



**THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA**

Project No 71

Exemption from Jury Service

REPORT

JUNE 1980

The Law Reform Commission of Western Australia was established by the *Law Reform Commission Act 1972-1978*.

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To: THE HON I G MEDCALF, QC, MLC
ATTORNEY GENERAL

In accordance with the provisions of section 11(3)(b) of the *Law Reform Commission Act 1972-1978*, I am pleased to present the Commission's report on exemption from jury service.

(Signed) D K Malcolm, QC
Chairman

25 June 1980

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CHAPTER 1 GENERAL

Terms of reference

1.1 The Commission was asked:

“to review the present law with regard to exemption from jury service and to make proposals for establishing the principles and procedures necessary to ensure that exemption - particularly class exemption - applies only in proper cases”.

The Working Paper

1.2 The Commission issued a working paper¹ in August 1978 setting out the present law in Western Australia in regard to exemption from jury service, outlining the Commission's provisional views for reform of the law in the area and inviting comment. Copies of the Working Paper were distributed to all those persons or bodies who the Commission considered might be interested in the question. A notice was published in *The West Australian* drawing attention to the publication of the paper and inviting those interested to obtain a copy, free of charge, and to submit comments to the Commission.

1.3 Twenty-six comments were received, including comments from Government Departments, educational institutions, lawyers, women's organisations and private persons.² The Commission wishes to express its appreciation to all those who responded. Their views have been of considerable assistance in the preparation of this report.

Use of juries in Western Australia

1.4 In Western Australia, juries are normally used only in criminal trials in the Supreme and District Courts.³ It is very seldom that a jury is empanelled in a civil trial - at the most once or twice a year. Normally, civil actions are tried by a judge alone. Juries are only used in civil actions if -

¹ Referred to in this report as "the Working Paper". The Working Paper is reproduced as Appendix IV.

² A list of the commentators is contained in Appendix I.

³ Juries are sometimes used under the *Coroners Act 1920-1974*: see paragraphs 4.1 to 4.2 below. A separate recommendation as regards coroners' juries is contained in paragraph 4.4 below.

- (a) there is an allegation of fraud against a party, or
- (b) the action is one for defamation, malicious prosecution, false imprisonment or seduction,

and a party makes application for the case to be heard by a jury.⁴

Even in these cases, the action will not be tried by a jury if the Judge considers that the trial requires a prolonged examination of documents or accounts or scientific or local examination.⁵

1.5 The number of persons in a criminal jury is twelve and in a civil jury it is six.⁶

Selection of jurors

1.6 The procedure laid down in the *Juries Act* which results in the selection of a particular jury for a criminal trial is set out in Chapter 3 of the Working Paper. The relevant steps are -

- (a) the compilation of the draft jury roll for the ensuing year for each Jury District⁷ (this roll is compiled by the State Chief Electoral Officer by ballot from the relevant electoral roll or rolls);
- (b) the revision of the draft jury roll and compilation of the Jurors' Book for each Jury District for the ensuing year (the Jurors' Book contains the names of those persons remaining on the draft jury roll after it has been revised);
- (c) the selection of a Jury Panel (that is, those persons who are summoned by ballot to attend as potential jurors at a Court sitting) and
- (d) the selection of a particular jury from the Jury Panel.

⁴ *Supreme Court Act 1935-1978*, s.42; *District Court of Western Australia Act 1969-1978*, s.52.

⁵ *Supreme Court Act 1935-1978*, s.42. The section also gives the Judge a general discretion to order an action to be tried by a jury. However, such power is seldom, if ever, exercised.

⁶ *Juries Act 1957-1976*, ss.18 and 19. Section 18 empowers a Judge to direct that up to three reserve jurors be empanelled in a criminal trial. This is often done when the trial is likely to be a lengthy one.

⁷ Appendix I of the Working Paper sets out the current Jury Districts.

The question of *disqualification*⁸ or *exemption*⁹ of a person from jury service can arise at each point in the process, namely when the relevant draft jury roll is being compiled,¹⁰ when the Jurors' Book is being made up,¹¹ when a Jury Panel is being selected and when a person has been summoned for jury service.¹²

1.7 The procedure for selecting a jury for a civil trial differs in one aspect from the steps outlined in the previous paragraph. In criminal trials the parties exercise their right of objection to particular jurors after members of the Jury Panel are at the Court in answer to their summons. However, in a civil trial which is to take place with a jury, the parties exercise their right of objection at the time when the list of persons to be summoned as jurors for the trial is made up.¹³ Those summoned can apply to be excused for cause after they have been summoned.¹⁴

1.8 Cancellation of liability to serve as a juror is a right the *Juries Act* reserves to women. A woman may exercise this right by serving notice to that effect on the Sheriff.¹⁵ She may do this at any time prior to service on her of a summons to attend as a member of a Jury Panel: see (c) above.

⁸ See paragraph 2.3 below.

⁹ See paragraphs 2.4 to 2.7 below.

¹⁰ In making up the draft jury roll (see (a)), the Chief Electoral Officer includes only the names of those who appear to be qualified for, and not exempted from, jury service, as he is authorised to do under s.14(1a) and (2) of the *Juries Act*. If the Commission's recommendation in paragraph 3.7 below is adopted, the names so excluded will be those who are disqualified or ineligible.

¹¹ Under s.14(6) of the *Juries Act* the Sheriff is required to send a notice to persons named in the draft jury roll informing them of that fact and the procedure for claiming disqualification or exemption. If it appears to the Sheriff that a person is disqualified or exempt he must remove the person's name from the draft roll. Consequently it does not appear in the Juror's Book: see the Working Paper, paragraphs 3.3 and 3.4.

¹² *Juries Act*, s.26(4). The summoning officer is obliged to omit a name from a Panel for a criminal trial if he knows the person to be exempt from jury service. In addition, a disqualified or exempt person may be excused for cause, pursuant to the power given to the summoning officer and presiding Judge: *Juries Act*, ss.27(1) and 32.

In the rare case where there is not a sufficient number of persons to make up a criminal jury and a party "prays a tales" (under which bystanders or such persons as may be found are required to make up the number) only those "qualified and liable to serve as jurors" are required to serve: *Juries Act*, s.52.

¹³ *Juries Act*, s.29.

¹⁴ *Ibid.*, s. 29(2)(h).

¹⁵ See paragraph 2.8 below.

CHAPTER 2

THE PRESENT LAW ON DISQUALIFICATION, EXEMPTION AND CANCELLATION OF LIABILITY

BASIC QUALIFICATION

2.1 The law relating to the qualification of jurors and the right to exemption from jury service¹ is contained mainly² in the *Juries Act 1957-1976* and the proclamations made thereunder.

2.2 The *Juries Act* provides that any person who is -

- (a) 18 years old or over and less than 65 years old, and
- (b) enrolled on an electoral roll for the election of members of the Legislative Assembly,

is eligible, and liable, to serve as a juror at trials in the Jury District in which he or she is shown by the roll to live,³ unless he or she is -

- (a) disqualified,
- (b) exempt,
- (c) in the case of a woman, has cancelled her liability, or
- (d) having been summoned as a potential juror for a particular trial or sitting, has been excused from attendance .

A detailed account of each of these categories is as follows.

DISQUALIFICATION

2.3 A person is *disqualified* from jury service if he or she -

- (a) is not a natural born or naturalised subject of Her Majesty;

¹ The Commission is here referring to juries in the Supreme and District Courts. Juries under the *Coroners Act* are considered in paragraphs 4.1 to 4.4 below.

² The *Psychologists Registration Act 1976* provides that registered psychologists are exempt from jury service.

³ Appendix I of the Working Paper sets out the current Jury Districts.

- (b) has been convicted of a crime or misdemeanour unless granted a free pardon;
- (c) is an undischarged bankrupt; or
- (d) cannot read and understand the English language.⁴

There is a saving provision to the effect that, notwithstanding any disqualification or exemption, if a person's name is in fact included in a Jurors' Book he or she is liable to serve as a juror unless excused from attendance in the case of a particular trial.⁵

EXEMPTION

2.4 Those **exempt** from serving as jurors are -

- (a) those described in the Second Schedule to the *Juries Act*;
- (b) those who occupy a State office in respect to which the Governor has issued a proclamation under s.6(2) of the *Juries Act*;⁶ and
- (c) those exempted under other legislation.

The persons who fall under each of these categories are set out in the following three paragraphs.

2.5 The Second Schedule to the *Juries Act* exempts the following -

Parliament⁷

Members and officers of the Legislative Assembly.

Members and officers of the Legislative Council.

The Parliamentary Commissioner for Administrative Investigations.

⁴ *Juries Act*, s.5(1).

⁵ *Ibid.*, s.4(2).

⁶ Section 14(9) of the *Juries Act* empowers the Sheriff to issue a certificate of permanent exemption from jury service in certain cases. However, this subsection does not provide any additional ground of exemption and merely enables production of a certificate to take the place of proof of the relevant matters that would otherwise be required for a person to obtain exemption.

⁷ These subheadings are the Commission's. They do not appear in the Second Schedule, where the classes are simply listed in alphabetical order. However, the description of each class is as it appears in that Schedule

Law

Judges, Stipendiary Magistrates, Judges' Associates and ushers, and the wives of persons in this class.

Legal practitioners, enrolled in the Roll of Practitioners pursuant to the *Legal Practitioners Act 1893*, and their wives.

Justices of the Peace.

Sheriff's officers and court bailiffs.

Emergency Services

Persons actually engaged on Civil Emergency Services.

Officers and members of permanent fire brigades.

Health ⁸

Medical practitioners, dentists,⁹ veterinarians, nurses and chiropractors registered as such according to law, if actually practising.

Pharmaceutical chemists registered as such according to law, if actually engaged in business.

Education

Professors, lecturers and the Registrar of the University of Western Australia and the academic staff and the Secretary of Murdoch University.

Schoolmasters and schoolteachers.

Commerce and Industry

Harbour and marine pilots.

Masters, officers and members of crews of vessels actually trading.

