JURIES LEGISLATION AMENDMENT BILL 2010

Introduction and First Reading

Bill introduced, on motion by **Mr C.C. Porter (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR C.C. PORTER (Bateman — Attorney General) [3.32 pm]: I move —

That the bill be now read a second time.

The jury has its origins in a time before the Norman conquest of England in 1066. The inquest as a means of settling a fact under Anglo-Saxon law used a jury of accusation to establish the strength of an accusation against a criminal suspect. Subsequently, in the eleventh and twelfth centuries the nature of the jury changed to become less of a trier of fact and more a decider of property disputes. In 1215, following the withdrawal of the Roman Catholic Church's support for trials by ordeal, the jury began to be used for determining guilt or innocence.

Juries were formally introduced into Western Australia in 1830 and the state has the distinction of having the first true civilian jury to sit in Australia. As the reforms being introduced today are largely concerned with eligibility, it is interesting to note the jury eligibility in 1830 was simply all males between 21 and 60 years who owned real estate to the value of at least £50. Court officials, civil servants, clergymen, legal practitioners, doctors, criminals and justices of the peace were excluded.

The first specific jury legislation was introduced through the Jury Act of 1898, which consolidated existing eligibility provisions. Minor amendments were then made to this act in 1937 that further extended exempt occupations. All through this time, the property qualification effectively excluded most Indigenous persons from jury service. It was not until the current Juries Act was passed in 1957 that the property qualification was removed so that it was technically possible for Aboriginal people to sit on a jury. At this time, gender exclusion was also removed, although women were granted a right to be excused from jury service. Amendments in 1983 redefined the concepts of eligibility, qualification and excusal; introduced the concept of disqualification on the basis of penalty received rather than the nature of the offence itself; and formally made Aboriginal people—recognising the vote granted to them in 1962—liable to serve on juries.

In a nutshell, the jury system has remained fundamentally unchanged for many hundreds of years, and as a strong supporter of the system, I hope that remains the case for the next 100 years. Although no process involving human decision making can ever be flawless, it is worth noting that in 2009, for example, some 600 jury trials were held in Western Australia. In that same year, only three appeals resulted in a retrial—noting that appeals dealt with in one year do not necessarily relate to trials held in the same year. As with many other aspects of the way the media responds to public services, great emphasis is often placed on the isolated mistrial whilst little attention is placed on the over 600 trials a year in which the verdict is delivered by the jury and the offender dealt with accordingly.

As this brief history has shown, there have been, over time, a series of improvements to the way juries are selected and their composition, over time, and the reforms that I introduce today will continue this.

Part 2 of the Juries Legislation Amendment Bill amends the Criminal Procedure Act to provide the prosecution in a criminal trial with the same number of peremptory challenges as the accused. This will particularly apply in cases where there is more than one accused. In the Macleod trial in 2009, this meant that the accused potentially had 15 challenges whereas the prosecution had only five. Clearly there is an inequity. To cater for the increased number of challenges available to each side, and to keep the number of potential jurors required to a reasonable level, section 104 of the Criminal Procedure Act has been amended to reduce the number of challenges to three per accused per side. This will have the effect of requiring a modest increase in the size of the jury pool in trials with more than two accused, but this will be more than offset by initiatives to increase the availability of persons to jury duty, which I will outline in a moment.

Part 3 of the bill and its two schedules effectively distinguish the grounds on which a person is not eligible to be a juror and the grounds upon which a person can seek to be excused from jury service either temporarily or permanently. Ineligibility for jury duty is addressed in clause 10 and its reference to a completely revised schedule 1. Clause 10, which amends section 5 of the Juries Act 1957, adds a further restriction to serving on a jury for those persons previously convicted of criminal offences. Clause 10(2)(g) prescribes that a person convicted of two or more imprisonable offences or three or more offences under the Road Traffic Act in the five years before the summons is issued become unqualified to serve on a jury. The inadequacies of the current disqualification provisions for persons with criminal records have become apparent over the past two years. The provisions being introduced today make it clear that a pattern of offending, especially one that does not result in

imprisonment, should disqualify a person from jury duty as it casts doubt on their ability to appropriately, objectively and without prejudice determine the guilt or innocence of another.

Schedule 1 implements the most significant aspects of the government's intent to increase community representation on juries. It removes entirely the category of persons who are "excused as of right" from serving as jurors. This change alone is estimated to result in an increase of some 10 000 persons per annum to the jury pool. As a result, each and every person summoned who is not specifically ineligible will need to provide a reason for excusal, and this will be individually considered by a summonsing officer or the court. This will have the effect such that persons engaged in emergency services, health and health-related fields, in occupations associated with religious practice, or persons who care for others and persons aged between 65 and 70 will no longer be excused as of right. Rather, if any individual considers that he or she cannot or should not sit on a jury, he or she will be required to seek excusal on the ground specified in part 3.

The revised schedule 1 also serves to implement the government's commitment to reduce the number of persons presently ineligible for jury service by virtue simply of their office or occupation. For example, under the existing second schedule part I, judges, magistrates and other named statutory officeholders are permanently exempted from jury service, yet it could be argued that once these people leave a particular office, they may be the very people who could add significant value to jury decision making. Existing part I of the second schedule also exempts for a period of five years a multitude of officers and occupations from members of Parliament to all employees of the department of government that administers the justice system.

The proposed revised schedule 1, divisions 1 and 2, significantly changes the present system of broad and various exclusions of a large number of professionals and exempts only statutory officeholders and members of Parliament from jury service whilst they hold the office or appointment. The rationale for this change is straightforward: why should we all—I mean by this members sitting in this house and in the other chamber—not be able to provide this vital community service once we have left the Parliament? Clearly, if a member of this house or one of the other categories of person exempt whilst in office believes there may be continuing conflict of interest in their sitting on a jury for an accused even after they have left office, it will still be open for them to seek an excusal under proposed section 34I on the grounds that they are not indifferent.

