

JURIES AMENDMENT BILL 1998

A BILL FOR

An Act to amend the *Juries Act 1957*

CURRENT LEGISLATION	PROPOSED LEGISLATION	COMMENTS
	<p>1. Short Title</p> <p>This Act may be cited as the <i>Juries Amendment Act 1998</i>.</p>	<p>Short title of Act.</p>
	<p>2. Commencement</p> <p>This Act comes into operation on the day on which it receives the Royal Assent.</p>	<p>The commencement of the Act is on assent.</p>
	<p>3. The Act amended</p> <p>The amendments in this Act are to the <i>Juries Act 1957</i>* [*Reprinted as at 2 December 1987. For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p.120.]</p>	<p>The various amendments are amendments to the <i>Juries Act 1957</i>.</p>

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<p>Section 5.</p> <p>5. Notwithstanding that a person is liable to serve as a juror by virtue of section 4 that person -</p> <p>(a) is not eligible to serve as a juror if -</p> <p>(i) he or she is a person within the classes of person listed in Part I of the Second Schedule;</p> <p>or</p> <p>(ii) he or she has attained the age of 65 years;</p> <p>(b) is not qualified to serve as a juror if he or she -</p> <p>(i) has been convicted of an offence in Western Australia or elsewhere and sentenced to -</p> <p>(ii) has at any time within 5 years in Western Australia or elsewhere -</p> <p>(I) served any part of a sentence of imprisonment or been on parole in respect of any such sentence;</p>	<p>4. Section 5 amended.</p> <p>5. Notwithstanding that a person is liable to serve as a juror by virtue of section 4 that person -</p> <p>(a) is not eligible to serve as a juror if -</p> <p>(i) he or she is a person within the classes of person listed in Part I of the Second Schedule;</p> <p>or</p> <p>(ii) he or she has attained the age of <u>70</u> years;</p> <p>(b) is not qualified to serve as a juror if he or she -</p> <p>(i) has been convicted of an offence in Western Australia or elsewhere and sentenced to -</p> <p>(ii) has at any time within 5 years in Western Australia or elsewhere -</p> <p>(I) <u>been the subject</u> of a sentence of imprisonment or been on parole in respect of any such sentence;</p>	<p>Existing legislative provisions limit the age of eligibility for jury service to 65 years.</p> <p>The proposed amendment allows for persons to be eligible to serve as a juror until they reach the age of 70 years.</p> <p>Persons sentenced to "suspended imprisonment" are not excluded from jury service under existing provisions. (the existing provisions pre-date suspended imprisonment which was not brought about until the introduction of the <i>Sentencing Act 1995</i>).</p> <p>The proposed amendment is to exclude persons from eligibility for jury service if they, in the past five (5) years, have been the subject of a term of imprisonment, which was ordered to be suspended.</p>

CURRENT LEGISLATION	PROPOSED LEGISLATION	COMMENTS
<p>Section 18.</p> <p>(3) Reserve jurors -</p> <p>(c) shall be subject to the same challenges, stand asides, and liability to discharge;</p> <p>as jurors and for that purpose the law in respect of jurors shall apply to and in relation to reserve jurors with such modifications as are required by this section.</p> <p>(4) Where reserve jurors are called the number of peremptory challenges, or the number of stand asides, permitted by section 38 is not increased.</p>	<p>5. Section 18 amended.</p> <p>(3) Reserve jurors -</p> <p>(c) shall be subject to the same challenges and liability to discharge;</p> <p>as jurors and for that purpose the law in respect of jurors shall apply to and in relation to reserve jurors with such modifications as are required by this section.</p> <p>(4) Where reserve jurors are called the number of peremptory challenges permitted by section 38 is not increased.</p>	<p>Section 38 allows the Crown a right to have a prospective juror "stand aside" when called, rather than take his / her place on the jury panel. This is not a formal "challenge" and it does not preclude the juror from being called again in the event that the jury pool is exhausted prior to the panel being finalised. The Crown currently has the right to "stand aside" four jurors in this manner.</p> <p>The proposed amendments to these sections which deal with the issue of reserve jurors, are required to remove reference to the right to stand aside jurors. The amendments to these sections are consequential to amendments proposed to section 38, which will remove the Crown's right to "stand aside" jurors altogether. (This is dealt with elsewhere in these clause notes).</p>
<p>Section 29 (2).</p> <p>(c) Persons joining in claim, defence, or counter claim, shall be regarded as forming one party; and a person who is introduced under third party procedure and who disputes the plaintiffs claim shall be regarded as separtate from the other parties, but if 2 or more persons so introduced join in defence they shall be regarded as collectively forming a separate party.</p>	<p>6. Section 29 (2) amended.</p> <p>(c) Persons joining in claim, defence, or counter claim, shall be regarded as forming one party; and a person who is introduced under third party procedure and who disputes the plaintiffs claim shall be regarded as <u>separate</u> from the other parties, but if 2 or more persons so introduced join in defence they shall be regarded as collectively forming a separate party.</p>	<p>The proposed amendment is required to correct the mis-spelling of the word "separate".</p>