Mining managers and engine-drivers on mines in which not less than ten men are engaged in mining operations.

Pilots, navigators and radio operators of commercial aircraft.

Religion

Clergymen in holy orders, and persons who preach or teach in any religious congregation, but only if they follow no secular occupation except that of a schoolmaster, and the wives of persons in this class.

⁸ Registered psychologists are also exempt: see paragraph 2.7 below.

⁹ Section 62 of the *Dental Act 1939-1979* also provides for exemption of dentists from jury service.

Local Government

Shire Clerks and Town Clerks.

Commonwealth Public Service

Such persons as are at any time exempted by or under any Act of the Parliament of the Commonwealth.¹⁰

Infirm Persons

Persons incapacitated by disease or by infirmity, of mind or body, from discharging the duty of jurors.

2.6 The holders of the following State offices are exempt pursuant to a proclamation issued by the Governor -

Administrative and professional heads of Departments, sub-departments, Boards, Commissions, Agencies and Instrumentalities and the Fremantle Port Authority [formerly the Fremantle Harbour Trust].

Commissioner of Railways and heads of branches of the Western Australian Government Railways.

Commissioner of Police and all persons under his direction and control.

Director of the Department of Corrections and all officers under his direction and control.

Members of the Parole Board.¹¹

Officers under the jurisdiction of the Attorney General (excluding officers of the Electoral Department, Land Titles Office and Public Trust Office).¹²

Staff of Mental Hospitals.

General staff of hospitals and homes for aged persons.

Inspectors of Mines.¹³

¹⁰ The relevant Commonwealth enactment is the *Jury Exemption Act 1965*, which exempts certain officers of the Commonwealth from jury service in a Federal, State or Territorial court: see paragraphs 5.15 to 5.17 of the Working Paper.

¹¹ The proclamation speaks of the Indeterminate Sentences Board, the predecessor of the Parole Board, but it applies to the latter: see s.32 of the *Offenders Probation and Parole Act 1963-1977*. A similar position exists in respect of the Director of the Department of Corrections: see s.4(2) of the *Prisons Act 1903-1978*.

¹² The Electoral Department is now under the Chief Secretary, not the Attorney General, and its exclusion is no longer necessary.

Staff of the Derby Leprosarium. ¹⁴

Doggers in the employ of the Agriculture Protection Board. ¹⁵

Employees of the Wyndham Freezing, Canning and Meat Export Works, employed at Wyndham. ¹⁶

Academic Staff and the Assistant Director (Administration and Finance) of the Western Australian Institute of Technology. ¹⁷

Officers of the Department for Community Welfare. ¹⁸

Officers and temporary employees employed in the Road Traffic Authority. ¹⁹

2.7 The only other Western Australian enactment²⁰ which provides for exemption from jury service is s.22(4) of the *Psychologists Registration Act 1976*, which came into force on 21 April 1978. This Act exempts psychologists registered under it. However, certain persons holding office under the Commonwealth are exempted by or under the *Jury Exemption Act 1965* (Cwth).²¹

CANCELLATION OF LIABILITY

2.8 A woman otherwise qualified and liable to serve as a juror can cancel her liability by serving written notice to that effect on the Sheriff.²² A woman who has cancelled her liability can, after two years from the cancellation, render herself liable again by serving written notice on the Sheriff. ²³

EXCUSAL FROM ATTENDANCE AT A PARTICULAR SITTING OR TRIAL

2.9 Even if a person is not disqualified or exempt or, (being a woman) has not cancelled her liability, he or she may nevertheless be excused from attendance at a particular sitting or

¹³ This class and the others above it were exempted in 1960: see *Gazette* (1960) pp.251 and 1609.

¹⁴ Exempted in 1962 (*Gazette* (1962) p.1133).

¹⁵ Exempted in 1965 (*Gazette* (1965) p.1041).

¹⁶ Exempted in 1966 (*Gazette* (1966) p.921).

¹⁷ Exempted in 1972 (*Gazette* (1972) p.915).

¹⁸ Exempted in 1974 (*Gazette* (1974) p.2231).

¹⁹ Exempted in 1975 (*Gazette* (1975) p.3758).

²⁰ Except s.62 of the *Dental Act*: see note 9 above.

²¹ These persons are also exempted under the *Juries Act* of this State: see paragraph 2.5 above. See also paragraph 3.33 below.

²² *Juries Act*, s.5(2). Section 5(4)(a) is to the same effect, the repetition apparently being an error in drafting.

²³ *Juries Act*, s.5(3). Section 5(4)(b) is to the same effect, the repetition apparently being an error in drafting.

trial. The summoning officer may of his own motion and "on such evidence as he deems sufficient" omit from a Panel any name in the Jurors' Book, and may excuse from attendance at any criminal trial any person who has been summoned as a juror.²⁴ In addition, the Court before which, or the Judge before whom, a jurors' panel is returnable (whether for a civil or criminal trial) is empowered to excuse from attendance any person whose name is included in the panel.²⁵ No guidelines are provided in the Act for the exercise of these discretions.

2.10 There is a further provision enabling a woman to be excused from attendance as a juror at a criminal or civil trial. The Court or Judge concerned is *obliged* to excuse her if she applies for exemption because -

- (a) of the anticipated nature of the evidence or issues to be tried,
- (b) she is for medical reasons unfit to attend, or
- (c) attendance would seriously interfere with her domestic obligations.²⁶

²⁴ *Juries Act*, ss.26(4) and 27(1). He also has power to excuse from attendance any person summoned in respect of a civil trial: *ibid.*, s.29.

²⁵ *Ibid.*, s.32.

²⁶ *Ibid.*, 27(2).

CHAPTER 3

RECOMMENDATIONS AS TO JURORS IN THE SUPREME AND DISTRICT COURTS

THE BASIC PRINCIPLE

3.1 The Commission regards it as axiomatic that the obligation to serve as a juror should be spread as widely and fairly as practicable throughout the community. Jury service is an important civic responsibility and a person should not be freed from the obligation to serve, or denied the right to do so, except for good reason. No one should be freed from jury service for the purpose of avoiding what might be seen as a tiresome duty, or to avoid some minor inconvenience to the person concerned or the public.

3.2 In the Commission's view the *Juries Act 1957* (which, with some modifications, was based on the report of a Select Committee of the Legislative Council in 1956), broadly conforms to this philosophy. The Act made the electoral roll the basis for general liability for jury service, instead of a list compiled by the police from among those with certain property qualifications, as was the case under the earlier legislation.¹ It also gave women the right to serve as jurors.² These reforms had the result of extending the responsibility for jury service over a much wider range of the State's population.

Deficiencies in present Act

3.3 Although the *Juries Act 1957* also significantly reduced the number of persons, otherwise liable, who could claim exemption from jury service, the framers of the legislation did not distinguish sufficiently clearly between those who should be **ineligible** for jury service, and those who should be given the **right to be excused**, should they choose to exercise it.³

3.4 Further, although the Act made women eligible and liable for jury service, it gave them an absolute right to cancel their liability. In this respect the Government of the day did

¹ The *Jury Act 1898*.

² Section 2 of the *Women's Legal Status Act 1923* (WA), which provides that "a person shall not be disqualified by sex from the exercise of any public function, ...any law or usage to the contrary notwithstanding", was apparently not considered to have had this result as regards the *Jury Act 1898*.

³ See paragraphs 3.7 to 3.9 below.

not accept the Select Committee's recommendation.⁴ No Ministerial statement was made in Parliament for this non-acceptance, but a Government Member in the Council said that the reason was "simply that nature provides differently for men and women, and it is necessary for the latter to be able to judge for themselves whether they feel fit to serve at a given time or not".⁵ The Commission considers that this view would not now be generally held, and that the right of women to cancel their liability should be reviewed.

3.5 The other part of the present Act which should be revised is that dealing with disqualification. Accordingly, this report draws attention to anomalies in this area and recommends changes.

3.6 The Commission's recommendations in regard to these and other incidental matters are contained in the following paragraphs of this Chapter.

REPLACEMENT OF EXEMPTION WITH INELIGIBILITY AND EXCUSAL AS OF RIGHT

3.7 In the Commission's view, the single category of exemption should be replaced by those of **ineligibility** and **excusal as of right**. This proposal, which is similar to that recently adopted in the juries legislation of England, New South Wales and Victoria,⁶ was suggested by the Commission in the Working Paper and met with unanimous approval from those who commented on it. The Commission recommends accordingly.

3.8 The rationale of the proposal is that the present category of exemption covers two distinct classes which should be treated separately, since different considerations apply to them. The first class consists of those who, because of their connection with the administration of law and justice or for some other reason, should not be permitted to serve on a jury, even though they may wish to do so. The other consists of those who would be well fitted to serve as jurors, but whose responsibilities to the community are such that they should be entitled to decline to serve. They should, however, not be barred from doing so. They might wish to serve and be able to make satisfactory arrangements for their duties to be

⁴ The Chairman of the Committee endeavoured to have the clause providing for the right of cancellation omitted from the Bill: see paragraphs 6.2 to 6.4 of the Working Paper.

⁵ W.A. *Parl. Deb.* Vol. 147, N.S. (1957) p.1518.

⁶ *Juries Act 1974* (Eng.); *Jury Act 1977* (NSW); *Juries Act 1967* (Vic.). The Morris Committee on Jury Service in England in 1965 recommended that the distinction be introduced into the jury legislation of that country: Report (Cmnd. 2627) paragraphs 98-101.

performed temporarily by someone else, or their work might in fact be such that no serious inconvenience to others would result if they made themselves available. This is a matter which could properly be left to the individual to resolve.

3.9 Failure to distinguish between those who should not be permitted to serve and those who should be entitled to refuse to serve might have resulted in an anomaly in the procedure set out in the *Juries Act* for compiling Jurors' Books.⁷ Section 14(7) of the Act provides that a person who "claims" to be exempt "may" send a claim for exemption to the Sheriff. This appears to make it a matter of choice for the person concerned.⁸ While this is appropriate for those who should be entitled to excusal as of right, it is quite inappropriate for those who should be ineligible.⁹

3.10 If the Commission's recommendation that the category of exemption should be replaced by the dual categories of ineligibility and excusal as of right is adopted, the question arises as to the classes of person which should comprise them. Paragraphs 3.11 to 3.43 below set out the Commission's views in this respect.

