of the *Criminal Code*:  
23 (a) Division 70 of Chapter 4 (about bribery of foreign public  
24 officials);  
25 (b) Part 7.7 of Chapter 7 (about forgery and related offences);  
26 (c) Part 9.5 of Chapter 9 (about identity crime);  
27 (d) Part 10.2 of Chapter 10 (about money laundering);  
28 (e) Part 10.7 of Chapter 10 (about computer offences);  
29 (f) Part 10.8 of Chapter 10 (about financial information  
30 offences);  
31 (g) Part 10.9 of Chapter 10 (about accounting records).

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## Schedule 1 Criminal jurisdiction

### Part 1 Conferral of criminal jurisdiction

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1 *Relationship with associated matters jurisdiction*

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

## 5 *National Consumer Credit Protection Act 2009*

### 6 **8 Before section 204**

7 Insert:

#### 8 **203A Criminal jurisdiction of the Federal Court**

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

#### 11 **9 Section 204 (heading)**

12 Repeal the heading, substitute:

#### 13 **204 Criminal jurisdiction of State and Territory courts**

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

### 15 **10 Before section 202**

16 Insert:

#### 17 **201A Criminal jurisdiction of the Federal Court of Australia in** 18 **relation to certain indictable offences**

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

### 22 **11 After 324A**

23 Insert:

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Criminal jurisdiction **Schedule 1**  
Conferral of criminal jurisdiction **Part 1**

---

1 **324B Instituting criminal proceedings**

- 2 (1) Proceedings before the Federal Court of Australia for an offence  
3 against a provision of this Act must not be instituted except with  
4 the written consent of the Minister, or of a person authorised in  
5 writing by the Minister to give such consent.
- 6 (2) Subsection (1) does not apply to proceedings instituted by the  
7 Regulator or a person authorised in writing by the Regulator.

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Schedule 1 Criminal jurisdiction

Part 2 Criminal procedure

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1 **Part 2—Criminal procedure**

2 *Corporations Act 2001*

3 **12 At the end of subsection 1338A(3)**

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

7 *Federal Court of Australia Act 1976*

8 **13 Section 4**

9 Insert:

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

12 **14 Subsection 23AB(4)**

13 Repeal the subsection (including the note).

14 **15 After Division 1A of Part III**

15 Insert:

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

18 **23K Practice and procedure applicable to proceedings for related**  
19 **summary offences**

20 Unless the Court orders otherwise:

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

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Criminal jurisdiction **Schedule 1**  
Criminal procedure **Part 2**

---

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

## 5 **23L Evidence in proceedings for related summary offences**

6 (1) Without affecting the admissibility of any evidence which might be  
7 given apart from this subsection, in proceedings for the prosecution  
8 of a person for a related summary offence, the Court may admit as  
9 evidence in relation to the prosecution:

10 (a) material disclosed under Division 1A in respect of the  
11 indictable offence; or

12 (b) evidence given during a trial of the person in respect of the  
13 indictable offence; or

14 (c) in the case of a plea of guilty to the indictable offence,  
15 evidence given by witnesses and documents tendered in  
16 evidence during the committal proceedings for the indictable  
17 offence; or

18 (d) in the case of a discontinuance of prosecution of an indictable  
19 offence against the person, evidence given by witnesses and  
20 documents tendered in evidence during the committal  
21 proceedings for the indictable offence.

22 (2) On the hearing of a prosecution against a person for a related  
23 summary offence, a party may adduce further evidence only with  
24 the leave of the Court.

## 25 **16 After subsection 30AA(2)**

26 Insert:

27 (2A) The Court has jurisdiction to hear and determine an appeal from a  
28 judgment of the Court constituted by a single Judge in proceedings  
29 for a related summary offence.

## 30 **17 At the end of subsection 30BF(1)**

31 Add “or (2A)”.

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Schedule 1 Criminal jurisdiction

Part 2 Criminal procedure

---

1 **18 After section 32AD**

2 Insert:

3 **32AE Discretionary transfer of certain criminal proceedings**

4 (1) This section applies to a proceeding in a court if:

5 (a) all or part of the proceeding is for a corporate crime offence;  
6 and

7 (b) the court is the Court or a court of a State or Territory.

8 (2) If it appears to the court (the *first court*) that it is more appropriate  
9 for the proceeding or a part of the proceeding to be determined by  
10 another court (the *second court*) that has jurisdiction to hear and  
11 determine the proceedings, the first court may transfer the  
12 proceeding or part to the second court.

13 (3) In considering whether to make an order under subsection (2), the  
14 first court must have regard to:

15 (a) the interests of justice; and

16 (b) any laws of the State or Territory in which the first court is  
17 located that provide for particular courts of that State or  
18 Territory to hear and determine the proceeding or part of the  
19 proceeding.

20 (4) A court may make an order under subsection (2):

21 (a) on application by the prosecutor; or

22 (b) on its own initiative.

23 (5) If an order is made under subsection (2):

24 (a) the first court may make such orders as it considers necessary  
25 pending the disposal of the proceeding or part by the second  
26 court; and

27 (b) further proceedings must be as directed by the second court.

