

## Chapter Seven

# Allowances, Protections and Penalties

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# Juror allowances

INADEQUACY of remuneration for jurors is a common complaint in many jurisdictions<sup>1</sup> and anecdotally it appears that many people have the perception that jurors are not properly compensated for their loss of income in Western Australia. This is perhaps the most widespread misconception about jury service in Western Australia and it may be a significant barrier to participation in jury service. In fact, Western Australia has the most generous system of juror allowances in Australia (and perhaps worldwide), covering actual loss of earnings for all jurors.<sup>2</sup> In the 2008–2009 financial year, the Sheriff's Office processed 3,777 claims for loss of income from jurors attending in Perth. This resulted in a total payment to jurors of \$2,487,770 for the year.<sup>3</sup>

## ALLOWANCES AND EXPENSES

Under s 58B of the *Juries Act 1957* (WA) a person who attends court pursuant to a jury summons (even if the person is not ultimately empanelled as a juror) is entitled to be paid an allowance by the state. The *Juries Regulations 2008* (WA) provide for the following payments to be made to jurors.<sup>4</sup>

Table of allowances for doing jury service<sup>5</sup>

If the time of attendance does not exceed one half-day	\$10.00
If the time of attendance exceeds one half-day but does not exceed 3 days, for each day	\$15.00
If the time of attendance exceeds 3 days, for each day after the third day	\$20.00

1. See Australian Institute of Criminology, *Practices, Policies and Procedures that Influence Juror Satisfaction in Australia*, Research and Public Policy Series No 87 (2008) xiv; NSWLRC, *Jury Selection*, Report No 117 (2007) 213; VPLRC, *Jury Service in Victoria*, Final Report (1996) vol 1, 135; Sheriff's Office (SA), *South Australian Jury Review* (2002) 18; Department of Justice (Tas), *Review of the Jury Act 1899*, Issues Paper (1999) ch 4.
2. So long as the loss is actual and can be substantiated. See below, 'Application for reimbursement'.
3. Carl Campagnoli, Jury Manager (WA), email (2 September 2009).
4. *Juries Regulations 2008* (WA) reg 4; *Juries Act 1957* (WA) s 58B(6).
5. *Juries Regulations 2008* (WA) reg 4.

A further allowance for travel is also automatically paid to jurors.<sup>6</sup> This is calculated on the basis of the cost of return public transport from the juror's suburb of residence to the court. Where public transport is not available (eg, in regional areas) jurors are reimbursed for return travel from their place of residence to the court at an amount of 37.5 cents per kilometre.<sup>7</sup> This is comparable to travel allowances in other jurisdictions.<sup>8</sup> Unlike some jurisdictions,<sup>9</sup> meal allowances are not paid to Western Australian jurors unless the meal falls during a period when they are required to stay together.<sup>10</sup>

Although there is currently no legislative provision for reimbursement of child care expenses in Western Australia, the Commission understands that as a matter of policy child care expenses are reimbursed by the Sheriff's Office. However, in the 2008–2009 financial year there were only nine claims submitted for child care expenses.<sup>11</sup> Currently, people with the responsibility for children under the age of 14 years are entitled to be excused from jury service and this may explain the low number of claims. In Chapter Six the Commission proposes that all excuses as of right be repealed (including those categories that relate to child care or other carer responsibilities).<sup>12</sup> Accordingly, the Commission has also proposed that the *Juries Regulations* be amended to provide for the reimbursement of reasonable out-of-pocket child care and other carer expenses incurred as a direct consequence of jury service.<sup>13</sup>

6. Jurors are required to complete their bank details on the bottom of the summons so that payment of allowances can be made directly to their bank accounts.
7. *Juries Regulations 2008* (WA) reg 5.
8. For example, New South Wales pays 30.07 cents per kilometre and Queensland pays 35 cents per kilometre. South Australia has the most generous travel allowance at 60 cents per kilometre. However, South Australian jurors may be required to drive very long distances to attend court because jury districts cover the entire state.
9. For example, luncheon allowances range from \$6.60 in New South Wales to \$12 in Queensland. In other states, such as South Australia, the sheriff must provide refreshments to jurors.
10. For example, when the jury has retired to consider its verdict.
11. Carl Campagnoli, Jury Manager (WA), consultation (11 September 2009).
12. See above Chapter Six, 'Excuse as of right' and Proposal 45.
13. Proposal 44.

## REIMBURSEMENT OF LOST INCOME

The attendance allowances described above generally apply to people who have no employment-based income; that is, people who are unemployed, or who are students or retirees. This accounts for approximately 7% of empanelled jurors.<sup>14</sup> However, if the summoning officer is satisfied that a person doing jury service has lost income in an amount greater than the prescribed allowance, the person may be paid an amount that equals the loss.<sup>15</sup>

The *Juries Act* requires jurors who are employed (whether full-time, part-time or casual) to be paid their normal wages or expected earnings by their employer for the period of their jury service.<sup>16</sup> Non-government<sup>17</sup> employers may then apply to be reimbursed the wage paid to the juror for the period of jury duty.<sup>18</sup> Self-employed jurors are entitled to be paid for loss of actual earnings. There is no upper limit to reimbursement of wages or loss of income, so long as the claim is for actual loss and can be adequately substantiated.

### Application for reimbursement

Regulation 8 of the *Juries Regulations* provides that applications may be made by employers for reimbursement of the employee-juror's wages<sup>19</sup> under statutory declaration and by providing the following evidence in support of the claim:

- the employer's Australian Business Number;<sup>20</sup>
- the earnings paid by the employer to the juror for any period that the juror did jury service;
- the name of the juror;

- the juror's occupation with the employer;
- the hourly rate paid by the employer to the juror;
- the number of hours of service of the juror lost by the employer as a result of the juror doing jury service.

As noted above, self-employed jurors can only claim loss of income where an actual financial loss is substantiated. Deferral of work is not enough to substantiate a claim for loss of income. Self-employed jurors must sign a statutory declaration and provide details of work lost and not regained as a result of jury service to enable the Sheriff's Office to assess whether an actual financial loss has occurred. In practice, evidence of lost income may be shown by provision of:

- a letter from the juror's client or regular contractor stating how much would have been earned from that client or contractor had the juror been available to work when performing jury service;
- a letter from the juror's accountant stating the juror's daily rate of pay and total income lost because of jury service; or
- a copy of the juror's personal income tax return<sup>21</sup> from the previous year showing gross income earned (from which a daily fee will be extrapolated).<sup>22</sup>

Claims are assessed by the Sheriff's Office and, once authorised, are effected by direct transfer to the employer's or self-employed juror's nominated bank account.<sup>23</sup> In regional areas, the claims are assessed and authorised by the summoning officer of the regional court and payment is effected through the Sheriff's Office in Perth.

In the Commission's view, the allowances and reimbursement of lost income provided for under the current *Juries Act* and *Juries Regulations* are appropriate. The Commission is not aware of any problems with the current reimbursement system or of any difficulties experienced by jurors or employers applying for reimbursement; however, it invites submissions, in particular from people who have served as jurors, as to whether there are any issues for reform.

14. Sheriff's Office (WA), *Results of Juror Feedback Questionnaire 2008–2009* (2009).

15. *Juries Regulations 2008* (WA) reg 4(2). This enables self-employed jurors to apply for reimbursement of income lost by reason of their jury service.

16. *Juries Act 1957* (WA) s 58B(3). Employers who fail to comply with this provision are subject to a fine of \$2,000, which is equivalent to the fine provided for in s 83(4) of the *Industrial Relations Act 1979* (WA) for the breach by an employer of an award or industrial, employee–employer agreement.

17. Government employers (including government departments, state instrumentalities and state trading concerns) are not entitled to reimbursement and must continue to pay their employees whilst performing jury service: *Juries Regulations 2008* (WA) reg 6. Further, government employees are not entitled to be paid the allowance prescribed under the regulations: *Juries Act 1957* (WA) s 58B(6).

18. *Juries Act 1957* (WA) s 58B(4); *Juries Regulations 2008* (WA) reg 8.

19. For employers the amount paid is reimbursement of wages paid to the juror. Money paid to temporarily replace an employee whilst he or she is performing jury service is not reimbursable.

20. Provision of the employer's ABN obviates the need to withhold income tax and generate payment summaries for all jurors.

21. A company or partnership tax return is not acceptable for this purpose.

22. The self-employed juror must also provide his or her ABN to avoid income tax withholding as reimbursement of lost income is assessable for income tax purposes.

23. Section 58B(7) of the *Juries Act 1957* (WA) provides that any amount paid in respect of a juror is to be charged to the Consolidated Account.

## INVITATION TO SUBMIT J

### Reimbursement of lost income

The Commission invites submissions on whether there are any issues with the current system for reimbursement of lost income or the process of application for reimbursement.

In the Commission's opinion it is important that awareness is raised in the community about the fact that the state reimburses jurors for actual loss of income and that in many cases jury service does not impose significantly on people's time. An awareness campaign would also provide a valuable opportunity to communicate the importance of jury service as a civic duty and vital part of Western Australia's criminal justice process.

## NEED FOR COMMUNITY AWARENESS

As mentioned above, there is an apparent perception in the community that performing jury service will impose a financial burden on the juror or the juror's employer. This is clearly not the case; however, continuing misconceptions in this regard can discourage prospective jurors from serving or cause them to seek to avoid jury service by claiming an excuse that they might not otherwise have claimed. The Sheriff's Office receives a large number of excuses each year which are claimed on the basis that jury service will cause the juror or their employer undue financial hardship. While these excuses will very rarely succeed, they do generate an unnecessary amount of work for the Sheriff's Office in assessing and responding to the claim.

In May 2008 the Sheriff's Office undertook a jury awareness campaign in two areas of the state (the Kimberley and the Pilbara) where there are not always enough people on the electoral roll to cover the required juror quota and where attendance rates for jury service were in decline. It was found that many people were unaware that jury duty would not impose on them greatly in terms of time (the average length of service being just three days in duration)<sup>24</sup> and that their income could be reimbursed.<sup>25</sup> The awareness campaigns were particularly effective in educating communities about the importance of jury service and what the role of a juror is, and in dispelling popular misconceptions in the community in regard to loss of income. The Commission is advised that following these campaigns there was a significant increase in juror attendance rates in these areas.<sup>26</sup>

## PROPOSAL 49

### Jury service awareness raising – reimbursement of lost income

That the Western Australian government provide resources for the Sheriff's Office to conduct regular jury service awareness raising strategies in metropolitan and regional areas to dispel any misconceptions that performing jury service will impose a financial burden on the juror or the juror's employer.

24. Information provided by Carl Campagnoli, Jury Manager (WA). It should be noted that Western Australia has one of the lowest lengths of jury service in Australia. Under s 42 of the *Juries Act 1957* (WA) jurors have a statutory limit of five days' attendance (unless they are serving as jurors in a part-heard case) and are only required to serve on one jury (if empanelled) even where the case is completed within the five days. In many other jurisdictions (eg, South Australia, Queensland, Australian Capital Territory and Northern Territory), jurors are on call for a full month with minimal compensation and may serve on up to four juries.
25. Information provided by Carl Campagnoli, Jury Manager (WA).
26. Carl Campagnoli, Jury Manager (WA), telephone consultation (2 September 2009).

# Protection of employment

**J**URIES legislation in most Australian jurisdictions provides for protection of jurors' employment by creating an offence for unfair dismissal or prejudice to employees summoned for jury service.<sup>1</sup> South Australia is the only jurisdiction that does not provide such protection in its *Juries Act*,<sup>2</sup> while in Western Australia the protection is limited to payment of wages while doing jury service.<sup>3</sup> In its 2007 study into matters that influence juror satisfaction in Australia, the Australian Institute of Criminology found that security of employment was a significant concern for people performing jury service.<sup>4</sup> It recommended that legislation be enacted in all jurisdictions to protect the income and jobs of jurors.<sup>5</sup>

The Commission has been advised by the Jury Manager in Perth that on occasion prospective jurors have complained that their employer has threatened them with dismissal if they perform jury service or has applied undue pressure on the employee to seek excusal.<sup>6</sup> Because there is currently no express offence in the *Juries Act 1957* (WA), the Sheriff's Office can only telephone the juror's employer and warn that interference with a person's jury service may constitute a contempt of court punishable by a fine or imprisonment.<sup>7</sup> The Commission's Guiding

1. See eg, *Juries Act 2003* (Tas) s 56; *Juries Act 2000* (Vic) s 76; *Jury Act 1995* (Qld) s 69; *Jury Act 1977* (NSW) s 69; *Jury Act 1967* (ACT) s 44AA; *Juries Act* (NT) s 52.
2. It is, however, noted that threatening an employee with loss of employment or income may fall under the offence of preventing or dissuading a person from performing jury service in the *Criminal Law Consolidation Act 1935* (SA) s 245(3).
3. Section 58B(3) of the *Juries Act 1957* (WA) provides that it is an offence for an employer not to pay the normal wage or earnings of an employee for the period that the employee is serving as a juror, whether or not the jury service breaches the contract of employment. The provision applies to any employee that is under a 'contract of service', which would include full-time, part-time and casual employees and possibly also independent contractors. The penalty ascribed to the offence is \$2,000.
4. Australian Institute of Criminology, *Practices, Policies and Procedures that Influence Juror Satisfaction in Australia*, Research and Public Policy Series No 87 (2008) 29.
5. *Ibid* 178.
6. Carl Campagnoli, Jury Manager (WA), email (11 September 2009).
7. In *Lovelady ex parte Medcalf* (1981) 5 A Crim R 197 the Full Court of the Supreme Court of Western Australia found that to dismiss a person from his or her employment because of jury service was directly to impinge on the administration of justice and would amount to contempt of court if it were proven beyond reasonable doubt.

Principle 4 supports reforms to the current law that will prevent or reduce any adverse consequences resulting from jury service. Western Australia is currently out of step with other Australian jurisdictions in relation to legislating for the protection of jurors who may be unfairly dismissed or whose employment may in anyway be prejudiced by their performance of jury service. The Commission is advised that the Courts' Jury Advisory Committee supports amendment of the *Juries Act* to provide for an offence to protect jurors' employment.<sup>8</sup> Indeed this course was suggested as early as 1981 by the Full Court of the Supreme Court of Western Australia as being preferable to controlling such conduct by actions for contempt of court.<sup>9</sup> The Commission agrees that a legislated offence is the appropriate course.

Having examined the legislative models currently existing in Australian jurisdictions, the Commission favours the legislative formulation found in s 76 of the *Juries Act 2000* (Vic):

## **Employment not to be terminated or prejudiced because of jury service**

- (1) An employer must not—
  - (a) terminate or threaten to terminate the employment of an employee; or
  - (b) otherwise prejudice the position of the employee—because the employee is, was or will be absent from employment on jury service.  
Penalty: In the case of a body corporate, 600 penalty units; In any other case, 120 penalty units or imprisonment for 12 months.
- (2) In proceedings for an offence against subsection (1), if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the termination, threat or prejudice was not actuated by the reason alleged in the charge lies on the defendant.
- (3) If an employer is found guilty of an offence against subsection (1), the court may—

8. Carl Campagnoli, Jury Manager (WA), email (11 September 2009).
9. *Lovelady ex parte Medcalf* (1981) 5 A Crim R 197, 200 (Burt CJ, Wickham & Kennedy JJ agreeing).

- (a) order the employer to pay the employee a specified sum by way of reimbursement for the salary or wages lost by the employee; and
  - (b) order that the employee be reinstated in his or her former position or a similar position.
- (4) If the court considers that it would be impracticable to re-instate the employee, the court may order the employer to pay the employee an amount of compensation not exceeding the amount of remuneration of the employee during the 12 months immediately before the employee's employment was terminated.
- (5) An order under subsection (3)(a) or (4) must be taken to be a judgment debt due by the employer to the employee and may be enforced in the court by which it was made.
- (6) The amount of salary or wages that would have been payable to an employee in respect of any period that his or her employer fails to give effect to an order under subsection (3)(b) is recoverable as a debt due to the employee by the employer in any court of competent jurisdiction.

However, the Commission believes that it is important that the offence extend also to anyone acting on behalf of an employer as adverted to in its New South Wales counterpart.<sup>10</sup> The Commission therefore makes the following proposal. The appropriate penalty for the proposed offence is discussed below.

## PROPOSAL 50

### Protection of employment

That a new provision be inserted into the *Juries Act 1957* (WA) modelled on the *Juries Act 2000* (Vic) s 76 and making it an offence for an employer or anyone acting on behalf of an employer to terminate, threaten to terminate or otherwise prejudice the position of an employee because the employee is, was or will be absent from employment on jury service.

## INDEPENDENT CONTRACTORS

The above provision would cover part-time, full-time and casual employees; however, a question arises whether persons engaged as independent contractors under a contract of service should also be protected. The NSWLRC considered this issue and determined that it was appropriate for the protection provided under s 69 of the *Jury Act 1977* (NSW) to be extended to make it an offence to terminate the contract for services or otherwise prejudice an independent contractor where

the contractor 'provides services on a continuing basis equivalent to employment'.<sup>11</sup> It was considered that such extension was essential in the contemporary workplace where many industries have moved from traditional employment structures to service contracts.<sup>12</sup> It is the Commission's preliminary view that the protection of employment should extend to independent contractors. Without this protection, many contractors who work for clients on a regular and ongoing basis may have no recourse under their contract for breach of contract where it is terminated solely by reason of the contractor performing his or her civic duty as a juror. However, before recommending this course the Commission seeks submissions as to whether there are any matters that it should have regard to in relation to independent contractors and jury service.

## INVITATION TO SUBMIT K

### Protection of employment – independent contractors

The Commission invites submissions about whether independent contractors who provide services on a continuing basis equivalent to employment should be statutorily protected from termination of their contract for service or from any prejudice to their position as contractor where they are required to perform jury service? Are there any matters to which the Commission should have particular regard in relation to protection of employment for independent contractors?

## APPROPRIATE PENALTY

Penalties for employers who unfairly dismiss an employee, threaten to dismiss an employee or prejudice an employee's position as a result of performing jury service vary widely. Table C on page 130 sets out the current<sup>13</sup> penalties in Australian jurisdictions.

In addition, the legislation in New South Wales, Tasmania, the Australian Capital Territory and Victoria (upon which the Commission's proposed offence is modelled) provides for orders to be made to reinstate the unfairly dismissed employee and reimburse lost wages. Such orders are standard in unfair dismissal legislation and are reflected in the *Industrial Relations Act 1979* (WA) s 23A.

11. NSWLRC, *Jury Selection*, Report No 117 (2007) recommendation 68.

12. *Ibid* 246.

13. As at 7 September 2009.

10. *Jury Act 1977* (NSW) s 69.

**Table C: Penalties attaching to protection of employment provisions in Australian jury legislation**

	Penalty amount	Legislative provision
<b>QLD</b>	Maximum 1 year's imprisonment	<i>Jury Act 1995</i> (Qld) s 69
<b>NSW</b>	Fine of \$2,200	<i>Jury Act 1977</i> (NSW) s 69
<b>ACT</b>	Maximum fine of \$5,000 (individual) or \$25,000 (corporation) or 6 months' imprisonment or both	<i>Juries Act 1967</i> (ACT) s 44AA
<b>NT</b>	Fine of \$5,000 or 12 months' imprisonment	<i>Juries Act</i> (NT) s 42
<b>TAS</b>	Maximum fine of \$14,400 (individual) or \$72,000 (corporation) or 12 months' imprisonment	<i>Juries Act 2003</i> (Tas) s 56
<b>VIC</b>	Fine of \$14,018 (individual) or \$70,092 (corporation) or 12 months' imprisonment	<i>Juries Act 2000</i> (Vic) s 76

An appropriate penalty for an offence under the *Juries Act* for dismissal or prejudice to employment by reason of the employee's service as a juror must acknowledge that jury service is an important civic duty that should be respected by the community. In Western Australia employers can have little reason to threaten a person's employment on the basis of jury service because they are fully reimbursed their employee's wages. In these circumstances, the Commission favours a high penalty reflecting the seriousness of the offence.

The Commission notes that the current penalty for failure to pay an employee performing jury service in Western Australia<sup>14</sup> is \$2000. While this is a reasonably low penalty, it intentionally reflects the penalty for breach by an employer of an employer–employee contract under s 83(4) of the *Industrial Relations Act*.<sup>15</sup> However, unfair dismissal or prejudicing an employee's position by reason of the employee's jury service is, in the Commission's opinion, a much more serious offence. In light of this, and in order to act as a deterrent, the Commission believes that the offence should carry both a fine and an alternative penalty of imprisonment. The Commission's preliminary view is that the fine should be in the range of \$5,000 to \$10,000 with an alternative penalty of 12 months' imprisonment. The Commission seeks submissions on this matter.

## INVITATION TO SUBMIT L

### Penalty for employers

The Commission invites submissions as to what level of fine is appropriate for employers who breach the offence created under Proposal 50 by terminating, threatening to terminate or otherwise prejudicing the position of an employee because the employee is, was or will be absent from employment on jury service? Should the penalty include an alternative term of imprisonment?

14. That is, the offence created under s 53B(3) of the *Juries Act 1957* (WA).

15. As explained in the explanatory memoranda to the amending Act: *Acts Amendment (Justice) Act 2008* (WA) s 67.

# Penalties for failure to comply with a juror summons

IN the preceding section the Commission discusses the allowances and protections available to jurors. Juror allowances are designed to ensure that jurors are adequately reimbursed for financial loss resulting from jury service. The Commission has also proposed that a new offence be inserted into the *Juries Act 1957* (WA) to ensure that jurors' employment status is not prejudiced as a consequence of undertaking jury service. Providing jurors with adequate allowances and ensuring the protection of employment reflects the Commission's Guiding Principle 4: that the law should prevent or reduce any adverse consequences resulting from jury service.<sup>1</sup> On the other hand, it is equally important that members of the community do not ignore or trivialise their responsibility to participate in jury service. In this section, the Commission considers the consequences of failing to comply with a juror summons.

## PROCESS FOR DEALING WITH NON-COMPLIANCE

The juror summons directs the person summoned to attend on a particular date and at a specified time and place. The summons form states that the person summoned is required to attend daily from that time until discharged. It is also clearly noted on the summons that failure to attend as required 'may result in a fine'. Statistics provided to the Commission by the Sheriff's Office show that for the 2008 calendar year approximately 16% of people summoned for jury service in Perth did not attend court or otherwise respond to the summons. Of these, 4% of people summoned had not been served with the juror summons and 3.6% of people received the summons late. A further 7.6% of people were excused after the Sheriff's Office conducted an investigation into why they did not attend and just less than 1% of people were referred to the District Court for action in respect of the non-compliance.<sup>2</sup>

In the metropolitan area, the Sheriff's Office compiles a list of people who did not attend ('DNA') for jury service. After waiting for approximately two weeks (in order to see if anyone contacts the Sheriff's Office because they received the summons late) the names on

the list are checked against current addresses on police records. If the address on this database is different to the address to which the summons was originally sent (ie, the address on the electoral roll) the person is given the benefit of the doubt – it is assumed that the summons was not received. For those remaining, the Sheriff's Office endeavours to make contact by phone or letter in order to determine if there was a valid reason for non-attendance. Following this process, those people who have not responded or who have not demonstrated a valid excuse are referred to the District Court to be dealt with in accordance with the provisions of the *Juries Act*. The Chief Judge of the District Court then imposes a fine in accordance with s 55(2) of the *Juries Act* (which provides that a court may, after receiving a report from the summoning officer, impose summarily 'such fine as the court thinks fit'. The Sheriff's Office then notifies those people who have been fined that they have 28 days in which to pay or, alternatively, show cause (by affidavit or appearance in court) why the fine should not be enforced. After considering such an affidavit, a judge may 'remit or reduce the fine but in default of any order to that effect recovery of the full amount of the fine shall be enforced'.<sup>3</sup> The fine imposed is then enforced through the Fines Enforcement Registry.<sup>4</sup>

The procedure appears to be different in regional courts because s 56(1) of the *Juries Act* provides that if a circuit court has imposed a fine for non-compliance with a juror summons, the person must show cause to the Supreme Court (as distinct from any court) why payment of the fine should not be enforced.

Section 59(1) of the *Juries Act* provides that a fine imposed under the Act is to be enforced under the provisions of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA). The fine is taken to be imposed on the date when the judge makes an order under s 56 to remit or reduce the fine or on the date a summons was issued to the person to show cause why the fine should not be enforced (whichever is the later).<sup>5</sup> Therefore, in order to enforce the fine through the *Fines, Penalties and Infringement Notices Enforcement Act* it is necessary for a

1. See above Chapter One, 'Guiding principles for reform of the juror selection process'.  
2. Sheriff's Office (WA), *Jury Information System Statistic Report: Breakdown of juror excusals – Perth Jury District 2008* (2009).

3. *Juries Act 1957* (WA) ss 56(2) & (3).  
4. Carl Campagnoli, Jury Manager (WA), consultation (7 December 2007) and (6 July 2009).  
5. *Juries Act 1957* (WA) s 59(2).

summons to first be issued by the court calling on the juror to show cause.

During consultations for this reference the Commission was advised by the Jury Manager and the Chief Judge of the District Court that the process for imposing and enforcing fines for non-compliance is cumbersome and inadequate.<sup>6</sup> The Commission agrees. The process involves multiple stages: a DNA investigation by the Sheriff's Office; referral of matters to the District Court; imposition of a fine by a judge; issuing of summons and notices to the person fined; consideration by a judge of any affidavits in relation to why the fine should not be enforced; and finally a decision to remit or reduce the previous fine imposed. And, after all of this takes place, outstanding fines are enforced under the *Fines, Penalties and Infringement Notices Enforcement Act* (which contains a series of options and stages for enforcing fines including possible licence suspension, seizure of goods and, ultimately, imprisonment). The Commission is of the view that the enforcement of fines for non-compliance should be simplified and streamlined. In particular, the Commission is of the view that the current process for imposing and enforcing fines for non-compliance creates an unnecessary burden on judicial resources.

The Commission's consultations have suggested that the best way of dealing with non-compliance is by an automatic infringement notice for non-compliance with a juror summons issued by the Sheriff's Office. The Commission agrees that a fine by way of infringement notice is appropriate, though it questions whether such a fine should apply 'automatically'. In this regard, the Commission notes the following:

- There are a significant number of people summoned who do not receive the juror summons at all or in time (eg, in 2008 approximately 7.6% of people summoned for jury service in Perth).
- That in certain regional locations there is no postal delivery service and therefore, unless mail is regularly collected from the post office, the person is unlikely to receive the juror summons<sup>7</sup> in time and may not receive the relevant notices from the Fines Enforcement Registry.
- That if an infringement is registered with the Fines Enforcement Registry and a licence suspension order has been made in default of payment, an application has to be made to a magistrate to cancel the licence suspension order.

6. Carl Campagnoli, Jury Manager (WA), consultation (7 December 2007); Chief Judge Kennedy, consultation (17 January 2008).

7. See above Chapter Two, 'Problems with the jury selection process'.

Therefore, in order to minimise any potential unfairness to members of the community who were genuinely unaware of the requirement to attend for jury service, the Commission supports a continuation of the existing practice of a DNA investigation by the Sheriff's Office.<sup>8</sup> This investigation process will identify some jurors who should not be penalised and will avoid the negative consequences of an automatic infringement for these people. Following the DNA investigation, the Commission proposes that the Sheriff's Office (or the summoning officer) issue an infringement notice in those cases where it appears that the person has failed to comply without a reasonable excuse.<sup>9</sup>

## PROPOSAL 51

### Penalties for non-compliance with a juror summons

That the *Juries Act 1957* (WA) be amended to provide that:

1. It is an offence to fail to comply with a juror summons without reasonable excuse.
2. If the summoning officer has reason to believe that a person has, without reasonable excuse, failed to comply with a juror summons, the summoning officer may issue an infringement notice in the prescribed form.<sup>10</sup>

## APPROPRIATE PENALTY

The Commission understands that, in practice, fines in the amount of \$250 are generally imposed on non-attending jurors in the metropolitan area, although in

8. The Jury Manager has indicated his support for a system where a preliminary investigation is undertaken before an infringement is issued: Carl Campagnoli, Jury Manager (WA), consultation (20 August 2009).

9. The offences of failing to comply with a juror summons in Victoria, Queensland, New South Wales and the Australian Capital Territory each adopt a similar phrase (eg, 'without reasonable excuse' or 'without valid and sufficient excuse': *Juries Act 2000* (Vic) s 71; *Jury Act 1995* (Qld) s 28; *Juries Act 1977* (NSW) s 63(3); *Juries Act 1967* (ACT) s 41).

10. Under the *Juries Act 1957* (WA) a fine may be imposed on a person who fails to attend a court or fails to attend the jury assembly room. Likewise, a talesman may be fined for failing to attend court or wilfully withdrawing him or herself from the court (s 55(1)(b)). Section 55 also provides that a person may be summarily fined by the court if he or she 'personates or attempts to personate a juror whose name is on a jury panel for the purpose of sitting as that juror' or if he or she knowingly receives any sum over and above the amount allowed as fees or remuneration for attending a trial. The Commission notes that these other offences may need to be reconsidered in light of the Commission's proposal; it may not be appropriate to issue an infringement notice for all of these offences and instead separate offences could be created with a specified maximum penalty.

**Table D: Penalties for non-compliance with a juror summons in Australian jurisdictions<sup>11</sup>**

	Maximum penalty	Legislative provision
<b>WA</b>	No set maximum amount (usually \$250)	Juries Act 1957 (WA) s 55
<b>NSW</b>	If person elects to pay first notice – \$1100 If not, but elects to pay penalty notice – \$1650 If dealt with by court, up to \$2200 <sup>12</sup>	Juries Act 1977 (NSW) ss 63(1), 64 & 66
<b>VIC</b>	\$3,504 <sup>13</sup> or 3 months' imprisonment	Juries Act 2000 (Vic) s 71(1) <sup>14</sup>
<b>QLD</b>	\$1,000 <sup>15</sup> or 2 months' imprisonment	Jury Act 1995 (Qld) s 28(1)
<b>SA</b>	\$1,250	Juries Act 1927 (SA) s 78(1)
<b>TAS</b>	\$3,600 <sup>16</sup> or 3 months' imprisonment	Juries Act 2003 (Tas) s 27(4)
<b>ACT</b>	\$500 <sup>17</sup>	Juries Act 1967 (ACT) s 41(1)
<b>NT</b>	\$500	Juries Act (NT) s 50

some instances fines up to \$1200 have been given in regional courts.<sup>18</sup> Table D above sets out the current penalties for non-compliance with a juror summons in other Australian jurisdictions. Although the Commission is unaware of the level of fines imposed in practice in other jurisdictions, it is noted that Western Australian penalties appear to be more lenient than elsewhere.

In its 2001 report, the New Zealand Law Commission (NZLC) discussed what the appropriate level of fine should be for failing to comply with a jury summons. At that time the maximum penalty in that jurisdiction was a fine of \$300. It was observed that this penalty 'is no disincentive to, for example, a busy professional or businessperson, who may well see it as cost-effective to incur the fine rather than lose a day's working time'.<sup>19</sup>

In order to provide for greater deterrence the NZLC recommended that the maximum penalty be increased to \$1000 and seven days' imprisonment. During Parliamentary debates in New South Wales it has been acknowledged that the penalty of \$220 (which existed in New South Wales until 1999) was probably an inadequate deterrent. However, it was also contended that the subsequently enacted penalties (eg, \$1100 for an infringement notice issued by the Sheriff) were too severe, especially for otherwise law-abiding citizens whose non-compliance is a result of an oversight rather than wilful disregard.<sup>20</sup>

The NSWLRC expressed the view that 'it would be undesirable if an impression was gained that the offence was not regarded by the courts as serious, or that jury service could be avoided by acceptance of a modest court-imposed fine or penalty'.<sup>21</sup> The Commission agrees that the penalty for failing to comply with a juror summons should reflect the seriousness of the offence and provide a sufficient incentive for jurors to attend for jury service. At the same time, the Commission recognises that community support for the jury system may be weakened if otherwise law-abiding citizens are penalised too harshly. For this reason, and bearing in mind that failure to attend for jury service will often occur as a result of oversight,<sup>22</sup> the Commission does not consider that imprisonment should be available as a penalty. However, the monetary penalty should be set at a sufficiently high level to act as a deterrent. Taking into account the penalties imposed in other jurisdictions, the

*Juries Act 1981* (NZ) provides for a maximum fine of \$1000.

11. As at 7 September 2009.

12. The penalty for failing to comply under s 63 is expressed as a maximum of 20 penalty units – by virtue of s 17 *Crimes (Sentencing Procedure) Act 1999* (NSW) one penalty unit is \$110.

13. The amount of the fine is stipulated as 30 penalty units – by virtue of s 5(2) of the *Monetary Units Act 2004* (Vic) one penalty unit is equal to \$116.82.

14. Section 71(3) of the *Juries Act 2000* (Vic) also provides that for an offence of failing to attend court once empanelled as a juror the penalty is a fine of \$7,009 or six months' imprisonment.

15. The amount of the fine is stipulated as 10 penalty units – by virtue of s 5(1)(c) of the *Penalties and Sentences Act 1992* (Qld) one penalty unit is equal to \$100.

16. The amount of the fine is stipulated as 30 penalty units – by virtue of ss 4 & 4A of the *Penalty Units and Other Penalties Act 1987* (Tas) one penalty unit is currently equal to \$120.

17. The amount of the fine is stipulated as five penalty units – by virtue of s 133 of the *Legislation Act 2001* (ACT) one penalty unit is equal to \$100.

18. Carl Campagnoli, Jury Manager (WA), consultation (6 July 2009).

19. NZLC, *Juries in Criminal Trials*, Report No 69 (2001) 67. This recommendation was implemented in part in 2008, s 32 of the

20. New South Wales, *Parliamentary Debates*, Legislative Assembly, 7 November 2001, 18225 (Mr M Richardson).

21. NSWLRC, *Jury Selection*, Report No 117 (2007) 165.

22. In contrast, the offence of threatening a juror's employment as set out in Proposal 50 involves much more wilful behaviour.

Commission's preliminary view is that the infringement notice penalty should be somewhere in the vicinity of \$600–\$800. If the person elected to have the matter dealt with in court rather than paying the modified infringement penalty, the maximum penalty available would need to be higher.

## INVITATION TO SUBMIT M

### **Penalty for failing to comply with a juror summons**

The Commission invites submissions about what level of fine should be prescribed for an infringement notice issued by the Sheriff or the summoning officer to a person who has failed to comply with a juror summons. Further, what level of fine should be available for the offence of failing to comply with a juror summons if that offence is dealt with by a court?