





# **Federal Court of Australia Amendment (Criminal Jurisdiction) Act 2009**

**No. 106, 2009**

**An Act to make provision for the exercise of certain  
criminal jurisdiction by the Federal Court of  
Australia, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



---

## Contents

|                                                       |                    |          |
|-------------------------------------------------------|--------------------|----------|
| 1                                                     | Short title .....  | 1        |
| 2                                                     | Commencement ..... | 2        |
| 3                                                     | Schedule(s) .....  | 2        |
| <b>Schedule 1—Amendments</b>                          |                    | <b>3</b> |
| Part 1—Main amendments                                |                    | 3        |
| <i>Director of Public Prosecutions Act 1983</i>       |                    | 3        |
| <i>Federal Court of Australia Act 1976</i>            |                    | 3        |
| <i>Judiciary Act 1903</i>                             |                    | 95       |
| Part 2—Consequential and other amendments             |                    | 102      |
| <i>Bankruptcy Act 1966</i>                            |                    | 102      |
| <i>Crimes Act 1914</i>                                |                    | 102      |
| <i>Federal Court of Australia Act 1976</i>            |                    | 105      |
| <i>Judiciary Act 1903</i>                             |                    | 115      |
| <i>Mutual Assistance in Criminal Matters Act 1987</i> |                    | 117      |
| <i>Proceeds of Crime Act 2002</i>                     |                    | 118      |
| <i>Transfer of Prisoners Act 1983</i>                 |                    | 118      |





# **Federal Court of Australia Amendment (Criminal Jurisdiction) Act 2009**

**No. 106, 2009**

---

---

**An Act to make provision for the exercise of certain  
criminal jurisdiction by the Federal Court of  
Australia, and for other purposes**

*[Assented to 6 November 2009]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Federal Court of Australia  
Amendment (Criminal Jurisdiction) Act 2009*.

---

## 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.

| Commencement information                                                        |                                                                         |                 |
|---------------------------------------------------------------------------------|-------------------------------------------------------------------------|-----------------|
| Column 1                                                                        | Column 2                                                                | Column 3        |
| Provision(s)                                                                    | Commencement                                                            | Date/Details    |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent.                    | 6 November 2009 |
| 2. Schedule 1                                                                   | The 28th day after the day on which this Act receives the Royal Assent. | 4 December 2009 |

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act 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—Amendments**

### **Part 1—Main amendments**

#### ***Director of Public Prosecutions Act 1983***

##### **1 After subsection 6(2E)**

Insert:

- (2F) If a person is committed for trial before a court (the ***initial court***) for one or more indictable offences against the laws of the Commonwealth, the Director may institute in another court (the ***later court***) a prosecution of the person on indictment for any or all of the offences.
- (2G) Subsection (2F) applies even if the Director has instituted a prosecution (the ***initial prosecution***) before the initial court for any or all of the offences. However, the Director must discontinue the initial prosecution in respect of each offence covered by the prosecution in the later court.

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

##### **2 After Division 1 of Part III**

Insert:

#### **Division 1A—Original jurisdiction (indictable offences)**

##### **Subdivision A—Introduction**

##### **23AA Background and simplified outline**

The following is background to, and a simplified outline of, this Division:

- This Division sets out procedures to be followed during criminal proceedings in the Court relating to certain indictable offences.

- This Division does not confer jurisdiction on the Court in relation to indictable offences. Other provisions need to have done this.
- This Division does not set out all of the procedures to be followed during these criminal proceedings. It is supplemented by procedures set out in the Rules of Court, and also by procedures set out in:
  - (a) State and Territory laws; and
  - (b) Rules of Court of State and Territory courts;as applied by sections 68, 68B and 68C of the *Judiciary Act 1903*.
- The procedures set out in this Division include procedures about the following:
  - (a) preparing, amending and filing indictments;
  - (b) pre-trial hearings and disclosure;
  - (c) empanelling and discharging juries;
  - (d) pleas and verdicts;
  - (e) persons committed to the Court for sentencing.

## **23AB Application of Division**

*Events causing Division to apply, and meaning of key concepts*

- (1) This Division applies in relation to a person (the **accused**) if any of the following events happen:
  - (a) either the accused, the prosecutor or both appear before the Court in accordance with an order committing the accused for trial on indictment, or sentencing, before the Court for an indictable offence;

- (b) the prosecutor files in the Court an indictment against the accused for an indictable offence (whether or not the accused has been examined and committed for trial on indictment);
- (c) the prosecutor applies to the Court for an extension of time in which to file in the Court an indictment of the kind covered by paragraph (b) against the accused;
- (d) the accused applies to the Court in relation to the prosecutor's failure to file an indictment against the accused in response to an order committing the accused for trial on indictment before the Court for an indictable offence;
- (e) either the accused, the prosecutor or both appear before the Court in accordance with an order of a State or Territory court granting the accused bail in relation to an indictable offence.

*Indictable primary proceedings*

- (2) This Division applies in relation to the following proceedings (the ***indictable primary proceedings***):
  - (a) proceedings in the Court that are commenced by, or that include, an event mentioned in subsection (1);
  - (b) proceedings in the Court for sentencing the accused if the Court, in proceedings covered by paragraph (a), has accepted a plea of guilty, or a verdict of guilty, for a count in the indictment in relation to the accused;
  - (c) proceedings in the Court that are ancillary to proceedings covered by paragraph (a) or (b).

*Parties to the proceedings*

- (3) In indictable primary proceedings, the accused and the prosecutor are ***parties*** to the proceedings.

Note: More than one accused may be a party to the proceedings if they are prosecuted on a single indictment (see sections 23BB and 23BD).

*Offences to which this Division applies*

- (4) A reference in this Division to an offence is a reference to any of the following:
  - (a) an offence against either of the following sections of the *Trade Practices Act 1974*:

- (i) section 44ZZRF (making a contract etc. containing a cartel provision);
- (ii) section 44ZZRG (giving effect to a cartel provision);
- (b) if jurisdiction is conferred on the Court under subsection 32(4) in respect of a matter—an indictable offence to which the matter relates.

Note: Paragraph (b) covers any Commonwealth indictable offence associated with a particular prosecution of a cartel offence mentioned in paragraph (a).

## **Subdivision B—Matters relating to indictments**

### **23BA Indictment may include alternate counts**

The prosecutor may include alternate counts in an indictment.

### **23BB Single count can cover multiple accused**

The prosecutor may, in an indictment, include a single count against more than one accused for the same indictable offence if the count is founded on alleged facts that are the same or substantially the same for each accused.

### **23BC Separating one or more accused from a single count**

- (1) The Court may order one or more accused included in a single count in an indictment to be tried separately:
  - (a) in the same proceedings on a different count in the same indictment; or
  - (b) in separate proceedings on one or more further indictments; if the Court is satisfied that it is expedient to do so in the interests of justice.
- (2) If the Court makes an order under subsection (1), the Court may make such other orders as it thinks appropriate in the circumstances.
- (3) The Court may make an order under subsection (1) before trial or during the trial.

### **23BD Single indictment can include multiple counts**

#### *Single accused*

- (1) The prosecutor may, in a single indictment, include counts against the accused for more than one indictable offence if those counts:
  - (a) are founded on alleged facts that are the same or substantially the same; or
  - (b) are, or form part of, a series of alleged indictable offences:
    - (i) of the same or a similar character; or
    - (ii) committed in the pursuit of a single purpose.

#### *Multiple accused*

- (2) The prosecutor may, in a single indictment, include counts against more than one accused for the same or different indictable offences if those counts:
  - (a) are founded on alleged facts that are the same or substantially the same; or
  - (b) are, or form part of, a series of alleged indictable offences:
    - (i) of the same or a similar character; or
    - (ii) committed in the pursuit of a single purpose.

### **23BE Separating one or more counts from a single indictment**

- (1) The Court may order one or more counts in an indictment to be tried separately:
  - (a) in separate proceedings; and
  - (b) on one or more further indictments;if the Court is satisfied that it is expedient to do so in the interests of justice.
- (2) If the Court makes an order under subsection (1), the Court may make such other orders as it thinks appropriate in the circumstances.
- (3) The Court may make an order under subsection (1) before trial or during the trial.

**23BF Time within which indictments must be filed following committal order**

*Scope*

- (1) This section applies if the accused is committed for trial before the Court for an indictable offence.

*General rule—indictments must be filed within 3 months*

- (2) An indictment may only include a count that covers the offence if the indictment is filed in the Court as soon as practicable, and in any event within 3 months, after the committal order is made.

*Extension—if accused/count separated from earlier indictment*

- (3) Subsection (2) does not prevent the inclusion of a count in an indictment if:
- (a) the count contains the same offence, in relation to the accused, as an earlier count from which the accused was separated by an order under subsection 23BC(1); and
  - (b) the indictment is filed within 3 months after:
    - (i) if the Court accepts a plea of guilty, or a verdict of guilty, in relation to the earlier count and any of the other accused remaining covered by that count—the end of sentencing proceedings relating to that count; or
    - (ii) otherwise—the end of the trial of those other accused remaining covered by the earlier count.
- (4) Subsection (2) does not prevent the inclusion of a count in an indictment if:
- (a) the count is the same as another count relating to the accused that was separated from an earlier indictment by an order under subsection 23BE(1); and
  - (b) the first-mentioned indictment is filed within 3 months after:
    - (i) if the Court accepts a plea of guilty, or a verdict of guilty, in relation to any of the counts remaining in the earlier indictment—the end of sentencing proceedings relating to those counts; or
    - (ii) otherwise—the end of the trial relating to the counts remaining in the earlier indictment.

- (5) The Court may order that subsection (3) or (4) does not apply in relation to an indictment, and may make such other orders about the time within which the indictment must be filed as the Court thinks appropriate in the circumstances.

*Extension—by court order*

- (6) On application by the prosecutor, the Court may, by order, extend (or further extend) the time by which, under subsection (2), (3), (4) or (5), an indictment is required to be filed.
- (7) The Court may exercise its power under subsection (6) only if the application for the extension (or further extension) is made before the end of the period to be extended (or further extended).

*No effect on filing indictments in other courts*

- (8) This section does not prevent an indictment of the accused for the indictable offence being filed in another court that has jurisdiction in relation to the offence.

**23BG Consequences of not filing indictment within time**

- (1) If the accused is committed for trial before the Court for an indictable offence and an indictment is not filed in the Court within the time required by section 23BF, the Court may:
- (a) discharge the accused; and
  - (b) make such other orders as it thinks appropriate in the circumstances.
- (2) Subsection (1) has effect subject to subsections (3) and (4).
- (3) The Court must not:
- (a) proceed with the trial as if an indictment had been filed in the Court; or
  - (b) acquit the accused of the offence.
- (4) Subsection (1) does not apply if an indictment of the accused for the indictable offence is filed in another court that has jurisdiction in relation to the offence.

## **23BH Amending indictments**

### *Amendments before a trial*

- (1) The prosecutor may, in accordance with the Rules of Court, amend (or replace) an indictment in relation to an accused at any time during the proceedings before the start of a trial of the accused on the indictment.

Note: A trial starts when the accused is arraigned before a jury (see subsection 23FA(2)).

### *Amendments during a trial*

- (2) During a trial of the accused on an indictment, the prosecutor may amend (or replace) the indictment in relation to the accused only with the leave of the Court.

### *Consequences of amending indictments*

- (3) If the prosecutor replaces an indictment under subsection (1) or (2), the Court must dismiss the replaced indictment.
- (4) If an indictment is amended or replaced, the Court may make such orders as it thinks appropriate in the circumstances.

Note: If, for example, an indictment was amended to remove a count against the accused, the Court could discharge the accused in relation to that count.

- (5) This section does not affect the amendment of an indictment under other provisions of this Division.

## **Subdivision C—Pre-trial matters (hearings, disclosure and quashing indictments)**

### **23CA Pre-trial hearings**

- (1) As soon as practicable after an indictment is filed in the Court, the Court must:
  - (a) order the prosecutor and the accused to attend a pre-trial hearing before the Court; and
  - (b) at the hearing, direct the accused to enter a plea to each count in the indictment that relates to the accused.

- (2) Before a trial on the indictment starts, the Court may order the prosecutor and the accused to attend one or more further pre-trial hearings before the Court.

Note: The Court may also order pre-trial disclosure (see subsection 23CD(1)).

### **23CB Court may make orders during pre-trial hearings**

- (1) During a pre-trial hearing, the Court may make orders and determinations for the efficient management and disposal of a trial on the indictment.
- (2) Without limiting subsection (1), the Court may do any or all of the following under that subsection:
- (a) make orders, or give leave, under Subdivision B (matters relating to indictments);
  - (b) hear and determine an objection to the indictment;
  - (c) make an order under subsection 23CD(1) (pre-trial disclosure);
  - (d) determine the admissibility of evidence;
  - (e) hear and determine a submission that the matter should not proceed to trial for a reason not mentioned in a preceding paragraph of this subsection;
  - (f) rule on a matter of law that may arise during a trial on the indictment.

Note 1: The Court could, for example, rule whether business records are admissible.

Note 2: For the purposes of paragraph (2)(b), the bases on which the accused may object to an indictment are set out in subsection 23CP(1).

- (3) If a trial on the indictment starts, an order or determination under subsection (1) applies for the trial unless the Court is satisfied that to follow the order or determination would be contrary to the interests of justice.

### **23CC Matters that must be raised during pre-trial hearings**

If a matter covered by paragraph 23CB(2)(b) or (e) was not raised during the pre-trial hearings for an indictment, the matter cannot be raised during the trial unless the Court is satisfied that to not do so would be contrary to the interests of justice.

## 23CD Pre-trial and ongoing disclosure

- (1) After the indictment is filed in the Court and before a trial on the indictment starts, the Court may order:
- (a) the prosecutor to give the accused notice of the case for the prosecution in accordance with section 23CE; and
  - (b) the accused, after having been given notice of the case for the prosecution, to give the prosecutor notice of the accused's response in accordance with section 23CF; and
  - (c) the prosecutor, after having been given notice of the accused's response, to give the accused notice of the prosecution's response to the accused's response in accordance with section 23CG; and
  - (d) the prosecutor and the accused to make ongoing disclosures in accordance with section 23CH until, for each count in the indictment relating to the accused, the accused is either:
    - (i) convicted of the offence covered by the count; or
    - (ii) discharged in relation to the count.

The order may specify the time within which each disclosure is to be made.

- (2) The accused must give the following to the prosecutor as soon as practicable after the accused's first pre-trial hearing before the Court in relation to the indictment:
- (a) if at the trial the accused proposes to adduce supporting evidence of an alibi—notice of particulars, prepared in accordance with the Rules of Court, of that alibi;
  - (b) if at the trial the accused proposes to adduce supporting evidence that the accused was suffering from a mental impairment (within the meaning of section 7.3 of the *Criminal Code*)—notice of particulars, prepared in accordance with the Rules of Court, of that impairment.

Note: A party may also be required to disclose additional information as a result of other laws (for example, subsection 44ZZRO(2) of the *Trade Practices Act 1974*).

## 23CE Disclosure of case for the prosecution

The notice of the prosecution's case must include the following:

---

- (a) an outline of the prosecution's case that sets out the facts, matters and circumstances on which the prosecution's case is based;
- (b) for each witness the prosecutor proposes to call at the trial:
  - (i) a copy of a signed statement by the witness that sets out the evidence the witness is to give at the trial; or
  - (ii) a written summary of the evidence the witness is to give at the trial;
- (c) for each witness:
  - (i) the prosecutor does not propose to call at the trial; but
  - (ii) who has signed a statement that sets out the evidence the witness could give at the trial;a copy of the signed statement;
- (d) copies of any documents the prosecutor proposes to tender at the trial;
- (e) copies of, or an invitation to inspect, any other exhibits the prosecutor proposes to tender at the trial;
- (f) a copy of any report, relevant to the trial, that has been prepared by an expert witness whom the prosecutor proposes to call at the trial;
- (g) a copy or details of any information in the prosecutor's possession that might adversely affect the reliability or credibility of a prosecution witness;
- (h) a copy or details of any information, document or other thing in the prosecutor's possession that the prosecutor reasonably believes contains evidence that may be relevant to the accused's case;
- (i) if the prosecutor reasonably believes information in the prosecutor's possession suggests the existence of evidence that may be relevant to the accused's case—a copy or details of so much of that information as is necessary to suggest that existence;
- (j) a list identifying:
  - (i) any information, document or other thing not in the prosecutor's possession that the prosecutor reasonably believes contains evidence that may be relevant to the accused's case; and

- (ii) for each item of information, and each document or other thing, a place where the prosecutor reasonably believes the item, document or thing to be;
  - (k) a copy or details of any information, document or other thing in the prosecutor's possession that is adverse to the accused's credit or credibility;
- and may include other matters.

Note: Information and things do not need to be disclosed more than once (see section 23CK).