INELIGIBILITY

Ineligibility on ground of occupation

3.11 The Commission considers that the principle to be followed in regard to ineligibility on the ground of occupation is that expounded by the Morris Committee in England.¹⁰ That Committee emphasised that, if juries were to continue to command public confidence, it was essential that they should "manifestly represent an impartial and lay element in the workings of the courts ". Applying this principle, the Morris Committee concluded that "all those whose work is connected with the detection of crime and the enforcement of law and order must be

⁷ See paragraph 1.6 above.

⁸ The wording in s.14(7) contrasts with that in s.14(1a) and (2) of the *Juries Act* which imposes an obligation on the Chief Electoral Officer to include in the draft jury roll only those who appear to be qualified and not exempt.

⁹ Under s.13 of the *Jury Act 1977* (NSW) the notice sent to persons on the draft jury roll **requires** a disqualified or ineligible person to inform the Sheriff of the fact of, and reasons for, that disqualification or ineligibility. There is no similar obligation placed on those entitled to excusal as of right. A similar distinction would be needed in the Western Australian legislation if the Commission's recommendations in this regard are adopted

¹⁰ Morris Committee Report, paragraph 103.

excluded, as must those who professionally practise the law, or whose work is concerned with the functioning of the courts".

3.12 The Commission agrees in principle with the Morris Committee's view, but considers that ineligibility should also extend to those who enact laws, as well as to those who enforce them. The Morris Committee recommended that members and officers of the United Kingdom Parliament should be entitled to excusal as of right.¹¹ However, the Commission considers it inappropriate that a person who is involved in the making of laws should be able to serve on a jury which may be called upon to decide whether there has been a breach of any such law. The Commission accordingly considers that members and officers¹² of the Legislative Council and the Legislative Assembly (who are presently exempt¹³) should be ineligible for jury service. A further reason for this view is that each House of the State Parliament, and their Committees, have power to compel the attendance of persons before them, and each House has power to punish for contempt.¹⁴ In a broad sense, members exercise a judicial or quasi judicial function in so doing, which would justify their exclusion from jury service.

3.13 The Parliamentary Commissioner for Administrative Investigations should also be excluded. That officer can broadly be said to act as an agent of Parliament in investigating allegations of Governmental maladministration.¹⁵

3.14 In accordance with the views expressed in the previous three paragraphs, the Commission recommends that persons occupying the following positions should be ineligible for jury service -

Parliament

Members and officers of the Legislative Assembly
Members and officers of the Legislative Council
The Parliamentary Commissioner for Administrative Investigations

¹¹ Report, paragraph 149. This recommendation was given effect to in Part III of Schedule I of the *Juries Act 1974* (Eng).

¹² By "officers" the Commission here refers to those (not being Members of Parliament) traditionally designated as such, namely the Clerks of the Legislative Council and the Legislative Assembly, their Clerks Assistant and the Clerks of Records and Papers: see the *W.A. Parliamentary Handbook* (15th ed., 1977) pages 32 and 38.

¹³ See paragraph 2.5 above.

¹⁴ *Parliamentary Privileges Act 1891* (WA), ss.4 and 8.

¹⁵ See the *Parliamentary Commissioner Act 1971-1976* (WA).

Law

Judges, Judges' Associates and ushers
The Master of the Supreme Court
Stipendiary Magistrates
Special Magistrates and members of Children's Courts¹⁶
Justices of the Peace
Sheriff's officers and court bailiffs
Legal practitioners, whether or not in practice, enrolled in the Roll of Practitioners pursuant to the *Legal Practitioners Act 1893-1979*

Government

Members of the Police Force)
Special constables)
Aboriginal aides)¹⁷
Persons (other than police) employed in the)
Police Department)

Persons employed in -

- (a) the Crown Law Department;¹⁸
- (b) the Department of Corrections;¹⁹ or
- (c) the Department for Community Welfare²⁰

Honorary probation officers
Members and employees of the Road Traffic Authority²¹
Members of the Parole Board.

3.15 In the Commission's view, the positions listed above are of such a nature as to make it undesirable that the persons occupying them should serve on a jury. With two exceptions (namely, Special Magistrates and lay members of Children's Courts, and members of the Road Traffic Authority) all are presently exempt. The justification for including members and officers of Parliament has been given above. The others are involved in one way or another in

¹⁶ These are appointed under s.19 of the *Child Welfare Act 1947-1979*. Special magistrates are not "stipendiary magistrates", and would not be covered by the reference to this latter class. Neither they, nor lay members of Children's Courts, are "employed in " the Department for Community Welfare, and would not be covered by the reference to employees of that Department.

¹⁷ The present exemption refers to "the Commissioner of Police and all persons under his direction and control": see paragraph 2.6 above. It seems clearer to list separately the various classes intended to be included in this general description. The reference to Aboriginal aides is to persons appointed under s.38A of the *Police Act 1892-1979*.

¹⁸ The present exemption covers "Officers under the jurisdiction of the Attorney General (excluding officers of the Land Titles Office and Public Trust Office)". This is interpreted by the Sheriff as referring to those listed under the Crown Law Department heading in the *Public Service List* (which includes those employed in the Corporate Affairs Office). Accordingly it seems preferable to say so directly.

¹⁹ The present exemption refers to "the Director of the Department of Corrections and all officers under his direction and control".

²⁰ Employees of this Department are included because the Children's Courts, Children's Panels and children's detention centres are administered by it.

²¹ At present, only officers and temporary employees of the Road Traffic Authority are exempt. It seems desirable that ineligibility should also extend to the members of the Authority. (Members of the Road Traffic Patrol, being police officers, would be ineligible under "Members of the Police Force").

the administration of law and justice, particularly in the criminal sphere, and for that reason should not serve on a jury.

3.16 The positions listed under "Government" which are presently exempt are exempted by proclamation under s.6(2) of the *Juries Act*. However, under that provision, the Governor has power to exempt the holder of an office only if he considers that interruption of the discharge of the holder's duties for jury service would result in serious public inconvenience. It is unlikely that interruption of the duties of a junior officer in the Crown Law Department, for example, would result in serious public inconvenience. The real justification for excluding such persons from jury service is that they are involved in the administration of law and justice to an extent which makes it undesirable that they should serve on a jury.

3.17 From the comments received on the Working Paper, the Commission considers that there would be broad agreement that the class of ineligible persons should include those in the list in paragraph 3.14 above. Two commentators, however, suggested that the list should contain others.

3.18 The Institute of Legal Executives submitted that Fellows of that Institute should be ineligible.²² It drew attention to the position in England where "legal executives in the employment of solicitors" are ineligible²³ and in Victoria where the same position obtains in regard to persons "employed by a duly qualified legal practitioner in connection with the practice of the law."²⁴ In the Institute's view, it is undesirable that a Fellow of the Institute should serve on a jury because -

- (a) his knowledge of the law would be such as to enable him to unduly influence the jury's deliberations;

²² The Institute is purely a voluntary organisation. There is no statutory requirement that a person employed by a legal practitioner must be a member. To qualify as a Fellow of the Institute, a person must satisfy the requirements of ordinary membership and also be (or have been) in the employment of, or working under the supervision of, a legal practitioner for eight years. At present they are neither disqualified nor exempt from jury service: see paragraphs 2.3 to 2.7 above.

²³ *Juries Act 1974* (Eng) Schedule I, Part I, Group B.

²⁴ *Juries Act 1967* (Vic) Schedule 3, paragraph 1(c).

- (b) he may know personally the presiding Judge or the legal practitioners engaged in the proceedings.²⁵

3.19 However the Commission is of the view that, on balance, it would not be desirable to extend ineligibility so far. If Fellows of the Institute of Legal Executives were to be made ineligible for jury service, so should all other persons who have acquired legal knowledge but are not enrolled practitioners, such as articled clerks, teachers of law at tertiary institutions,²⁶ law graduates and, possibly, senior law students. There may, of course, be a risk that such a person may unduly influence the other jury members. Equally, however, he or she may be of benefit in helping them to clarify the issues.

3.20 It would certainly be undesirable for a person who knew personally, or was employed by, any of the participants in the proceedings to sit on that particular jury. But this is more appropriately dealt with by a potential juror disclosing this fact to the summoning officer or presiding Judge. Following a practice direction issued by the then Chief Justice in 1961, an announcement in the following terms is made to each jury panel:

"If it should subsequently transpire that in any case in which a juror is concerned the juror is:-

- (a) related to the accused or the prosecutor,²⁷
- (b) on terms of friendship with the accused or the prosecutor or with any relation of the accused or the prosecutor, or
- (c) feels that he or she is liable to be biased by reason of acquaintanceship with the accused or the prosecutor or with any relation of the accused or of the prosecutor,

the juror should so inform the Court".

The practice in relation to those who indicate they fall within the terms of the direction is for the Judge, if satisfied as to the facts, to stand them down or to inform counsel, who can then exercise their right of challenge. The practice direction, as presently worded, seems to be concerned principally with family or social relationships with the accused or the complainant.

²⁵ The Institute also said that some legal executives appear before a Judge on Chambers' applications. It should also be pointed out that the "paid or articled clerks of certificated practitioners" are excluded from the prohibition in s.77 of the *Legal Practitioners Act 1893-1979* from engaging in legal business for reward.

²⁶ That is, those who are not enrolled practitioners.

²⁷ The Sheriff has informed the Commission that the reference to "the prosecutor" is intended to refer to the complainant.

The Commission recommends below²⁸ that the terms of the announcement to the jury panel should be extended to others involved in the proceedings and to include, where appropriate, employer-employee relationships. If this were to be done, any need for exclusion of legal executives or other employees of legal practitioners on the ground of possible bias would disappear.