28 (6) Without limiting paragraph (5)(b), the second court may order that  
29 it proceed as if:

30 (a) the proceeding had been commenced in the second court; and

31 (b) the same or similar steps in the proceeding had been taken in  
32 the second court as were taken in the first court; and

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Criminal jurisdiction **Schedule 1**  
Criminal procedure **Part 2**

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- 1 (c) the orders and directions made by the first court in the  
2 proceeding had been made by the second court.
- 3 (7) An appeal does not lie from a decision of a court in relation to the  
4 transfer of a proceeding, or part of a proceeding, under  
5 subsection (2).
- 6 (8) Nothing in this section confers on a court jurisdiction that the court  
7 would not otherwise have.
- 8 (9) In this section:
- 9 ***corporate crime offence*** means:
- 10 (a) an indictable offence against the *Australian Securities and*  
11 *Investments Commission Act 2001*; or
- 12 (b) an indictable offence against the *Corporations Act 2001*; or
- 13 (c) an indictable offence against any of the following provisions  
14 of the *Criminal Code*:
- 15 (i) Division 70 of Chapter 4 (about bribery of foreign  
16 public officials);
- 17 (ii) Part 7.7 of Chapter 7 (about forgery and related  
18 offences);
- 19 (iii) Part 9.5 of Chapter 9 (about identity crime);
- 20 (iv) Part 10.2 of Chapter 10 (about money laundering);
- 21 (v) Part 10.7 of Chapter 10 (about computer offences);
- 22 (vi) Part 10.8 of Chapter 10 (about financial information  
23 offences);
- 24 (vii) Part 10.9 of Chapter 10 (about accounting records); or
- 25 (d) an indictable offence against the *National Consumer Credit*  
26 *Protection Act 2009*; or
- 27 (e) an indictable offence against a provision of the  
28 *Superannuation Industry (Supervision) Act 1993* that is  
29 administered by the Australian Securities and Investments  
30 Commission; or
- 31 (f) a related summary offence.

## 19 After paragraph 35A(1)(e)

32 Insert:  
33

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Schedule 1 Criminal jurisdiction

Part 2 Criminal procedure

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

3 ***Judiciary Act 1903***

4 **20 Subsection 68B(2)**

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

6 **21 Section 68C (heading)**

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

8 **22 At the end of Division 1 of Part X**

9 Add:

10 **68D Adjustments to State and Territory laws applying to**  
11 **proceedings for related summary offences before Federal**  
12 **Court of Australia**

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

27 *Which State’s or Territory’s laws are to apply?*

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



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Criminal jurisdiction **Schedule 1**  
Criminal procedure **Part 2**

1

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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 a case stated, or question reserved, by a court	the laws of the State or Territory applying in the proceedings during which the court stated the case or reserved the question.

2

*What those laws include*

3

(3) The laws of that State or Territory are taken:

4

(a) to include the Rules of the Supreme Court of that State or Territory that apply in relation to criminal proceedings; and

5

6

(b) not to include the Rules of any other court of that State or Territory.

7

8

*How those laws apply*

9

(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.

10

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12

13

(5) The laws of that State or Territory apply to the proceedings only to the extent to which they are:

14

15

(a) not inconsistent with the laws of the Commonwealth; and

16

(b) not inconsistent with the Rules of the Federal Court.

# EXPOSURE DRAFT

Schedule 1 Criminal jurisdiction

Part 2 Criminal procedure

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1 **23 Subsection 70(2)**

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

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

4 **24 At the end of subsection 203(2)**

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

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## Schedule 2—Juries

### *Federal Court of Australia Act 1976*

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

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

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

Omit “section 23DF”, substitute “section 23EAA”.

#### **3 Section 4**

Insert:

*jury list* has the meaning given by subsection 23DH(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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1 **Subdivision D—Election in relation to a jury panel**

2 **23DA Simplified outline of this Subdivision**

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4  
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11

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).

12 **23DB Application of Subdivision**

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

15 **23DC Direction to arrange for a jury panel**

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

21 **23DD Election in relation to a jury panel**

- 22 (1) This section applies if the Court gives the Sheriff a written  
23 direction under subsection 23DC(1) to arrange for a jury panel for  
24 indictable primary proceedings.
- 25 (2) The Sheriff must, in writing to the Chief Executive Officer, elect  
26 that either Subdivision DA or DB applies in relation to the  
27 provision of the jury panel to the Court for the purposes of the  
28 proceedings.

1 (3) An election under subsection (2) is not a legislative instrument.

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

4 **23DE Simplified outline of this Subdivision**

5 Before arranging for a jury panel for trials in a State or Territory,  
6 the Sheriff needs to determine one or more jury districts for the  
7 State or Territory. A jury roll for each jury district is then prepared.

8 The Sheriff arranges for a jury panel under this Act by preparing a  
9 jury list, randomly selecting some of the persons on that list and  
10 summoning them to attend court for jury service.

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

14 **23DF Application of Subdivision**

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

19 **23DG Sheriff to select the jury district for the proceedings**

20 (1) The Sheriff must, in writing, determine which jury district is to  
21 apply to the indictable primary proceedings. This jury district (the  
22 *applicable jury district*) must be:

- 23 (a) the jury district (if any) that includes the sitting place; or  
24 (b) another jury district, in the same State or Territory as the  
25 sitting place, that is near the sitting place.