### **23CF Accused's response**

- (1) The notice of the accused's response to the notice of the prosecution's case must include the following:
  - (a) a statement setting out, for each fact set out in the notice of the prosecution's case:
    - (i) that the accused agrees that the fact is to be an agreed fact for the purposes of section 191 of the *Evidence Act 1995* at the trial; or
    - (ii) that the accused takes issue with the fact;and, if the accused takes issue with the fact, the general basis for taking issue;
  - (b) a statement setting out, for each matter and circumstance set out in the notice of the prosecution's case:
    - (i) whether the accused takes issue with the matter or circumstance; and
    - (ii) if the accused does take issue—the general basis for taking issue;
  - (c) notice as to whether any statement by a person given under subparagraph 23CE(b)(i) can be tendered at the trial without the person being called as a witness at the trial;
  - (d) notice as to whether the accused requires the prosecutor to call witnesses to corroborate any specified surveillance evidence that was notified to the accused by the prosecutor under section 23CE;
  - (e) notice as to whether the accused requires the prosecutor to prove:
    - (i) the continuity of handling of any specified exhibits; or
    - (ii) the accuracy of any specified exhibits that are transcripts, summaries or charts;

that were notified to the accused by the prosecutor under section 23CE;

- (f) in relation to each report given under paragraph 23CE(f), notice as to:
  - (i) whether the accused accepts or contests the opinions expressed in the report; and
  - (ii) whether the report can be tendered at trial without the expert being called as a witness at the trial;
- (g) any consent that the accused gives under section 190 of the *Evidence Act 1995* in relation to:
  - (i) any evidence notified under section 23CE as evidence proposed to be adduced by the prosecutor; or
  - (ii) any other evidence relating to the trial;
- (h) any consent that the accused gives under section 184 of the *Evidence Act 1995* in relation to the trial;
- (k) a copy of any report, relevant to the trial, that has been prepared by an expert witness whom the accused proposes to call at the trial;

and may include other matters.

- (2) Paragraph (1)(a) and subparagraph (1)(b)(ii) do not require the accused to disclose details of the accused's proposed defence.

### **23CG Prosecutor's response to accused's response**

The notice of the prosecution's response to matters contained in the accused's response must include the following:

- (a) notice as to whether the prosecutor requires the accused to prove:
  - (i) the continuity of handling of any specified exhibits; or
  - (ii) the accuracy of any specified exhibits that are transcripts, summaries or charts;that were notified to the prosecutor by the accused under section 23CF;
- (b) in relation to each report given under paragraph 23CF(1)(k), notice as to:
  - (i) whether the prosecutor accepts or contests the opinions expressed in the report; and
  - (ii) whether the report can be tendered at trial without the expert being called as a witness at the trial;

- (c) any consent that the prosecutor gives under section 190 of the *Evidence Act 1995* in relation to:
    - (i) any evidence notified under section 23CF as evidence proposed to be adduced by the accused; or
    - (ii) any other evidence relating to the trial;
  - (d) notice of any fact that the prosecutor agrees to as an agreed fact for the purposes of section 191 of the *Evidence Act 1995* at the trial;
  - (e) a copy or details of any additional information, document or other thing in the prosecutor's possession that the prosecutor reasonably believes contains evidence that may be relevant to the accused's case;
  - (f) if the prosecutor reasonably believes additional information in the prosecutor's possession suggests the existence of evidence that may be relevant to the accused's case—a copy or details of so much of that information as is necessary to suggest that existence;
  - (g) a list identifying:
    - (i) any additional information, document or other thing not in the prosecutor's possession that the prosecutor reasonably believes contains evidence that may be relevant to the accused's case; and
    - (ii) for each item of information, and each document or other thing, a place where the prosecutor reasonably believes the item, document or thing to be;
- and may include other matters.

Note: Information and things do not need to be disclosed more than once (see section 23CK).

## **23CH Ongoing disclosure obligations**

- (1) If the Court makes an order under subsection 23CD(1) requiring ongoing disclosure in accordance with this section:
  - (a) the accused's ongoing disclosure obligations are set out in subsection (2); and
  - (b) the prosecutor's ongoing disclosure obligations are set out in subsections (4) and (5).

*Accused's ongoing disclosure obligations*

- (2) If, contrary (or in addition) to the accused's response under section 23CF, the accused later:
- (a) no longer takes issue with, or no longer contests, something set out in the notice of the prosecution's case; or
  - (b) takes issue with something set out in the notice of the prosecution's case on an alternate or additional basis to the basis set out in the accused's response; or
  - (c) no longer requires the prosecution to do something, or to ensure that something is done; or
  - (d) agrees or accepts, or consents to, something set out in the notice of the prosecution's case; or
  - (e) obtains a report, relevant to the trial, that has been prepared by an expert witness whom the accused proposes to call at the trial;

the accused must notify this to the prosecutor. When giving notice of a report by an expert witness, the accused must include a copy of the report.

Note: The order may specify the time within which the accused must notify this to the prosecutor (see section 23CD).

*Prosecution's ongoing disclosure obligations*

- (4) If, contrary (or in addition) to the prosecution's response under section 23CG, the prosecutor later:
- (a) no longer contests something set out in the accused's response; or
  - (b) no longer requires the accused to do something, or to ensure that something is done; or
  - (c) agrees or accepts, or consents to, something set out in the accused's response; or
  - (d) obtains a report, relevant to the trial, that has been prepared by an expert witness whom the prosecution proposes to call at the trial;

the prosecutor must notify this to the accused as soon as practicable. When giving notice of a report by an expert witness, the prosecutor must include a copy of the report.

Note: The order may specify the time within which the prosecutor must notify this to the accused (see section 23CD).

- (5) After giving the prosecution's response under section 23CG, the prosecutor must give the accused:
- (a) a copy or details of any additional information, document or other thing in the prosecutor's possession that the prosecutor reasonably believes contains evidence that may be relevant to the accused's case; and
  - (b) if the prosecutor reasonably believes information in the prosecutor's possession suggests the existence of evidence that may be relevant to the accused's case—a copy or details of so much of that information as is necessary to suggest that existence; and
  - (c) if the prosecutor reasonably believes any information, document or other thing not in the prosecutor's possession contains evidence that may be relevant to the accused's case—a statement to that effect identifying:
    - (i) the information, document or thing; and
    - (ii) a place where the prosecutor reasonably believes the information, document or thing to be.

Note 1: Information and things do not need to be disclosed more than once (see section 23CK).

Note 2: The order may specify the time within which the prosecutor must give these things to the accused (see section 23CD).

#### **23CI Copies of things need not be provided if impracticable etc.**

- (1) Nothing in this Subdivision requires a copy or details of any information, document or other thing to be given if it is unlawful, impossible or impracticable to provide the copy or details.
- (2) However, the party to the proceedings required (but for subsection (1)) to give the copy or details must:
  - (a) notify the other party of a reasonable time and place at which the information, document or other thing may be inspected; and
  - (b) allow the other party a reasonable opportunity to inspect the information, document or other thing.

### **23CJ Personal details need not be provided**

- (1) Nothing in this Subdivision requires the prosecutor to disclose the address or telephone number of any witness proposed to be called by the prosecutor, or of any other living person, unless:
- (a) the address or telephone number is a materially relevant part of the evidence; or
  - (b) on application by the accused—the Court makes an order directing the disclosure.

Note: The Court may make orders to protect witnesses, information, documents and other things (see section 23HC).

- (2) The Court must not make an order under paragraph (1)(b) directing the disclosure of information unless it is satisfied that:
- (a) the accused needs the information to prepare properly for the hearing of the evidence for the prosecution; and
  - (b) if the disclosure is likely to present a risk to a person's safety or welfare—the accused's need for the information outweighs this risk.
- (3) This section does not prevent the disclosure of an address if:
- (a) the disclosure does not identify it as a particular person's address; and
  - (b) it could not reasonably be inferred from the matters disclosed that it is a particular person's address.
- (4) If:
- (a) a statement is to be given to the accused; and
  - (b) the statement contains an address or telephone number that must not be disclosed;
- the address or telephone number may, without reference to the person who made the statement, be deleted from the statement, or rendered illegible, before the statement is given to the accused.

### **23CK Things need not be disclosed to a party more than once**

A party to indictable primary proceedings (the **current proceedings**) need not disclose anything under this Subdivision to another party if the first-mentioned party has already disclosed it to the other party:

- (a) during the current proceedings; or

- (b) during committal or other proceedings relating to an offence founded on alleged facts that are the same or substantially the same as those for an offence being prosecuted in the current proceedings.

**23CL Effect on legal professional privilege and other privileges and duties etc.**

*Litigation privilege not an excuse for failing to comply with pre-trial disclosure requirements*

- (1) A party is not excused from disclosing material under this Subdivision on the basis of litigation privilege claimed by the party in relation to the material.

Note: The party can still be excused from disclosing material on the basis of advice privilege (that is, privilege that would, if the material were evidence to be adduced in the Court, protect against a disclosure covered by section 118 of the *Evidence Act 1995*).

- (2) This Subdivision does not otherwise:
  - (a) abrogate or affect the law relating to legal professional privilege; or
  - (b) amount to a waiver of legal professional privilege.

Note: This means, for example, that legal professional privilege will apply for the trial.

*Other privileges and duties unaffected*

- (3) This Subdivision does not abrogate or affect:
  - (a) the operation of the *National Security Information (Criminal and Civil Proceedings) Act 2004*; or
  - (b) the law relating to public interest immunity.
- (4) This Subdivision does not abrogate or affect the law relating to any duty of a person investigating the accused to ensure that information and other things are disclosed to the prosecutor or the accused.

*Definitions*

- (5) In this section:

***legal professional privilege*** includes privilege (however described) under Division 1 of Part 3.10 of the *Evidence Act 1995*, or a similar law of a State or Territory.

***litigation privilege*** means privilege (however described) that would, if the material were evidence to be adduced in the Court, protect against a disclosure covered by section 119 of the *Evidence Act 1995*.

## **23CM Consequences of disclosure requirements**

*Orders to ensure non-compliance does not unfairly affect the other party*

- (1) The Court may make such orders as it thinks appropriate to ensure that:
  - (a) any failure by the prosecutor to comply with an order under subsection 23CD(1) does not cause unfairness to the accused; and
  - (b) any failure by the accused to comply with an order under subsection 23CD(1) does not prejudice the prosecutor's ability to efficiently conduct the prosecution.
- (2) However, the Court must not make an order under subsection (1) if it would result in an unfair trial.

*Certain evidence cannot be adduced at trial unless there is earlier disclosure*

- (3) If the accused fails to comply with subsection 23CD(2) in relation to an alibi, the accused may only adduce evidence of the alibi with the leave of the Court.
- (4) If the accused fails to comply with subsection 23CD(2) in relation to a mental impairment (within the meaning of section 7.3 of the *Criminal Code*), the accused may only adduce evidence that the accused was suffering from the impairment with the leave of the Court.

## **23CN Restricting further disclosure of disclosed material**

- (1) This section restricts what a person (the ***entrusted person***) may do with any information, document or other thing (the ***protected***

**material**) the person obtains as the result of a disclosure under this Subdivision.

- (2) The entrusted person commits an offence if the person discloses any protected material to another person.

Penalty: Imprisonment for 2 years.

- (3) Each of the following is an exception to the prohibition in subsection (2):
- (a) the disclosure is for the purposes of the proceedings for which the entrusted person obtained the protected material;
  - (b) the Court has given leave for the disclosure;
  - (c) the disclosure happens for the purposes of, or in connection with, the performance of the duties of the entrusted person's official employment;
  - (d) the disclosure is of protected material that has already been lawfully disclosed in proceedings in open court.

Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) The entrusted person is not to be required:
- (a) to produce to a court or tribunal any document that is or contains protected material; or
  - (b) to disclose protected material to a court or tribunal.

- (5) In this section:

**disclose** means divulge or communicate.

**official employment** means:

- (a) service as:
  - (i) the Director of Public Prosecutions; or
  - (ii) a member of the staff of the Office of the Director of Public Prosecutions; or
  - (iii) a Special Prosecutor under the *Special Prosecutors Act 1982*; or
  - (iv) the Attorney-General; or
  - (v) a person appointed by the Governor-General in relation to the prosecution for which the entrusted person obtained the protected material; or

- (b) representing, or otherwise performing services for, a person referred to in paragraph (a); or
- (c) exercising the powers, or performing the functions, of the Director of Public Prosecutions.

### **23CO Restricting admissibility of disclosed material as evidence in other proceedings**

- (1) The Court may order that any or all of the material disclosed under this Subdivision is not admissible:
  - (a) in any other proceedings before the Court; or
  - (b) in any other court (whether exercising federal jurisdiction or not); or
  - (c) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.
- (2) An order made under subsection (1) ceases to have effect if, during the indictable primary proceedings, the material is lawfully disclosed in open court.
- (3) The Court may, on the application of an interested person (whether during the indictable primary proceedings or otherwise), order that an order made under subsection (1) be:
  - (a) set aside; or
  - (b) varied;if the Court is satisfied it is in the interests of justice to do so.
- (4) The Court may, before making an order under subsection (3), direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.

### **23CP Objecting to indictments**

- (1) The accused may object to a count in the indictment on the basis of:
  - (a) a formal defect apparent on the face of the indictment; or
  - (b) the Court lacking jurisdiction; or
  - (c) autrefois acquit or autrefois convict; or
  - (d) a pardon.

Note: The objection must be raised during a pre-trial hearing unless the Court allows otherwise (see section 23CC).

- (2) If the Court upholds the objection, the Court may:
- (a) in every case:
    - (i) make an order quashing the count in relation to the accused; and
    - (ii) if after quashing the count, no counts remain in the indictment in relation to the accused or any other accused—make an order quashing the indictment; and
    - (iii) discharge the accused in relation to the count; and
    - (iv) make such other orders as it thinks appropriate in the circumstances; or
  - (b) if the objection is covered by paragraph (1)(a)—make an order for the amendment of the indictment to remove the defect instead of quashing the count.

### **23CQ Examining witnesses after committal in absence of the jury**

- (1) After the indictment is filed in the Court, the Court may direct a person to appear for examination before the Court or a Judge, the Registrar, a Deputy Registrar, a District Registrar or a Deputy District Registrar of the Court if:
- (a) a party applies for the direction; and
  - (b) the prosecutor has disclosed that the prosecutor proposes to call the person as a witness at a trial on the indictment; and
  - (c) if the indictment was filed in the Court as a result of proceedings in which the accused was committed for trial—the person was not examined in those proceedings; and
  - (d) the applicant satisfies the Court that it would be contrary to the interests of justice to proceed to trial without the person being examined.

Note: A person examined under this section will be examined in the absence of a jury.

- (2) The Court may make such orders as it thinks appropriate in the circumstances to give effect to a direction under subsection (1).
- (3) A direction under subsection (1) may permit either or both of the parties to examine the person named in the direction.

- (4) For the purposes of paragraph (1)(d), the absence of committal proceedings does not, of itself, mean it will be contrary to the interests of justice to proceed to trial without the person being examined.

## **Subdivision D—Pre-trial matters (empanelling the jury)**

### **23DA Simplified outline**

The following is a simplified outline of this Subdivision:

- There are rules about the number of jurors on a jury.
- Before convening jury panels for trials in a State or Territory, the Sheriff needs to determine one or more jury districts for the State or Territory. A jury roll for each jury district can then be obtained.
- Not everyone on a jury roll is qualified to serve as a juror.
- For each trial, the Sheriff convenes a jury panel by:
  - (a) selecting the jury district and preparing a jury list from the corresponding jury roll; and
  - (b) randomly selecting some of the persons on the jury list and summoning them to attend court for jury service.
- The jury is then selected from those persons on the jury panel.
- A person on the jury panel will not become a juror if they are excused from jury service, 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.

### **23DB Application to criminal proceedings**

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

### 23DC 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 for the proceedings.

### 23DD 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.

Note: For when a juror is discharged, see Subdivision E.

- (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 23DE).

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

### 23DE 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).

### 23DF Jury districts (establishment and boundaries)

- (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.
  - (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.

### **23DG Jury roll for a jury district**

- (1) The Sheriff may prepare a written jury roll for a jury district.
- (2) A jury roll prepared under subsection (1) is not a legislative instrument.

### **23DH Qualification and liability for serving on jury**

#### *Qualification for serving on jury*

- (1) A person is qualified to serve as a juror 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*.

This subsection has effect subject to sections 23DI and 23DJ.

Note 1: A person on the jury roll who is entitled to vote may not be qualified to serve as a juror, see sections 23DI and 23DJ.

Note 2: For **applicable jury district**, see section 23DL.

#### *Liability to serve on jury*

- (2) A person who is qualified under subsection (1) to serve as a juror is liable to serve as a juror in particular proceedings unless the person:
- (a) is excused from that service for those proceedings under section 23DQ, 23DR or 23DV; or
  - (b) is discharged as a juror or potential juror for those proceedings under Subdivision E.