3.21 The Chief Executive Officer of the Agriculture Protection Board of Western Australia submitted that ineligibility should extend to his position. He said that he had the responsibility for recommending changes in the law within the Board's jurisdiction, for issuing warnings, serving notices and commencing legal proceedings. He suggested that other administrative and professional heads of Government Departments or branches performing similar functions should also be ineligible.

3.22 The Commission considers, however, that not everyone who is involved in a particular aspect of law making or law enforcement should be made ineligible. The matter is one of degree. Involvement in law enforcement in a limited way, particularly if the area involves only summary offences, should not render a person ineligible.²⁹ The Commission is of the view that officers in positions such as that of the Chief Executive Officer of the Agriculture Protection Board would not be, or be thought to be, any the less impartial because of their law making or law enforcement functions.

Ineligibility after retirement

3.23 The present law in this State does not extend exemption beyond a person's current occupation. In the Working Paper³⁰ the Commission invited comment on the question whether ineligibility should extend for a certain time after a person had ceased to be in the occupation. The Morris Committee in England proposed such a step because it felt that the reasons which made it desirable that the members of certain occupations should be excluded from jury service applied to some extent after retirement. In the resulting English legislation,

²⁸ See paragraph 3.69.

²⁹ The penalties for offences in the *Agriculture and Related Resources Protection Act 1976-1979* (which is administered by the Agriculture Protection Board) are fines of varying amounts, to be imposed summarily.

³⁰ Paragraphs 4.13 to 4.14.

ineligibility for judges and magistrates is lifelong. For all others concerned with the administration of justice it is ten years after ceasing to follow the occupation.³¹

3.24 Of the other Australian jurisdictions, only Victoria and the Northern Territory extend ineligibility³² after a person ceases to be in the occupation concerned.³³ In Victoria, those in ineligible occupations remain ineligible for ten years afterwards. In the Northern Territory, the period is the same but the provision applies only to “holders of judicial office”.

3.25 Of those who commented on the Working Paper only the Sheriff, the Soroptimist Club of Perth (Inc) and the Women Justices’ Association submitted that ineligibility should extend after a person quits the occupation. None pointed to any particular instance where difficulties had been caused by the present law, and the Commission itself is not aware of any. After carefully considering the question, the Commission has concluded that no change in the law in this respect is necessary. The chance of a person formerly in an ineligible occupation being called for jury service after retirement is small, since he or she is no longer qualified for jury service after reaching 65 years of age.³⁴ The trend towards earlier retirement may cause the position to change, but at this stage it does not seem to be a practical problem.

Spouses of those in ineligible occupations

3.26 Under the present law, the wives of ministers of religion, Judges, Magistrates, Judges' Associates, ushers and legal practitioners are exempt from jury service.³⁵ The Juries Bill as introduced into Parliament in 1957 did not exempt any wives; their inclusion was the result of an amendment in the Legislative Council.³⁶

³¹ *Juries Act 1974* (Eng), Schedule I.

³² Or exemption, in the case of those Australian jurisdictions which still use that concept.

³³ *Juries Act 1967* (Vic), Schedule 3. *Juries Act 1979* (NT), s.8.

³⁴ The Chief Electoral Officer excludes the names of those 65 years or older from the draft jury rolls he sends to the Sheriff.

³⁵ See paragraph 2.5 above. The Juries Act refers to “wives”, not “spouses”, so that although the wife of a male legal practitioner would be exempt the husband of a female legal practitioner would not.

³⁶ The only reason appearing in *Hansard* for the amendment was that some members felt it to be incongruous to call on the wives of Judges, Magistrates and court officials for jury service: W.A. *Parl. Deb.* Vol. 147, N.S. (1957) at 1998. Prior to the coming into force of the present Act the question of exemption for wives did not arise, since women were not eligible for jury service under the earlier legislation: see paragraph 3.2 above.

3.27 In the Working Paper, the Commission said that it was inclined to the view that the ineligibility of a person should not extend to his or her spouse, but invited comment.³⁷ The views of those who responded are interesting. Only the Sheriff and the Women Justices' Association submitted that ineligibility should in some cases cover spouses. The Sheriff suggested that ineligibility should extend to the spouses of -

- (a) Judges, Magistrates, Judges' Associates, and ushers;
- (b) legal practitioners;
- (c) the Commissioner of Police and all persons under his direction and control;
- (d) the Director of the Department of Corrections and all persons under his direction and control;
- (e) members of the Parole Board.

The Women Justices' Association's suggested list included these and also the spouses of Justices of the Peace, Sheriff's officers, court bailiffs and employees of the Crown Law Department.³⁸ All the others who commented on this issue, namely the Law Society, the Australian Federation of University Women, the Institute of Legal Executives, the Clerk of Courts at Carnarvon and the National Committee for the Decade of Women, did not favour extending ineligibility to spouses.

3.28 The position of spouses in other jurisdictions which have recently revised their legislation varies. In England and Victoria ineligibility does not extend to spouses.³⁹ In New South Wales the spouses of members and officers of Parliament are ineligible, as are those of Judges, magistrates and members of the Police Force.⁴⁰ The Northern Territory of Australia recently revised its list of exempted persons⁴¹ and only spouses of judges are exempted.

3.29 In the Commission's view, extension of ineligibility to the spouses of those in ineligible occupations is unjustified. It sees no incongruity⁴² in the spouse of any of the persons listed in paragraph 3.14 being called for jury service. Like the Morris Committee in

³⁷ Working Paper, paragraph 5.13.

³⁸ The Association's list of ineligible spouses was co-extensive with its list of ineligible occupations.

³⁹ See the Working Paper, Appendix IV.

⁴⁰ Ibid.

⁴¹ *Juries Act 1979*, s.8. The legislation adheres to the concept of exemption.

⁴² See note 36 above.

England,⁴³ the Commission does not consider that the fact that someone is married to, or is a close relative of, a member of an ineligible occupation should of itself render him or her ineligible. There may be a feeling in some sections of the community that the spouses of some of the persons listed (particularly in the case of those employed in “law enforcement” occupations) share their attitude of mind. However, while shared attitudes may exist in some cases the Commission is not aware of any research which shows that this is so to any significant extent, or that the spouses of those concerned are not as capable as anyone else of fulfilling their duty as jurors. If spouses of those in ineligible occupations are to be made ineligible, so probably should their children, parents, relations or even close friends. It would be undesirable in principle to extend ineligibility so far.⁴⁴

3.30 As the Morris Committee recognised, it would be undesirable for the spouse of, or a person who was related to or knew, any of those involved in the particular trial (whether it be the Judge, the legal practitioners, the police concerned⁴⁵ or the accused) to sit on the jury. However this could be dealt with by an appropriate announcement to the jury panel.⁴⁶

3.31 If the Commission's recommendation in respect of eligibility of spouses is adopted, the wives of Judges, Magistrates, Judges' Associates, ushers, and legal practitioners would now be liable for jury service.⁴⁷ Since the Commission does not consider that a Minister of

⁴³ Report, paragraph 117.

⁴⁴ A further consideration is that the Crown and the accused each have eight peremptory challenges (*Juries Act*, s.38(1) and (2)) and an additional right of objecting to any juror on the ground that he or she “is not indifferent as between the Crown and the accused person”: Code, s.628. If they wished to do so, they could exercise these rights in the case of a spouse. The names and addresses of those on the jury panel for a criminal trial are made available to the parties and their solicitors four days before the sittings (*Juries Act*, s.30) and enquiries as to relationships could then be made.

⁴⁵ In a recent case (*R. v Howe*, C.C.A No. 29 of 1980, judgment delivered on 23 May 1980) a man appealed against his conviction, inter alia, on the ground that
 “[he] did not receive a fair trial by reason of the fact that the prosecution knew it was a trial consisting solely of police witnesses for the prosecution, and the prosecution knew or ought to have known that a wife of a serving police officer based at Geraldton [where the alleged offence occurred] was in the jury panel and accordingly should have been stood aside and not allowed to be empanelled”.

The Court of Criminal Appeal dismissed the appeal against conviction. All three Judges held that there was no substance in the above ground. In rejecting it, the Chief Justice said:

“It is I think enough to say that the member of the jury referred to was not a wife of a policeman who had anything to do with the case. The appellant's counsel did not attempt to show that she was in fact biased or that in the terms of s.628(2) of the *Criminal Code* she was 'not indifferent as between the Crown and the accused person'.”

⁴⁶ See paragraph 3.69 below.

⁴⁷ Because of the small number of Judges in this State, as compared to England and Victoria (where spouses of Judges are liable for jury service), it would be likely that a spouse of a Judge would know personally the Judge presiding at the trial. In such a case the summoning officer would no doubt be informed of this and omit the spouse's name from the panel, pursuant to the power under s.27(1) of the *Juries Act*. There would be an additional reason for doing this in the case of a spouse of a Supreme Court Judge. The Court

Religion should be ineligible ⁴⁸ (but entitled to excusal as of right) the question extending ineligibility to his or her spouse would not arise.

Others who should be ineligible

Incapacitated persons

3.32 The *Juries Act* at present exempts "persons incapacitated by disease or by infirmity, of mind or body, from discharging the duty of jurors".⁴⁹ Clearly, such persons should not serve on a jury and the Commission recommends that they should be made ineligible .

Commonwealth officers

3.33 At present, "such persons as are at any time exempted by or under any Act of the Parliament of the Commonwealth" are exempt from jury service under the *Juries Act* of this State.⁵⁰ If the relevant Commonwealth enactment⁵¹ is constitutionally valid, there is, of course, no legal necessity to exempt them under the juries legislation of this State. However, reference to them would protect their position should the Commonwealth legislation be held to be invalid.⁵² It would also be of practical assistance to summoning officers by ensuring that their position as regards jury service was not overlooked.⁵³ Accordingly, the Commission recommends that the persons exempted by the Commonwealth legislation should be made ineligible for jury service.⁵⁴

of Criminal Appeal consists of three Judges of the Supreme Court. It would be undesirable for a Judge to hear an appeal in a case where his wife had been on the jury. Because of the pressure of court business, difficulties may be caused if arrangements had to be made for another Judge to sit in his place.

