

JURIES LEGISLATION AMENDMENT BILL 2010

EXPLANATORY MEMORANDUM

Overview of the Bill

The Juries Legislation Amendment Bill 2010 primarily amends the *Juries Act 1957* to:

- Broaden community representation on juries;
- Allow deferment of jury service for a short period of time;
- Clarify the concepts of “ineligibility” and “excusal” in terms of jury service;
- Provide for a more streamlined process for prosecuting persons who, without proper excuse, fail to report for jury service, and
- Introduce a number of other minor procedural changes.

The Bill also amends the *Criminal Procedure Act 2004* to provide for prosecutors and defence counsel to have the same number of peremptory challenges and for this number to be reduced from 5 to 3.

PART 1 – Preliminary

1. Short Title

This is the *Juries Legislation Amendment Act 2010*.

2. Commencement

This Act comes into operation as follows –

- (a) Part 1 – on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act – on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 – Amendments about peremptory challenges

Division 1 – *Criminal Procedure Act 2004* amended

3. Act amended

This clause provides for amendment to the *Criminal Procedure Act 2004*.

4. Section 104 amended

4(1) Section 104(3) is deleted and replaced by Section 104(3) (a) and (b). The new section provides a prosecutor with 3 peremptory challenges for an accused and where there are 2 or more accused, 3 challenges per accused. Previously, the prosecutor was only entitled to challenge 5 jurors irrespective of the number of accused.

4(2) Section 104(4) is amended by deleting 5 jurors and inserting 3 jurors.

The purpose of this amendment is to provide an equal number of peremptory challenges to the prosecution as the accused and at the same time reduce the number of challenges per accused.

Division 2 – Juries Act 1957 amended

5. Act amended

This Division amends the *Juries Act 1957*.

6. Section 32G amended

This section is amended to reflect that the number of persons to be specified in a pool will now include sufficient to cater for increased prosecutor peremptory challenges as provided for by way of amendment of section 104 of the *Criminal Procedure Act 2004*.

Part 3 – Amendments about liability to serve as a juror and being excused

Division 1 – Juries Act 1957 amended

7. Act amended

This Division amends the *Juries Act 1957*.

8. Section 3 amended

Section 3 – “Terms used” is amended by inserting new terms in alphabetical order they being, Australian legal practitioner, Electoral Commissioner, mental illness, mental impairment and proper officer.

9. Section 4 amended

This section is amended through the insertion of Section 4(2) which provides for the circumstance of persons on electoral rolls to whom Section 4(1) - a persons liability to serve as a juror, does not apply because of their residence overseas or in the circumstance where they have no fixed address.

10. Section 5 amended

This section introduces a new Subsection 1 which defines the term ‘conviction’ for the purposes of this section.

A new Subsection 2 defines the period for which prior convictions can count toward ineligibility for jury service.

The amendments also reorganise current S 5(b) to include proposed new Schedule 1 and to introduce new eligibility criteria in relation to prior criminal convictions.

11. Part IV heading replaced

This clause simply changes the heading of Part IV to read “Jurors’ books, boxes and tickets” to accurately reflect that tickets are used in this process and not cards.

Part IV – Jurors’ books, boxes and tickets

12. Section 14 amended

The purpose of this clause is to amend Section 14 by putting an age limit of 75 years on jurors and to allow the Electoral Commission to provide a list of persons selected for each jury district other than in a printed form.

It also deletes sections 14(8), (10), (11) and (12) which relate to the compilation of jurors’ books for each district, and is replaced by the insertion of Section 16A as described below.

13. Section 16A inserted

This clause stipulates the administrative requirements associated with the preparation of jurors’ books by the Sheriff before 1 July of each year for the different jury districts, including the requirement for the sheriff to omit the names of persons ineligible or not qualified to serve as a juror.

14. Section 17 amended

This is a minor amendment which relates to the obligation of Police officers rendering assistance to the Sheriff or Electoral Commissioner in the compilation of jury lists and books, particularly with regard to ascertaining the names of persons who are “eligible” or qualified to serve as jurors.

15. Section 24 amended

This again is a relatively minor amendment which tightens the conditions related to persons not being returned as a juror for a trial of any issue before a court or for amending or enlarging a panel by a judge, unless he or she is “eligible” and qualified.

16. Section 26 amended

This clause replaces sections 26(2), (3) and (4) related to the procedure for choosing jurors for criminal trials. It simply sets out the process to be followed in terms of drawing numbered tickets from a box which corresponds to the names of jurors and the recording of those names against the corresponding numbers.