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

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

**23DI 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 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.

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

- (1) A person is not qualified to serve as a juror 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 147 of the *Navigation Act 1912* 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.

**23DK When Sheriff is to convene a jury panel**

- (1) The Court may give the Sheriff a written direction to convene 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.

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

- (1) The Sheriff must, in writing, determine which jury district is to apply to the 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.
- (2) A determination made under subsection (1) is not a legislative instrument.

**23DM Sheriff to prepare the jury list for the proceedings**

- (1) The Sheriff must prepare a jury list for the 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: The jury list may be supplemented under subsection (5).

Note 2: The Sheriff may remove a person's name from the jury list under section 23DO.

- (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 23DP 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 23DO.

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

### **23DN Investigation and questionnaires**

- (1) The Sheriff may make such enquiries as he or she 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.
- (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.

The Commissioner must give the information to the Sheriff.
- (6) 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 23DO and there is no need to pass the information on to the Court.

- (7) The Sheriff must not disclose information given to the Sheriff by the Commissioner under this section except:
- (a) to the Court under subsection (6); or
  - (b) otherwise for the purposes of this Act.

### **23DO 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 be a juror; or
- (b) the Sheriff would excuse the person from serving on the jury:
  - (i) under section 23DQ if the person were a potential juror who had applied under that section to be excused; or
  - (ii) under section 23DR if the person were a potential juror.

### **23DP 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 issued 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.

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

- (1) A potential juror (or an interested person on the potential juror's behalf) may apply to the Sheriff, at any time before the potential juror is seated in the jury box under section 23DU, for the potential juror to be excused from serving on the jury.

- (2) 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's 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*.

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

- (1) At any time before a potential juror is seated in the jury box under section 23DU, 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.

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.

### **23DS 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 jurors; 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).

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

- (1) At the beginning of the trial, the Sheriff must:
- (a) give the Court the list of potential jurors on the jury panel prepared under subsection 23DS(1); 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 the parties 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 a 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.

### **23DU Empanelling the jury**

- (1) The Court must ensure that an officer of the Court calls:
  - (a) the name; or
  - (b) if a direction under section 23EB has modified the procedure—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 from serving on the jury; or
  - (b) stood aside under section 23DZA; 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 23DX to 23DZ).

- (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 23DC are seated in the jury box.
- (5) When the required number of jurors under section 23DC 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.

### **23DV 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) If:
  - (a) a jury has been empanelled under section 23DU; and
  - (b) either:
    - (i) the jury is not discharged under subsection 23EL(1); or
    - (ii) if the jury is so discharged, the Court does not give a direction under subsection 23EM(3);all the potential jurors who were not empanelled for the trial are taken to be excused by the Court from serving on the jury.

### **23DW Supplementary jurors**

- (1) If there is an insufficient number of potential jurors available on the jury panel for empanelment of the jury under section 23DU, 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 23DS; or
  - (b) both:
    - (i) causing additional summonses to be issued under section 23DP 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 23DS; or
  - (c) selecting a sufficient number of persons in the vicinity of the Court who are qualified to serve on the jury.

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

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

- (1) This section and sections 23DY and 23DZ 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 23DU; 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)).

### **23DY Challenges for cause**

- (1) Each party to the 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.

### **23DZ 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 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.

### **23DZA 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 under subsection 23DU(1); 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.
- (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 23DC seated in the jury box;any potential juror who has been ordered to stand aside is eligible to have his or her name and/or number called a second time in accordance with section 23DU.

Note: Subsection 23DU(1) requires potential jurors to be called at random.
- (4) If a potential juror has his or her 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 23DY).
- (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.

### **Subdivision E—Other jury matters**

#### **23EA Appointing the jury foreperson**

The jury must appoint a foreperson:

- (a) when directed by the Court; or

- (b) in the absence of such a direction—as soon as practicable after being empanelled.

### **23EB Confidentiality directions**

- (1) The Court may give such directions as the Court thinks necessary in order to protect the security of a juror or potential juror.
- (2) Without limiting subsection (1), the Court may direct that a potential juror:
  - (a) be called under subsection 23DU(1) by number only; and
  - (b) be referred to during the proceedings by number only.
- (3) A direction under this section may cover more than one juror or potential juror.

### **23EC Things to help jury understand issues**

- (1) The Court may order such things (including copies of documents) as it thinks appropriate in the circumstances to be given to the jury to assist the jury to understand issues during the trial.
- (2) The Court may specify in an order under subsection (1) when, and the manner in which, the things are to be given to the jury.

### **23ED Recalling the jury for further directions or evidence**

After the jury retires to consider its verdict on a count in the indictment, but before the jury reaches its verdict on the count, the Court may recall the jury in order for the jury:

- (a) to be given further directions; or
- (b) to hear further evidence.

### **23EE When jury can separate**

- (1) The jury:
  - (a) may separate at any time before the jury retires to consider its verdict on a count in the indictment; but
  - (b) must not separate after the jury retires to consider its verdict on the count;unless the Court orders to the contrary.

- (2) The Court need not be in the presence of the jury when making an order under subsection (1).

### **23EF Directions and potential jurors and jurors**

- (1) Each juror is subject to the direction of the Sheriff and the Court.

Note: Failing to comply with a direction is an offence (see section 58AC).

- (2) Each potential juror is, after attending for service as a juror in accordance with the jury summons, subject to the direction of the Sheriff and the Court.

Note: Failing to comply with a direction is an offence (see section 58AB).

### **23EG Sheriff's powers**

#### *Investigations*

- (1) The Sheriff must investigate whether the verdict of a jury is being, or has been, affected because of the improper conduct of a juror or jurors if:
- (a) the Sheriff has reason to suspect that the verdict is being, or has been, so affected, and the Court has consented to the investigation; or
  - (b) the Court requests the investigation.

Note: During and after the investigation, the Court or the Sheriff can give a direction to a juror under section 23EF.

- (2) The Sheriff must report the outcome of the investigation to the Court.

#### *Disclosing information*

- (3) Subsection (4) applies in relation to a person (the **officer**) whose duties include convening juries for trials before a court of a State or Territory.
- (4) The Sheriff may disclose to the officer information identifying a juror or former juror so that the officer can consider whether to summons the juror or former juror when convening a trial before the State or Territory court.

Note: For specification by class, see subsection 46(3) of the *Acts Interpretation Act 1901*.

**23EH Jurors' remuneration**

The regulations may provide for remuneration and allowances to be payable to the following persons:

- (a) a potential juror who attends for service as a juror in accordance with a summons issued under section 23DP;
- (b) a juror.

**23EI Discharge of potential jurors**

- (1) A potential juror is discharged if the potential juror is excused from serving on the jury under Subdivision D.
- (2) A potential juror is discharged if a challenge to the inclusion of the potential juror on the jury is upheld.

**23EJ Discharge of jurors—by law**

- (1) A juror is discharged if the juror is not selected in a ballot conducted under section 23DE in relation to the jury.
- (2) A juror is taken to be discharged if the juror dies.

**23EK Discharge of jurors—by the Court**

The Court, during a trial, must discharge a juror if it appears to the Court that the juror:

- (a) is not impartial; or
- (b) is incapable of continuing to act as a juror; or
- (c) should not continue to act as a juror for any other reason.

**23EL Discharge of jury**

*Discharge if composition of jury unsatisfactory*

- (1) Immediately following the empanelment of the jury for a trial, the Court may discharge the entire jury if the Court is satisfied that the exercise of challenges has resulted in a jury whose composition is such that the trial might be, or might appear to be, unfair.

*Discharge if each count relating to the accused is dealt with*

- (2) The Court must discharge the jury in relation to an accused if each count in the indictment that relates to the accused is covered by one of the following paragraphs:
- (a) the Court is satisfied that the jury is not able to reach a unanimous verdict on the count in relation to the accused;
  - (b) the jury delivers its verdict on the count in relation to the accused;
  - (c) the Court, under subsection 23FJ(1), accepts a plea of guilty by the accused to the count;
  - (d) the Court enters, under subsection 23FH(2), a judgment of acquittal for the count in relation to the accused;
  - (e) the count is an alternate to a count covered by one of the above paragraphs.

*Discharge in the interests of justice*

- (3) The Court may, at any time during a trial, discharge a jury if the Court is satisfied that it is expedient to do so in the interests of justice.

*Discharge if Judge incapable of proceeding*

- (4) If, during a trial, a Judge becomes incapable of proceeding with the trial or directing the discharge of the jury, another Judge must discharge the jury.

*Discharge if number of jurors falls below 10*

- (5) The Court must discharge the jury immediately if the number of jurors falls below that permitted in subsection 23DD(3).

## **23EM Consequences of discharging the jury**

*General rule*

- (1) The Court must order a new trial of an accused in relation to a count in the indictment if:
- (a) the jury is discharged without delivering a unanimous verdict on the count in relation to the accused; and
  - (b) the count is not covered by paragraph 23EL(2)(c), (d) or (e).

*If Court thinks it appropriate to empanel a new jury from the same jury panel*

- (2) Subsection (1) does not apply if:
  - (a) the jury is discharged under subsection 23EL(1); and
  - (b) the Court thinks it appropriate to give a direction under subsection (3).
- (3) If the jury is discharged under subsection 23EL(1), the Court may direct an officer of the Court to start the process for empanelling a new jury under section 23DU from the same jury panel.
- (4) For the purposes of empanelling the new jury, this Division (other than this section) applies as if the first jury had not been empanelled.
  - Note 1: This has the effect of resetting the limits on challenges, and for the standing aside, of potential jurors.
  - Note 2: The Court may direct the Sheriff to supplement the jury panel under section 23DW.
- (5) Despite subsection (4):
  - (a) the jurors on the first jury, and any potential jurors discharged before the empanelling of the first jury, cannot be empanelled on the new jury and remain discharged; and
  - (b) to avoid doubt, section 23DT is taken to have been satisfied in relation to the empanelling of the new jury.

## **Subdivision F—Matters relating to pleas, the trial and verdicts**

### **23FA Accused to be arraigned before the jury**

- (1) If the prosecution of the accused is to proceed to trial, the accused must be arraigned before a jury in accordance with the Rules of Court.
- (2) The trial on indictment of the accused starts when the accused is arraigned before the jury.

### **23FB Practice and procedure applicable to the trial**

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 the trial, are to be those in force at the time the indictment is filed in the Court.

### **23FC Admissibility of evidence given in committal proceedings**

- (1) If the trial happens as the result of a court committing the accused for trial before the Court, then this section applies to:
  - (a) evidence given by witnesses; and
  - (b) documents tendered in evidence;

(**committal evidence**) during those committal proceedings (whether or not the committal evidence was given, or tendered, in relation to an offence being determined at the trial).
- (2) The Court may allow a party to admit committal evidence, in whole or in part, as evidence at the trial if the Court is satisfied:
  - (a) that the individual who gave the evidence, or tendered the document, in the committal proceedings:
    - (i) is dead, or is so ill as not to be able to travel or to give evidence without a risk of endangering the individual's life; or
    - (ii) is absent from Australia; or
  - (b) that there are other valid reasons for doing so.

### **23FD Entering pleas**

- (1) The accused may enter a plea of guilty, or not guilty, to a count in the indictment.

Note: The Court may reject a plea of guilty in the interests of justice (see subsection 23FJ(1)).
- (2) The accused is taken to have entered a plea of not guilty to a count in the indictment if the accused fails to enter a plea to the count when directed by the Court.

Note: A failure to enter a plea includes a failure to say anything and a failure to give a direct answer.
- (3) The accused may both:

- (a) enter a plea to a count in the indictment; and
- (b) object to the count.

**23FE Pleading to some counts in satisfaction of other counts**

If:

- (a) the accused enters a plea of guilty to one or more counts in the indictment; and
  - (b) the prosecutor advises the Court that the prosecutor accepts the plea or pleas of guilty in satisfaction of the indictment;
- the indictment is taken to be amended so that no other count in the indictment covers the accused.

**23FF Pleading to different offences capable of being supported by indictment**

- (1) The accused may enter a plea of guilty to an offence not specified in the indictment if:
  - (a) the Court has jurisdiction to try a person for the offence; and
  - (b) the prosecutor consents; and
  - (c) the matters alleged in the indictment can support an allegation that the accused committed the offence.
- (2) For the purposes of this Act, if the accused pleads guilty to an offence in accordance with subsection (1), the indictment is taken to have always included a count against the accused for the offence.

**Note:** If the accused proposes to enter a plea of guilty to an offence that cannot be supported by the matters alleged in the indictment, the prosecutor will need to amend the indictment under section 23BH to include a count for the offence before the accused can enter the plea to that offence.

**23FG Changing pleas**

*Accused may change plea*

- (1) The accused may change his or her plea in accordance with this section.

*Changing plea to guilty*

- (2) If the accused has entered a plea of not guilty in relation to a count in the indictment, the accused may change the plea to guilty.

Note: The Court may reject the change of plea in the interests of justice (see subsection 23FJ(1)).

*Changing plea to not guilty*

- (3) If the accused has entered a plea of guilty in relation to a count in the indictment, the accused may change the plea to not guilty only with the leave of the Court. The Court may grant leave at any time before the Court imposes a sentence on the accused in relation to an offence specified in the count.

- (4) If the accused changes the plea in accordance with subsection (3):
- (a) the Court must direct that the accused be put on trial in relation to the count; and
  - (b) the Court may make such orders as to matters preliminary to the trial as the Court thinks appropriate.

Note: The Court could, for example, make orders under Subdivision C.

**23FH Court's verdict if no case to answer**

- (1) This section applies if:
- (a) after the close of the prosecutor's case for a count in the indictment in relation to the accused; and
  - (b) before the jury delivers its verdict for the count in relation to the accused;
- the Court finds the accused has no case to answer in relation to the count.
- (2) The Court must:
- (a) enter a judgment of acquittal for the count in relation to the accused; and
  - (b) discharge the accused in relation to the count.
- (3) The Court must not direct the jury to deliver a verdict for the count in relation to the accused.

### **23FI Jury's verdict**

#### *Verdict must be unanimous*

- (1) The jury's verdict on each count in the indictment must be unanimous. If the indictment includes alternate counts, the jury need only reach a verdict on one of those counts.
- (2) Before the jury retires to consider its verdict on a count in the indictment, the Court must inform the jury that its verdict must be unanimous.

#### *Jury may deliver alternative verdicts*

- (3) If an offence specified in a count in the indictment is an offence for which an Act allows the jury to find the accused:
  - (a) not guilty of the offence; but
  - (b) guilty of another offence;the Court may inform the jury of this.
- (4) If, in accordance with an Act referred to in subsection (3), the jury unanimously finds the accused:
  - (a) not guilty of an offence specified in a count in the indictment; but
  - (b) guilty of another offence;the indictment is taken to have always included a count against the accused for the other offence.

#### *Foreperson is to deliver the verdict*

- (5) The jury's verdict is to be delivered by the jury foreperson.

### **23FJ Consequences of guilty pleas and guilty verdicts**

#### *Guilty pleas*

- (1) If the accused:
  - (a) enters a plea of guilty; or
  - (b) changes, in accordance with subsection 23FG(2), a plea of not guilty to a plea of guilty;to a count in the indictment, the Court must accept the plea of guilty unless:

- (c) the Court gives leave under subsection 23FG(3) for the accused to change the plea of guilty to a plea of not guilty; or
  - (d) it would be contrary to the interests of justice to accept the plea of guilty.
- (2) If a plea of guilty is not accepted under subsection (1):
- (a) the plea has no further effect; and
  - (b) the accused is taken to have entered a plea of not guilty to the count.

*Guilty verdicts*

- (3) If the jury delivers a unanimous verdict of guilty for a count in the indictment in relation to an accused, the Court must accept the verdict unless it would be contrary to the interests of justice to do so.

*Consequences of accepting a guilty plea or guilty verdict*

- (4) If a plea of guilty, or a verdict of guilty, is accepted for a count in the indictment in relation to an accused, then:
- (a) the Court is taken to have found the count proven in relation to the accused; and
  - (b) the accused is taken to be convicted of the offence covered by the count; and
  - (c) the Court must proceed to sentence the accused in relation to the offence (whether or not the Court first adjourns the proceedings); and
  - (d) if there is an alternate count included in the indictment for the accused and the first-mentioned count—the Court must discharge the accused in relation to the alternate count.
- (5) However, if the accused changes, in accordance with subsection 23FG(3), a plea of guilty to the count to a plea of not guilty, then:
- (a) paragraphs (4)(a) and (b) are taken never to have applied in relation to the plea of guilty; and
  - (b) the Court must cease any sentencing proceedings to the extent that those proceedings relate to the plea of guilty; and
  - (c) if the Court has discharged the accused under paragraph (4)(d) in relation to an alternate count—the accused is taken never to have been so discharged.

- (6) Paragraph (4)(b) does not apply if, when sentencing the accused in relation to the offence, the Court makes an order under section 19B of the *Crimes Act 1914*.

### **23FK Consequences of not guilty verdicts**

If the jury delivers a unanimous verdict of not guilty for a count in the indictment in relation to the accused, the Court must acquit and discharge the accused in relation to the count.

## **Subdivision G—Procedure on committal for sentencing**

### **23GA When Subdivision applies**

This Subdivision applies if, as a result of the accused entering a plea of guilty to an indictable offence, a court (the **committal court**) makes an order (the **committal order**) committing the accused for sentencing before the Court for the offence.

### **23GB Accused taken to have been committed for trial etc.**

- (1) For the purposes of this Act and the *Judiciary Act 1903*, the committal court is taken to have made an order:
- (a) on the day it made the committal order; and
  - (b) to the effect of committing the accused for trial before the Court for the indictable offence.
- (2) If an indictment including a count covering the indictable offence is filed in accordance with this Division, then this Division applies as if:
- (a) the accused entered before the Court, immediately after that filing, a plea of guilty to the count; and
  - (b) paragraph 23CA(1)(b) were omitted.

Note: The Court must accept the plea unless either the Court gives leave to the accused to change the plea to a plea of not guilty, or if it would be contrary to the interests of justice to accept the plea (see subsection 23FJ(1)).

## **Subdivision H—Custodial and other matters**

### **23HA Remanding in custody when proceedings adjourned**

- (1) If, during indictable primary proceedings:
- (a) there is no bail order having effect for the accused for the offence; or
  - (b) if a bail order is so having effect, the accused cannot be released on bail for the offence (see subsection 58DE(1));
- the Court may, by warrant of commitment, remand the accused in custody during an adjournment in the proceedings.

Note 1: Before the accused's first appearance before the Court, the person may be being remanded in custody or granted bail under the law of a State or Territory applied by subsection 68(1) of the *Judiciary Act 1903*.

Note 2: Subject to this subsection, State or Territory law will apply in relation to custody matters before the Court during the proceedings (see sections 68 and 68B of the *Judiciary Act 1903*).

- (2) A warrant of commitment under subsection (1) may be signed by any Judge, the Registrar or any Deputy Registrar, District Registrar or Deputy District Registrar of the Court.

### **23HB Oaths and affirmations**

- (1) A person required to make an oath or affirmation under this Division must make the oath or affirmation in the form provided for in the Rules of Court.
- (2) The Court may require a person to make an oath or affirmation for the purposes of this Division if the Court thinks this is reasonably necessary.

### **23HC Protecting witnesses etc.**

- (1) The Court may make such orders as it thinks appropriate in the circumstances to protect:
- (a) witnesses called or proposed to be called; or
  - (b) information, documents and other things admitted or proposed to be admitted;
- in indictable primary proceedings.

Note: The Court may also restrict or prohibit the publication of information about witnesses and evidence (see section 50).

- (2) Without limiting subsection (1), the Court may do either or both of the following under that subsection:
- (a) order the exclusion of the public, or of persons specified by the Court, from a sitting of the Court;
  - (b) direct how a witness may give evidence.

**23HD Accused cannot make unsworn statements**

An accused cannot make an unsworn statement in indictable primary proceedings.

**23HE Costs**

Nothing in this Act gives the Court power to award costs in indictable primary proceedings.

**3 After Division 2 of Part III**

Insert:

**Division 2A—Appellate and related jurisdiction (criminal proceedings)**

**Subdivision A—Bringing appeals**

**30AA Appellate jurisdiction—allowable appeals**

*Appeals about indictable offences*

- (1) The Court has jurisdiction to hear and determine an appeal from a judgment of an eligible primary court to the extent the judgment:
- (a) convicts the accused of a count in an indictment; or
  - (b) sentences the accused in relation to a count in an indictment; or
  - (c) acquits the accused of a count in an indictment as a result of the court (rather than a jury) finding that the accused had no case to answer; or
  - (d) acquits the accused because of mental illness in relation to a count in an indictment; or
  - (e) in the case of a judgment of the Court constituted by a single Judge—consists of one or more orders, determinations or

findings under Division 6 or 9 of Part IB of the *Crimes Act 1914*.

*Appeals against summary judgments*

- (2) The Court has jurisdiction to hear and determine an appeal from a judgment of:
- (a) the Court constituted by a single Judge; or
  - (b) the Supreme Court of a Territory (other than the Australian Capital Territory or the Northern Territory); or
  - (c) in such cases as are provided by any other Act, a court (other than a Full Court of the Supreme Court) of a State, the Australian Capital Territory or the Northern Territory exercising federal jurisdiction;
- in proceedings to try an offence summarily.

*Appeals about bail and forfeiture of bail security*

- (3) The Court has jurisdiction to hear and determine an appeal from a judgment of the Court under Part VIB (bail).

*Appeals against interim judgments and decisions*

- (4) The Court has jurisdiction to hear and determine an appeal from a judgment or decision (however described) of the Court constituted by a single Judge if the judgment or decision is made:
- (a) in indictable primary proceedings; and
  - (b) before the making of a judgment to acquit, discharge, convict or sentence the accused of the count in the indictment to which the judgment or decision relates;
- and is not a judgment under Part VIB (bail) or an order discharging the jury or a juror.

Note: This subsection gives jurisdiction to hear, for example, appeals from decisions remanding the accused in custody under section 23HA.

*Relationship to other Acts*

- (5) This section has effect subject to any other Act, whether passed before or after the commencement of this Act (including an Act by virtue of which any judgments referred to in this section are made final and conclusive or not subject to appeal).

**30AB Leave needed unless question of law or about bail**

- (1) An appeal under section 30AA cannot be brought from a judgment referred to in subsection 30AA(1) or (2) unless:
  - (a) the Court or a Judge gives leave to appeal; or
  - (b) the appeal involves a question of law alone.
- (2) An appeal under section 30AA cannot be brought from a judgment or decision of a Judge referred to in subsection 30AA(4) unless that Judge gives leave to appeal.

**30AC Who may appeal**

- (1) The accused and the prosecutor, in relation to a judgment or decision referred to in section 30AA, may:
  - (a) make an application referred to in subsection 30AE(2) or (3) in relation to the judgment or decision; and
  - (b) in accordance with this Division, bring an appeal from the judgment or decision.
- (2) However, the prosecutor cannot act under subsection (1) in the case of a judgment covered by paragraph 30AA(1)(d).

**30AD Appellate jurisdiction—further appeal if Attorney-General consents**

- (1) The Attorney-General may consent in writing for the accused to appeal under this section if:
  - (a) the accused applies for this consent; and
  - (b) the accused satisfies the Attorney-General that there is a doubt or question about either or both of the following:
    - (i) the accused's conviction by an eligible primary court of a count in an indictment;
    - (ii) the accused's sentence imposed by an eligible primary court in relation to a count in an indictment.
- (2) If the Attorney-General consents under subsection (1), the Court has jurisdiction to hear and determine:
  - (a) an appeal from a judgment of the eligible primary court, to the extent the judgment so convicts the accused; and

- (b) an appeal from a judgment of the eligible primary court, to the extent the judgment so sentences the accused.
- (3) Subsection (1) has effect subject to any other Act, whether passed before or after the commencement of this Act (including an Act by virtue of which any judgments referred to in this section are made final and conclusive or not subject to appeal).

### **30AE Exercise of appellate jurisdiction**

- (1) The appellate jurisdiction of the Court referred to in sections 30AA and 30AD must, subject to any other Act, be exercised by a Full Court.
- (2) Applications:
  - (a) for leave to appeal under subsection 30AA(1) or (2); or
  - (b) for an extension of time within which to file:
    - (i) a notice of application for leave to appeal under subsection 30AA(1) or (2); or
    - (ii) a notice of appeal under subsection 30AA(1) or (2) for an appeal involving a question of law alone; or
    - (iii) a notice of appeal under subsection 30AA(3); or
  - (c) for leave to amend the grounds of an appeal under subsection 30AA(1), (2) or (3); or
  - (d) to stay an order of a Full Court;must be heard and determined by a single Judge unless:
  - (e) a Judge directs that the application be heard and determined by a Full Court; or
  - (f) the application is made in a proceeding that has already been assigned to a Full Court, and the Full Court considers it is appropriate for it to hear and determine the application.
- (3) Applications:
  - (a) for leave to appeal a judgment or decision of a Judge referred to in subsection 30AA(4); or
  - (b) for an extension of time within which to file a notice of application for leave to appeal under that subsection; or
  - (c) for leave to amend the grounds of an appeal under that subsection;must be heard and determined by the Judge who made the judgment or decision.

- (4) In relation to criminal appeal proceedings, a single Judge (sitting in Chambers or in open court) or a Full Court may:
    - (a) join or remove a party to an appeal to the Court; or
    - (b) make an order by consent disposing of an appeal to the Court; or
    - (c) make an order that an appeal to the Court be dismissed for want of prosecution; or
    - (d) make an order that an appeal to the Court be dismissed for:
      - (i) failure to comply with a direction of the Court; or
      - (ii) failure of the appellant to attend a hearing relating to the appeal; or
    - (e) vary or set aside an order under paragraph (c) or (d); or
    - (f) give directions about the conduct of an appeal to the Court, including directions about:
      - (i) the use of written submissions; and
      - (ii) limiting the time for oral argument.
  - (4A) An application for the exercise of a power mentioned in subsection (4) must be heard and determined by a single Judge unless:
    - (a) a Judge directs that the application be heard and determined by a Full Court; or
    - (b) the application is made in a proceeding that has already been assigned to a Full Court and the Full Court considers it is appropriate for it to hear and determine the application.
  - (5) The Rules of Court may make provision enabling an application of the kind mentioned in subsection (2), (3) or (4A) to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing.
  - (6) The Court constituted by a single Judge may state any case or reserve any question concerning a matter with respect to which an appeal would lie from a judgment of the Judge to a Full Court of the Court for the consideration of a Full Court. The Full Court has jurisdiction to hear and determine the case or question.
  - (7) Subsections 25(3) and (4) (appeals from Supreme Court of a Territory) apply to appellate jurisdiction under this Division in a corresponding way to the way in which they apply to appellate jurisdiction under Division 2.
-

### **30AF Time for appealing**

- (1) This section applies in relation to the filing of:
- (a) a notice of application for leave to appeal under subsection 30AA(1), (2) or (4); or
  - (b) a notice of appeal under subsection 30AA(1) or (2) for an appeal involving a question of law alone; or
  - (c) a notice of appeal under subsection 30AA(3);
- in relation to a judgment or decision.
- Note: There are no time limits for an appeal under section 30AD.
- (2) The notice must be filed in the Court before the end of 28 days after the end of:
- (a) in the case of a judgment convicting the accused—the day the accused is sentenced in relation to the conviction; or
  - (b) in the case of a judgment sentencing the accused—the day the accused is so sentenced; or
  - (c) in the case of a judgment or decision referred to in paragraph 30AA(1)(e) or subsection 30AA(3) or (4)—the day the judgment or decision was made; or
  - (d) otherwise—the day the accused is discharged in relation to the proceedings in which the judgment was given.
- (3) However, the Court may, by order, extend (or further extend) the period within which the notice must be filed if the Court is satisfied it is in the interests of justice to do so.

### **30AG Right to attend**

A party to an appeal brought under this Division is entitled to be present at the hearing of the appeal, unless:

- (a) the Court orders otherwise; or
- (b) the Court, under subsection 47B(1), directs or allows the party to appear by way of video link, audio link or other appropriate means.

### **30AH Practice and procedure applicable to the appeal**

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 criminal appeal proceedings, are to be those in force at the time the following notice is filed in the Court:
- (d) if the appeal cannot be brought unless leave is given—the notice of application for leave to appeal;
- (e) otherwise—the notice of appeal.

### **30AI Evidence on appeal**

- (1) In an appeal under this Division, the Court:
    - (a) must have regard to the evidence given in the proceedings out of which the appeal arose; and
    - (b) may draw inferences of fact; and
    - (c) may, if satisfied it is in the interests of justice to do so, receive further evidence, which may be taken:
      - (i) on affidavit; or
      - (ii) by video link, audio link or other appropriate means in accordance with another provision of this Act or another law of the Commonwealth; or
      - (iii) by oral examination before the Court or a Judge; or
      - (iv) otherwise in accordance with section 46.
- Note: Paragraph (c) does not require the Court to receive further evidence. For example, if the failure to adduce the evidence during the trial is not satisfactorily explained.
- (2) The Court may receive further evidence under paragraph (1)(c) by:
    - (a) directing the evidence be taken by a single Judge; and
    - (b) having regard to the findings of that Judge in relation to that evidence.

### **30AJ When to allow appeals**

#### *Appeals against conviction*

- (1) The Court must allow an appeal under section 30AA from a judgment convicting the accused if the Court is satisfied:

- (a) that the verdict of the jury (if any) should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or
  - (b) that the judgment should be set aside on the ground of a wrong decision of any question of law; or
  - (c) that there has been a substantial miscarriage of justice.
- (2) However, if the Court is satisfied of a matter in paragraph (1)(a) or (b), the Court may dismiss the appeal if the Court is satisfied that there has not been a substantial miscarriage of justice.

*Appeals against sentence*

- (3) The Court must allow an appeal under section 30AA from a judgment sentencing the accused if the Court is satisfied that some other sentence (whether more or less severe) is warranted in law.

*Other appeals under section 30AA*

- (4) The Court may allow any other appeal under section 30AA if the Court is satisfied it is in the interests of justice to do so.

*Final appeals*

- (5) The Court may allow an appeal covered by section 30AD if the Court is satisfied that it would be a miscarriage of justice not to allow the appeal.

**30AK Stay or suspension of orders pending appeal**

- (1) If an appeal to the Court has been instituted under this Division in relation to a judgment or decision (the ***appealed decision***), the Court or a Judge may make an order, on such conditions (if any) as the Court or Judge thinks fit, to stay or otherwise affect the operation or implementation of, any order arising from the appealed decision.
- (2) This section does not affect the operation of any provision made by or under any other Act or by the Rules of Court for or in relation to the stay or suspension of orders.

**30AL Prison sentence not to include time on bail**

If:

- (a) a person is convicted of an indictable offence and sentenced to a term of imprisonment; and
- (b) the person appeals to the Court under this Division against the conviction or sentence, or both;

any time during which the person is released on bail pending the determination of the appeal does not count as part of the term of imprisonment to which the person has been sentenced.

**Subdivision B—Form of judgment on appeal**

**30BA Court may give such judgment as is appropriate**

- (1) The Court may, by order, when exercising its appellate jurisdiction under this Division:
  - (a) dismiss or allow the appeal; and
  - (b) take such other action as it thinks appropriate in the circumstances.
- (2) Without limiting subsection (1), the other action the Court can take if it allows an appeal includes that set out in sections 30BB to 30BG.

**30BB Allowing appeals against convictions on indictment**

- (1) This section applies if the Court allows an appeal covered by paragraph 30AA(1)(a) or 30AD(2)(a).
- (2) The Court may:
  - (a) set aside the conviction (with or without an order for a new trial); or
  - (b) acquit the accused of the count.
- (3) The Court may substitute a guilty verdict for an offence (the ***substituted offence***) other than the offence to which the appeal relates (the ***appealed offence***) if:
  - (a) an Act allowed the jury to find the accused not guilty of the appealed offence but guilty of the substituted offence; and
  - (b) the Court is satisfied that:

- (i) the guilty verdict relating to the appealed offence cannot stand; and
  - (ii) the jury must have been satisfied of facts that prove the accused guilty of the substituted offence; and
  - (c) the Court substitutes the guilty verdict in accordance with that other Act.
- (4) The Court may substitute a guilty verdict for an offence (the **substituted offence**) other than the offence to which the appeal relates (the **appealed offence**) if the Court is satisfied that:
  - (a) the Court has jurisdiction to try a person for the substituted offence; and
  - (b) the maximum penalty for the substituted offence does not exceed the maximum penalty for the appealed offence; and
  - (c) the guilty verdict relating to the appealed offence cannot stand; and
  - (d) the substituted offence is covered by the same indictment as the appealed offence; and
  - (e) the jury must have been satisfied of facts that prove the accused guilty of the substituted offence.
- (5) For a guilty verdict substituted under subsection (3) or (4), the Court may:
  - (a) sentence the accused in relation to the substituted offence; and
  - (b) set aside the conviction and sentence relating to the appealed offence.

The accused is taken to be convicted of the substituted offence unless the Court makes an order under section 19B of the *Crimes Act 1914* when sentencing the accused for the substituted offence.

### **30BC Allowing appeals against sentence**

- (1) This section applies if the Court allows an appeal covered by paragraph 30AA(1)(b) or 30AD(2)(b).
- (2) The Court may:
  - (a) increase or decrease the sentence; or
  - (b) substitute a different sentence; or

- (c) in the case of an appeal against a judgment in which one or more orders were made under subsection 19B(1) of the *Crimes Act 1914*:
  - (i) vary or set aside any or all of the orders; or
  - (ii) set aside the orders, record a conviction of the accused and sentence the accused.