CURRENT LEGISLATION	PROPOSED LEGISLATION	COMMENTS
<p>Section 29A.</p> <p>29A. (1) A summoning officer may instead of manual performance carry out by the use of a computer in respect of a trial in a Circuit Court -</p> <p>(a) the procedures for and in relation to the choosing of a jury for a criminal trial referred to in sections 26 (2), (3), (4) and (5), 27 and 28; and</p> <p>(b) the procedures for and in relation to the choosing of a jury for a civil trial referred to in section 29 (2) (a), (b), (d), (f), (g), (h) and (3).</p>	<p>7. Section 29A amended.</p> <p>29A. (1) A summoning officer may instead of manual performance carry out by the use of a <u>computer</u> -</p> <p>(a) <u>in respect of a criminal trial held at a place other than Perth</u>, the procedures for and in relation to the choosing of a jury for a criminal trial referred to in sections 26 (2), (3), (4) and (5), 27 and 28; and</p> <p>(b) the procedures for and in relation to the choosing of a jury for a civil trial referred to in section 29 (2) (a), (b), (d), (f), (g), (h) and (3).</p>	<p>A Circuit Court, as currently defined in the Act, does not include the Supreme Court or District Court sitting at Perth.</p> <p>The proposed amendment will allow the Sheriff to use a computer to select jurors:</p> <p>(1) for a criminal trial held in the Supreme Court and the District Court sitting at a place other than Perth; and</p> <p>(2) for a civil trial held in the Supreme Court and the District Court sitting at Perth.</p>
<p>Section 33.</p> <p>33. (1) A summons or notice required or authorized by or under this Act to be sent, served or given to any person by a summoning officer shall be deemed to have been duly sent, served or given -</p> <p>(a) if delivered personally to that person, or if left at the address appearing in the Jurors' Book in respect of that person; or</p>	<p>8. Section 33 amended.</p> <p>Section 33 (1)</p> <p><u>(a) if delivered personally to that person, or if left -</u></p> <p><u>(i) at the address appearing in the Jurors' Book in respect of that person; or</u></p> <p><u>(ii) if it is in the same jury district as that address, at an address recorded by the Electoral Commissioner in respect of that person;</u></p> <p><u>or</u></p>	<p>Currently the Jurors Book is updated annually from source information collated by the Electoral Commissioner as at 1 July each year. This means that often the information can become quite out-dated.</p> <p>The Western Australian Electoral Commissioner holds "live information" derived from continually updating electoral postal and residential address information from elector claim cards.</p> <p>Under the current provisions of the Act, the Jurors Book created each year from the electoral roll cannot be updated with this "live" change of address information.</p>

