

JURIES RULES 1996

(as amended to the 1st October 2014 – Amendment No. 2)

The Juries Rules 1996, dated 5 June 1996, which came into operation on 20th June 1996 (*Government Gazette* 20 June 1996, p 3001), have been varied by Juries Rules dated:

		<i>Gazette</i>	<i>Date of Operation</i>
#1	12 th December 2000	11 th January 2001, p. 52	11 th January 2001
#2	25th August 2014	11th September 2014, p 4356	1 October 2014

BY virtue and in pursuance of section 89 of the *Juries Act, 1927*, and all other powers us thereunto enabling, We, The Chief Justice of the Supreme Court of South Australia and the Chief Judge of the District Court of South Australia, do hereby make the following Rules:

1. These Rules may be cited as the ‘Juries Rules, 1996’.

[Rules 2 to 18 inclusive deleted by Juries Rules 1996 (Amendment 2)]

[Inserted by Juries Rules 1996 (Amendment 2)]

Schedule 1 to these Rules forms part of the Rules made pursuant to section 89 of the *Juries Act 1927*.

Note—

The Rules made by this clause duplicate Chapters 5 and 9 of rules made separately by the Supreme Court pursuant to section 72 of the *Supreme Court Act 1935* being the *Supreme Court Criminal Rules 2014* and by the District Court pursuant to section 51 of the *District Court Act 1991* being the *District Court Criminal Rules 2014*.

[Inserted by Juries Rules 1996 (Amendment 2)]

Schedule 2 to these Rules forms part of the Rules made pursuant to section 89 of the *Juries Act 1927*.

Note—

The Rules made by this clause duplicate Chapter 5 of supplementary rules made separately by the Supreme Court pursuant to section 72 of the *Supreme Court Act 1935* being the *Supreme Court Criminal Supplementary Rules 2014* and by the District Court pursuant to section 51 of the *District Court Act 1991* being the *District Court Criminal Supplementary Rules 2014*.

[Inserted by Juries Rules 1996 (Amendment 2)]

A reference in Schedule 1 or Schedule 2 to—

- (a) “the Rules” is a reference to the rules contained in Schedule 1;
- (b) “the Supplementary Rules” is a reference to the rules contained in Schedule 2.

Schedule 1

Chapter 5—Election for trial by Judge alone

38—Election

- (1) An accused may make an election under section 7(1)(a) of the *Juries Act 1927* (the *election*) in the manner and at the time stipulated in this Chapter and not otherwise.
- (2) Subject to subrule (3), the election applies to the trial of all charges in the information in respect of which a trial is to be held. An election that purports to be limited to certain charges contained in the information is not valid or effectual.
- (3) When an accused is charged in an information in respect of more than one count and proposes to apply for a separate trial in respect of one or more counts, a separate election may be made as to the counts sought to be severed or as to the counts remaining in anticipation of an order for severance. The election is to be made in the manner and at the time stipulated in this Chapter and will be valid and effectual only if the application for severance is granted.

39—Election by joint accused

- (1) Subject to subrule (2), when two or more accused are jointly charged with an offence, they must concur, as required by section 7(3) of the *Juries Act 1927*, in making the election by jointly signifying their concurrence in the election or by each of them separately notifying his or her election in accordance with this Chapter.
- (2) When two or more accused are jointly charged in an information and an accused proposes to apply for a separate trial from the trial of others jointly charged, a separate election may be made by that accused in anticipation of an order for separate trials. The election is to be made in the manner and at the time stipulated in this Chapter and will be valid and effectual only if the application for separate trials is granted or all co-accused make a valid election in accordance with subrule (1).

40—Manner of making election

- (1) An election made by the defendant is to be made by filing a notice of election in an approved form signed by the accused making the election and a practitioner's certificate.
- (2) An election made by counsel on behalf of the defendant under section 269W(2) of the Act is to be made by filing a notice of election in an approved form signed by counsel and no practitioner's certificate is required.
- (3) When an accused or counsel files a notice of election, the accused or counsel, as the case may be, is as soon as practicable to serve a copy of the notice on the Director and on any person jointly charged with the accused on a charge contained in an information the subject of the election.
- (4) Unless the election was made under subrule (2), a notice of election complying with this rule is admissible at any stage of the proceeding as evidence that the accused before making the election sought and received advice in relation to the election from a lawyer.

41—Practitioner’s certificate

- (1) A *practitioner’s certificate* is a certificate signed by a lawyer stating that the signatory holds a current practising certificate and has advised the accused on all matters relevant to the election. The certificate is to identify clearly the charge in respect of which the advice has been given.
- (2) A practitioner’s certificate is to be in an approved form.
- (3) A practitioner’s certificate complying with this rule is admissible at any stage of the proceeding as evidence that the accused before making the election sought and received advice in relation to the election from a lawyer.