Proposed revised schedule 1 division 3 taken together with proposed section 34K, "Certain lawyers, excusing", implements that if health professionals and other professional persons should not be exempt from jury service, then neither should lawyers as a group, unless of course the lawyer is "not indifferent" to the accused. This having been said, it will still be the case that schedule 1 division 3 will exempt those lawyers working for agencies that exclusively or almost exclusively deal with criminal matters. Lawyers working for the Director of Public Prosecutions, for example, and some other specified organisations, will be exempt. All other lawyers will need to seek an excusal via proposed section 34K on the grounds that some of their work is criminal in nature or they may attempt to argue other grounds for excusal. It is of note that as recently as June 2010 the Jury Amendment Act 2010 was passed by the New South Wales Parliament, which, amongst other things, provides for lawyers to sit on juries. We all know that there are many lawyers in the state who have nothing whatsoever to do with criminal law. These changes are primarily aimed at ensuring the jury system reaps the benefit of this talented pool of individuals.

Divisions 4 and 5 exempt police officers and authorised officers of the Corruption and Crime Commission from jury service whilst they hold office. Whilst some countries, such as the United Kingdom and some states of the United States, do not exempt police officers as a group, the experiences, particularly in the UK where a number of trials have been aborted due to perceived conflict of interest, have persuaded me at least that justice is perhaps best served by exempting them.

At this point it is necessary to note the important role public perception and confidence play in achieving balanced reform in this area. This bill is motivated by the principle that public confidence is enhanced when juries are drawn from the broadest possible number of citizens as this inherently makes juries more representative of the community as a whole. However, the bill does not go as far as to include all lawyers, police or CCC officers. This is not because the government considers these persons would not contribute as quality and fair jurors. Rather, it acknowledges that for police, CCC officers and those few lawyers involved in criminal practice, there is at least enough risk of a public perception of possible inherent bias to arise in some circumstances to outweigh the benefits associated with the inclusion of these persons.

Finally, clause 10 also clarifies other disqualifications such as persons currently awaiting trial, persons who are involuntary patients under the Mental Health Act 1996, represented persons under the Guardianship and Administration Act 1990 and persons subject to the Criminal Law (Mentally Impaired Accused) Act 1996.

The balance of part 3 of the Juries Legislation Amendment Bill introduces a number of procedural reforms many of which were proposals put forward by the WA Law Reform Commission in its discussion paper of September

2009 entitled "Selection, Eligibility and Exemption of Jurors". These include amendments to allow juror lists to be provided to the Sheriff's Office electronically as opposed to requiring printing.

However, proposed amendments to part VC of the Juries Act contained in part 3 of the bill deal with excusals, which together with exemptions, provide the focus for another key government reform. Proposed sections 34G to 34K provide for, amongst other things: a clear process for reviewing a summoning officer's decision, an appropriate decision-making authority for officers who grant excusals, a process for seeking a deferral from jury duty, a process for seeking excusal on the grounds of not being indifferent toward the parties, and a clearer definition of the grounds for seeking excusal from a particular jury summons on the basis of having previously completed jury duty.

A key reform amongst this group of amendments is the introduction of an ability to defer jury duty for up to six months—namely, proposed section 34H. It has been put to me on a number of occasions in the past two years that there are many people committed to serving on a jury, but who argue that for important and urgent personal reasons they are unable to respond to a particular summons at a point in time. Currently, these people seek an excusal and if excused do not have an opportunity to perform jury duty again unless they are randomly selected from the electoral roll in a subsequent year. Proposed section 34H allows deferral for up to six months or until the first panel of jurors is selected after this period, provided the reason is based on one prescribed in subsection (2) of proposed section 34H. Proposed section 34H also qualifies the grounds that could give rise to "hardship" as a reason for excusal. The proposed wording is designed to be more inclusive than the existing provision contained in the current third schedule.

Proposed section 34J is also a reform arising from community input, which allows a person who has completed jury duty in the past five years to apply for an excusal from another summons. This of course depends on whether there are sufficient numbers in that particular jury pool.

Part 4 of the bill covers miscellaneous amendments, the most significant of which, from the government's point of view, is reform of the way persons who fail to obey a summons for jury duty, and who are not excused, are prosecuted. Presently, there is a cumbersome and lengthy process involving summons, appearance in court and a fine of any amount the court thinks fit. This is to be replaced by a simple infringement notice, which can be issued by the summoning officer or the court. The modified penalty applicable will be a flat-rate fine of $800, which reflects the government's view of the seriousness of ignoring this particular community obligation. Part 4 also ensures that employers, whether directly or through a contractual arrangement, who refuse to allow an employee to attend for jury duty or who terminate an employee's employment because they attended for jury duty, will face appropriately serious consequences—in this case, a fine of $10 000 for an individual or $50 000 for a body corporate.

On the ultimate analysis, these reforms maintain a commitment to continuous improvement of a most crucial part of our criminal justice system—the jury. Apart from being involved either as an accused or a witness, the jury offers members of the public, who might never have any other involvement in the criminal justice system, an opportunity to see it working firsthand and contribute to a system that is critical to the proper functioning of the civil society of which all jurors, as citizens, are a part. It is critical for the integrity of the criminal justice system and our democratic civil society that juries remain, that their processes and functioning are improved at every opportunity and that the composition of the jury reflects the wider community as closely as possible. The bill I introduce today is aimed at achieving all three of these goals. I now commend the Juries Legislation Amendment Bill 2010 to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.