



ANNO TRICESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1984

No. 81 of 1984

An Act to amend the Juries Act, 1927; and to make a related amendment to the Local and District Criminal Courts Act, 1926.

[Assented to 15 November 1984]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Juries Act Amendment Act, 1984". Short title.
 (2) The Juries Act, 1927, is in this Act referred to as "the principal Act".
 2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.
 3. Section 1 of the principal Act is repealed and the following section is substituted: Repeal of s. 1 and substitution of new section.
 1. This Act may be cited as the "Juries Act, 1927". Short title.
 4. Section 2 of the principal Act is repealed. Repeal of s. 2.
 5. Sections 5, 6 and 7 of the principal Act are repealed and the following sections are substituted: Repeal of ss. 5, 6 and 7 and substitution of new sections.
 5. No civil inquest shall be tried by a jury. Civil inquests not to be tried by a jury.
 6. A criminal inquest in the Supreme Court or a District Criminal Court shall, subject to this Act, be tried by a jury of twelve persons qualified and liable to serve as jurors as provided by this Act. Criminal inquests to be tried by jury.
 7. (1) Subject to this section, where, in a criminal inquest before the Supreme Court or a District Criminal Court— Trial without a jury.
 - (a) the accused elects, in accordance with the rules of court, to be tried by the Judge alone;
- and

(b) the presiding Judge is satisfied that the accused before making the election sought and received advice in relation to the election from a legal practitioner,

the inquest shall proceed without a jury.

(2) No election may be made under subsection (1) where the accused is charged with a minor indictable offence and has elected to be tried in a District Criminal Court.

(3) Where two or more persons are jointly charged, no election may be made under subsection (1) unless all of those persons concur in the election.

(4) Where a criminal inquest proceeds without a jury in pursuance of this section, the Judge may make any decision that could have been made by a jury on the question of the guilt of the accused, and such a decision shall, for all purposes, have the same effect as a verdict of a jury.

Amendment of
s. 11—
Qualification of
jurors.

6. Section 11 of the principal Act is amended—

(a) by striking out paragraph (a1) and the word “and” following that paragraph;

and

(b) by striking out from paragraph (b) the passage “sixty-five years” and substituting the passage “seventy years”.

Repeal of s. 12
and substitution
of new section.

7. Section 12 of the principal Act is repealed and the following section is substituted:

Disqualification
from jury service.

12. (1) A person is disqualified from jury service if, either in this State or elsewhere—

(a) he has been convicted of an offence for which death or life imprisonment is a mandatory, or the maximum, penalty;

(b) he has been sentenced to imprisonment for a term exceeding two years;

(c) within the period of ten years immediately preceding the relevant date—

(i) he has served the whole, or a part, of a term of imprisonment;

(ii) he has served the whole, or a part, of a term of detention in an institution for the correction or training of young offenders;

or

(iii) he has been on probation or parole;

(d) within the period of five years immediately preceding the relevant date—

(i) he has been convicted of an offence punishable by imprisonment;

or

(ii) he has been disqualified by order of a court from holding or obtaining a driver's licence for a period exceeding six months;

(e) he is, at the relevant date, bound by a recognizance to be of good behaviour;

or

(f) he has been charged with an offence punishable by imprisonment and the charge has not yet been determined.

(2) In this section, a reference to the "relevant date" is a reference to the date on which the qualification of a prospective juror for jury service falls to be determined.

8. Section 13 of the principal Act is repealed and the following section is substituted:

Repeal of s. 13 and substitution of new section.

13. A person is ineligible for jury service if—

Ineligibility for jury service.

(a) he is mentally or physically unfit to carry out the duties of a juror;

(b) he has insufficient command of the English language to enable him properly to carry out the duties of a juror;

or

(c) he is one of those persons declared by the third schedule to be ineligible for jury service.

9. Section 14 of the principal Act is amended by striking out the passage "qualified or".

Amendment of s. 14—
Residence qualification.

10. Section 15 of the principal Act is repealed and the following section is substituted:

Repeal of s. 15 and substitution of new section.

15. No verdict shall be impeached on the ground that a member of the jury was disqualified from, or ineligible for, jury service unless the allegation of disqualification or ineligibility was made before the juror is sworn.

Verdict not to be impeached on ground of disqualification or ineligibility of juror except in certain cases.