⁴⁸ See paragraph 3.41 below.

⁴⁹ See paragraph 2.5 above.

⁵⁰ *Juries Act*, Second Schedule, Part II.

⁵¹ *Jury Exemption Act 1965* (Cwth).

⁵² A description of those who are exempt under the *Jury Exemption Act 1965* (Cwth) is contained in paragraph 5.16 of the Working Paper. Some commentators suggested that the present list of exempted Commonwealth officers is too wide and should be reviewed by the State and Commonwealth Governments.

⁵³ See the Working Paper, paragraph 5.17.

⁵⁴ The Commonwealth Act provides (s.4) that those exempted under it "shall not be summoned" for jury service. Accordingly, the proper category for them to be placed in under the State legislation is that of ineligibility. New South Wales has adopted this course: see the *Jury Act 1977* (NSW), Schedule 2.

EXCUSAL AS OF RIGHT

General

3.34 Following the Morris Committee in England, the Commission is of the view that entitlement to excusal as of right should be limited as much as possible. In justifying its approach, the Morris Committee said - ⁵⁵

“We recognise that our recommendations will disappoint many who think that their duties and responsibilities are of such importance that they should not be required to serve. But it seems to us that since jury service is in general a responsibility of citizenship, it would be unfair to those who are not given special treatment to lengthen more than is clearly necessary the list of those who are.

In a community as highly organised as ours it is extremely difficult to draw a line between those whose work is so crucial that it would be against the public interest to compel them to serve as jurors, and those whose work does not fall into this category. Persuasive arguments can be advanced for granting entitlement to excusal as of right to a large number of occupations. It must be remembered, however, that in most occupations arrangements are made to deal with the unavoidable and temporary absence of individuals. Furthermore, the fact that the members of an occupation are not in general entitled to be excused as of right need not prevent an individual member of that occupation from making out a convincing argument on a particular occasion why the summoning officer should exercise his discretionary power to grant excusal for good reason”.

3.35 The Morris Committee accordingly recommended that entitlement to excusal as of right should be confined to members of the Defence Forces, officers and members of Parliament, doctors, dentists, nurses, veterinarians and chemists.⁵⁶ This recommendation was followed in the *Juries Act 1974* (Eng). The Commission, however, does not consider that it would be appropriate to apply the basic principle in precisely the same way in Western Australia. It has already recommended in paragraph 3.14 above that members and officers of Parliament should be ineligible for jury service, and members of the defence forces are ineligible under the *Jury Exemption Act 1965* of the Commonwealth. Although the Commission agrees with the Morris Committee that it is important that those professionally engaged in administering to the sick or injured should be entitled to excusal as of right, it

⁵⁵ Report, paragraphs 146 and 147.

⁵⁶ Report, paragraphs 149 and 150.

considers that excusal as of right should also extend to certain other classes, although nevertheless to be kept within strict limits.⁵⁷

Views of commentators

3.36 In paragraph 5.18 of the Working Paper, the Commission proposed a list of those who should be entitled to excusal as of right, and invited comment. Commentators varied in their response. The Law Society took the extreme position of submitting that only pregnant women and persons who have the full-time care of children under fourteen years or of persons aged or in ill health should be entitled to excusal as of right. Some, including the Institute of Legal Executives and the Sheriff, agreed with the list. The State Women's Council of the Liberal Party submitted that the list of exemptions under the present law gave an imbalance to juries in that the list included many qualified or professional people.

3.37 The Public Service Board said that it had no objection to the omission from the proposed list of those public servants under its jurisdiction who are presently exempt, provided that the power of excusal for cause was exercised in a reasonably liberal way so as to ensure that public servants on urgent business are excused. The Western Australian Institute of Technology agreed with the proposal to remove the present general exemption from members of its academic staff, provided that a lecturer who was engaged in teaching when summoned was excused.

3.38 Others suggested that the Commission's proposed list be extended. For example, the Federation of University Women suggested that it include the staff of homes for the mentally or physically infirm, those caring for such persons in their own home, and nursing mothers. One commentator proposed that the list should include single parents caring for children. Three persons proposed that those with a religious objection to jury service should be entitled to decline to serve. The Secretary of Railways submitted that the Commissioner of Railways should be entitled to excusal, on the ground that his statutory responsibilities were great and could not be undertaken by another person unless appointed to do so by the Executive Council. The Secretary said that because of problems of timing "it would be virtually

⁵⁷ See paragraph 3.41 below for the Commission's recommended list.

impossible to arrange the appointment of a deputy for the Commissioner's period of jury service".⁵⁸

Considerations the Commission has borne in mind

3.39 In making its recommendations, the Commission has borne in mind the following -

- (a) The chances of actually being summoned for jury service in Perth are low: at the present rate of jury trials, there is substantially less than an even chance of a person ever being required to serve as a juror. The principal effect in Perth of strict limitation of excusal as of right would be that of liability for jury service would be spread more equitably. The chances of being called in remote circuit towns are substantially higher, and limitation of excusal as of right would help lighten the burden on those relatively few persons who are available to serve in those areas.⁵⁹
- (b) The *Juries Act* provides that a person shall not be required to attend for more than five days at the same sitting, except for the purpose of finishing a part-heard case. Because of the way in which Jury Panels are chosen, a person who has been summoned once in a year is most unlikely to be summoned again in that year.⁶⁰
- (c) Only persons residing within the respective Jury Districts are in any case liable to be called for jury service.⁶¹ Persons in areas which fall outside these Districts are not liable.
- (d) Because of the entitlement in most occupations of annual leave, long service leave and sick leave, provision is made as a matter of course for the duties of a particular employee to be performed temporarily by a substitute. It would seem

⁵⁸ The Secretary also suggested that exclusion should extend to the principal heads of all other Government Departments.

⁵⁹ See the Working Paper, paragraphs 5.23 and 5.24. Appendix III of this report sets out the number of jury trials in each Jury District for the past four years.

⁶⁰ This is because the names of those who are summoned for a Jury Panel are put on one side, and are only used again in that year if the number of jury trials is so great in that District that the summoning officer exhausts the remaining names in the Jurors' Book. See the *Juries Act*, ss.28 and 42.

⁶¹ For the present Jury Districts see Appendix I of the Working Paper

to be a small additional step to make adequate provision for a replacement during jury service. In this regard, the Commission considers it most desirable that the Government take the lead by making arrangements (whether administratively or by statute) to ensure, where practicable, that a substitute is available to take over temporarily from a public servant called as a juror. The obligations of jury service will be borne much more equably by the general community if it can be seen that the Government has been at pains to ensure that its officers are available whenever possible.

- (e) As the Morris Committee pointed out, the denial of a right of excusal to a particular occupation or group does not necessarily mean that the person concerned would not be able to obtain excusal from the summoning officer or Judge, for cause shown. In this respect, the Commission has endeavoured to ensure that the guidelines it proposes below⁶² are so worded that those with good grounds for excusal in a particular case are not forced to serve. In particular, the guidelines proposed would permit the summoning officer to excuse a person who satisfies him that he or she has a bona fide religious objection to serving as a juror.

3.40 After taking into account the above considerations, and the views of the commentators, the Commission considers that entitlement to excusal as of right should be limited to persons -

- (a) Employed in emergency services where the personnel may not be numerous enough, particularly in a major emergency, to risk having any of them unavailable because of jury service.
- (b) Professionally engaged in health care. The Commission acknowledges that it may be unduly cautious in recommending that such persons should be entitled to excusal as of right. However, it may be difficult for those in private practice to find a suitable locum tenens at short notice, and those who are employed in hospitals may often be difficult to replace. This could be particularly so in country areas. The Commission also has in mind the needs of farming

⁶² See paragraph 3.51.

communities for veterinary services. The Commission accordingly considers that it is better to err on the side of caution. Many of those engaged in health care, for example doctors and nurses, should be available in an emergency, and therefore classified under (a) of this paragraph.

- (c) Who are ministers of religion. They should be available at all times to give comfort to the sick or dying and to carry out their pastoral responsibilities.
- (d) Who are engaged, in a family situation, in the full time care of children or persons aged or in ill-health. It may be difficult to make suitable arrangements for substitute care during the period of jury service. Pregnant women should also be entitled to excusal.

Recommended list

3.41 Accordingly, the Commission recommends that only the following should be entitled to excusal as of right -

Emergency services

Full-time operational staff of the Western Australian Emergency Service
Officers and firemen of permanent fire brigades
Pilots employed by the Royal Flying Doctor Service.

Health

Medical practitioners, dentists, veterinarians, psychologists, nurses and chiropractors, registered as such according to law, if actually practising
Physiotherapists, registered as such according to law and in private practice.
Pharmaceutical chemists, registered as such according to law, if actually engaged in business, whether as a principal or manager for a principal.

Religion

Persons in holy orders, and persons who preach or teach in any religious congregation, but only if they follow no secular occupation except that of a schoolteacher.⁶³

⁶³ In the Working Paper, the Commission invited comment on how this class should be described. It received no submissions on the point, except that the reference to "clergyman" in the list of those exempted under the Second Schedule of the *Juries Act* should be replaced by "person" and "schoolmaster" by "schoolteacher". This has been done. In other respects the wording is the same as the present Act.

Family

Pregnant women

Persons residing with, and having the full-time care of, children under the age of 14 years

Persons residing with, and having the full-time care of, persons who are aged, in ill-health or physically or mentally infirm.