17. Section 27 replaced

This clause deletes the previous section 27 and replaces it with a new section 27. It sets out the grounds on which extra persons may be summoned to make up for people not attending, either by way of them not being able to be served with a summons or by being excused.

18. Section 28 amended

The effect of this amendment is the simplification of the description of what is to happen when a ticket is drawn for a person who cannot be served or has not attended i.e. the ticket bearing the number of that person is to be placed in a box marked "Jurors in Reserve".

19. Section 29 amended

This clause amends section 29(2)(h) to reflect that if a person who doesn't attend on the basis of an excusal rather than for "any reason", then providing other names remain on the list, the summoning officer may summon another juror.

20. Section 29A amended

These are minor changes related to the realignment of references to amendments to Section 26.

21. Section 30 replaced

This clause determines access by parties to the inspection of the panel or pool of jurors under s43A before a criminal trial to be from 8 a.m. on the day the trial is listed to begin.

22. Section 32 deleted

Section 32 "Power of court to excuse jurors" has been deleted as s32 refers to the Third Schedule which has now been deleted. This provision is now more accurately described in the new Schedule 2.

23. Section 32C amended

This clause provides that the summoning officer in a jury district is to select an appropriate number of persons from a jury book to ensure there will be a sufficient attendance of persons at the jury pool including those deferred jurors required for the pool.

24. Section 32D amended

Section 32D is amended to provide that a summoning officer must not issue a summons to a person if they are satisfied the person is not eligible or qualified to serve as a juror, has a certificate of excusal, is exempt, no longer resides in the district, has no known address or has died.

25. Section 32E amended

This clause amends section 32E(2) to provide for ballots to be performed manually or by a computer.

26. Section 32F amended

This clause reflects advice to the jury pool supervisor of the names of persons excused and that the excusal is by way of the new Division 2 of

Part VC – Excusing People, which, as the title indicates, stipulates the process that relates to excusals.

27. Section 32FA amended

This clause reflects that Schedule 4 has been deleted and that matters previously covered in that schedule relating to the need for jurors to disclose the existence of certain factors is now covered in Schedule 2.

28. Section 32H amended

This amended section simply updates the description of the manner in which a person in a pool excused by the court under Part VC Division 2 shall be replaced.

29. Part VC heading replaced

30.

PART VC – Serving summonses and excusing people

Division 1 – Serving summonses

This amendment simply replaces the previous heading of Part VC “Service of summonses and claims for exemption”.

31. Section 33 amended

Section 33(6) is deleted as the definition of Electoral Commissioner has been moved to Section 3.

32. Section 33A replaced

The new section 33A stipulates more clearly the information to be contained in the notice attached to the summons for attendance advising of the manner that a claim of not being eligible or qualified to be a juror is to be made, the procedure to apply for excusal and the information a person is to disclose to the summoning officer or the court.

33. Section 34A deleted

Section 34A is deleted as this is covered in the new Part VC – “Serving summonses and excusing people”

34. Section 34B amended

This amendment reflects that the disclosure of certain factors previously contained within the Fourth Schedule have been moved to Schedule 2.

35. Part VC Division 2 inserted

Division 2 – Excusing people

A new Division covering the excusal of persons from jury duty has been inserted.

Section 34D

Advises the insertion of the Division does not affect the ability of a prosecutor or accused to challenge a juror under section 104(5) of the *Criminal Procedure Act 2004*.

Section 34E

Provides for the Sheriff to issue a certificate to permanently excuse a person from serving as a juror and that the Sheriff may seek information by way of statutory declaration in order to do so. It also provides that the sheriff is to notify the Electoral Commissioner in order to ensure the persons name does not appear on any future jury list. It also provides that the Sheriff may cancel a certificate.

Section 34F

Provides that persons may apply to be excused by making an application to the summoning officer, who may refer the application to a judge to decide. If a summoning officer refuses an application the applicant may renew the application before a judge. It also provides that the summoning officer may request information from an applicant by way of a statutory declaration to substantiate the grounds for an application.

Section 34G

Stipulates who may excuse a person from jury duty, the grounds on which that may be done and that if excused, the persons name must be removed from the panel of jurors, the ticket bearing the persons name is to be removed from every box and the name and number removed from the jurors book for the district. If, however, a person is excused by way of section 34G (2)(e) or (f) (cannot speak English well enough to be a juror or is not capable because of a physical disability or mental impairment) their name must not be removed by reason only of the excusal.

Section 34H

Is a new provision which allows a judge or summoning officer to defer a person from doing jury duty for six months or until the first panel of jurors selected after that period, if reasons stipulated in section 34(H)(2) exist. These could include the nature of the person's business or occupation, a special or pressing commitment, mental impairment, physical disability, a person's state of health or other personal circumstances.

Section 34I

Provides that a judge on his or her own initiative or on application by a person may excuse that person if it is considered they would not be indifferent between the parties in the trial. A summoning officer can only exclude such a person if an application is made by that person under section 34F. The name of such a person must remain on the jurors panel until the panel or pool is no longer required.

Section 34J

Allows a person who has done jury duty within the previous five years to apply to be excused from a summons. The excusal can be given by either a judges or a summoning officer, but only on application by the person concerned and providing a sufficient number of other persons who were summoned are present for the purposes of choosing jurors.

Section 34K

Provides that if a person summoned is an Australian legal practitioner practicing either criminal law or civil law and they are summoned for the purpose of one or more a civil or criminal trials, which correspond to the area in which they are practicing, they may be excused by either a judge or summoning officer if they make an application under section 34F. Otherwise they are required to remain on the panel of jurors or the jury pool.

36. Section 52 amended

This section is amended to include the word eligible, when referring to persons who may be bystanders or “found” by a summoning officer who commands them to serve as a juror in circumstances where insufficient summoned persons attend the court or where because of the number of summoned persons eliminated through challenges, there is a risk the case will remain untried.

37. First, Second, Third and Fourth Schedules replaced

This clause deletes the First, Second, Third and Fourth Schedules and inserts Schedules 1 and 2.

Schedule 1 – Classes of Persons not eligible to be jurors

Schedule 1 stipulates those classes of persons not eligible to be jurors.

Division 1 of Schedule 1 stipulates those persons not eligible for civil and criminal trials, whereas Division 2 specifically identifies certain legal practitioners, certain public servants and officers in the WA Police who are ineligible to be jurors for criminal trials.

Schedule 2 – Matters to be disclosed by a person appearing in answer to a summons to be a juror

Schedule 2 stipulates those matters to be disclosed by a person appearing in answer to a summons to be a juror, including whether the person has reached 75 years of age, if they are a person listed in Schedule 1 (depending on the nature of the trial), whether they have a criminal record that disqualifies them in accordance with section 5(3)(b) etc.

Division 2 *Criminal Procedure Act 2004* amended

38. Act amended

This Division amend the *Criminal Procedure Act 2004*.

39. Section 104 amended

Section 104(5)(a) is deleted and replaced by a new section 104(5)(a) which strengthens a prosecutor’s or accused’s ability to challenge a persons suitability to be a juror by including the words “not eligible” and referring to section 5 of the *Juries Act 1957* which has been amended to include new provisions relating to convictions.

Part 4 – Miscellaneous amendments

40. Act amended

This part amends the *Juries Act 1957*.

41. Section 2 deleted

Section 2 is deleted

42. Section 32H amended

Section 32(H)(4) is deleted and replaced by a new section 34(H)(4) which is more explicit than the replaced section in that it stipulates that the jury pool supervisor or an officer on his behalf shall direct persons selected in pursuance of the pool precept to attend at the court and at the time specified in the precept.

43. Section 55 and 56 replaced

Section 55 has been replaced. The new section stipulates the grounds on which an offence is committed by jurors and others and sets the penalty of a fine of \$5,000 whereas no limit to the fine that could be imposed previously existed.

Section 56 is a new provision that enables action to be taken by the court against employers who act prejudicially against employees who have done or are currently doing jury service.

The penalty for an individual employer who is deemed to have done so is \$10,000 and \$50,000 if the employer is a body corporate.

Where a court convicts an employer of acting prejudicially it may order the employer to pay the employee compensation for any prejudice suffered, including lost remuneration.

Where a person's employment is terminated the court may order the re-employment of the employee or it may order the employer to pay the employee compensation for loss or injury caused by the termination.

Compensation orders made may be enforced under the *Civil Judgments Enforcement Act 2004*.

Action against any employer under this section does not prevent proceedings for contempt and they can be punished for both contempt and proceedings under this section.

44. Section 58B amended

Section 58(3) to (6) are deleted and new sections 58B (3),(4) and (5) are inserted.

These sections relate to the payment of employers and employees where the employment is by way of contract, for the period of jury service performed, in accordance with prescribed regulations.

45. Section 59 amended

The amendment to this section clarifies that although a fine may be imposed for an act or omission committed by person under the *Juries Act 1957*, it does not constitute an offence.