11. Section 16 of the principal Act is repealed and the following section is substituted:

Repeal of s. 16 and substitution of new section.

16. (1) If the Sheriff is satisfied, on the basis of information verified by statutory declaration, that a person summoned for jury service ought to be excused from attendance in compliance with the summons by reason of ill health, conscientious objection or any other reasonable cause, he may excuse that juror from attendance in compliance with the summons.

Power of Sheriff to excuse prospective juror from attendance.

(2) If the Sheriff declines to excuse a prospective juror under subsection (1), the prospective juror may apply to a judge for review of the Sheriff's decision and, on such a review, the judge may confirm or reverse that decision.

12. Section 17 of the principal Act is amended by striking out the word "exempt" and substituting the word "excuse".

Amendment of s. 17—
Power to excuse partner.

Amendment of s. 18—
Power to excuse on condition of subsequent service.

13. Section 18 of the principal Act is amended by striking out the passage “or exempt”.

Amendment of s. 19—
Power of Sheriff to excuse in certain cases.

14. Section 19 of the principal Act is amended by striking out the word “exempt” and substituting the word “excuse”.

Repeal of ss. 23 and 23a and substitution of new section.

15. Sections 23 and 23a of the principal Act are repealed and the following section is substituted:

Selection of names to be included in annual jury list.

23. (1) The names of the persons to be included in an annual jury list must be drawn from the names appearing on the rolls for the electoral subdivisions contained in the jury district and the list must include names from each such roll.

(2) The selection of names from the electoral roll for a subdivision—

(a) must be made by ballot or by use of a computer programmed to make a random selection;

and

(b) must be made so that the ratio of the number of names drawn from the roll for the subdivision to the total number of names to be included in the jury list for the jury district is equal, or approximately equal, to the ratio of the number of names on the roll for the subdivision to the total number of names on the rolls for all the subdivisions contained in the jury district.

(3) Where it appears from information contained in an electoral roll that a person whose name has been selected for inclusion in an annual jury list is ineligible for jury service, the name of that person must be rejected and the process of selection must continue until the number of names to be drawn from the electoral roll is complete.

(4) Where names for inclusion in an annual jury list are to be selected by ballot, the ballot must be conducted under the supervision of the Electoral Commissioner.

Insertion of new s. 25.

16. The following section is inserted after section 24 of the principal Act:

Questionnaire to be completed and returned by prospective jurors.

25. (1) At any time after the preparation of an annual jury list, the Sheriff may send to any person whose name appears on the list a questionnaire relating to matters contained in this Act in the prescribed form to be completed and returned by that person.

(2) A person—

(a) who without reasonable excuse fails to fill in and return the questionnaire in accordance with the accompanying directions of the Sheriff;

or

(b) who includes in the questionnaire information that is false or deliberately misleading,

shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

17. Section 29 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “proposed inquests” and substituting the passage “proposed criminal inquests”;

(b) by striking out from subsection (2) the word “inquests” and substituting the passage “criminal inquests”;

and

(c) by striking out from subsection (5) the word “inquests” and substituting the passage “criminal inquests”.

Amendment of
s. 29—
Summoning of
jurors.

18. Section 31 of the principal Act is amended by striking out subsections (2), (3) and (4) and substituting the following subsection:

(2) The Sheriff shall, at the request of the Crown Solicitor, or of the accused or the solicitor or agent of the accused in a criminal inquest, provide him with a copy of the list without fee.

Amendment of
s. 31—
Duty of Sheriff to
keep list of
persons
summoned.

19. Section 32 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “a single inquest” and substituting the passage “a single criminal inquest”;

(b) by striking out from subsection (2) the word “inquests” and substituting the passage “criminal inquests”;

and

(c) by striking out from subsections (3) and (4) the passage “an inquest” wherever it occurs and substituting, in each case, the passage “a criminal inquest”.

Amendment of
s. 32—
Jury panels.

20. Section 42 of the principal Act is amended—

(a) by striking out the passage “an inquest” and substituting the passage “a criminal inquest”;

and

(b) by striking out from paragraph (b) the passage “, their respective occupations or callings, and places of residence”.

Amendment of
s. 42—
Sheriff to return
panel with cards.