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

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

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1     **23DH Sheriff to prepare the jury list for the proceedings**

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

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

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

10            Note 3:     The Sheriff may remove a person’s name from the jury list under

11            section 23DN.

- 12            (3) The persons to be included in the jury list are to be selected at
- 13            random from the jury roll.
- 14            (4) The number of persons to be selected is the number the Sheriff
- 15            thinks is adequate to allow a jury to be empanelled.
- 16            (5) If:
- 17                 (a) a jury list has been prepared under subsection (1); and
- 18                 (b) the jury list no longer contains the number of persons the
- 19                 Sheriff thinks is adequate to allow a jury to be empanelled;
- 20            the Sheriff may supplement the list by selecting additional persons,
- 21            who have not already been summonsed under section 23DP for the
- 22            jury, at random from the jury roll for the applicable jury district.

23            Note:        The situation described in paragraph (b) may arise because of a larger

24            than expected number of persons being removed from the list under

25            section 23DN.

- 26            (6) A jury list is not a legislative instrument.

27     **23DJ Investigation and questionnaires**

- 28            (1) The Sheriff may make such enquiries as the Sheriff thinks
- 29            necessary to determine whether a person included on the jury list:
- 30                 (a) is not qualified to serve as a juror; or
- 31                 (b) should be excused from serving as a juror.

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

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

5 (2) Without limiting subsection (1), the Sheriff may send a  
6 questionnaire to some or all of the persons included in the jury list.

7 (3) A person who receives a questionnaire under subsection (2) must  
8 complete the questionnaire in the manner specified and return it to  
9 the Sheriff within 14 days.

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

12 (4) A failure by a person to comply with subsection (3) does not affect  
13 the retention of the person's name on the jury list.

14 (5) After preparing the jury list, the Sheriff may:

15 (a) give the Commissioner of the Australian Federal Police the  
16 name and other details of any or all of the persons included in  
17 the jury list; and

18 (b) request the Commissioner to give information about the  
19 criminal history (if any) of each of those persons.

20 The Commissioner must give the information to the Sheriff.

21 (6) The Sheriff may give the Court any information that the  
22 Commissioner gives the Sheriff under this section.

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

27 (7) The Sheriff must not disclose information given to the Sheriff by  
28 the Commissioner under this section except:

29 (a) to the Court under subsection (6); or

30 (b) otherwise for the purposes of this Act.

## 31 **23DK Qualification to serve as a juror**

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

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

6 **23DL Disqualification from serving on jury (convictions, charges,  
7 detention orders etc.)**

8 *When a person is not qualified*

- 9 (1) A person is not qualified to serve as a juror in the indictable  
10 primary proceedings if:  
11 (a) the person has been:  
12 (i) convicted of an offence against a law of the  
13 Commonwealth, a State or a Territory; and  
14 (ii) sentenced to imprisonment for life, or to serve a term of  
15 imprisonment of more than 12 months, as a result of the  
16 conviction; or  
17 (b) the person has been:  
18 (i) convicted of an offence against a law of a foreign  
19 country; and  
20 (ii) sentenced to death, imprisonment for life, or to serve a  
21 term of imprisonment of more than 12 months, as a  
22 result of the conviction; or  
23 (c) the person has been:  
24 (i) tried for an offence against a law of the Commonwealth,  
25 a State, a Territory or a foreign country; and  
26 (ii) ordered to be detained for life, or for a period of more  
27 than 12 months, in a hospital, juvenile facility or other  
28 detention facility as a result of the trial; or  
29 (d) the person has, within the last 10 years, been:  
30 (i) convicted of an offence against a law of the  
31 Commonwealth, a State, a Territory or a foreign  
32 country; and



- 1 (ii) sentenced to serve a term of imprisonment (including by  
2 way of periodic detention) as a result of the conviction;  
3 or  
4 (e) the person has, within the last 10 years, been:  
5 (i) tried for an offence against a law of the Commonwealth,  
6 a State, a Territory or a foreign country; and  
7 (ii) ordered to be detained in a hospital, juvenile facility or  
8 other detention facility as a result of the trial; or  
9 (f) the person is currently:  
10 (i) serving a term of imprisonment (including by way of  
11 periodic detention); or  
12 (ii) being detained in a hospital, juvenile facility or other  
13 detention facility; or  
14 (iii) subject to an order for periodic home detention or  
15 periodic detention in a hospital, juvenile facility or other  
16 detention facility; or  
17 (g) the person is currently subject to:  
18 (i) a good behaviour bond or community service order; or  
19 (ii) a similar order; or  
20 (h) the person is currently being held in custody for the  
21 commission, or suspected commission, of a criminal offence;  
22 or  
23 (i) the person:  
24 (i) has been charged with an offence against a law of the  
25 Commonwealth, a State, a Territory or a foreign  
26 country; and  
27 (ii) is currently at liberty in respect of the offence until the  
28 person is required to appear before a court in respect of  
29 the offence.