Comments on the list

- 3.42 (a) Under "Emergency Services" the Commission has included only the cases where the particular service has comparatively few personnel. The State Emergency Service has only thirteen full-time operational staff, and the Royal Flying Doctor Service has only twenty-two pilots. The Fire Brigades Board has many more on its full-time firefighting staff (679 officers and firemen as at 30 June 1979) but the scale of its activities is much greater. The Commission had intended to recommend that pilots of the St. John Ambulance Association should also be included. However, its air ambulance service will cease to operate from 1 July 1980.
- (b) All those in the list are now exempt, except physiotherapists in private practice. The Physiotherapists Association and a physiotherapist submitted that such physiotherapists should be exempt. The Commission agrees.
- (c) The principal reason for including chemists is that no unqualified person can dispense medicines or drugs in their shops in their absence: *Pharmacy Act 1964-1979*, s.39.
- (d) Perhaps the most noteworthy omissions from the present list of exemptions, and from the list set out in paragraph 5.18 of the Working Paper, are those to do with staff of Government hospitals. However, the professional medical staff would be entitled to excusal as of right, so that only general staff would now be liable for jury service. The Commission considers that it would not be unduly difficult to arrange for the duties of such a person to be performed by another for the relevant period. It is also important to note that under the present law, only the staff of State-run hospitals are exempt.⁶⁴ The non-medical staff of private hospitals are liable for jury service at present.

⁶⁴ See paragraph 2.6 above. It is unlikely that more than one person even in a large hospital would be called for jury service at any one time. If more were summoned, this could be a ground for excusal by the summoning officer.

Exclusions from list

3.43 If the Commission's list is adopted, the following who are presently exempt would now be liable for jury service⁶⁵ (subject, of course, to their right to apply for excusal for cause) -

Staff of the Derby Leprosarium
Staff of Government mental hospitals
General staff of Government hospitals and homes for aged persons.

Harbour and marine pilots
Masters, officers and members of crews of vessels actually trading
Inspectors of Mines
Mining managers and engine-drivers on mines in which not less than ten men are engaged in mining operations
Pilots, navigators and radio operators of commercial aircraft.

Professors, lecturers and the Registrar of the University of Western Australia, the academic staff and Secretary of Murdoch University and the academic staff and the Assistant Director (Administration and Finance) of the Western Australian Institute of Technology
Schoolmasters and schoolteachers

Shire clerks and Town clerks
Administrative and professional heads of departments, sub-departments, Boards, Commissions, Agencies and Instrumentalities and the Fremantle Port Authority.

The Commissioner of Railways and heads of branches of Westrail Doggers in the employ of the Agriculture Protection Board. Employees of the Wyndham Freezing, Canning and Meat Export Works, employed at Wyndham.

RIGHT OF A WOMAN TO CANCEL HER LIABILITY FOR JURY SERVICE

3.44 In paragraphs 6.6 to 6.8 of the Working Paper, the Commission suggested that the right of a woman to cancel her liability for jury service should be abolished, on the ground that the present law unjustifiably favours women and that the object to be sought by the privilege could adequately be provided for in another way.⁶⁶

⁶⁵ Except those who would be entitled to excusal as of right because they fall into one of the classes listed in paragraph 3.41, e.g. doctors and nurses employed in mental hospitals.

⁶⁶ See paragraph 6.8 of the Working Paper.

3.45 All those who commented on this question, including the Law Society and all the women's organisations, agreed with this view. The Commission recommends accordingly.

3.46 Implementation of the recommendation would bring Western Australian law on this matter in line with that in England, New South Wales, Victoria, the Northern Territory and the Australian Capital Territory.

3.47 As a corollary, the Commission recommends that s.27(2) of the *Juries Act*, which enables a woman (but not a man) to obtain an excusal from attendance at a particular trial on special grounds (namely, the anticipated nature of the evidence, medical unfitness or because attendance would seriously interfere with her domestic obligations)⁶⁷ should also be repealed. To the extent necessary, these grounds should apply equally to both sexes.⁶⁸

EXCUSAL IN THE CASE OF A PARTICULAR SITTING OR TRIAL

3.48 It was pointed out in paragraph 2.9 above that the present law gives the summoning officer and the Judge power to excuse from attendance at a particular sitting or trial. Such a power is clearly desirable, and the Commission recommends its continuance.

3.49 Under the present law, no guidelines are prescribed for the exercise of this power.⁶⁹ In the Working Paper,⁷⁰ the Commission suggested that the *Juries Act* should be amended so as to provide guidelines in this area. Most of those who commented on this question agreed with the Commission's proposal. The Law Society, which agreed that guidelines should be enacted, submitted that the power to excuse for cause should be confined to a judicial officer, and that summoning officers should no longer have this power. A legal practitioner considered that guidelines were desirable only in the case of a summoning officer and that a Judge's discretion should be left unfettered.

3.50 Having reconsidered the question, the Commission affirms its provisional view that guidelines would be of assistance both to those called upon to exercise the power of excusal and to those applying for it. If excusal as of right is to be limited to a narrow range of persons,

⁶⁷ See paragraph 2.10 above.

⁶⁸ See paragraph 3.41 above, under "Family".

⁶⁹ Except in the case of a woman called for jury service: see paragraph 2.10 above. The Commission has recommended above that this provision be repealed: see paragraph 3.47.

⁷⁰ Paragraph 6.9.

as has been recommended by the Commission above,⁷¹ it would seem desirable to provide guidelines to ensure that those whose business or personal affairs warrant it at the particular time, but who are not entitled to excusal as of right, are in fact excused.

3.51 Accordingly, the Commission recommends that the *Juries Act* should provide that, if the summoning officer or Judge is satisfied that a person ought to be excused by reason of -

- (a) illness;
- (b) undue hardship either to himself or another person; or
- (c) circumstances of sufficient weight, importance or urgency,

he may excuse that person from attendance.

3.52 Although there is merit in the Law Society's suggestion that power to excuse should be vested solely in a judicial officer, practical considerations would seem to make it undesirable to so restrict it. The Commission has been informed that excusal is sought by a significant number of persons, and consideration of their cases can be time consuming. It would be undesirable to require a judicial officer (presumably a Judge) to give over a substantial proportion of his time to this task.

ORDERS IN COUNCIL

3.53 At present, the *Juries Act* empowers the Governor to exempt the holders of State offices from jury service.⁷² The power is exercisable only in respect of offices which are so important that serious public inconvenience would be caused if the holders were required to serve as jurors. There is no power to exempt by proclamation persons in non-State positions or occupations.

3.54 If the Commission's recommendations as to ineligibility and excusal as of right are adopted, the question would arise whether the lists of those ineligible or entitled to excusal should be able to be amended by proclamation. A number of commentators on the Working Paper submitted their views on the question. The Sheriff, the Women Justices' Association, the Institute of Legal Executives, the Clerk of Courts at Carnarvon and the Women's Service

⁷¹ Paragraph 3.41.

⁷² Section 6(2).

Guild submitted that there should be such a power. However, the Law Society and two legal practitioners were of the view that there should not, and that amendment to the lists should be by statute. The Law Society gave no reasons for its view, but a practitioner suggested that the existence of such a power would encourage pressure groups to apply for its exercise in their favour and that this pressure might be hard to resist.

3.55 The Commission considers that the power under s.6(2) has in the past been exercised too liberally and, in some cases, apparently on a wrong principle.⁷³ Amendment to the lists of those ineligible or entitled to excusal as of right would be of sufficient importance as to justify Parliament's attention. The Commission accordingly recommends that there should be no provision in the Act for the lists to be amended by proclamation.

DISQUALIFICATION

3.56 The *Juries Act* disqualifies a person who -

- (a) is not a natural born or naturalised subject of Her Majesty;
- (b) has been convicted of a crime or misdemeanour unless he or she has received a free pardon;⁷⁴
- (c) is an undischarged bankrupt; or
- (d) cannot read and understand the English language.⁷⁵

The Commission considers that these four grounds should be reduced to one, and the following paragraphs set out its recommendations in this respect.

(a) **British subject**

3.57 It is unnecessary to stipulate that a person must be a natural born or naturalised subject of Her Majesty as a condition of qualification for jury service. The *Electoral Act* requires precisely the same qualification as a condition of being entitled to be enrolled as an elector for

⁷³ See paragraph 3.16 above.

⁷⁴ "Free" in this context means unconditional: see Halsbury's Laws, 4th ed. vol. 8, paragraph 950.

⁷⁵ *Juries Act*, s.5.

the Legislative Assembly⁷⁶ and a person is not qualified to serve on a jury unless he or she is so enrolled.⁷⁷

3.58 The Sheriff has informed the Commission that the retention in the *Juries Act* of the reference to being "a subject of Her Majesty" is confusing. Some persons forget that they certified as to this fact in their application to be enrolled as an elector, or think that the condition in the *Juries Act* is in some way different from that in the *Electoral Act*.⁷⁸ Accordingly the Commission recommends that this condition be deleted from the *Juries Act*.

(b) Persons convicted of a crime or misdemeanour

3.59 Under the present law, a person convicted of a crime or misdemeanour is disqualified for life from jury service, unless he or she has received a free pardon.⁷⁹ The Commission is of the view that this provision is too narrow in one respect and too wide in another. It is too narrow in that it appears⁸⁰ to apply only to those convicted in Western Australia, so that a person convicted of a serious offence in another jurisdiction would remain qualified. It is too wide in that regard is had only to the class of offence and not to the penalty imposed. Thus, a person convicted of a crime or misdemeanour is disqualified even though a non-custodial sentence (perhaps a small fine) was imposed, whereas a person convicted of a summary offence and sentenced to a substantial term of imprisonment is not.⁸¹

⁷⁶ And also for the Legislative Council: *Electoral Act 1907-1979*, s.17. The reference to the "Legislative Assembly" and not "Parliament" in the *Juries Act 1957* is because the Council was elected on a more restricted franchise when that Act was passed.

⁷⁷ See paragraph 2.2 above.

⁷⁸ The condition is interpreted by the State Chief Electoral Officer and the Sheriff in the same way, namely that a person must be a natural born or naturalised subject of Her Majesty, whether in Australia or elsewhere.

⁷⁹ Under s.18 of the *Electoral Act 1907-1979* (WA), a person is disqualified from being enrolled or voting at any State Parliamentary election if, inter alia, he or she is under sentence of imprisonment for one year or more, or is subject to an indeterminate sentence. Under s.59 of that Act the Department of Corrections is required to supply particulars of such persons to the State Electoral Office which then is required (under s.60) to remove their names from the State electoral roll.

When they have completed their sentence, such persons are entitled, on application, to have their names restored to the electoral roll. Since eligibility for jury service depends on being on the electoral roll, it is only if they exercise this right to re-instatement that the question of their qualification for jury service would arise.

⁸⁰ The Commission is not aware of any judicial decision on the point.

⁸¹ There are a number of summary offences which carry up to two years imprisonment, e.g. possession of drugs (s.94B(5)(a) of the *Police Act 1892-1979*), fraud by a company officer (s.374G of the *Companies Act 1961-1979*). One summary offence carries a maximum penalty of ten years imprisonment (trading in cannabis (s.94B(5)(b) of the *Police Act*)).

It could be argued that, because of s.673 of the *Criminal Code* (which deems a summary conviction of an indictable offence to be a conviction of a simple - not an indictable - offence) the present law disqualifies only those convicted of a crime or misdemeanour on indictment. Even if this is so, the present law is

3.60 The question of disqualification of those convicted of offences was considered by the Morris Committee in England in 1965.⁸² That Committee concluded that regard should be had to the penalty imposed and that, even where it was appropriate to disqualify, the disqualification should not, except in serious cases, be lifelong. The *Juries Act 1974* (Eng) followed this principle. The relevant provisions of this legislation are set out in Appendix II below. The principle has also been followed in Victoria, New South Wales and the Northern Territory, although the legislative outcome is not identical in each case: see Appendix II below.

3.61 After having carefully considered the question, and after taking into account the precedents elsewhere, the Commission recommends that persons who fall within the following criteria should be disqualified (unless he or she has received a free pardon) -

1. A person who has at any time been convicted in Western Australia or elsewhere and sentenced -
 - (a) to death and whose sentence has been commuted;
 - (b) to imprisonment for life;
 - (c) to imprisonment for a term exceeding two years; or
 - (d) to imprisonment for an indeterminate period.⁸³

2. A person who at any time within the last five years in Western Australia or elsewhere -
 - (a) has served any part of a sentence of imprisonment or has been on parole in respect of any such sentence;
 - (b) has been found guilty of an offence and detained in an institution for juvenile offenders;
 - (c) has been the subject of a probation order made by any court.

unsatisfactory, since a person may elect trial by jury for a comparatively minor misdemeanour. If convicted he would be disqualified, whereas if he had been tried summarily he would not.

⁸²

Report, paragraphs 129 to 143.

⁸³

That is, to be detained during the Governor's pleasure (see, e.g., *Code*, s .662) or its equivalent elsewhere.

(c) Bankruptcy

3.62 The Commission is of the view that being an undischarged bankrupt should not be an automatic disqualification. Bankruptcy does not necessarily imply criminal behaviour or moral turpitude, or that a bankrupt person is unfit to be a juror. His bankruptcy may have been brought about entirely by misfortune. The *Bankruptcy Act 1966* (Cwth) prescribes certain offences for which a bankrupt may be prosecuted (for example, gambling or hazardous speculations⁸⁴ or failure to keep proper books of account⁸⁵). A bankrupt who is convicted of any of these offences (or of any other offence relating to his bankruptcy) may warrant disqualification but that should be because of the conviction, not the bankruptcy.

3.63 The present law is also discriminatory in that it disqualifies those who carried on business as a sole trader or in partnership and not through a company. A director of a company ordered to be wound up by the Court is not disqualified as a juror.

3.64 Bankruptcy is not a ground of disqualification in England, New South Wales or the Northern Territory (which amended its law in this respect in 1979).⁸⁶ The Commission recommends that it no longer be a ground of disqualification in this State.

(d) Persons unable to understand English

3.65 The Commission recommends that persons who cannot read and understand the English language should be ineligible for jury service, rather than disqualified. Implementation of this recommendation would bring Western Australian law into line with that in England, Victoria and New South Wales.

OTHER MATTERS

Proportion of men to women on Jury Panel

3.66 Under the *Juries Act* at present, the summoning officer is required, when summoning persons to make up a Jury Panel, to ensure that:⁸⁷

⁸⁴ *Bankruptcy Act 1966* (Cwth), s.271.

⁸⁵ *Ibid.*, s.270.

⁸⁶ *Juries Act 1974* (Eng); *Jury Act 1977* (NSW); *Juries Act 1979* (NT). It still is in Victoria, which revised its juries legislation in 1967 (*Juries Act 1967*).

"as far as is practicable, the number of men to be summoned bears to the number of women to be summoned, the ratio which the number of men whose names are entered in the Juror's Book bears to the number of women whose names are entered in that Juror's Book....".

3.67 The Commission considers that this requirement should be repealed if the right of women to cancel their liability for jury service is abolished. Abolition of the right would mean that the number of women liable to serve would more closely approximate that of men, and any panel selected at random would be likely to reflect this position. No doubt some panels would contain a preponderance of one sex, but it seems to the Commission that this is unimportant. Adopting the words of the Morris Committee,⁸⁸ the Commission considers that to retain the provision as to the proportion of women to be empanelled would suggest, quite wrongly, that the position of women in respect of jury service will continue to be different from that of men. The Commission accordingly recommends the repeal of the provisions in the *Juries Act* requiring men and women to be summoned in a certain proportion. This recommendation is intended to apply to civil trials with a jury, as well as to criminal trials.

Announcement to Panel

3.68 As mentioned in paragraph 3.20 above, an announcement in the following terms is made to the assembled Jury Panel pursuant to a practice direction by the then Chief Justice in 1961 -

“If it should subsequently transpire that in any case in which a juror is concerned the juror is: -

- (a) related to the accused or the [complainant],
- (b) on terms of friendship with the accused or the [complainant] or with any relation of the accused or the [complainant], or
- (c) feels that he or she is liable to be biased by reason of acquaintanceship with the accused or the [complainant] or with any relation of the accused or of the [complainant],

the juror should so inform the Court”.

⁸⁷ *Juries Act*, s.26(2). See also ss.26(3) and (4) and s.27(3). The quoted provision relates to criminal trials. A similar procedure applies to civil trials: *ibid.*, s.29(2).

⁸⁸ Report, paragraph 251

3.69 The Commission considers it most desirable that such an announcement should continue to be made. However, it recommends that its terms should be widened to include -

- (i) In (a) a reference to the possibility of any member of the Panel being related to the presiding Judge.
- (ii) In (a) and (b), a reference to the possibility of any member of the Panel being related to, or employed by, any of the legal practitioners engaged in the proceedings.
- (iii) In (c), a reference to any other reason why the member of the Panel may feel that he or she may be biased **in the particular trial** on which he or she will sit as juror. (This is intended to cover miscellaneous cases, such as where a member, of the Panel is a spouse or other close relative of a policeman connected with the proceedings.)

3.70 Because of the need for the announcement to be contextual with other announcements made to the Panel, the Commission has not attempted to draft its actual terms. However, it would be pleased to assist in doing so if required.

3.71 Whatever its terms, the Commission considers that it is undesirable that the announcement should have only the authority of a practice direction, and recommends that specific statutory authority be enacted for authorising it.

CHAPTER 4 CORONER'S JURIES

4.1 The *Coroners Act* also makes provision for juries in certain cases. A coroner is to have an inquest taken by a jury (consisting of three persons¹) if -

- (a) the inquest is on the body of a person whose death has been caused by an explosion or accident -
 - (i) in or about a mine to which the *Mines Regulation Act 1946-1974*, or the *Coal Mines Regulation Act 1946-1976*, applies; or
 - (ii) in or about a factory to which the *Factories and Shops Act 1963-1978* applies;
- (b) the coroner considers it desirable to have a jury; or
- (c) in any special case the Attorney General so directs.

In practice it is unusual for a jury to be summoned in cases other than those involving deaths in mines or factories.

4.2 A coroner's jury is summoned by a member of the police force on the instructions of the coroner.² This is done by the police officer choosing persons who have had experience in the class of mining or factory work concerned. Section 34 of the *Coroners Act* provides that the following are not liable to be summoned -

- (a) Persons who under the provisions of the *Juries Act 1957-1976* are exempt from serving as jurors.
- (b) Persons who are exempt from serving as jurors under Commonwealth law.

¹ *Coroners Act 1920-1979*, s.30. There are from three to six coroners' juries empanelled every year.

² *Ibid.*, s.28.

4.3 In the Working Paper³ the Commission suggested that, since a coroner's jury could return a verdict upon which a coroner could found an order that a person be committed for trial, those who should be ineligible for jury service in trials in the Supreme and District Courts should also be ineligible to sit on a coroner's jury. The Commission also suggested that those entitled to excusal as of right in such trials should be similarly entitled in respect of coroners' juries.

4.4 All those who commented on this aspect agreed with the Commission's suggestions. The Commission recommends accordingly.⁴ This recommendation is also intended to cover the case of disqualification, so that those who should be disqualified from jury service in the Supreme and District Courts should also be disqualified from sitting on coroners' juries.⁵

³ Paragraph 6.14.

⁴ Because the *Coroners Act* speaks of "exemption" that Act will require amendment to conform to the Commission's recommendation that "exemption" be replaced by "ineligibility" and "excusal as of right".

⁵ This would be in addition to any other reason for disqualification laid down in the *Coroners Act*: see, for example, s.32.

CHAPTER 5

SUMMARY OF RECOMMENDATIONS

5.1 The Commission recommends that -

- (a) The concept of "exemption" in the present *Juries Act* should be replaced by the concepts of "ineligibility" and "excusal as of right".

(paragraph 3.7)

Ineligibility

(b) That the following persons should be ineligible for jury service¹ -

(i) **Parliament**

Members and officers of the Legislative Assembly
Members and officers of the Legislative Council
The Parliamentary Commissioner for Administrative Investigations

Law

Judges, Judges' Associates and ushers
The Master of the Supreme Court
Stipendiary Magistrates
Special Magistrates and members of Children's Courts
Justices of the Peace
Sheriff's officers and court bailiffs
Legal practitioners, whether or not in practice, enrolled in the Roll of Practitioners pursuant to the *Legal Practitioners Act 1893-1979*

Government

Members of the Police Force
Special constables
Aboriginal aides
Persons (other than police) employed in the Police Department

Persons employed in -

- (a) the Crown Law Department;
(b) the Department of Corrections; or
(c) the Department for Community Welfare
Honorary probation officers
Members and employees of the Road Traffic Authority
Members of the Parole Board.

¹ That is, they should not be permitted to serve, even though they wished to do so.

- (ii) Those incapacitated by disease or infirmity, of mind or body, from discharging the duty of jurors. (paragraph 3.14)
- (iii) Those exempted under the *Jury Exemption Act 1965* of the Commonwealth. (paragraph 3.32)
- (iv) Persons who cannot read and understand the English language. (paragraph 3.33)
- (iv) Persons who cannot read and understand the English language. (paragraph 3.65)

Excusal as of right

- (c) That the following should be entitled to excusal as of right² –

Emergency services

Full-time operational staff of the Western Australian Emergency Service
Officers and firemen of permanent fire brigades
Pilots employed by the Royal Flying Doctor Service.

Health

Medical practitioners, dentists, veterinarians, psychologists, nurses and chiropractors, registered as such according to law, if actually practising
Physiotherapists, registered as such according to law and in private practice
Pharmaceutical chemists, registered as such according to law, if actually engaged in business, whether as a principal or manager for a principal.

Religion

Persons in holy orders, and persons who preach or teach in any religious congregation, but only if they follow no secular occupation except that of a schoolteacher.

Family

Pregnant women
Persons residing with, and having the full-time care of, children under the age of 14 years
Persons residing with, and having the full-time care of, persons who are aged, in ill-health or physically or mentally infirm.

(paragraph 3.41)

- (d) That the right of women to cancel their liability for jury service should be abolished.

(paragraph 3.45)

² That is, they should not be obliged to serve, but should be permitted to do so, if they choose.

- (e) That the right of a woman to be excused from attendance at a particular trial on special grounds should also be abolished.
(paragraph 3.47)
- (f) That the *Juries Act* be amended to provide guidelines for the summoning officer and the Judge for the exercise of their power to excuse from attendance in the case of a particular sitting or trial.
(paragraphs 3.48 and 3.51)
- (g) That any changes to the classes of those ineligible or entitled to excusal as of right be by way of statute.
(paragraph 3.55)
- (h) That disqualification from jury service should be restricted to those convicted of an offence and sentenced to a prescribed term of imprisonment.
(paragraphs 3.58,3.61,3.64 and 3.65)
- (i) That the announcement which is now made to the Jury Panel relating to possible bias should be widened and put on a statutory basis.
(paragraphs 3.70 and 3.71)
- (j) That the provisions in the *Juries Act* as to proportions of men and women required to be summoned for jury service should be repealed.
(paragraph 3.67)
- (k) That persons disqualified, ineligible or entitled to excusal as of right in relation to jury trials in the Supreme and District Courts should also be disqualified, ineligible or entitled to excusal as of right in the case of coroners' juries.
(paragraph 4.4).

(Signed) David K. Malcolm
Chairman

Eric Freeman
Member

H.H. Jackson
Member

Charles Ogilvie
Member

Proksch
Member

25 June 1980

APPENDIX I

List of those who commented on the working paper -

Agriculture Protection Board of Western Australia
Australian Federation of University Women (W.A.) Incorporated
Australian Physiotherapy Association (W.A.)
Clerk of Courts, Carnarvon
Country Women's Association of Western Australia (Inc.)
Doxey, J.
Hubbard, J.M.
Institute of Legal Executives
Jackson, H.H.*
Law Society of Western Australia
Miller, G.
National Committee for the Decade of Women
Northern Territory Law Review Committee
Public Service Board
Sharpe, F.W.
Sharpe, R.L.
Sheriff of Western Australia
Sivewright, C.W.
Soroptimist Club of Perth (Inc) W.A.
State Women's Council of the Liberal Party
Velterop, J.M.
Western Australian Government Railways
Western Australian Institute of Technology
Women Justices' Association
Women's Electoral Lobby, Perth
Women's Service Guilds of Western Australia Inc.

* Mr. Jackson is now a member of the Law Reform Commission of Western Australia.

APPENDIX II

Extracts from the juries legislation in England, Victoria, New South Wales and the Northern Territory relating to disqualification on the ground of conviction for a criminal offence.¹

ENGLAND

A person is disqualified -

- (1) Who has at any time been sentenced in the United Kingdom, the Channel Islands or the Isle of Man -
 - (a) to imprisonment for life or for a term of five years or more; or
 - (b) to be detained during Her Majesty's pleasure, during the pleasure of the Secretary of State or during the pleasure of the Governor of Northern Ireland.
- (2) Who at any time in the last ten years has, in the United Kingdom or the Channel Islands or the Isle of Man -
 - (a) served any part of a sentence of imprisonment or detention, being a sentence for a term of three months or more; or
 - (b) been detained in a borstal institution.

VICTORIA

A person is disqualified –

- (1) Who has been -
 - (a) convicted of treason;
 - (b) convicted of felony; or
 - (c) convicted of one or more misdemeanours and sentenced to imprisonment for a term or terms in the aggregate of not less than three years -

but any conviction for an offence in respect of which a free pardon has been granted shall be disregarded.
- (2) Who at any time within the last preceding five years -
 - (a) has been imprisoned; or
 - (b) has been on parole -

but there shall be disregarded -

- (i) all sentences of imprisonment served during that period if together they do not exceed a period of three months;

¹ See the *Juries Act 1974* (Eng), Schedule 1, Part II; the *Juries Act 1967* (Vic) Schedule 2; the *Jury Act 1977* (NSW) Schedule 1; the *Juries Act 1979* (NT), ss.6 and 7.

- (ii) any imprisonment incurred as a result of failure to pay a fine; and
 - (iii) any imprisonment in respect of a conviction for an offence in respect of which a free pardon has been granted.
- (3) Who is bound by a recognizance entered into after conviction for any offence.
 - (4) Who is subject to a probation order made by a court.

NEW SOUTH WALES

A person is disqualified -

- (1) Who has been convicted in New South Wales or elsewhere of -
 - (a) treason;
 - (b) an offence carrying a penalty of imprisonment, or penal servitude, for life; or
 - (c) any offence and sentenced to imprisonment, or penal servitude, for a term exceeding 2 years.
- (2) Who at any time within the last 10 years in New South Wales or elsewhere -
 - (a) has served any part of a sentence of imprisonment or penal servitude or has been on parole in respect of any such sentence; or
 - (b) has been found guilty of an offence and detained in an institution for juvenile offenders.
- (3) Who at any time within the last 5 years in New South Wales or elsewhere -
 - (a) has been convicted of any offence which may be punishable by imprisonment or penal servitude;
 - (b) has been bound by recognizance to be of good behaviour or to keep the peace;
 - (c) has been the subject of a probation order made by any court; or
 - (d) has been disqualified by order of a court from holding a licence to drive a motor vehicle or omnibus for period in excess of 6 months.

THE NORTHERN TERRITORY

A person is disqualified -

- (1) Who has been sentenced to a term of imprisonment (whether within the Territory, in a State or another Territory or in a prescribed country) for an offence other than a capital offence and -
 - (a) has not completed the sentence; or
 - (b) a period of less than 7 years has elapsed since he completed the sentence;

- (2) has been sentenced to a term of imprisonment (whether within the Territory, in a State or another Territory or in a prescribed country) for a capital offence.

For the purposes of this provision -

- (a) a person is deemed never to have been under sentence of imprisonment for an offence if he has been granted a free pardon in respect of the offence.
- (b) A person who has been sentenced to a term of imprisonment has not completed the sentence -
- (i) if he has been released from prison on parole - until the expiration of the period of parole;
 - (ii) if the sentence has been wholly or partly remitted under section 56 of the *Criminal Law and Procedure Act* subject to conditions - until the conditions have been satisfied and no longer apply in relation to him; or
 - (iii) if that sentence has been suspended -
 - (i) subject to conditions - until the conditions have been satisfied and no longer apply in relation to him; or
 - (ii) unconditionally - until the expiration of the period during which the sentence remains suspended.
- (c) "Capital offence" means an offence the penalty for which is under a law in force in the Territory is prescribed to be life imprisonment, with or without hard labour, and in respect of which the court imposing the sentence may not vary or mitigate the sentence and includes murder.

APPENDIX III
JURY TRIALS IN WESTERN AUSTRALIA

Location		Supreme Court	District Court	Total
Perth	1976	56	107	163
	1977	32	118	150
	1978	54	127	181
	1979	86	130	216
Bunbury	1976	6	13	19
	1977	1	6	7
	1978	1	6	7
	1979	2	1	3
Broome	1976	-	2	2
	1977	5	4	9
	1978	2	2	4
	1979	2	-	2
Port Hedland	1976	6	3	9
	1977	5	10	15
	1978	8	5	13
	1979	5	2	7
Geraldton	1976	1	5	6
	1977	-	3	3
	1978	4	2	6
	1979	4	6	10
Albany	1976	2	7	9
	1977	-	9	9
	1978	1	7	8
	1979	4	9	13
Wyndham	1976	1	3	4
	1977	-	-	-
(Ceased to be a circuit town)				
Kalgoorlie	1976	3	17	20
	1977	12	25	37
	1978	5	20	25
	1979	4	24	28
Carnarvon	1976	-	1	1
	1977	1	3	4
	1978	1	6	7
	1979	-	5	5

Location		Supreme Court	District Court	Total
Kununurra	1976	3	-	3
	1977	2	1	3
	1978	1	2	3
	1979	1	2	3
Derby	1976	-	-	-
	1977	-	-	-
	1978	2	-	2
	1979	-	1	1