**30BD Allowing appeals for certain acquittals**

- (1) This section applies if the Court allows an appeal covered by paragraph 30AA(1)(c) or (d).
- (2) The Court may:
  - (a) set aside the acquittal; and
  - (b) order that there be, or not be, a new trial.

**30BE Allowing appeals involving unfitness, mental illness etc.**

- (1) This section applies if the Court allows an appeal covered by paragraph 30AA(1)(e).
- (2) The Court may vary or set aside:
  - (a) the order, determination or finding; and
  - (b) any related orders, determinations or findings.

**30BF Allowing appeals from summary proceedings**

- (1) This section applies if the Court allows an appeal covered by subsection 30AA(2).
- (2) For an appeal against conviction, the Court may set aside the conviction, and:
  - (a) record an acquittal; or
  - (b) remit the matter to the Judge for further hearing (with or without directions), or to a different Judge for a new hearing (with or without directions).
- (3) For an appeal against sentence, the Court may:
  - (a) increase or decrease the sentence; or
  - (b) substitute a different sentence.

- (4) For an appeal against a judgment in which one or more orders were made under Division 8 of Part IB, or subsection 19B(1), of the *Crimes Act 1914*, the Court may:
  - (a) vary or set aside any or all of the orders; and
  - (b) if it sets aside an order, record a conviction of the accused and/or sentence the accused.
- (5) For an appeal against acquittal, the Court may set aside the acquittal, and:
  - (a) record a conviction; or
  - (b) remit the matter to the Judge for further hearing (with or without directions), or to a different Judge for a new hearing (with or without directions).

**30BG Allowing appeals against bail, bail forfeiture or interim judgments and decisions (including about custody)**

- (1) This section applies if the Court allows an appeal covered by subsection 30AA(3) or (4).
- (2) The Court may, in every case:
  - (a) set aside the judgment or decision (the ***appealed decision***); or
  - (b) vary the appealed decision; or
  - (c) substitute a new judgment or decision for the appealed decision;and make orders about custody or bail.
- (3) The Court may, if it allows an appeal covered by subsection 30AA(4), order the continuation or cessation of the proceedings in which the appealed decision was made.

**30BH Matters relevant to form of judgment on appeal**

- (1) The powers in this Subdivision may be exercised even though the notice of appeal asks that only part of the judgment or decision be reversed or varied.
- (2) For the purposes of sentencing an accused under this Subdivision (including by way of substituting a different sentence), the Court's powers are taken to include those of the court from which the appeal was made.

Note: This means the Court could, for example, sentence the accused by making an order under section 19B of the *Crimes Act 1914*.

- (3) This Subdivision has effect subject to section 80 of the Constitution and to any other Act.

## Subdivision C—References

### 30CA Cases stated and questions reserved

#### *Cases/questions from proceedings other than committal proceedings*

- (1) A court in proceedings from which appeals lie under section 30AA (other than proceedings covered by subsection (2)) may state any case or reserve any question concerning a matter with respect to which such an appeal would lie for the consideration of the Court.

#### *Cases/questions from committal proceedings*

- (2) If, in proceedings before a court of a State or Territory (the **committals court**), the court:
- (a) can, under subsection 68A(2) of the *Judiciary Act 1903*, commit a person for trial or sentencing before either:
    - (i) the Court; or
    - (ii) a superior court of the State or Territory; and
  - (b) can, under a law of the State or Territory, state a case or reserve a question for the consideration of that superior court;
- the committals court may instead choose to state the case or reserve the question for the consideration of the Court.

#### *General rules*

- (3) The Court has jurisdiction to hear and determine a case or question it receives under subsection (1) or (2).
- (4) Subject to any other Act, this jurisdiction of the Court:
- (a) if the court stating the case or reserving the question is not a court of summary jurisdiction—must be exercised by a Full Court; or
  - (b) otherwise—may be exercised by a single Judge or by a Full Court.

- (5) A court must not state a case, or reserve a question concerning a matter referred to in subsection (1), to a court other than the Court.

### **30CB Questions referred after trial**

- (1) If a judgment of the Court acquits a person following a trial on indictment for an indictable offence, the prosecutor may apply to the Court or a Judge for leave to refer a question of law arising from the judgment to a Full Court for its determination.
- (2) If leave is granted, both the prosecutor and the acquitted person may make submissions to the Full Court in relation to the Court's determination of the question of law.
- (3) A determination made by the Court on the question of law does not affect the person's acquittal.
- (4) The Court may make orders to ensure each party to proceedings under this section is adequately represented in those proceedings. This subsection has effect despite section 30DA.

### **Subdivision D—Other**

#### **30DA Costs**

Nothing in this Act gives the Court power to award costs in:

- (a) criminal appeal proceedings; or
- (b) proceedings before the Court under section 30CA or 30CB; or
- (c) proceedings referred to the Court under section 20B of the *Crimes Act 1914* (as that section applies because of subsection 68A(6) of the *Judiciary Act 1903*).

## **4 After Part VI**

Insert:

## Part VIA—Offences relating to juries

### Division 1—Offences

#### 58AA Failing to attend for jury service

- (1) A person commits an offence if:
- (a) the person has been served with a summons under:
    - (i) section 23DP; or
    - (ii) a law applying under subsection 41(1); and
  - (b) the summons has not been withdrawn; and
  - (c) the person has not been excused from serving as a juror in the proceedings to which the summons relates; and
  - (d) the person fails to attend for service as a juror in accordance with the summons.

Penalty: 30 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

#### 58AB Failing to comply with directions—persons attending for jury service

##### *Criminal trials*

- (1) A person commits an offence if:
- (a) the person is a potential juror in relation to indictable primary proceedings; and
  - (b) the person attends for service as a juror; and
  - (c) the person has not been discharged under section 23EI; and
  - (d) the person is given a direction by the Sheriff or the Court; and
  - (e) the person fails to comply with the direction.

Penalty: 30 penalty units.

*Civil trials*

- (2) A person commits an offence if:
- (a) the person is a potential juror in relation to civil proceedings before the Court; and
  - (b) the person attends for service as a juror; and
  - (c) the person has not been discharged under a law applying under subsection 41(1); and
  - (d) the person is given a direction by the Sheriff or the Court; and
  - (e) the person fails to comply with the direction.

Penalty: 30 penalty units.

- (3) Subsections (1) and (2) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4)—see subsection 13.3(3) of the *Criminal Code*.

**58AC Failing to comply with directions—jurors**

- (1) A person commits an offence if:
- (a) the person is a juror; and
  - (b) neither the jury nor the juror has been discharged; and
  - (c) the person is given a direction by the Sheriff or the Court; and
  - (d) the person fails to comply with the direction.

Penalty: 30 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

### **58AD Impersonating a juror or potential juror**

- (1) A person commits an offence if:
- (a) the person impersonates another person; and
  - (b) the first-mentioned person does so with the intent of:
    - (i) being empanelled as a juror; or
    - (ii) causing the other person to be excused from serving as a juror.

Penalty: Imprisonment for 2 years.

- (2) A person commits an offence if:
- (a) the person impersonates another person; and
  - (b) the first-mentioned person does so with the intent of:
    - (i) acting as a juror; or
    - (ii) causing the other person to be discharged from serving as a juror.

Penalty: Imprisonment for 2 years.

### **58AE Failing to complete and return a questionnaire**

- (1) A person commits an offence if:
- (a) the person is sent a questionnaire under subsection 23DN(2); and
  - (b) the person either:
    - (i) fails to return the questionnaire in accordance with subsection 23DN(3); or
    - (ii) returns the questionnaire but fails to complete it in accordance with subsection 23DN(3).

Penalty: 30 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

### **58AF False or misleading information to avoid jury service**

- (1) A person commits an offence if:
- (a) the person gives information to the Court, the Sheriff or another officer of the Court; and
  - (b) the information:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the information is misleading; and
  - (c) the person does so with the intent of avoiding service as a juror.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

### **58AG Bribery of jurors or potential jurors**

#### *Giving a bribe*

- (1) A person commits an offence if:
- (a) the person dishonestly:
    - (i) provides a benefit to another person; or
    - (ii) causes a benefit to be provided to another person; or
    - (iii) offers to provide, or promises to provide, a benefit to another person; or
    - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
  - (b) the person does so with the intent of influencing:
    - (i) a juror (who may or may not be the other person) in the exercise of the juror's duties as a juror; or

- (ii) a potential juror (who may or may not be the other person) in the exercise of the potential juror's duties as a potential juror.

Penalty: Imprisonment for 10 years.

*Receiving a bribe*

- (2) A person commits an offence if:
  - (a) the person is a juror or potential juror; and
  - (b) the person dishonestly:
    - (i) asks for a benefit for himself, herself or another person; or
    - (ii) receives or obtains a benefit for himself, herself or another person; or
    - (iii) agrees to receive or obtain a benefit for himself, herself or another person; and
  - (c) the person does so with the intent:
    - (i) that the exercise of the person's duties as a juror or potential juror will be influenced; or
    - (ii) of inducing, fostering or sustaining a belief that the exercise of the person's duties as a juror or potential juror will be influenced.

Penalty: Imprisonment for 10 years.

*Determination of dishonesty to be a matter for the trier of fact*

- (3) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.

*Expressions have Criminal Code meaning*

- (4) An expression used in this section that is also used in Chapter 7 of the *Criminal Code* has the same meaning in this section as it has in that Chapter.

**58AH Causing or threatening harm to jurors, potential jurors or former jurors**

*Causing harm*

- (1) A person (the **first person**) commits an offence if:
- (a) the first person engages in conduct; and
  - (b) the first person's conduct causes harm to another person (the **second person**); and
  - (c) the second person, or a third person, (the **targeted person**) is a juror, potential juror or former juror; and
  - (d) the first person intends that his or her conduct cause harm to the second person; and
  - (e) the harm is caused without the consent of the second person; and
  - (f) the first person engages in his or her conduct because of:
    - (i) the targeted person's status as a juror, potential juror or former juror; or
    - (ii) any conduct engaged in by the targeted person in the targeted person's capacity as a juror or potential juror.

Penalty: Imprisonment for 10 years.

*Threatening to cause harm*

- (2) A person (the **first person**) commits an offence if:
- (a) the first person makes to another person (the **second person**) a threat to cause harm to the second person or to a third person; and
  - (b) the second person, or the third person, (the **targeted person**) is a juror, potential juror or former juror; and
  - (c) the first person:
    - (i) intends the second person to fear that the threat will be carried out; or
    - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
  - (d) the first person makes the threat because of:
    - (i) the targeted person's status as a juror, potential juror or former juror; or

- (ii) any conduct engaged in by the targeted person in the targeted person's capacity as a juror or potential juror.

Penalty: Imprisonment for 7 years.

*When conduct causes harm*

- (3) For the purposes of this section, a person's conduct is taken to cause harm if it substantially contributes to harm.

*Unnecessary to prove that a threatened person actually feared harm*

- (4) In a prosecution for an offence against this section, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

*Expressions have Criminal Code meaning*

- (5) An expression used in this section that is also used in Part 7.8 of the *Criminal Code* has the same meaning in this section as it has in that Part.

#### **58AI Obstructing jurors or potential jurors**

A person commits an offence if:

- (a) the person knows that another person is a juror or potential juror; and
- (b) the first-mentioned person obstructs, hinders, intimidates or resists the other person in the performance of the other person's duties, or functions, as a juror or potential juror.

Penalty: Imprisonment for 12 months.

#### **58AJ Publishing or broadcasting information identifying jurors, potential jurors or former jurors**

- (1) A person commits an offence if:

- (a) the person publishes or broadcasts information to the public; and
- (b) either:
  - (i) the information identifies another person as a juror, potential juror or former juror; or

- (ii) a member of the public could reasonably be expected to identify the other person as a juror, potential juror or former juror either on the basis of the information or on the basis of the information in conjunction with other publicly-available information.

Penalty: 50 penalty units.

- (2) A person commits an offence if:
  - (a) the person publishes or broadcasts information to a section of the public; and
  - (b) either:
    - (i) the information identifies another person as a juror, potential juror or former juror; or
    - (ii) a member of that section of the public could reasonably be expected to identify the other person as a juror, potential juror or former juror either on the basis of the information or on the basis of the information in conjunction with other information available to that section of the public.

Penalty: 50 penalty units.

- (3) Subsections (1) and (2) do not apply to a publication or broadcast that occurs in circumstances specified in regulations made for the purposes of this section.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

### **58AK Soliciting information from jurors**

- (1) A person commits an offence if:
  - (a) the person (the **first person**) solicits another person (the **second person**) for information; and
  - (b) the second person is a juror or former juror; and
  - (c) one of the following subparagraphs applies:
    - (i) the information identifies a person as a juror or former juror;
    - (ii) the first person could reasonably be expected to identify a person as a juror or former juror either on the basis of the information or on the basis of the information in

conjunction with other information available to the first person;

- (iii) the information relates to the deliberations of the jury.

Penalty: 60 penalty units.

- (2) A person commits an offence if:

- (a) the person (the **first person**) solicits another person (the **second person**) for information; and
- (b) the second person is a juror or former juror; and
- (c) one of the following subparagraphs applies:
  - (i) the information identifies a person as a juror or former juror;
  - (ii) the first person could reasonably be expected to identify a person as a juror or former juror either on the basis of the information or on the basis of the information in conjunction with other information available to the first person;
  - (iii) the information relates to the deliberations of the jury; and
- (d) the first person:
  - (i) provides a benefit to another person; or
  - (ii) causes a benefit to be provided to another person; or
  - (iii) offers to provide, or promises to provide, a benefit to another person; or
  - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person;in relation to the soliciting of the information.

Penalty: Imprisonment for 6 months.

- (3) Subsections (1) and (2) do not apply if:

- (a) a Judge or officer of the Court solicits the information because of a suspicion that a juror or former juror is or was biased in relation to the performance of that juror's, or former juror's, duties as a juror; or
- (b) an investigating official solicits the information because of a suspicion that a juror or former juror committed:
  - (i) fraud; or

- (ii) another offence against a law of the Commonwealth or a State or Territory;  
in relation to the performance of that juror's, or former juror's, duties as a juror; or
- (c) the information was solicited in accordance with the performance of a function under this Act; or
- (d) the information was solicited in accordance with an authority granted by the Attorney-General for the conduct of a research project into matters relating to juries or jurors; or
- (e) a health professional solicited the information from the former juror when treating the former juror in relation to issues arising out of the former juror's service on the jury.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

- (4) In this section:

***benefit*** has the same meaning as in the *Criminal Code*.

***investigating official*** means any of the following:

- (a) the Attorney-General;
- (b) the Director of Public Prosecutions;
- (c) a member of the Australian Federal Police or of the police force or police service of a State or Territory;
- (d) a Judge or officer of the Court.

#### **58AL Disclosing information about a jury**

- (1) A person commits an offence if:
  - (a) the person is a juror or former juror; and
  - (b) the person discloses information to another person (the ***second person***); and
  - (c) one of the following subparagraphs applies:
    - (i) the information identifies a person as a juror or former juror;
    - (ii) the second person could reasonably be expected to identify a person as a juror or former juror either on the basis of the information or on the basis of the information in conjunction with other information available to the second person;
    - (iii) the information relates to the deliberations of the jury.

Penalty: 60 penalty units.

- (2) A person commits an offence if:
- (a) the person is a juror or former juror; and
  - (b) the person discloses information to another person (the ***second person***); and
  - (c) one of the following subparagraphs applies:
    - (i) the information identifies a person as a juror or former juror;
    - (ii) the second person could reasonably be expected to identify a person as a juror or former juror either on the basis of the information or on the basis of the information in conjunction with other information available to the second person;
    - (iii) the information relates to the deliberations of the jury; and
  - (d) the first-mentioned person:
    - (i) asks for a benefit for himself, herself or another person; or
    - (ii) receives or obtains a benefit for himself, herself or another person; or
    - (iii) agrees to receive or obtain a benefit for himself, herself or another person;in relation to the disclosure.

Penalty: Imprisonment for 6 months.

- (3) Subsections (1) and (2) do not apply if:
- (a) the disclosure was to a Judge or officer of the Court because of a suspicion that a juror or former juror is or was biased in relation to the performance of that other juror's, or former juror's, duties as a juror; or
  - (b) the disclosure was to an investigating official because of a suspicion that a juror or former juror committed:
    - (i) fraud; or
    - (ii) another offence against a law of the Commonwealth or a State or Territory;in relation to the performance of that other juror's, or former juror's, duties as a juror; or

- (c) the disclosure was made in accordance with the performance of a function under this Act; or
- (d) the disclosure was made in accordance with an authority granted by the Attorney-General for the conduct of a research project into matters relating to juries or jurors; or
- (e) the disclosure was made by a former juror to a health professional who is treating the former juror in relation to issues arising out of the former juror's service on the jury.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

#### *Interpretation*

- (4) An expression used in subsection (2) that is also used in Chapter 7 of the *Criminal Code* has the same meaning in that subsection as it has in that Chapter.
- (5) In this section:

***investigating official*** means any of the following:

- (a) the Attorney-General;
- (b) the Director of Public Prosecutions;
- (c) a member of the Australian Federal Police or of the police force or police service of a State or Territory;
- (d) a Judge or officer of the Court.

### **58AM Making improper inquiries as a juror or potential juror**

A person commits an offence if:

- (a) the person is a juror or potential juror; and
- (b) the person makes an inquiry for the purposes of obtaining information relating to:
  - (i) in the case of indictable primary proceedings—the accused, or one of the accused, being tried; or
  - (ii) in every case—any matter relevant to the trial; and
- (c) the inquiry is not directed to the presiding Judge, the Sheriff or a fellow juror or fellow potential juror.

Penalty: 60 penalty units.

## Division 2—Infringement notices

### 58BA When an infringement notice can be given

- (1) If the Sheriff has reasonable grounds to believe that a person has committed an offence against section 58AA or 58AE, the Sheriff may give the person an infringement notice relating to the alleged offence.
- (2) The infringement notice must be given within 12 months after the day on which the offence is alleged to have been committed.

### 58BB Matters to be included in an infringement notice

An infringement notice must:

- (a) be identified by a unique number; and
- (b) set out the name of the person to whom the notice is given (the **recipient**); and
- (c) set out the name of the person who gave the notice; and
- (d) set out brief details of the alleged offence, including relevant dates and the maximum penalty a court could impose for the alleged offence; and
- (e) state that criminal proceedings will not be brought in relation to the matter if the penalty specified in the notice is paid to the Sheriff, on behalf of the Commonwealth, within:
  - (i) 28 days after the notice is given; or
  - (ii) if the Sheriff allows a longer period—that longer period;and
- (f) state that payment of the penalty is not an admission of guilt or liability; and
- (g) give an explanation of how payment of the penalty is to be made; and
- (h) invite the recipient to, within 28 days after the notice is given, notify the Sheriff in the manner set out in the notice of any reason why the Sheriff should withdraw the infringement notice; and
- (i) state that the period referred to in paragraph (e) will be extended if the Sheriff is given a notification described in paragraph (h); and

- (j) set out such other matters (if any) as are specified in the regulations.

#### **58BC Amount of penalty**

The penalty to be specified in an infringement notice relating to an alleged offence must be a pecuniary penalty equal to one-fifth of the maximum penalty that a court could impose for the offence.

#### **58BD Withdrawal of an infringement notice**

*Sheriff may withdraw an infringement notice*

- (1) This section applies if an infringement notice is given to a person.
- (2) The Sheriff may, by written notice (the **withdrawal notice**) given to the person, withdraw the infringement notice.

*Withdrawal can only occur after first 28 days if Sheriff notified of reasons*

- (3) A withdrawal notice cannot be given more than 28 days after the infringement notice was given unless the person has notified the Sheriff in accordance with the infringement notice of a reason why the Sheriff should withdraw the infringement notice.

*If person notifies Sheriff of reasons to withdraw*

- (4) If the person notifies the Sheriff in accordance with the infringement notice of a reason why the Sheriff should withdraw the infringement notice, the Sheriff must:
  - (a) decide whether to withdraw the infringement notice; and
  - (b) if the Sheriff decides to refuse to withdraw the infringement notice—give the person a written notice (the **refusal notice**) of that decision.
- (5) The refusal notice must contain a statement to the effect that criminal proceedings will not be brought in relation to the matter if the penalty specified in the infringement notice is paid to the Sheriff, on behalf of the Commonwealth, within 28 days after the refusal notice is given.

*Refund of penalty if infringement notice withdrawn*

- (6) If:
- (a) the penalty specified in the infringement notice is paid; and
  - (b) the infringement notice is withdrawn after the penalty is paid;
- the Commonwealth is liable to refund the penalty.

**58BE What happens if the penalty is paid**

- (1) This section applies if:
- (a) an infringement notice relating to an alleged offence against section 58AA or 58AE is given to a person; and
  - (b) the penalty is paid in accordance with:
    - (i) the infringement notice; or
    - (ii) if a refusal notice is given to the person under subsection 58BD(4)—the refusal notice; and
  - (c) the infringement notice is not withdrawn.
- (2) Any liability of the person for the alleged offence is discharged.
- (3) Criminal proceedings may not be brought against the person for the alleged offence.
- (4) The person is not regarded as having been convicted of the offence specified in the infringement notice.

**58BF Effect of this Division on criminal proceedings**

- (1) This Division does not:
- (a) require an infringement notice to be given in relation to an alleged offence against section 58AA or 58AE; or
  - (b) affect the liability of a person to be prosecuted for an offence against section 58AA or 58AE if:
    - (i) the person does not comply with an infringement notice, or a refusal notice given to the person under subsection 58BD(4), relating to the offence; or
    - (ii) an infringement notice relating to the offence is not given to the person; or
    - (iii) an infringement notice relating to the offence is given to the person and subsequently withdrawn; or

- (c) limit a court's discretion to determine the amount of a penalty to be imposed on a person convicted of an offence against section 58AA or 58AE.
- (2) Evidence of an admission made by a person in notifying the Sheriff in accordance with an infringement notice of a reason why the Sheriff should withdraw the infringement notice is inadmissible in proceedings against the person for the alleged offence concerned.
- (3) Subsection (2) does not apply if the person gives evidence in the proceedings that is inconsistent with the admission.

### **58BG Regulations**

The regulations may make further provision in relation to:

- (a) infringement notices; and
- (b) refusal notices given under subsection 58BD(4).

## **Part VIB—Bail**

### **Division 1—Introduction**

#### **58CA Simplified outline**

The following is a simplified outline of this Part:

- During indictable primary proceedings or criminal appeal proceedings the Court may grant (and continue) bail for the accused.
- If granted bail, the accused must sign a bail undertaking.
- A decision about bail may be reconsidered if there is a change in circumstances.
- The Court must also reconsider bail if the accused fails to comply with the accused's bail undertaking.
- A failure by the accused to appear before the Court in accordance with the accused's bail undertaking may be an

offence, and may lead to the forfeiture of security provided as a condition of bail.

Note 1: The procedures relating to bail and custody during committal proceedings, and during summary prosecutions in the Court, are those applying under subsection 68(1) of the *Judiciary Act 1903* (see also paragraph 68B(1)(b) of that Act).

Note 2: During indictable primary proceedings, the Court may decide to remand the accused in custody (see section 23HA).

## **Division 2—Granting bail**

### **58DA Applying for bail**

- (1) During indictable primary proceedings or criminal appeal proceedings, the accused can apply to the Court for bail for one or more offences.
- (2) However, if the Court refuses to grant bail to the accused for an offence, the accused cannot apply again for bail for the offence unless there has been a material change in circumstances since the refusal.

### **58DB Granting bail**

- (1) The Court may, by order, grant bail to the accused for one or more of the offences.
- (2) In deciding whether to grant bail, the Court must consider the following:
  - (a) whether the accused will appear in court if bail is granted;
  - (b) the interests of the accused;
  - (c) the protection of any other person;
  - (d) the protection and welfare of the community, including whether there is a risk that the accused will commit offences if bail were granted;
  - (e) whether there is a risk that the accused will approach witnesses or attempt to destroy evidence.
- (2A) An accused applying for bail during indictable primary proceedings is entitled to be granted bail during the proceedings in relation to an offence against either of the following sections of the *Trade Practices Act 1974*:

- (a) section 44ZZRF (making a contract etc. containing a cartel provision);
  - (b) section 44ZZRG (giving effect to a cartel provision);unless the Court decides otherwise after considering the matters mentioned in subsection (2).
- (3) In deciding whether to grant bail during criminal appeal proceedings, the Court must also be satisfied that there are exceptional circumstances that justify granting bail.
- (4) This section has effect subject to any other Act.

#### **58DC Bail may be granted subject to conditions**

- (1) A bail order may be made unconditionally or subject to one or more specified conditions.
- (2) Without limiting subsection (1), the conditions can include one or more of the following:
  - (a) the accused reside at a specified place;
  - (b) the accused report to a specified person at a specified place at a specified time or times;
  - (c) the accused surrender any passport held by the accused and agree not to approach a point of international departure;
  - (d) the accused provide security in the form of money, or other property, for forfeiture if the accused fails to appear before the Court in accordance with the accused's bail undertaking;
  - (e) one or more other specified persons provide security in the form of money, or other property, for forfeiture if the accused fails to appear before the Court in accordance with the accused's bail undertaking.
- (3) Money or other property deposited with the Court, or otherwise provided, as security in accordance with a condition of bail must be dealt with by the Court in accordance with the Rules of Court.

#### **58DD Bail to be stayed pending appeal**

- (1) If:
    - (a) the Court makes a bail order; and
    - (b) the prosecutor requests the Court to stay the bail order pending appeal;
-

the bail order is stayed by force of this section for 48 hours.

- (2) If a notice of appeal from the bail order is filed within that 48 hours, the stay of the bail order continues by force of this section until:
  - (a) the appeal is finally disposed of; or
  - (b) the prosecutor withdraws the appeal in accordance with the Rules of Court; or
  - (c) a Full Court orders, under this subsection, that the stay be set aside;whichever happens first.
- (3) If the prosecutor makes a request under paragraph (1)(b), the appeal from the making of the bail order must be dealt with as quickly as possible.
- (4) If a bail order is stayed by force of this section, the Court must, by warrant of commitment, remand the accused in custody for the duration of the stay.
- (5) A warrant of commitment under subsection (4) may be signed by any Judge, the Registrar or any Deputy Registrar, District Registrar or Deputy District Registrar of the Court.

#### **58DE Bail undertakings etc.**

- (1) If the Court grants bail to the accused, then the accused can only be released on bail if:
  - (a) the accused has signed an undertaking (a ***bail undertaking***) containing the matters set out in subsection (2) and made in accordance with the Rules of Court; and
  - (b) each other person (if any), who as a condition of bail has agreed to provide security, has signed an undertaking (a ***third party security undertaking***) made in accordance with the Rules of Court; and
  - (c) subsection 58DC(3) is complied with in relation to any security required as a condition of bail.
- (2) A bail undertaking must set out:
  - (a) an undertaking by the accused to:
    - (i) appear in person before the Court in accordance with the bail order; and

- (ii) promptly notify the Court if the accused changes his or her residential address; and
  - (b) an undertaking by the accused to comply with the specified conditions, if any, on which bail has been granted.
- (3) A bail undertaking, and any third party security undertaking made in relation to the accused's bail, must be expressed to cover:
  - (a) the period for which bail was granted; and
  - (b) each period for which bail may be continued under subsection 58GA(1).
- (4) The Registrar must cause the parties to be given a copy of:
  - (a) the accused's bail undertaking; and
  - (b) any third party security undertaking made in relation to the accused's bail.

#### **58DF Effect of granting bail**

- (1) If an accused is released on bail under this Part for an offence, the accused is entitled to be at liberty in respect of the offence in accordance with the accused's bail undertaking.

Note: This does not prevent the accused from being held in custody for some other offence.

- (2) Subsection (1) is subject to a stay under section 58DD.

#### **58DG Seeking discharge from undertaking to give security**

- (1) A person who has made a third party security undertaking in relation to the accused's bail may apply to the Court to be discharged from the person's liability under that undertaking.
- (2) If:
  - (a) the person so applies; and
  - (b) at the time of applying, the accused has not failed to appear before the Court in accordance with the accused's bail undertaking;the Court must direct that the person be discharged from this liability, unless satisfied it would be contrary to the interests of justice to do so.

Note: A direction will cause a reconsideration of the accused's bail (see Division 3).

### **58DH Dealings with property given as security for bail**

A person commits an offence if:

- (a) the person is:
  - (i) an accused who has signed a bail undertaking; or
  - (ii) a person who has signed a third party security undertaking made in relation to the accused's bail; and
- (b) the person has, under that undertaking, undertaken to forfeit security if the accused does not appear before the Court in accordance with the accused's bail undertaking; and
- (c) while the person's undertaking is in force, the person:
  - (i) disposes of, or otherwise deals with, any of that security that is not money; and
  - (ii) intends by this to prevent the forfeiture of the security, to destroy the security or to reduce its value.

Penalty: Imprisonment for 2 years.

### **Division 3—Reconsidering bail orders**

#### **58EA Reconsidering bail—discharge of security or accused fails to comply with the accused's bail undertaking**

- (1) This section applies if, in relation to a bail order:
  - (a) the Court gives a direction under subsection 58DG(2); or
  - (b) the prosecutor applies for the bail order to be varied or revoked on the basis that the accused has failed to comply with the accused's bail undertaking.
- (2) The Court must cause the accused to be brought before the Court in accordance with the Rules of Court.

Note: In a case where the accused failed to appear before the Court in accordance with the accused's bail undertaking, the Court may be asked to commence forfeiture proceedings (see section 58FB).
- (3) The Court may, by order, vary or revoke the bail order.
- (4) In deciding whether to vary or revoke the bail order, the Court must consider:
  - (a) the matters set out in subsection 58DB(2); and

- (b) if the decision is to be made during criminal appeal proceedings—the principle that exceptional circumstances must exist for the accused to be released on bail.

#### **58EB Reconsidering bail—change in circumstances**

- (1) The Court may, by order, vary or revoke the accused’s bail order under this section if:
  - (a) the Court is satisfied that there has been a sufficient change in circumstances since the making of the bail order; and
  - (b) the Court considers:
    - (i) the matters set out in subsection 58DB(2); and
    - (ii) if the decision is to be made during criminal appeal proceedings—the principle that exceptional circumstances must exist for the accused to be released on bail.
- (2) If the Court is satisfied an application for an order under this section is frivolous or vexatious, the Court may refuse the application without a hearing.

#### **58EC Consequences if bail is varied or revoked**

- (1) If the Court varies the accused’s bail under this Division, then the accused can only be released on bail if:
  - (a) the accused has signed a new bail undertaking under paragraph 58DE(1)(a); and
  - (b) each other person (if any), who has undertaken to provide security as a condition of bail, has signed a new third party security undertaking under paragraph 58DE(1)(b); and
  - (c) subsection 58DC(3) is complied with in relation to any security required as a condition of bail.
- (2) If the Court revokes the accused’s bail under this Division, the Court may cause the accused to be committed to prison in accordance with the Rules of Court.

## **Division 4—Further consequences if accused fails to appear in accordance with bail undertaking**

### **58FA Offence for failing to appear before the Court**

- (1) A person commits an offence if:
- (a) the person is the accused; and
  - (b) the person gives the Court a bail undertaking; and
  - (c) the person is released on bail under this Part; and
  - (d) the person fails to appear before the Court in accordance with the bail undertaking.

Penalty: Imprisonment for 2 years.

Note: The accused's bail will also be reconsidered under Division 3.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

### **58FB Notice of proposed forfeiture**

- (1) The prosecutor may apply to the Court for a direction under subsection (2) if the accused allegedly fails to appear before the Court in accordance with the accused's bail undertaking.
- (2) The Court may direct the Registrar to give a notice to:
- (a) each person who provided security for the accused's bail; and
  - (b) any other person who the Court considers may have an interest in security provided for the accused's bail.

A failure by the Registrar to give a notice to a person covered by the direction, if the Registrar has made reasonable efforts to do so, does not affect the validity of any forfeiture order.

- (3) The notice must:
- (a) invite the person to show cause, by filing an objection in accordance with paragraphs 58FC(3)(b) and (c), why the security should not be forfeited; and
  - (b) contain the particulars set out in the Rules of Court.

- (4) An application under subsection (1) cannot be made more than 6 months after the alleged failure to appear before the Court.

### **58FC Ordering forfeiture**

- (1) The Court must order the forfeiture of all specified security provided by a particular person for the accused's bail if the Court is satisfied that the accused failed to appear before the Court in accordance with the accused's bail undertaking.

Note 1: For the forfeiture of security provided by more than one person, separate forfeiture orders will be required.

Note 2: A forfeiture order may be appealed (see subsection 30AA(3)).

- (2) However, the Court may decide to not make a forfeiture order, or to reduce the amount of security to be forfeited, if the Court is satisfied that:

- (a) the accused had a reasonable excuse for failing to appear; or
- (b) it is in the interests of justice to do so.

- (3) In deciding whether to make a forfeiture order, the Court must consider any objection:

- (a) filed by a person who the Court is satisfied either provided security for the accused's bail or has an interest in such security; and
- (b) filed before the end of the 28th day after:
  - (i) if the person was given a notice under subsection 58FB(2)—the day of being given the notice; or
  - (ii) otherwise—the first day on which a notice was given to a person under subsection 58FB(2); and
- (c) containing the particulars set out in the Rules of Court.

The Court may also invite the person to make submissions.