42—Time for making election

- (1) If an accused is committed for trial to sittings at Adelaide, the election is to be made no later than the day of the accused’s first arraignment on the information in respect of which the trial is intended to be held or within such time and in such manner as the Judge on the first arraignment directs.
- (2) If an accused is committed for trial to a circuit sittings, the election is to be made within 28 calendar days after the accused is committed for trial.
- (3) Subject to subrules (4) and (5) and to rule 44, if the election is not made in accordance with the preceding subrules, the accused is precluded from making the election subsequently notwithstanding that the information is amended or that the trial proceeds upon an information filed in substitution for an earlier information or informations on which the accused has been arraigned.
- (4) If an amended or new information referred to in subrule (3) materially alters the substance of the charge or charges upon which the accused is to be tried, the accused may make an election at or before the first arraignment on the amended or new information.
- (5) The Court may extend the time prescribed by or under this rule if satisfied that there are special reasons for so doing or that it would be unjust not to do so notwithstanding that such period has expired.

43—Election irrevocable

- (1) Subject to rule 44, an accused who has made an election in accordance with the preceding rules is not permitted to revoke the election without the permission of the Court.
- (2) Permission to revoke the election may be granted only if the Court is satisfied that, because of events occurring after the election, there are special reasons for so doing or that it would be unjust to refuse such permission.

44—Election after direction for new trial

- (1) Despite rule 42, when there has been a mistrial or a jury has been unable to reach a verdict or an appeal against conviction has been allowed and the accused has been remanded for a new trial, the accused may make the election in the manner set out in the preceding rules within 28 calendar days after being remanded for a new trial.
- (2) Despite rule 43, when an appeal against conviction by a Judge alone has been allowed and the accused has been remanded for a new trial, the accused may revoke an election for trial by Judge alone by filing a notice of revocation in an approved form signed by the accused and a practitioner’s certificate within 28 calendar days after being remanded for a new trial.

- (3) A notice of revocation and practitioner's certificate complying with subrule (2) are admissible at any stage of the proceeding as evidence that the accused before making the revocation sought and received advice in relation to revoking the election from a lawyer.

45—Application by Director

An application by the Director for a determination under section 7(3a) of the *Juries Act 1927* that the trial of an information that includes a charge of a serious and organised crime offence be heard by Judge alone is to be made by written application under rule 49 no later than 28 calendar days after the first arraignment.

Chapter 9—Juries

84—Interpretation

In this Chapter—

jury card means the jury card referred to in section 42 of the *Juries Act 1927*;

jury pool room means the place appointed from time to time by the Sheriff for the attendance of the jury pool for a jury district;

Sheriff includes the Deputy Sheriff and any other person for the time being performing the functions of the Sheriff under the *Juries Act 1927*;

sheriff's officer means an officer appointed by the Sheriff.

85—Juror's oath or affirmation

- (1) Before first directing a juror to attend for a criminal trial, the Sheriff is to cause the juror to take an oath or affirmation in the form of Schedule 6 to the *Juries Act 1927*.
- (2) The Sheriff is to cause a record to be made of the taking by each juror of the oath or affirmation. The record is not to be shown or communicated to any person other than a Judge except by leave of a Judge.

86—Jury panel

- (1) When a trial of an accused is to commence, the Sheriff is to ensure that a jury panel of not less than 20 jurors attend for the trial.
- (2) When a trial of more than one accused is to commence, the Sheriff is to ensure that a jury panel of not less than 20 jurors plus not less than 3 extra jurors in respect of each additional accused attend for the trial.
- (3) Subject to subrule (4), a copy of the jury panel list giving the number, name, suburb and occupation of the jurors selected by the Sheriff under subrule (1) or (2) will be made available to counsel for the parties or an unrepresented accused by the Sheriff's Officer in court sufficiently early before the jury is empanelled to enable decisions to be made on challenge.
- (4) The Presiding Judge may direct the Sheriff to have information included or removed from the jury panel list for a particular trial.

87—Selection of jurors by ballot

- (1) The Associate will conduct the juror ballot by drawing a jury card from the ballot box and reading aloud to the Court the jury number only of the juror selected as shown on the jury card.
- (2) This procedure will continue, allowing for challenges, until 12 jurors, or 12 jurors and any additional jurors, are seated in the jury box.
- (3) After the selection of the jury, the Sheriff's Officer will collect the jury panel list from counsel and from any unrepresented accused.
- (4) The jury panel list is not a public document and is supplied to the parties for the purpose of jury selection only. Subject to any direction of the trial Judge, it ceases to be available to counsel or the accused after the jury has been selected.

- (5) The cards of the jurors empanelled for a criminal trial are to be kept apart from the cards of all other jurors until a verdict has been given or until such jurors have been discharged.
- (6) A ballot required to be held in accordance with section 6A(2) of the *Juries Act 1927* is to be conducted by drawing at random the number of cards necessary to reduce the number of jurors to 12 from those cards kept apart in accordance with subrule (5).