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

32 *Extended meaning of serving a term of imprisonment*

- 33 (2) For the purposes of subsection (1), *serving a term of*  
34 *imprisonment* includes:  
35 (a) the case where:

# EXPOSURE DRAFT

## Schedule 2 Juries

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- 1 (i) a person has been sentenced to a term of imprisonment;  
2 and  
3 (ii) the sentence has been suspended; and  
4 (iii) the period of suspension has not ended; and  
5 (b) the case where:  
6 (i) a person has been sentenced to a term of imprisonment;  
7 and  
8 (ii) the person has started serving the sentence; and  
9 (iii) the person has been released on parole or probation or  
10 on a similar basis; and  
11 (iv) that period of release has not ended.

12 *Disregard convictions etc. that have been set aside*

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

### 16 **23DM Disqualification from serving on jury (professional** 17 **ineligibility)**

- 18 (1) A person is not qualified to serve as a juror in the indictable  
19 primary proceedings if the person is:  
20 (a) the Governor or Administrator of a State or Territory; or  
21 (b) a judge, or other judicial officer, of a court of a State or  
22 Territory; or  
23 (c) a member of the Parliament or Legislative Assembly of a  
24 State or Territory; or  
25 (d) a qualified legal practitioner who holds a legal practising  
26 certificate in a State or Territory; or  
27 (e) a person whose duties or activities involve or are connected  
28 with:  
29 (i) the investigation or prosecution of criminal offences; or  
30 (ii) the administration of justice; or  
31 (iii) the punishment of offenders; or  
32 (f) a person who:

- 1 (i) is excluded by a State or Territory law from serving as a  
2 juror in a court of that State or Territory; and  
3 (ii) is so excluded because the person's current duties or  
4 activities involve or are connected with public  
5 administration or emergency services.

- 6 (2) Subsection (1) has effect in addition to:  
7 (a) section 89 of the *Navigation Act 2012* and any other law that  
8 exempts other categories of persons from serving as jurors; or  
9 (b) the *Jury Exemption Act 1965* and any other law that provides  
10 that other categories of persons are not liable to serve as  
11 jurors.

12 For the purposes of this Division, a person exempt from serving, or  
13 not liable to serve, as a juror under a law referred to in  
14 paragraph (a) or (b) is taken to be not qualified to serve as a juror.

- 15 (3) Subsection (1) applies whether the position the person holds is paid  
16 or not.

## 17 **23DN Removing names from jury list**

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

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

## 27 **23DP Jury summonses**

- 28 (1) The Sheriff must issue summonses to a sufficient number of  
29 persons on the jury list to allow the empanelment of the jury.

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

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## Schedule 2 Juries

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- 1 (2) The persons to be summonsed are to be selected at random from  
2 the jury list.
- 3 (3) A summons to a person must be in the form, and be served, as  
4 provided for in the Rules of Court.
- 5 (4) The Sheriff may withdraw a summons issued under this section.

### 6 **23DQ Preparing the jury panel**

- 7 (1) The Sheriff must prepare a jury panel by listing the names,  
8 addresses and dates of birth of:
- 9 (a) each potential juror who has attended in accordance with a  
10 jury summons; or
- 11 (b) an adequate number of potential jurors, selected at random,  
12 from those who have attended in accordance with a jury  
13 summons.
- 14 (2) Only potential jurors who:
- 15 (a) are qualified to serve as a juror; and  
16 (b) are not excused from serving on the jury;  
17 are to be included on the jury panel.
- 18 (3) The Sheriff must assign a number to each potential juror who is  
19 included on the jury panel, indicating the number next to the  
20 person's name on the list prepared.
- 21 (4) A potential juror, who is not excused by the Sheriff, remains liable  
22 to be included on the jury panel until the potential juror is  
23 discharged.
- 24 Note: A potential juror will be discharged if excused or successfully  
25 challenged (see section 23EI).

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1 **Subdivision DB—Provision of a jury panel prepared under**  
2 **State or Territory laws**

3 **23DR Simplified outline of this Subdivision**

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

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

10 **23DS Application of Subdivision**

- 11 (1) This Subdivision applies in relation to indictable primary  
12 proceedings if:  
13 (a) the Sheriff elects under subsection 23DD(2) that this  
14 Subdivision applies in relation to the provision of a jury  
15 panel to the Court for the purposes of the proceedings; and  
16 (b) the State or Territory in which the Court is to sit for the  
17 purposes of the proceedings has consented to the Sheriff  
18 making an election of that kind; and  
19 (c) the consent is in force; and  
20 (d) the election is in accordance with that consent.
- 21 (2) Without limiting paragraph (1)(b), an arrangement in force under  
22 section 23DY may constitute consent for the purposes of that  
23 paragraph.

24 **23DT Provision of jury panel by State/Territory jury official**

25 *Request for a jury panel*

- 26 (1) The Sheriff may, in writing, for the purposes of indictable primary  
27 proceedings under this Division, request a State/Territory jury  
28 official to:  
29 (a) prepare and provide a jury panel to the Sheriff; and

# EXPOSURE DRAFT

- 1 (b) issue summonses to a sufficient number of persons  
2 mentioned in subsection (2) to allow the empanelment of a  
3 jury for the purposes of the proceedings.
- 4 (2) The persons are persons who may be summoned under a law of the  
5 State or Territory concerned relating to juries for the purposes of  
6 the trial on indictment of an offence in the Supreme Court of the  
7 State or Territory concerned.