### **58FD When forfeiture orders take effect**

- (1) A forfeiture order never takes effect if it is set aside on appeal.
- (2) If the forfeiture order is not set aside on appeal, it takes effect:
- (a) if a notice of appeal was not filed in relation to the order—at the end of the time for filing such a notice under section 30AF; or
  - (b) otherwise—when the appeal is finally disposed of.

Note: If a forfeiture order is varied on appeal, it will take effect as varied.

- (3) If a forfeiture order takes effect, the Registrar must give written notice that it has taken effect to:
- (a) the person who provided the security forfeited by the order; and
  - (b) each other person (if any) who objected to the making of the order in relation to that security.

### **58FE Effect of forfeiture orders**

*Security is money held by the Court or property other than registrable property*

- (1) If security specified in a forfeiture order is:
- (a) money deposited with or otherwise provided to the Court; or
  - (b) property other than:
    - (i) money; or
    - (ii) registrable property;
- the security vests absolutely in the Commonwealth at the time the order takes effect.

*Security is money not held by the Court*

- (2) If security specified in a forfeiture order is an amount of money that has not been deposited with or otherwise provided to the Court, then:
- (a) the amount is taken to be a civil debt payable by the provider of the security to the Commonwealth at the time the order takes effect; and
  - (b) the Commonwealth may enforce the forfeiture order as if it were an order made in civil proceedings against the provider to recover a debt due by the provider; and
  - (c) the debt arising from the order is taken to be a judgment debt; and
  - (d) if the undertaking under which the amount was provided as security also specified property to secure payment of the amount—the Commonwealth may enforce the undertaking in respect of that property.

*Security is registrable property*

- (3) If security specified in a forfeiture order is registrable property, then:
- (a) that property vests in equity in the Commonwealth but does not vest in the Commonwealth at law until the applicable registration requirements have been complied with; and
  - (b) the prosecutor may, on behalf of the Commonwealth, do anything necessary or convenient to give notice of, or otherwise protect, the Commonwealth's equitable interest in that property; and
  - (c) the Commonwealth is entitled to be registered as the owner of that property; and
  - (d) the Court may, by order, authorise a person to:
    - (i) do; or
    - (ii) authorise the doing of;anything necessary or convenient to obtain the registration of the Commonwealth as the owner.
- (4) The powers of a person who is the subject of an order under paragraph (3)(d) include executing any instrument required to be executed by a person transferring an interest in property of that kind.

*Meaning of **registrable property***

- (5) In this section:

**registrable property** means property, title to which is passed by registration on a register kept pursuant to a provision of any law of the Commonwealth or of a State or Territory.

## **Division 5—When bail ends**

### **58GA Continuing bail orders**

- (1) The Court may direct that a bail order continue to have effect.
- (2) Unless the Court orders otherwise, if:
  - (a) the accused appears before the Court in accordance with the accused's bail undertaking; and

- (b) the accused's bail order would no longer have effect after that appearance (otherwise than because of section 58GB); and
  - (c) the Court does not make a direction under subsection (1) during that appearance;
- the Court is taken to have directed under subsection (1) that the bail order continue to have effect until the accused's next scheduled appearance before the Court.
- (3) If the Court gives a direction under subsection (1), each of the following continue to have effect:
  - (a) the accused's bail undertaking;
  - (b) each third party security undertaking made in relation to the accused's bail;subject to any contrary intention in the undertaking and to any variation ordered by the Court.

**58GB Bail discharged if the Court discharges the accused**

A bail order ceases to have effect if the Court discharges the accused in relation to all the offences for which bail was granted.

**58GC Continuing security undertakings when bail ends**

- (1) This section applies if:
  - (a) security was provided for the accused's bail; and
  - (b) the accused's bail order is revoked under section 58EA because of a failure by the accused to appear before the Court in accordance with the accused's bail undertaking.
- (2) Despite the revocation, each of the following continue to have effect to the extent to which they relate to the security provided for the accused's bail:
  - (a) the accused's bail undertaking;
  - (b) each third party security undertaking made in relation to the accused's bail.

**Note:** Generally, the bail undertaking and any third party security undertaking will automatically end at the same time as the bail order.

- (3) This continuation of an undertaking to provide security ceases if:

- (a) a forfeiture order cannot take effect in relation to the security and the failure; or
- (b) the Court orders the continuation to cease.

Note 1: When a forfeiture order takes effect is set out in section 58FE.

Note 2: A forfeiture order cannot be made unless an application is made within 6 months of the failure (see subsection 58FB(4)).

### **58GD Returning security when bail ends**

If:

- (a) a person provides security for the accused's bail under a bail undertaking or third party security undertaking; and
- (b) the accused's bail order ceases to have effect; and
- (c) if section 58GC applies—the continuation of the undertaking to provide the security ceases under subsection 58GC(3); and
- (d) the Court holds the security solely because of the undertaking;

the Court must return the security to the person.

Note: The money or property will not be returned if it was forfeited under Division 4 or is being held as security in relation to another bail order.

## **Division 6—Other matters**

### **58HA Admissibility of certain matters**

- (1) Each of the following documents is to be received in all courts and proceedings as prima facie evidence of their contents:
  - (a) a bail order;
  - (b) a bail undertaking;
  - (c) a third party security undertaking;
  - (d) a notice referred to in subparagraph 58DE(2)(a)(ii) (about change of address) given by the accused to the Court.
- (2) A copy, certified by an officer of the Court, of a document referred to in subsection (1) is admissible in evidence in all courts and proceedings without further proof or production of the original.

Note: This means that a certified copy is to be received in all courts and proceedings as prima facie evidence of the original's contents.

- (3) An officer of the Court may issue a written certificate stating that:

- (a) a condition specified in a bail order:
    - (i) has not been varied; or
    - (ii) has been varied in a specified way; or
  - (b) a notice was given under subsection 58FB(2) to a specified person in a specified way on a specified day; or
  - (c) the accused did not appear in person before the Court:
    - (i) at a specified place; or
    - (ii) on a specified day or during a specified period; or
  - (d) the accused did not notify the Court of a change in the accused's residential address; or
  - (e) the accused notified the Court of a change in the accused's residential address:
    - (i) to a specified address; and
    - (ii) on a specified day.
- (4) The certificate is to be received in all courts and proceedings as prima facie evidence of the statements in the certificate.
- (5) A document purporting to be a certificate under subsection (3) is taken to be such a certificate and to have been duly given, unless the contrary is established.

#### **58HB Indemnifying a person providing security**

- (1) A person commits an offence if:
- (a) the person signs a bail undertaking, or a third party security undertaking, to provide security as a condition of bail; and
  - (b) the person agrees to be indemnified by another person against any forfeiture under this Part of that security.

Penalty: Imprisonment for 2 years.

- (2) A person commits an offence if the person agrees to indemnify another person against any forfeiture under this Part of security provided by that other person as a condition of bail.

Penalty: Imprisonment for 2 years.

#### **5 At the end of subsection 59(2)**

Add:

; and (zm) indictments filed in the Court, including:

---

- (i) the amendment of such indictments and the substitution of new indictments for such indictments; and
- (ii) the quashing of such indictments by the Court; and
- (iii) the joining and separation of multiple accused in a single count in such an indictment; and
- (iv) the joining and separation of counts in such an indictment; and
- (v) the presenting of indictments; and
- (zn) the discontinuance or stay of criminal proceedings; and
- (zo) the management of criminal proceedings; and
- (zp) pre-trial hearings, pre-trial disclosure and the determination of issues in criminal proceedings; and
- (zq) disclosure in criminal proceedings by the prosecution and the accused; and
- (zr) pleas in criminal proceedings; and
- (zs) the presentation of cases in criminal proceedings; and
- (zt) the service of documents in criminal proceedings; and
- (zu) the selection and management of jurors; and
- (zv) the appearance of the accused by means of video link, audio links or other appropriate means; and
- (zw) the adjournment of criminal proceedings; and
- (zx) the practice and procedure of the Court in relation to any or all of the following proceedings:
  - (i) proceedings under the *Proceeds of Crime Act 2002*;
  - (ii) proceedings for the forfeiture of a thing under a law of the Commonwealth; and
- (zy) the issue of warrants; and
- (zz) bail, including the forfeiture of security provided for an accused's bail.

## ***Judiciary Act 1903***

### **6 After section 68**

Insert:

**68A Committals jurisdiction if both Federal Court of Australia and State or Territory court have jurisdiction in relation to indictable offence**

- (1) This section applies if both:
- (a) the Federal Court of Australia; and
  - (b) a court of a State or Territory (the *superior State or Territory court*);

have jurisdiction to try a person on indictment for an indictable offence against a law of the Commonwealth (the *indictable offence*).

*Working out which court the person should be committed to*

- (2) If a court of the State or Territory (the *State or Territory committals court*) has, under subsection 68(2), jurisdiction with respect to the examination and commitment for trial on indictment of a person who is charged with the indictable offence, the court may, in exercising that jurisdiction:
- (a) commit the person for trial on indictment for the offence before either:
    - (i) the Federal Court of Australia; or
    - (ii) the superior State or Territory court; or
  - (b) if the person pleads guilty to the offence, commit the person for sentencing for the offence by either:
    - (i) the Federal Court of Australia; or
    - (ii) the superior State or Territory court.

This subsection has effect subject to subsections (3) and (4).

Note: Paragraph (2)(b) refers to committal for sentencing. For the power of the State or Territory committal court to commit for sentencing, see subsection 68(7).

- (3) Despite subsection 68(1), if:
- (a) a person is charged with the indictable offence; and
  - (b) at the end of the proceedings before the State or Territory committals court, the State or Territory committals court proposes to make an order (the *committal order*) that the person be committed for trial on indictment, or for sentencing, for the indictable offence;

the State or Territory committals court must invite the Director of Public Prosecutions to suggest the court before which the person is to be tried or sentenced.

Note: The State or Territory committals court must make this invitation even if the Director of Public Prosecutions is not a party to the committal proceedings.

- (4) When making the committal order, the State or Territory committals court must consider specifying the court suggested by the Director of Public Prosecutions as the court before which the person is to be tried or sentenced.

*Committal court may grant bail to person to appear before Federal Court*

- (5) If the committal order relating to the person specifies the Federal Court of Australia, then a power of the State or Territory committals court:
- (a) that is conferred by a law applying under subsection 68(1) in relation to indictable offences against the laws of the Commonwealth; and
  - (b) that enables the State or Territory committals court to grant bail to persons accused of such offences to appear before the superior State or Territory court if committed for trial, or for sentencing, before the superior State or Territory court;
- applies as if the power included the power to grant bail to the first-mentioned person to appear before the Federal Court of Australia.

Note: Appeals or reviews of the exercise of this power will be dealt with under the laws of the State or Territory applying under subsection 68(1). However, bail will be dealt with under Part VIB of the *Federal Court of Australia Act 1976* once indictable primary proceedings (within the meaning of that Act) commence for the person.

*If question about person's fitness to be tried*

- (6) Subsection 20B(1) of the *Crimes Act 1914* applies as if the reference in that subsection to the court to which the proceedings would have been referred had the person been committed for trial were a reference to a court to which the proceedings could have been referred had the person been committed for trial.

Note: This means the committal court may choose whether to refer a question of the person's fitness to be tried to either the Federal Court of Australia or the superior State or Territory court.

**68B Application of State and Territory laws if Federal Court of Australia and State or Territory court both have jurisdiction in relation to an offence**

- (1) To avoid doubt:
- (a) subsection 68(1) applies to a person:
    - (i) who is charged with an offence against a law of the Commonwealth; and
    - (ii) in respect of whom jurisdiction is conferred on a court of a State or Territory by section 68;  
even if jurisdiction in relation to that person and that offence is also conferred on the Federal Court of Australia by another law of the Commonwealth; and
  - (b) subsection 68(1) applies to the person and the offence in relation to:
    - (i) any proceedings in relation to the offence that are brought before a court of the State or Territory; and
    - (ii) any proceedings in relation to the offence that are brought before the Federal Court of Australia.
- (2) Paragraph (1)(b) has effect subject to section 68C.

**68C Adjustments to State and Territory laws applying to proceedings before Federal Court of Australia**

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

- (iii) proceedings under section 30CA of that Act that relate to primary proceedings; or
- (iv) proceedings under section 30CB of that Act that relate to primary proceedings; or
- (v) proceedings referred to the Federal Court under section 20B of the *Crimes Act 1914* (as that section applies because of subsection 68A(6)).

*The State or Territory in which trial proceedings must be heard*

- (2) If the proceedings are primary proceedings that:
- (a) are to include either the person, the prosecutor or both appearing before the Federal Court in accordance with an order of a court of a State or Territory committing the person for trial on indictment before the Court for the offence; or
  - (b) if paragraph (a) does not apply—include the filing in the Federal Court, in a State or Territory, of an indictment against the person for the offence;

the Federal Court must hear the proceedings in that State or Territory unless and until the Federal Court makes an order under subsection (3).

Note: The place in which any other proceedings are to be heard is a matter for the Court.

- (3) If the proceedings are covered by subsection (2), the Federal Court may, before the jury is empanelled for the trial, make an order specifying the State or Territory in which the Federal Court will hear the proceedings.
- (4) Subsections (2) and (3) have effect subject to section 80 of the Constitution and sections 70 and 70A.

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

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

| <b>Laws applicable in relation to the proceedings</b> |                                                                       |                                                                         |
|-------------------------------------------------------|-----------------------------------------------------------------------|-------------------------------------------------------------------------|
| <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 | the laws of the State or Territory in which the Federal Court hears the |

**Schedule 1** Amendments  
**Part 1** Main amendments

---

| <b>Laws applicable in relation to the proceedings</b> |                                                                                                                |                                                                                                                                           |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Item</b>                                           | <b>If the proceedings are ...</b>                                                                              | <b>the laws to be applied are ...</b>                                                                                                     |
|                                                       | person following a trial in the Federal Court)                                                                 | 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.           |
| 5                                                     | proceedings covered by subparagraph (1)(c)(iv)                                                                 | the laws of the State or Territory applying in relation to the corresponding primary proceedings at the end of those primary proceedings. |
| 6                                                     | proceedings covered by subparagraph (1)(c)(v) as a result of a referral by a court                             | the laws of the State or Territory applying in the proceedings during which the court made the referral.                                  |

---

*What those laws include*

- (6) 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*

- (7) 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.
- (8) 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.

## Part 2—Consequential and other amendments

### *Bankruptcy Act 1966*

#### 7 Subsection 273(4)

After “The”, insert “Federal”.

#### 8 At the end of subsection 273(4)

Add:

Note: State and Territory courts are conferred jurisdiction by the *Judiciary Act 1903* in relation to offences against this Act. The exercise by those courts of that jurisdiction does not involve the exercise of jurisdiction in bankruptcy conferred by this Act.

#### 9 Subsection 273(5)

Omit “Court, the Court”, substitute “Federal Court, the Federal Court”.

### *Crimes Act 1914*

#### 10 Subsection 3(1)

Insert:

*federal court* means the High Court or a court created by the Parliament, other than a court of a Territory.

#### 11 Paragraph 3Y(4)(c)

Before “remand”, insert “if the condition was not imposed by the Federal Court of Australia—”.

#### 12 At the end of subsection 3Y(4)

Add:

; or (d) if the condition was imposed by the Federal Court of Australia—remand the person in custody for a reasonable time pending the obtaining of a warrant for the apprehension of the person from that Court.

#### 13 Subsection 15A(1AD)

---

Omit “the Federal Court of Australia and the Family Court of Australia”, substitute “a federal court”.

**14 Paragraph 15A(1A)(a)**

After “convicted”, insert “summarily”.

**15 Paragraph 15A(1A)(a)**

Omit “the Federal Court of Australia”, substitute “a federal court”.

**16 Paragraph 15A(1A)(a)**

Omit “that Court”, substitute “the federal court”.

**17 After subsection 15A(1A)**

Insert:

(1B) If a law of a State or Territory:

- (a) is with respect to the enforcement or recovery of fines ordered to be paid by offenders (including a law described in subsection (1AA)); and
- (b) applies in relation to fines ordered to be paid by offenders convicted on indictment;

subsection (1) operates to require that law to apply and be applied in the same manner to persons who are convicted on indictment of federal offences by a federal court.

**18 Subsection 15A(2)**

Omit “federal offenders”, substitute “a person convicted of a federal offence”.

**19 Subsection 15A(5)**

Insert:

***federal offence*** means an offence against the law of the Commonwealth.

**20 Subsection 16(1) (definition of *federal court*)**

Repeal the definition.

**21 After paragraph 16A(2)(f)**

Insert:

- (fa) the extent to which the person has failed to comply with:
    - (i) any order under subsection 23CD(1) of the *Federal Court of Australia Act 1976*; or
    - (ii) any obligation under a law of the Commonwealth; or
    - (iii) any obligation under a law of the State or Territory applying under subsection 68(1) of the *Judiciary Act 1903*;
- about pre-trial disclosure, or ongoing disclosure, in proceedings relating to the offence;

## **22 Paragraph 23WA(8)(b)**

Omit “a federal offence”, substitute “an offence against the law of the Commonwealth”.