21. Section 43 of the principal Act is repealed and the following section is substituted:

43. The proper officer shall, upon receipt of the cards, keep them together in the ballot-box provided for the purpose.

Repeal of s. 43
and substitution
of new section.

Cards to be kept
in ballot-box.

22. Section 46 of the principal Act is amended by striking out the passage “On any inquest” and substituting the passage “When it is necessary to constitute a jury for the purposes of a criminal inquest”.

Amendment of
s. 46—
Balloting for trial.

Amendment of
s. 47—
Constitution of
jury.

23. Section 47 of the principal Act is amended by striking out the passage “as aforesaid”.

Repeal of s. 54
and substitution
of new section.

24. Section 54 of the principal Act is repealed and the following section is substituted:

Duty of Sheriff to
provide for jury.

54. The Sheriff shall make reasonable provision for the comfort and refreshment of the jury.

Repeal of ss. 55a
and 56 and
substitution of
new section.

25. Sections 55a and 56 of the principal Act are repealed and the following section is substituted:

Continuation of
inquest with less
than full number
of jurors.

56. (1) If, during the course of a criminal inquest, the presiding judge is satisfied that by reason of the ill health of a juror or a matter of special urgency or importance a juror should be excused from further attendance, the judge may order that the juror be excused from further attendance during that inquest and for such further period (if any) as the judge determines.

(2) If during the course of a criminal inquest a juror dies or is excused under subsection (1), or fails to attend without lawful excuse, the inquest shall, subject to any contrary direction by the presiding judge, continue with the reduced number of jurors provided that the number of the jury has not been reduced to less than ten.

Repeal of s. 57
and substitution
of new section.

26. Section 57 of the principal Act is repealed and the following section is substituted:

Majority and
alternative
verdicts.

57. (1) Subject to subsection (2), where a jury, having retired to consider its verdict, has remained in deliberation for at least four hours and the jurors have not then reached a unanimous verdict—

(a) if a sufficient number agrees to enable the jury to return a majority verdict—a majority verdict shall be returned;

but

(b) otherwise—the jury may be discharged from giving a verdict.

(2) No verdict that an accused person is guilty of murder or treason shall be returned by majority.

(3) Where an accused person is charged with a particular offence (the major offence) and it is possible for a jury to return a verdict of not guilty of the offence charged but guilty of some other offence for which he has not been charged (the alternative offence)—

(a) the jury shall consider whether the accused is guilty of the major offence before considering whether he is guilty of the alternative offence;

and

(b) if the jury reaches a verdict (either unanimously or by majority) that the accused is not guilty of the major offence but then, having been in deliberation for at least

four hours, is unable to reach a verdict on the question of whether the accused is guilty of the alternative offence—

- (i) the accused shall be acquitted of the major offence;
- (ii) the jury may be discharged from giving a verdict in respect of the alternative offence;

and

- (iii) fresh proceedings may be taken against the accused on a charge of the alternative offence.

(4) In this section—

“majority verdict” means—

- (a) where the jury, at the time of returning its verdict, consists of twelve jurors—a verdict in which ten or eleven jurors concur;
- (b) where the jury, at the time of returning its verdict, consists of eleven jurors—a verdict in which ten jurors concur;
- (c) where the jury, at the time of returning its verdict, consists of ten jurors—a verdict in which nine jurors concur,

and the phrase “by majority” has a corresponding meaning.

27. Section 58 of the principal Act is repealed.

Repeal of s. 58.

28. Section 59 of the principal Act is amended—

Amendment of s. 59—
Fresh proceedings may be taken.

(a) by striking out subsection (1) and substituting the following subsection:

(1) Whenever a jury is discharged from giving a verdict, fresh proceedings may be taken as if there had been no inquest before the jury so discharged.;

and

(b) by striking out from subsection (2) the passage “sections 56, 57 and 58 of this Act” and substituting the passage “section 57”.

29. Section 61 of the principal Act is amended by striking out the word “inquests” and substituting the passage “criminal inquests”.

Amendment of s. 61—
Challenge.

30. Section 62 of the principal Act is repealed.

Amendment of s. 62—
Right of Crown to challenge.

31. Sections 65 to 69 (inclusive) of the principal Act are repealed and the following sections are substituted:

Repeal of ss. 65 to 69 and substitution of new section.

65. Where two or more persons are jointly charged, each shall be entitled to challenge three jurors peremptorily.

Rights to peremptory challenge where persons jointly charged.