8 *Complying with request*

- 9 (3) If a request is made under subsection (1), the official:  
10 (a) must comply with the request; and  
11 (b) is authorised to issue the summonses under this subsection.
- 12 Note: It is an offence if a person served with a summons fails to attend for  
13 jury service in accordance with the summons, and the person has not  
14 been excused (see section 58AA).
- 15 (4) In complying with the request, the official must apply the same  
16 processes the official would apply in preparing a jury panel  
17 (however described), and issuing summonses, for the purposes of  
18 the trial on indictment of an offence in the Supreme Court of the  
19 State or Territory concerned.
- 20 (5) The official may comply with the request under subsection (3)  
21 concurrently with any of the official's powers, functions or duties  
22 under a law of the State or Territory relating to the preparation of a  
23 jury panel (however described), or relating to the issuing of  
24 summonses, for the purposes of the trial on indictment of an  
25 offence in the Supreme Court of the State or Territory concerned.
- 26 (6) For the purposes of this section and subsections 23DZL(3) to (5),  
27 the laws in force in a State or Territory relating to:  
28 (a) the preparation of jury lists and jury panels (however  
29 described); and  
30 (b) the processes associated with issuing summonses;  
31 that apply for the purposes of the trial on indictment of an offence  
32 in the Supreme Court of the State or Territory concerned extend  
33 and are to be applied for the purposes of the indictable primary  
34 proceedings.

- 
- 1 Note 1: Subsections 23DZL(3) to (5) deal with supplementing a jury panel if  
2 the jury panel was provided to the Sheriff under this section.
- 3 Note 2: A person who is not excused from inclusion on a jury panel (however  
4 described) under a law of a State or Territory may later be excused  
5 from serving as a juror for the purposes of the indictable primary  
6 proceedings (see sections 23DZD, 23DZE and 23DZK).
- 7 (7) For the purposes of subsection (6), the laws mentioned in that  
8 subsection apply with such changes as are necessary, and without  
9 limiting this, references to a court are taken to be references to the  
10 Court.
- 11 (8) If a law of a State or Territory requires the Supreme Court of the  
12 State or Territory to issue a jury precept or direction (however  
13 described) before a State/Territory jury official is authorised to  
14 prepare a jury list or jury panel (however described), the request  
15 under subsection (1) is taken to satisfy that requirement.
- 16 *When a jury panel is provided*
- 17 (9) A State/Territory jury official provides a jury panel to the Sheriff  
18 under this section by providing a list of the potential jurors on the  
19 jury panel to the Sheriff.
- 20 (10) The list must include:
- 21 (a) the name of each potential juror; and  
22 (b) any other information necessary to identify each potential  
23 juror; and  
24 (b) a number assigned to each potential juror, located next to the  
25 potential juror's name on the list.

## 26 **23DU Qualification to serve as a juror**

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

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1 limiting this, references to a court are taken to be references to the  
2 Court.

3 **23DV Certain other laws of a State or Territory apply, and**  
4 **Part VIA does not apply, before provision of jury panel**

5 (1) If the Sheriff makes a request under subsection 23DT(1) for the  
6 preparation and provision of a jury panel, subsections (2) to (4) of  
7 this section apply during the period:

- 8 (a) beginning when the request is made; and  
9 (b) ending when the State/Territory jury official provides the  
10 jury panel to the Sheriff under section 23DT.

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

13 (2) The laws in subsection (3) extend and are to be applied, with such  
14 changes as are necessary, in respect of conduct engaged in by, or in  
15 relation to, persons or potential jurors in the indictable primary  
16 proceedings.

17 (3) The laws are the laws in force in the State or Territory concerned,  
18 including laws that create offences, that:

- 19 (a) relate to the trial on indictment of an offence in the Supreme  
20 Court of the State or Territory concerned; and  
21 (b) are equivalent to Part VIA of this Act; and  
22 (c) apply in respect of conduct engaged in by, or in relation to,  
23 persons or potential jurors in the trial.

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

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

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



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1 **23DW Disclosure of personal information by Sheriff or**  
2 **State/Territory jury official**

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

10 **23DX Payments to State or Territory**

- 11 (1) If a State/Territory jury official provides to the Sheriff a jury panel  
12 as mentioned in section 23DT, the Court must pay to the State or  
13 Territory concerned, for the provision of that panel, either:  
14 (a) a fee worked out in accordance with an arrangement under  
15 section 23DY; or  
16 (b) if there is no such arrangement—a reasonable fee.
- 17 (2) An amount of a fee for the purposes of paragraph (1)(a) may be nil.
- 18 (3) The Court may pay a fee to a State or Territory if the Court  
19 considers it appropriate in the following circumstances:  
20 (a) the Sheriff makes a request under subsection 23DT(1) for a  
21 State/Territory jury official in the State or Territory  
22 concerned to prepare and provide a jury panel to the Sheriff;  
23 and  
24 (b) the Sheriff later rescinds the request before the official  
25 provides the jury panel.

26 **23DY Arrangements with State or Territory**

- 27 (1) The Chief Justice or Chief Executive Officer may, in writing, make  
28 an arrangement with a State or Territory for and in relation to  
29 State/Territory jury officials in that State or Territory preparing,  
30 and providing to the Sheriff, a jury panel for the purposes of  
31 indictable primary proceedings under this Division.