## **23 At the end of subsection 85ZP(3)**

Add:

Note: An exception is a disclosure to the Federal Court of Australia for the purposes of indictable primary proceedings, criminal appeal proceedings or related matters (see section 85ZZL).

## **24 Section 85ZZF**

After “Federal Court” (wherever occurring), insert “of Australia”.

## **25 At the end of Division 6 of Part VIIC**

Add:

## **85ZZL Criminal proceedings before the Federal Court of Australia**

- (1) The Federal Court of Australia (and an officer of that court) may:
    - (a) require a person to disclose information to the court, or an officer of the court, about any Commonwealth offence, State offence, Territory offence or foreign offence in relation to which the person has been charged or convicted; and
    - (b) take into account that information;
- for the purposes of indictable primary proceedings, criminal appeal proceedings or matters relating to either such proceedings.

Note: The officers of the Federal Court of Australia are referred to in section 18N of the *Federal Court of Australia Act 1976*.

- (2) Division 3 does not apply in relation to a disclosure of information, or a taking into account of information, under subsection (1).
- (3) Subsections (1) and (2) have effect despite section 85ZP and any other Commonwealth law, and any State law, Territory law or foreign law.
- (4) For the purposes of references in this section to **foreign law** or **foreign offence**, a foreign country is taken to include a region where:
  - (a) the region is a colony, territory or protectorate of a foreign country; or
  - (b) the region is part of a foreign country; or
  - (c) the region is under the protection of a foreign country; or
  - (d) a foreign country exercises jurisdiction or control over the region; or
  - (e) a foreign country is responsible for the region's international relations.
- (5) In this section:

**criminal appeal proceedings** has the same meaning as in the *Federal Court of Australia Act 1976*.

**indictable primary proceedings** has the same meaning as in the *Federal Court of Australia Act 1976*.

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

### **26 Section 4**

Insert:

***accused:***

- (a) in relation to indictable primary proceedings—has the meaning given by subsection 23AB(1); and
- (b) in relation to criminal appeal proceedings—means the person who was the accused in the proceedings appealed from.

### **27 Section 4**

Insert:

***applicable jury district*** has the meaning given by section 23DL.

---

**28 Section 4**

Insert:

***bail order*** means an order made under subsection 58DB(1).

**29 Section 4**

Insert:

***bail undertaking*** means an undertaking under paragraph 58DE(1)(a).

**30 Section 4**

Insert:

***criminal appeal proceedings*** means:

- (a) proceedings relating to an appeal referred to in section 30AA or 30AD; or
- (b) proceedings relating to the seeking of leave to file such an appeal; or
- (c) proceedings in the Court that are ancillary to proceedings covered by paragraph (a) or (b).

**31 Section 4**

Insert:

***electoral Division*** has the same meaning as ***Division*** has in the *Commonwealth Electoral Act 1918*.

**33 Section 4**

Insert:

***eligible primary court*** means:

- (a) the Court constituted by a single Judge in indictable primary proceedings; or
- (b) the Supreme Court of a Territory (other than the Australian Capital Territory or the Northern Territory); or
- (c) in such cases as are provided by any other Act, a court (other than a Full Court of the Supreme Court) of a State, the Australian Capital Territory or the Northern Territory, exercising federal jurisdiction.

**34 Section 4**

Insert:

***examination and commitment*** for trial on indictment includes commitment for trial on indictment.

**35 Section 4**

Insert:

***foreign country*** includes a region where:

- (a) the region is a colony, territory or protectorate of a foreign country; or
- (b) the region is part of a foreign country; or
- (c) the region is under the protection of a foreign country; or
- (d) a foreign country exercises jurisdiction or control over the region; or
- (e) a foreign country is responsible for the region's international relations.

**36 Section 4**

Insert:

***forfeiture order*** means an order made under subsection 58FC(1).

**37 Section 4**

Insert:

***former juror*** means a person who has ceased to be a juror.

**38 Section 4**

Insert:

***Full Court of the Supreme Court of a State or Territory*** means the Supreme Court of the State or Territory when constituted by 2 or more judges, and includes the Supreme Court of the State or Territory when so constituted for the purpose of sitting as the Court of Appeal of the State or Territory.

**39 Section 4**

Insert:

***indictable offence matter*** has the meaning given by subsection 32(6).

**40 Section 4**

Insert:

***indictable primary proceedings*** has the meaning given by subsection 23AB(2).

**41 Section 4**

Insert:

***infringement notice*** means an infringement notice given under section 58BA.

**42 Section 4 (definition of *judgment*)**

Repeal the definition, substitute:

***judgment*** means:

- (a) a judgment, decree or order, whether final or interlocutory; or
  - (b) a sentence;
- and includes a conviction.

**43 Section 4**

Insert:

***juror*** means a person serving as a juror in proceedings before the Court.

**44 Section 4**

Insert:

***jury district*** means a jury district determined by the Sheriff under section 23DF.

**45 Section 4**

Insert:

***jury service*** means service as a juror.

**46 Section 4**

---

Insert:

**party**, in relation to indictable primary proceedings, has the meaning given by subsection 23AB(3).

#### **47 Section 4**

Insert:

**potential juror** means a person who:

- (a) has been summonsed to attend for service as a juror in proceedings before the Court; and
- (b) has not been empanelled as one of the jury; and
- (c) has not been discharged from serving on the jury.

#### **48 Section 4**

Insert:

**relevant to the accused's case**: if an accused is prosecuted on indictment, evidence is **relevant to the accused's case** if it is capable of either or both of the following:

- (a) undermining the prosecution's case;
- (b) assisting the accused's case.

#### **49 Section 4**

Insert:

**sitting place**, in relation to indictable primary proceedings, has the meaning given by subsection 23DK(2).

#### **50 Section 4 (definition of *suit*)**

Omit "action or original proceeding", substitute "civil action, or original civil proceeding".

#### **51 Section 4**

Insert:

**third party security undertaking** means an undertaking under paragraph 58DE(1)(b).

#### **52 Subsection 18P(1)**

After "process of the Court", insert "(including warrants)".

---

**53 After subsection 18P(2)**

Insert:

(2A) The Sheriff is also responsible for matters under Division 1A of Part III directed to the Sheriff.

Note: These provisions of Part III are mainly about juries in criminal proceedings.

**54 Division 1 of Part III (heading)**

Repeal the heading, substitute:

**Division 1—Original jurisdiction (general)**

**55 After subsection 20(1A)**

Insert:

(1B) Subsection (1A) does not apply in relation to indictable primary proceedings.

**56 Subsection 21(1)**

After “may,”, insert “in civil proceedings”.

**57 Division 2 of Part III (heading)**

Repeal the heading, substitute:

**Division 2—Appellate and related jurisdiction (civil proceedings)**

**58 Before section 24**

Insert:

**23P Appellate jurisdiction in civil proceedings**

This Division applies to the Court’s appellate jurisdiction in relation to civil matters.

**59 Subsection 24(5)**

Repeal the subsection.

**64 Paragraph 28(1)(d)**

---

Omit “in a civil proceeding”.

**65 Paragraph 28(1)(e)**

Repeal the paragraph.

**66 Subsection 28(5)**

Repeal the subsection.

**67 Section 29A**

Repeal the section.

**68 At the end of section 31A**

Add:

(5) This section does not apply to criminal proceedings.

**69 After section 31A**

Insert:

**31B Prerogative of mercy unaffected**

Nothing in this Part abrogates or affects the prerogative of mercy.

**70 Subsection 32(1)**

After “with matters”, insert “(the *core matters*)”.

Note: The following heading to subsection 32(1) is inserted “*Associated matters—civil proceedings*”.

**71 Subsection 32(2)**

After “matter” (second occurring), insert “(the *core matter*)”.

**72 At the end of section 32**

Add:

(3) Subsections (1) and (2) do not apply in relation to a core matter that is an indictable offence matter.

*Associated matters—indictable offences*

(4) To the extent that the Constitution permits, jurisdiction is conferred on the Court in respect of matters (the *related matters*) that:

- (a) arise under any laws made by the Parliament; and
  - (b) are not otherwise within the Court's jurisdiction; and
  - (c) relate to one or more indictable offences;
- that are associated with an indictable offence matter in which the jurisdiction of the Court is invoked.
- (5) The jurisdiction conferred by subsection (4) extends to jurisdiction to hear and determine an appeal from a judgment of a court so far as it relates to a related matter that is associated with an indictable offence matter in respect of which an appeal from that judgment, or another judgment of that court, is brought.

*Indictable offence matters*

- (6) For the purposes of this Act, a matter is an **indictable offence matter** if a proceeding in relation to the matter would be an indictable primary proceeding.

**73 After subsection 32AB(9)**

Insert:

(9A) This section does not apply to criminal proceedings.

Note: The heading to section 32AB is altered by inserting “**civil**” after “**of**”.

**74 Subsection 32A(4)**

Repeal the subsection, substitute:

- (4) This section does not apply to a proceeding that is:
- (a) an indictable primary proceeding; or
  - (b) an Australian proceeding within the meaning of Part IIIA.

Note 1: The heading to section 39 is altered by omitting “**Trial**” and substituting “**Civil trials to be**”.

Note 2: The heading to section 40 is altered by inserting “**in civil proceedings**” after “**Court**”.

**75 Paragraph 41(1)(c)**

Omit “impanelling”, substitute “empanelling”.

Note: The heading to section 41 is altered by adding at the end “**in civil proceedings**”.

**76 Paragraph 41(1)(i)**

Omit “or sworn”, substitute “, sworn or affirmed”.

---

**77 Subsection 41(2)**

After “jury” (first occurring), insert “referred to in subsection (1)”.

**78 Section 42**

Repeal the section.

**79 Subsection 43(1)**

After “which”, insert “this or”.

**80 Subsection 45(1)**

After “sworn”, insert “or affirmed”.

Note: The heading to section 45 is altered by omitting “**Swearing**” and substituting “**Making**”.

**81 Paragraph 45(1)(a)**

Omit “, a commissioner for affidavits”.

**82 Paragraph 45(1)(b)**

After “oaths”, insert “and affirmations”.

**83 Subsection 45(2)**

After “sworn”, insert “or affirmed”.

**84 Paragraph 45(2)(a)**

After “oaths”, insert “and affirmations”.

**85 Paragraph 45(2)(b)**

Repeal the paragraph.

**86 Paragraph 45(2)(e)**

After “oath”, insert “or affirmation”.

**87 Subsection 45(3)**

After “sworn”, insert “or affirmed”.

**88 Paragraphs 46(a) and (b)**

After “oath”, insert “or affirmation”.

## 89 Subsection 47(1)

After “In a”, insert “civil”.

Note 1: The following heading to subsection 47(1) is inserted “*Civil proceedings other than trials of causes*”.

Note 2: The following heading to subsection 47(2) is inserted “*Civil trials of causes*”.

## 90 At the end of section 47

Add:

- (7) Subsections (1) to (6) do not apply in relation to criminal proceedings.

*Criminal proceedings*

- (8) Testimony in criminal proceedings must be given orally unless:
- (a) the testimony is given in another form:
    - (i) agreed to between the parties; and
    - (ii) to which the Court does not object; or
  - (b) the testimony is given in accordance with this or any other Act, or with any law applying under subsection 68(1) of the *Judiciary Act 1903* in relation to the proceedings.

Note: For testimony etc. by video link, audio link or other appropriate means, see sections 47A to 47F.

## 91 Subsection 47A(3)

Repeal the subsection, substitute:

- (3) If the testimony is given:
- (a) otherwise than on oath or affirmation; and
  - (b) in proceedings where there is not a jury;
- the Court or the Judge is to give the testimony such weight as the Court or the Judge thinks fit in the circumstances.

Note: In proceedings where there is a jury, the Judge may warn the jury about the testimony (see section 165 of the *Evidence Act 1995*).

## 92 Section 48

Before “The”, insert “(1)”.

## 93 At the end of section 48

Add:

---

- (2) Subject to section 80 of the Constitution and sections 68C, 70 and 70A of the *Judiciary Act 1903*, subsection (1) extends to criminal proceedings.

**94 Section 50**

Before “The”, insert “(1)”.

**95 At the end of section 50**

Add:

- (2) This section does not limit section 23HC.

**96 At the end of section 53A**

Add:

- (3) This section does not apply to criminal proceedings.

**97 Subsection 56(1)**

Omit “or an appellant in an appeal to the Court”, substitute “, or an appellant in an appeal under Division 2 of Part III,”.

Note: The heading to section 60 is altered by omitting “**relating to fees**”.

***Judiciary Act 1903***

**98 Section 2**

Insert:

*examination and commitment for trial on indictment* includes commitment for trial on indictment.

**99 At the end of subsection 39B(1A)**

Add:

Note: Paragraph (c) does not prevent other laws of the Commonwealth conferring criminal jurisdiction on the Federal Court of Australia.

**100 Section 70**

Before “When”, insert “(1)”.

**101 At the end of section 70**

Add:

(2) This section has effect subject to section 68C.

## 102 Section 70A

Before “The”, insert “(1)”.

## 103 At the end of section 70A

Add:

(2) This section has effect subject to section 68C.

## 104 Subsection 71A(1)

Repeal the subsection, substitute:

- (1) Notwithstanding anything contained in this Part, or any provision of any law of a State or Territory, the Attorney-General of the Commonwealth may file an indictment for any indictable offence against the laws of the Commonwealth in:
- (a) the High Court; or
  - (b) if the Federal Court of Australia has jurisdiction to try a person for the offence—that Court; or
  - (c) the Supreme Court of a State or Territory;
- without examination or commitment for trial.

## 105 Subsection 72(1)

Repeal the subsection, substitute:

- (1) This section applies if a person is indicted before a Court, other than:
- (a) the Federal Court of Australia; or
  - (b) the Supreme Court of a Territory (other than the Australian Capital Territory or the Northern Territory);
- for an indictable offence against a law of the Commonwealth.
- (1A) The Court (the *trial court*) before which the person is tried:
- (a) must, if an application is made by or on behalf of the person before the jury delivers its verdict on a count in the indictment in relation to the person; and
  - (b) may in its discretion (either before or after judgment without such an application);

reserve a question of law, in relation to that count, which arises on the trial for the consideration of:

- (c) a Full Court of the High Court; or
- (d) a Full Court of the Supreme Court of the same State or Territory as the trial court.

#### **106 Subsection 76(1)**

Repeal the subsection, substitute:

- (1) This section applies if a Court, other than:

- (a) the Federal Court of Australia; or
- (b) the Supreme Court of a Territory (other than the Australian Capital Territory or the Northern Territory);

convicts an accused person on indictment for an offence against the laws of the Commonwealth.

- (1A) If the Court (the *trial court*) before which the accused person is convicted arrests judgment at the trial, the Court must on the application of counsel for the prosecution state a case for the consideration of:

- (a) a Full Court of the High Court; or
- (b) a Full Court of the Supreme Court of the same State or Territory as the trial court.

#### **107 Subsection 76(2)**

Omit “any Justice of the Peace may issue his or her”, substitute “an issuing officer (within the meaning of Part IAA of the *Crimes Act 1914*) may issue a”.

#### **108 Section 81**

After “High Court,”, insert “the Judges of the Federal Court of Australia,”.

### ***Mutual Assistance in Criminal Matters Act 1987***

#### **109 Subsection 39A(1)**

Omit “Supreme Court of the State or Territory in which the proceeding is being heard”, substitute “relevant court (see subsection (1A))”.

#### **110 After subsection 39A(1)**

---

Insert:

- (1A) For the purposes of subsection (1), the **relevant court** is:
- (a) if the proceeding is being heard in the Federal Court of Australia—that Court; or
  - (b) otherwise—the Supreme Court of the State or Territory in which the proceeding is being heard.

### ***Proceeds of Crime Act 2002***

#### **111 At the end of section 335**

Add:

##### *Proceeds jurisdiction of Federal Court of Australia*

- (7) If the Federal Court of Australia has jurisdiction to try a person (whether on indictment or summarily) for an \*indictable offence, the Court has **proceeds jurisdiction** for an order if the order would, if made, be an order made on the basis of:
- (a) a proposal that the person be charged with the offence; or
  - (b) the person having been charged with the offence; or
  - (c) the person’s conviction of the offence.
- (8) Subsection (7):
- (a) has effect despite subsections (2) and (3); and
  - (b) does not prevent other courts having \*proceeds jurisdiction for the order under another subsection of this section.

### ***Transfer of Prisoners Act 1983***

#### **112 Subsection 16(1)**

Omit “any court of a State or Territory or to any Judge of such a court”, substitute “a court, or to the Judge of a court, sitting in a State or Territory”.

---

*[Minister's second reading speech made in—  
House of Representatives on 3 December 2008  
Senate on 12 February 2009]*

(236/08)