88—Jurors in charge of Sheriff or Sheriff’s officer

The Sheriff is to ensure that jurors while in a jury pool room, jury retiring room, courtroom, building in which a courtroom is situated, at a view or proceeding between any of those places are in the charge of the Sheriff or a sheriff’s officer.

89—Non attendance

If a juror does not attend in obedience to a summons or in compliance with a direction by the Sheriff, the Sheriff is to report the fact to a Judge.

Schedule 2

Chapter 5—Election for trial by Judge alone

31—Manner of making election

- (1) An election for trial by Judge alone made by a defendant under rule 40(1) of the Rules is to be in form 8A.
- (2) An election for trial by Judge alone made by counsel under rule 40(2) of the Rules is to be in form 8B.

32—Practitioner’s certificate

A practitioner’s certificate under rule 41(2) or 44(2) of the Rules is to be in form 9.

33—Revocation of election

A revocation of election for trial by Judge alone made by a defendant under rule 44(2) of the Rules is to be in form 10.

(insert front sheet)

ELECTION BY DEFENDANT FOR TRIAL BY JUDGE ALONE

Juries Act 1927 s 7(3)

I, *(full name of defendant)*

of *(address)*

.....

ELECT under section 7(1)(a) of the *Juries Act 1927* to be tried by Judge alone in respect of all charges in the following information(s), namely: *(set out details of the charges)*

.....

.....

.....

I ACKNOWLEDGE that I have received legal advice about making the election before making the election.

Date:20

(signed)

Defendant

(insert front sheet)

ELECTION BY COUNSEL FOR TRIAL BY JUDGE ALONE

Criminal Law Consolidation Act 1935 s 269W

I, *(full name of practitioner)*
of *(address of practice)*
barrister/barrister and solicitor *(delete whichever is inapplicable)*

CERTIFY that as follows:

- 1. I am a legal practitioner holding a current practising certificate under the *Legal Practitioners Act 1981*.
- 2. I am the counsel for the defendant.....in this proceeding.
- 3. I believe that the defendant is unfit to instruct counsel or give rational instructions in respect of all charges in the information, namely: *(set out details of the charges)*
.....
.....
- 4. I have considered all matters relevant to the making of an election.
- 5. I consider that a trial by Judge alone would be in the best interest of the defendant.
- 6. I exercise my independent discretion under section 269W of the *Criminal Law Consolidation Act 1935* and hereby make an election under section 7(1)(a) of the *Juries Act 1927* that the defendant be tried by Judge alone on the above charge/s and in relation to any other charges relating to facts that may be laid by the Director of Public Prosecutions.

Date:20

(signed)
Counsel for the defendant

(insert front sheet)

PRACTITIONER'S CERTIFICATE

I, (full name of practitioner)

of (address of practice)

barrister/solicitor/barrister and solicitor (delete whichever is inapplicable)

CERTIFY that:

- 1. I am a lawyer holding a current practising certificate under the *Legal Practitioners Act 1981*; and
- 2. I am the solicitor/counsel (delete whichever is inapplicable) for the defendant.....in this proceeding.
- 3. I have advised the defendant on all matters relevant to the defendant making/revoking (delete whichever is inapplicable) an election for trial by Judge alone under section 7(1)(a) of the *Juries Act 1927* in respect of all charges in the information, namely: (set out details of the charge(s))
.....
.....

Date:20

(signed)
Solicitor/Counsel for the defendant (delete whichever is inapplicable)

(insert front sheet)

REVOCATION OF ELECTION BY DEFENDANT

I, (full name of defendant)

of (address)

REVOKE the election that I previously made on under section 7(1)(a) of the *Juries Act 1927* to be tried by a Judge alone in respect of all charges in the following information(s), namely: (set out details of the charges)

I ACKNOWLEDGE that I have received legal advice about making the revocation of my previous election before making the revocation.

Date:20

(signed)
Defendant

History of Amendment

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
Front Page Note re Schedule 1	ins am 2	1 October 2014
Front Page Note re Schedule 2	ins am 2	1 October 2014
Front Page Reference to Schedule 1 or Schedule 2	ins am 2	1 October 2014
Schedule 1	ins am 2	1 October 2014
Schedule 2	ins am 2	1 October 2014
2	del am 2	1 October 2014
3	del am 2	1 October 2014
4	del am 2	1 October 2014
5(2)	am am1 del am 2	11 January 2001 1 October 2014
6	del am 2	1 October 2014
6A	ins am1 del am 2	11 January 2001 1 October 2014
7	del am 2	1 October 2014
8	del am 2	1 October 2014
9	del am 2	1 October 2014
10	del am 2	1 October 2014
10A	ins am1 del am 2	11 January 2001 1 October 2014
11	am am1 del am 2	11 January 2001 1 October 2014
12	am am1 del am 2	11 January 2001 1 October 2014
13	am am1 del am 2	11 January 2001 1 October 2014
14	del am 2	1 October 2014
15	del am 2	1 October 2014
16	del am 2	1 October 2014
17	del am 2	1 October 2014
18	del am 2	1 October 2014