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## Schedule 2 Juries

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- 1 (2) If an arrangement under subsection (1) is in force in relation to a  
2 State/Territory jury official in a State or Territory, a State/Territory  
3 jury official in that State or Territory may prepare and provide the  
4 jury panel despite any other provision of this Act or any other law  
5 of the Commonwealth.

### 6 **23DZ Validity of anything done by jury**

7 If a jury is empanelled under this Division as a result of the  
8 preparation and provision of a jury panel as mentioned in this  
9 Subdivision, anything done by the jury is not invalid merely  
10 because of any defect or irregularity in the preparation or provision  
11 of that panel.

### 12 **Subdivision DC—Liability to serve on jury and Sheriff’s** 13 **excusal**

#### 14 **23DZA Simplified outline of this Subdivision**

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

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

#### 18 **23DZB Application of Subdivision**

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

#### 21 **23DZC Liability to serve on jury**

- 22 (1) A person who is qualified to serve as a juror for particular  
23 proceedings is liable to serve as a juror for those proceedings  
24 unless the person:  
25 (a) is excused from that service for those proceedings under:  
26 (i) a law applying under subsection 23DT(6); or  
27 (ii) section 23DZD; or  
28 (iii) section 23DZE; or

- 1 (iv) section 23DZK; or  
2 (b) is discharged as a juror or potential juror for those  
3 proceedings under Subdivision E.

4 Note: See sections 23DK and 23DU for when a person is qualified to serve  
5 as a juror for particular proceedings.

6 *Lack of qualification does not affect validity of verdict*

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

## 10 **23DZD Sheriff's power to excuse—on application**

11 *Excusal when Subdivision DA applies*

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

19 *Excusal when Subdivision DB applies*

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

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

# EXPOSURE DRAFT

## Schedule 2 Juries

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1

### *Grounds for excusal*

2

(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:

3

4

(a) the potential juror's health; or

5

(b) undue hardship, financial or otherwise, to the potential juror, or to another person, if the potential juror is not excused; or

6

7

(c) the potential juror's recent service on a jury in any jurisdiction in Australia; or

8

9

(d) substantial inconvenience to the public resulting from the potential juror serving on the jury; or

10

11

(e) the potential juror's inability, in all the circumstances, to perform the duties of a juror to a reasonable standard.

12

13

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

14

15

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

16

(1) At any time before a potential juror is seated in the jury box under section 23DZJ, the Sheriff may excuse the potential juror from serving on the jury if the Sheriff is satisfied that the potential juror:

17

18

19

(a) is, in all the circumstances, unable to perform the duties of a juror to a reasonable standard; or

20

21

(b) is otherwise not required for jury service.

22

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

23

24

(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.

25

26

27

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

28

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

29

A jury is selected from potential jurors on a jury panel.

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32

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

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

## 6 **23DZG Application of Subdivision**

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

## 9 **23DZH Preparing to empanel the jury**

- 10 (1) Before the selection of persons to be empanelled as the jury for a  
11 trial, the Sheriff must:
- 12 (a) give the Court the list of potential jurors on the jury panel  
13 that was:
    - 14 (i) prepared under subsection 23DQ(1); or
    - 15 (ii) provided to the Sheriff under subsection 23DT(9), with  
16 the details of any person the Sheriff has excused from  
17 serving on the jury removed from the list; and
  - 18 (b) facilitate the attendance in court of those potential jurors.
- 19 (2) Before the selection of persons to be empanelled as the jury for the  
20 trial, the Court must inform each party to the trial that:
- 21 (a) the potential jurors whose names and/or numbers are to be  
22 called may become jurors for the trial; and
  - 23 (b) if the party wishes to challenge any of them, the party must  
24 make the challenge before the potential juror sits in the jury  
25 box.
- 26 (3) Before the selection of persons to be empanelled as the jury for the  
27 trial, the Court must:
- 28 (a) inform the potential jurors on the jury panel of the nature of  
29 the trial in question, including the offences for which the  
30 accused is being tried; and
  - 31 (b) inform the potential jurors on the jury panel of the identities  
32 of:

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## Schedule 2 Juries

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- 1 (i) the parties; and  
2 (ii) to the extent known to the Court, the principal witnesses  
3 to be called during the trial; and  
4 (c) call on the potential jurors on the jury panel to apply to be  
5 excused if they consider that:  
6 (i) they are not able to give impartial consideration to the  
7 case; or  
8 (ii) they should be excused for any other reason.

### 9 **23DZJ Empanelling the jury**

- 10 (1) The Court must ensure that an officer of the Court calls:  
11 (a) the name; or  
12 (b) if a direction of a kind referred to in paragraph 23EB(2)(a) is  
13 in force—the number;  
14 of a potential juror, selected at random, from the jury panel.
- 15 (2) If:  
16 (a) 2 or more potential jurors have the same name; and  
17 (b) their name is required to be called under subsection (1);  
18 the officer of the Court must call their name and number.
- 19 (3) If a potential juror's name and/or number is called, the potential  
20 juror must sit in the jury box unless, before the potential juror can  
21 do so, the potential juror is:  
22 (a) excused under this Subdivision or Subdivision DC from  
23 serving on the jury; or  
24 (b) stood aside under section 23DZR; or  
25 (c) discharged under subsection 23EI(2).
- 26 Note: A potential juror is discharged under subsection 23EI(2) if the  
27 potential juror's inclusion on the jury is successfully challenged (see  
28 sections 23DZM to 23DZQ).
- 29 (4) The officer of the Court must continue to call the names and/or  
30 numbers of potential jurors, as provided under subsection (1), until  
31 the required number of jurors under section 23EAB are seated in  
32 the jury box.

- 
- 1 (5) When the required number of jurors under section 23EAB are  
2 seated in the jury box, those potential jurors must be sworn or  
3 make an affirmation.
- 4 (6) When every potential juror seated in the jury box has been sworn,  
5 or has made an affirmation, those potential jurors are taken to have  
6 been empanelled as the jury for the trial.

## 7 **23DZK Court’s power to excuse a person from serving on jury**

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

## 22 **23DZL Supplementary jurors**

### 23 *Jury panel prepared under Subdivision DA*

- 24 (1) If the jury panel was prepared under subsection 23DQ(1) and there  
25 is an insufficient number of potential jurors available on the jury  
26 panel for empanelment of the jury under section 23DZJ, the Court  
27 may direct the Sheriff to supplement the jury panel by:  
28 (a) if the original panel did not include each potential juror who  
29 attended in accordance with a jury summons—selecting  
30 additional potential jurors from those attending in the same  
31 manner as was done in the formation of the original panel  
32 under section 23DQ; or

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- 1 (b) both:  
2 (i) causing additional summonses to be issued under  
3 section 23DP to persons not already summonsed under  
4 that section for the jury; and  
5 (ii) selecting additional persons from those summonsed and  
6 appearing in accordance with that section, in the same  
7 manner as was done in the formation of the original  
8 panel under section 23DQ; or  
9 (c) selecting a sufficient number of persons in the vicinity of the  
10 Court who are qualified to serve as a juror under section  
11 23DK.

- 12 (2) For the purposes of this Division, a person selected under  
13 paragraph (1)(c) of this section is taken to be a potential juror  
14 included on the jury panel.

15 *Jury panel provided under Subdivision DB*

- 16 (3) If the jury panel was provided to the Sheriff as mentioned in  
17 section 23DT and there is an insufficient number of potential jurors  
18 available on the jury panel for empanelment of the jury under  
19 section 23DZJ, the Sheriff may:  
20 (a) request the State/Territory jury official who provided the jury  
21 panel to the Sheriff to supplement the jury panel by selecting  
22 additional potential jurors, from those attending in  
23 accordance with a jury summons, in the same manner as was  
24 done in the formation of the original panel; or  
25 (b) both:  
26 (i) request the State/Territory jury official to issue  
27 summonses under subsection (4) to a sufficient number  
28 of persons mentioned in subsection (5) to supplement  
29 the jury panel; and  
30 (ii) request the State/Territory jury official to select  
31 additional persons from those summonsed and attending  
32 in accordance with those summonses, in the same  
33 manner as was done in the formation of the original  
34 panel; or  
35 (c) request the State/Territory jury official to supplement the jury  
36 panel by selecting a sufficient number of persons in the



- 
- 1 vicinity of the Court who are qualified to serve as a juror  
2 under a law applying under section 23DU.
- 3 (4) If a request to issue summonses is made under  
4 subparagraph (3)(b)(i) of this section, the official:  
5 (a) must comply with the request by applying the same processes  
6 the official would apply in issuing summonses for the  
7 purposes of the trial on indictment of an offence in the  
8 Supreme Court of the State or Territory concerned; and  
9 (b) is authorised to issue the summonses under this subsection.
- 10 (5) The persons are persons:  
11 (a) who may be summoned under a law of the State or Territory  
12 concerned relating to juries for the purposes of the trial on  
13 indictment of an offence in the Supreme Court of the State or  
14 Territory concerned; and  
15 (b) not already summonsed under subsection 23DT(3) for the  
16 jury.
- 17 (6) For the purposes of this Division, a person selected under  
18 paragraph (3)(c) of this section is taken to be a potential juror  
19 included on the jury panel.

## 20 **23DZM Challenges to potential jurors—general**

- 21 (1) This section and sections 23DZP and 23DZQ set out each party's  
22 rights to challenge the inclusion of a potential juror in a jury.
- 23 (2) If a party wishes to challenge the inclusion of a potential juror in  
24 the jury, the party must do so:  
25 (a) after the potential juror's name and/or number has been  
26 called in accordance with section 23DZJ; and  
27 (b) before the potential juror sits in the jury box.
- 28 (3) If:  
29 (a) the inclusion of a potential juror on the jury is challenged;  
30 and  
31 (b) the challenge is upheld;  
32 the potential juror must not be empanelled on the jury.

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

### 2 **23DZN Challenges for cause**

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

### 7 **23DZQ Peremptory challenges**

8 The accused is entitled to:

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

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

### 14 **23DZR Prosecutor may request that potential jurors be stood aside**

- 15 (1) This section sets out the prosecutor's right to request that a  
16 potential juror be stood aside.
- 17 (2) If:
- 18 (a) a potential juror's name and/or number is called under  
19 subsection 23DZJ(1); and  
20 (b) before the potential juror sits in the jury box, the prosecutor  
21 requests the Court to order the potential juror to stand aside;  
22 the Court must order the potential juror to stand aside until all other  
23 potential jurors on the jury panel have been called for a first time.
- 24 (3) If:
- 25 (a) all potential jurors on the jury panel have been called for a  
26 first time; and  
27 (b) there is fewer than the required number of jurors under  
28 section 23EAB seated in the jury box;

1 any potential juror who has been ordered to stand aside is eligible  
2 to have their name and/or number called a second time in  
3 accordance with section 23DZJ.

4 Note: Subsection 23DZJ(1) requires potential jurors to be selected at  
5 random.

6 (4) If a potential juror has their name and/or number called for a  
7 second time in accordance with subsection (3) the prosecutor may  
8 not request that the potential juror be stood aside.

9 Note: The prosecutor may still challenge the potential juror's inclusion in  
10 the jury (see section 23DZN).

11 (5) The prosecutor is entitled to:  
12 (a) 4 requests under subsection (2); and  
13 (b) an additional request under subsection (2) if more than 12  
14 jurors are to be empanelled for the proceedings.

## 15 **7 Before section 23EA**

16 Insert:

### 17 **23EAA Jury districts and rolls**

#### 18 *Jury districts*

19 (1) The Sheriff may, in writing, determine that the electoral Divisions  
20 specified in the determination constitute a *jury district* for a  
21 particular State or Territory.

22 Note: Jury districts determined under this subsection are relevant for the  
23 provision of jury panels under Subdivision DA (see section 23DG).

24 (2) There may be more than one jury district for a State or Territory.

25 (3) A determination made under subsection (1) is not a legislative  
26 instrument.

#### 27 *Jury rolls*

28 (4) The Sheriff may prepare a written jury roll for a jury district  
29 composed of the Rolls (as on the day the Sheriff begins the

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1 preparation) for each electoral Division that forms part of the jury  
2 district.

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

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

### 7 **23EAB Number of jurors on jury**

8 (1) The number of jurors on a jury is:

9 (a) 12; or

10 (b) such larger number (not exceeding 15) as the Court orders.

11 (2) An order under paragraph (1)(b) must be made before the jury is  
12 empanelled under section 23DZJ for the indictable primary  
13 proceedings.

### 14 **23EAC Continuation of the trial with a reduced jury**

15 (1) Subject to subsection (3), if a juror is discharged during a trial, the  
16 Court may direct that the trial continue with the remaining jurors.

17 Note: This Subdivision deals with discharge of jurors.

18 (2) If the Court gives a direction under subsection (1) after the jury has  
19 retired to consider its verdict on a count in the indictment, the  
20 verdict of the remaining jurors has the same effect as if it were the  
21 verdict of all the persons who were jurors when the jury retired to  
22 consider its verdict.

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

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

### 26 **23EAD Ballot to reduce additional jurors**

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

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

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

5 **8 Paragraph 23EB(2)(a)**

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

7 **9 Paragraph 23EH(a)**

8 Omit “section 23DP”, substitute “subsection 23DP(1), 23DT(3) or  
9 23DZL(4)”.

10 **10 Subsection 23EI(1)**

11 Omit “under Subdivision D”.

12 **11 Subsection 23EJ(1)**

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

14 **12 Subsection 23EL(5)**

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

16 **13 Paragraph 23EM(2)(a)**

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

18 **14 Subsection 23EM(3)**

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

20 **15 Paragraph 23EM(3)(a)**

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

22 **16 Subsection 23EM(3) (note)**

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

24 **17 Subsection 23EM(4) (note 1)**

25 Omit “Note 1”, substitute “Note”.

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1 **18 Subsection 23EM(4) (note 2)**

2 Repeal the note.

3 **19 Paragraph 23EM(5)(b)**

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

5 **20 Subparagraph 58AA(1)(a)(i)**

6 Repeal the subparagraph. Substitute:

7 (i) subsection 23DP(1), 23DT(3) or 23DZL(4); or”.

8 **21 Paragraph 58AE(1)(a)**

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

10 **22 Subparagraphs 58AE(1)(b)(i) and (ii)**

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

12 **23 Application and saving provisions**

- 13 (1) The amendments made by this Schedule apply in relation to directions  
14 given under subsection 23DC(1) of the *Federal Court of Australia Act*  
15 *1976* on or after the commencement of this item.
- 16 (2) Division 1A of Part III of the *Federal Court of Australia Act 1976*, as in  
17 force immediately before the commencement of this item, continues to  
18 apply on and after that commencement in relation to a direction given  
19 under subsection 23DK(1) of that Act before that commencement.
- 20 (3) A determination in force under subsection 23DF(1) of the *Federal*  
21 *Court of Australia Act 1976* immediately before the commencement of  
22 this item has effect on and after that commencement as if it were a  
23 determination in force under subsection 23EAA(1) of that Act.
- 24 (4) A jury roll prepared under subsection 23DG(1) of the *Federal Court of*  
25 *Australia Act 1976* and that was in effect immediately before the  
26 commencement of this item has effect on and after that commencement  
27 as if it were a jury roll prepared under subsection 23EAA(4) of that Act.

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