66. A juror may be challenged on the ground that he is ineligible to act, or disqualified from acting, as a juror, and if the court is

Challenge on ground of ineligibility or disqualification.

satisfied of the ineligibility or disqualification, the juror shall be discharged.

Common law rights of challenge preserved.

67. Nothing in this Act affects a right of challenge that exists at common law.

Trial of challenge for cause.

68. Where a juror is challenged for cause, and it is necessary to determine whether he has been properly challenged for that cause, the matter shall be tried by the presiding judge.

Tales.

69. (1) Where a jury for a criminal inquest cannot be constituted because there are insufficient jurors in attendance, the Sheriff shall, if the presiding judge so directs, summons further persons who are eligible to serve as jurors to attend as jurors at the inquest.

(2) The persons to be summoned under subsection (1) shall be chosen as the presiding judge may direct.

Repeal of Part VIII and substitution of new Part.

32. Part VIII of the principal Act (comprising sections 70 to 77 inclusive) is repealed and the following new Part is substituted:

PART VIII

FEES

Payment of jurors.

70. (1) Every juror who is summoned and punctually attends a court in compliance with the summons is entitled to be remunerated for his service in accordance with a scale prescribed by regulation.

(2) The remuneration shall be paid out of the General Revenue of the State, which is appropriated to the necessary extent.

Amendment of s. 78—
Offence by jurors.

33. Section 78 of the principal Act is amended by striking out paragraph (b) of subsection (1).

Repeal of ss. 80, 81 and 82.

34. Sections 80, 81 and 82 of the principal Act are repealed.

Amendment of s. 88—
View during trial.

35. Section 88 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “any inquest” and substituting the passage “any criminal inquest”;

and

(b) by striking out subsection (2).

Repeal of ss. 90 and 91.

36. Sections 90 and 91 of the principal Act are repealed.

Repeal of third schedule and substitution of new schedule.

37. The third schedule to the principal Act is repealed and the following schedule is substituted:

THIRD SCHEDULE

Section 13.

The following persons are ineligible for jury service:

The Governor, the Lieutenant Governor and their spouses;
 Members of Executive Council and their spouses;
 Members of Parliament;
 Members of the judiciary or magistracy and their spouses;
 Justices of the Peace who perform court duties and their spouses;
 Legal practitioners actually practising as such;
 Members of the Police Force and their spouses;
 Persons employed in a department of the Government that is concerned with the administration of justice or the punishment of offenders;
 Persons employed in the administration of courts or in the recording or transcription of evidence taken before courts.

38. Section 331 of the Local and District Criminal Courts Act, 1926, is repealed.

Amendment of
 the Local and
 District Criminal
 Courts Act, 1926.

SCHEDULE

The principal Act is further amended as follows:

Long title—

The long title is repealed and the following long title is substituted:

An Act to provide for the constitution, powers and duties of juries in relation to criminal inquests; and for other purposes.

Section 3 (1)—

From the definition of "criminal inquest" strike out "any issue joined upon an indictment presentment or information for".

Strike out the definitions of "inquest" and "subdivision roll".

Section 4—

Section 4 is repealed.

Section 18—

Strike out "either of the last two preceding sections" and substitute "section 16 or 17".

Heading to Part IV—

Strike out ", JURORS BOXES AND CARDS".

Section 20 (1)—

Strike out "in the manner hereinafter provided" and substitute "in accordance with this Part".

Section 20 (2)—

Strike out "Returning Officer for the State" and substitute "Electoral Commissioner".

Section 22—

Section 22 is repealed.

Section 24—

Strike out "thereof" and substitute "of the list".

Section 29 (5)—

Before "not less than" insert ", but".

Section 55—

Strike out "consider their verdict, permit them to separate" and substitute "considers its verdict, permit the jurors to separate".

Section 61—

Strike out "Circuit Court or".
 After "each party" insert "(including the Crown)".

Section 63—

Strike out "herein allowed" and substitute "allowed under this Act".

Section 84—

Section 84 is repealed and the following section is substituted:

84. Except as otherwise provided in this Act, proceedings for offences against this Act shall be disposed of summarily.

Proceedings for
 offences.

Section 92—

Strike out "herein contained" and substitute "in this Act".

First schedule—

The first schedule is repealed.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor