

Selection, Eligibility and Exemption of Jurors

Discussion Paper

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Law Reform
Commission of
Western Australia

The Law Reform Commission of Western Australia

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RECENT public debate about juries has centred upon the concern about whether juries have become unrepresentative of the community because of the number of people who are either disqualified, ineligible to serve or who seek to be excused as of right or apply to be excused for good reason. This has led to a perception that juries are populated by the unemployed and ‘housewives’. The Commission has analysed the data available from the Western Australian Sherriff’s Office and has found no support for this proposition in relation to Western Australian juries. Statistics for the most recent financial year show only 2% were Centrelink recipients and only 3% listed their employment status as ‘home duties’. A further 25% were employed in the public sector with 3% self-funded retirees and 2% students. The majority (57%) of jurors were employed in the private sector representing an extremely diverse occupational cross-section of the community.

Despite this the Commission has regarded the review of the processes and procedures concerning jury selection as timely in light of the fact that reforms have recently occurred in other Australian jurisdictions and internationally and the fact that the last formal review of the *Juries Act 1957* (WA) by the Law Reform Commission occurred in 1980. In reviewing the law in this area the Commission has been guided by a number of principles of reform which include recognising that the obligation to serve on a jury is an important civic responsibility to be shared as equitably as possible by the community. This should be balanced with an accused’s right to a fair and impartial trial before a lay jury that is independent of the state.

The Commission has proposed abolishing excuse as of right for certain professions and other groups in the community, reducing the categories of occupational ineligibility and introducing a system of deferral of jury service. In this way the Commission expects that the numbers of excusals will dramatically decrease and representation of the community will correspondingly increase.

Other important issues also addressed in this Discussion Paper are the process of empanelling juries, jury representativeness in regional areas and when a physical

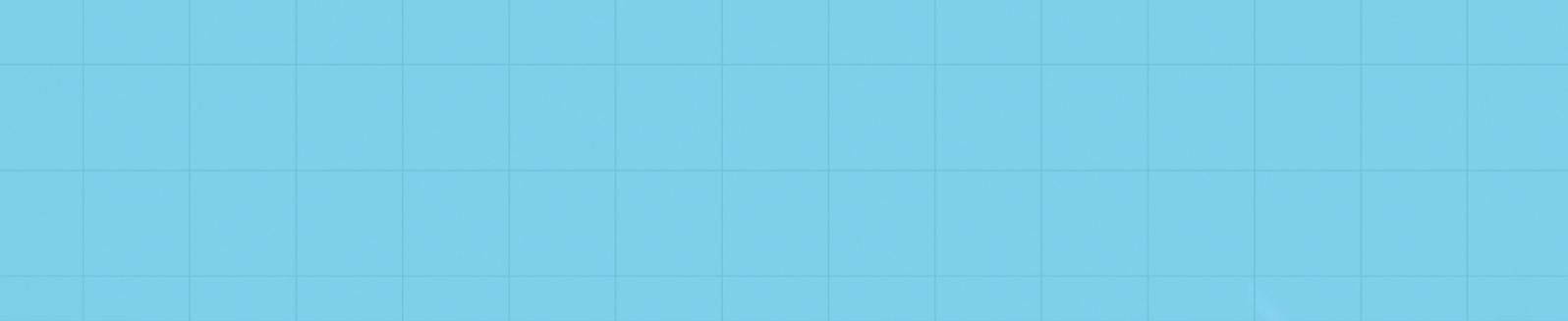
or mental disability should disqualify a person from serving as a juror. It is recognised that there may not be appropriate representation of Aboriginal people on juries; the Discussion Paper sets out the factors which may contribute to under-representation and makes suggestions for increasing representation of this group.

The Commission has approached its task of reforming the law relating to juror selection and exemption with the aim of ensuring that the law is principled, clear, consistent and relevant to the specific conditions experienced in Western Australia. The Commission has established six principles that have guided its proposals for reform which are set out in Chapter One. The paper goes on to examine the criteria for liability to serve as a juror, the categories of occupational ineligibility and disqualification from service, the categories of excuse, allowances for jury duty, protection of employment and enforcement of juror obligations.

The purpose of this Discussion Paper is to provide those interested in the issue of jury selection with a review of the law and a discussion of what the Commission believes are the relevant issues. The Commission has closely examined available research and data from Western Australia, other Australian jurisdictions and the United Kingdom. It has also consulted widely with people involved in the jury selection process in several jurisdictions in Australia and in England. As a result of its research the Commission has arrived at very considered and clear proposed reforms. Where the Commission has not been able to arrive at a clear proposal the Commission has posed consultation questions on which it invites submissions. A list of proposals and invitations to submit can be found at Appendices A and B. The Commission hopes that this Discussion Paper will engage our readers and stimulate responses for us to draw upon when we write our Final Report and make recommendations for government.

This is a fascinating and timely reference. I would like to thank the many people who have given the Commission their experience, advice and assistance. Their names appear in Appendix E.

Mary Anne Kenny
Chair



Executive summary

JURY trials have existed in Western Australia from the earliest days of settlement, but their use has diminished over time. Today juries are virtually unheard of in civil trials and are empanelled in less than 0.5% of criminal cases. Nonetheless, juries are widely considered to be an important protection of liberty and a guarantee of the sound administration of justice. Indeed, public confidence in the criminal justice system has been shown to be enhanced by the public's participation as jurors.

The *Juries Act 1957* (WA) sets out the system for selecting people for jury service in Western Australia. Only people aged between 18 and 70 years who are enrolled to vote in Western Australia are currently liable to serve as a juror. Each year a number of people are randomly chosen from the electoral roll for potential jury service. Of these people, some will be disqualified by reason of their criminal history, lack of understanding of English or mental or physical incapacity. Others will be ineligible for jury service because of their occupation (eg, police, lawyers, judges, members of Parliament etc). And still others will seek to be excused from jury service, either 'as of right' (eg, health professionals, emergency service workers and full-time carers) or for good cause (eg, undue hardship or illness). The judge or the summoning officer may also excuse a person from attendance on their own motion or the person may be challenged by counsel for the prosecution or the defence before being sworn as a juror.

Presently, the incidence of pre-attendance excuse (52%) and failure to attend (16%) pursuant to a jury summons is unacceptably high and it is this that has triggered a review of the provisions that govern selection, eligibility and excuse in the *Juries Act 1957* (WA).

The Commission has closely examined available research and data from all Australian jurisdictions, New Zealand and the United Kingdom. It has also consulted widely with people involved in the jury selection process in these jurisdictions. The Commission's analysis of Western Australian data has shown that several of the popular criticisms of juries have little or no basis in fact. For example, it has been reported that Western Australian juries are populated by the unemployed and by 'housewives'. The Commission has found that this is

not the case, with data showing that these categories make up only 5% of current jurors. There is also a perception that the 'professional' classes are not widely represented on juries. Again, data analysed by the Commission shows that this criticism cannot be sustained. Further, there is a perception that Aboriginal people and ethnic minorities are significantly underrepresented on juries. The available evidence does not appear to support this contention; however, existing data is limited in this regard. There is also a misconception that jurors in Western Australia are poorly remunerated for their service.

However, the Commission's research did find that the burden of jury service in Western Australia may presently be borne unequally. This is particularly so in regional areas where people may be called upon to serve as jurors much more often than those in metropolitan Perth. Indeed, in some regional areas it is possible that a person may be summoned to serve as a juror more than once a year. Further, there are a number of categories of people that are entitled to be excused from jury service 'as of right' irrespective of their individual circumstances or actual availability for jury service. The Commission makes a series of proposals to broaden the pool of potential jurors in Western Australia to increase participation in the jury system. These include such things as raising the age of jurors to 75 years; potentially increasing the size of jury districts; limiting those people who are automatically exempt from jury service; and enabling, by a series of practical measures, the source lists from which jurors are drawn to be more regularly updated.

The Commission has also found that the current list of ineligible occupations is unnecessarily wide. The Commission proposes that the number of ineligible occupations be reduced so that only those people who are intimately involved in the administration of justice (and in particular criminal justice) and whose presence on a jury may compromise its independent, impartial and lay nature are ineligible for jury service. Another significant proposed reform is the removal of 'as of right' excuses for health professionals, emergency service workers and others. Under the Commission's proposals people will only be relieved of the obligation to undertake jury service—and hence excused from further attendance—in the following circumstances:

- Where service would cause substantial inconvenience to the public or undue hardship or extreme inconvenience to a person.
- Where a person who, because of an inability to understand and communicate in English or because of sickness, infirmity or disability (whether physical, mental or intellectual), is unable to discharge the duties of a juror.
- Where a conflict of interest or some other knowledge, acquaintance or friendship exists that may result in the perception of a lack of impartiality in the juror

Currently many people apply to be excused from jury service for temporary reasons such as holidays, illness, exams, medical appointments or pressing work commitments. The Commission proposes that a deferral scheme be introduced in Western Australia to enable people who have a valid but temporary excuse to postpone their jury service to a time that is convenient to the juror and the court within the following 12 months. The capacity to postpone jury service is likely to facilitate greater participation in jury service, which will in turn ease the burden on other members of the community and increase the representative nature of juries.

Noting the current problems with a drawn-out process of penalising those who fail to comply with a jury summons, the Commission has proposed that an infringement notice system be introduced with a significant penalty attached. The Commission has also identified that there is currently no provision to protect a juror's employment while he or she is performing jury service. For this reason the Commission has proposed that a new provision be inserted into the *Juries Act* 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.

Inadequacy of remuneration for jurors is a common complaint in many jurisdictions 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, the Commission has found that Western Australia has the most generous system of juror allowances in Australia, covering actual loss of earnings for self-employed jurors and actual wages for employed jurors. The Commission proposes that awareness-raising strategies be implemented to dispel any misconceptions that performing jury service will impose a financial burden on the juror or the juror's employer. Furthermore, the Commission proposes that the relevant legislation

provide for reimbursement of reasonable child care and other carer expenses incurred as a consequence of jury service.

Finally, the Commission has proposed reforms to tighten up the current provisions regarding disqualification from jury service. This includes removing the significant anomalies caused by the current wording of the *Juries Act* in relation to jurors' past criminal convictions. For example, a person fined for fraud in the District Court is currently qualified for jury service, while a person sentenced to a Community Based Order for disorderly conduct (a much lesser offence) within five years is disqualified. Further, an adult offender convicted and sentenced to two years' imprisonment in August 2002 for sexual assault would presently be qualified for jury service, while a young offender sentenced to a Youth Community Based Order for six months in August 2005 for stealing would not. The Commission believes that the best way to ensure that the disqualifying provisions operate fairly and maintain public confidence in the jury system is to use a combination of offence-based and sentenced-based classifications with legislative criteria that distinguishes between those convictions that are so serious as to justify permanent disqualification and those that only demand temporary exclusion from jury service.

The Commission has approached the task of reforming the law relating to juror selection with the aim of ensuring that the law is principled, clear, consistent and relevant to the specific conditions experienced in Western Australia. It has devised six guiding principles for reform to encourage juries that are independent, impartial, competent and broadly representative. The Commission makes 51 proposals to improve the current process of juror selection, which reflect these guiding principles and, most importantly, ensure that the right to a fair and impartial trial before a lay jury is protected and the public's confidence in the jury system is maintained.