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<p>Section 33 (cont'd).</p> <p>(b) if sent by prepaid post addressed to that person at that address.</p> <p>(2) Service of a summons or notice in accordance with subsection (1) (a) shall be effected by a police officer or a Sheriff's officer who shall prepare and complete, in the manner required by subsection (3), a list (referred to in this section as a "summons and notice list") in the prescribed form.</p> <p>(3) The officer who serves the summons or notice -</p> <p>(a) shall insert in the respective columns of the summons and notice list the particulars indicated by the heading to each of those columns;</p> <p>(b) shall certify the summons and notice list in, or substantially in, the manner indicated in that form and shall sign and date the certificate; and</p> <p>(c) shall then send or deliver the certified summons and notice list, together with any summonses or notices that he has not been able to serve, to the summoning officer.</p>	<p>Section 33 amended (cont'd).</p> <p>(b) if sent by prepaid post addressed to that person at <u>an address referred to in paragraph (a)</u>.</p>	<p>Also, current provisions only allow service of jury summonses to be effected by post at a residential address. This is ineffectual in some country locations.</p> <p>The proposed amendments will assist in the process of serving jury summonses by allowing for:</p> <p>(1) jurors' addresses to be updated during the term of the Jurors Book rather than being static from 1 July each year when the Jurors Book comes into operation.</p> <p>(2) the summoning officer to have the ability to serve the summons to juror at either a juror's postal or residential address known to the Electoral Commissioner.</p>

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<p>Section 33 (cont'd).</p> <p>4) Production of a summons and notice list so certified, signed and dated, is prima facie evidence of the service of the summonses or notices stated to have been served, and of the other facts stated, in the summons and notice list.</p> <p>(5) Service of a summons or notice in accordance with subsection (1) (b) shall be prima facie deemed to have been effected at the time when it would be delivered in the ordinary course of post.</p>	<p>Section 33 amended (cont'd).</p> <p>(6) <u>In subsection (1) –</u></p> <p><u>“Electoral Commissioner” means the Electoral Commissioner appointed under the <i>Electoral Act 1907</i>.</u></p>	<p>Definition of Electoral Commissioner added as subsection 6.</p>

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<p>Section 36.</p> <p>(2) This Act does not affect the power of any Court at the prayer of those prosecuting for the Crown, to order any juror to stand aside until the panel has been gone through to the extent authorized by section 38 (2).</p> <p>(3) If before the full number of jurors has been empanelled for the trial, all of the cards have been drawn out of the ballot-box, the cards of those jurors who have been so ordered to stand aside shall be returned to the box and shall be redrawn and thereafter those prosecuting for the Crown shall not be entitled to pray the Court to order those jurors to stand aside but may still exercise any remaining right of challenge peremptorily or for cause.</p>	<p>9. Section 36 amended.</p> <p><u>Section 36(2) and (3) are repealed.</u></p>	<p>There are instances where a pool of prospective jurors is exhausted during the ballot process prior to the empanelling of the requisite number of jurors for the trial. These sections deal with the procedure to be followed when this situation arises and more specifically with those jurors whom the Crown has sought to "stand aside".</p> <p>The amendments to these sections are consequential to amendments proposed to section 38, which will remove the Crown's right to "stand aside" jurors altogether. (This is dealt with elsewhere in these clause notes).</p>

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<p>Section 38.</p> <p>(1) Without affecting the right of challenge to the array or for cause shown which might have been claimed or exercised immediately prior to the coming into operation of this Act, and without affecting the right of those prosecuting for the Crown to pray for an order to stand jurors aside to the extent authorized by subsection (2), any party at any criminal trial may challenge peremptorily 8 jurors, except where 2 or more than 2 persons are charged with the same offence and are put on trial together in which case each of those persons may challenge peremptorily 6 jurors.</p>	<p>10. Section 38 amended.</p> <p><u>(1) Without affecting the right of challenge to the array or for cause shown which might have been claimed or exercised immediately prior to the coming into operation of this Act, any party at any criminal trial (including those prosecuting for the Crown) may challenge peremptorily</u></p> <p><u>=</u></p> <p><u>(a) if the trial is held in the Supreme Court or the District Court sitting at Perth, 3 jurors; or</u></p> <p><u>(b) if the trial is held at a place other than Perth, 5 jurors.</u></p>	<p>Both the prosecution and defence currently have a right to challenge jurors.</p> <p>The current provisions, allowing eight challenges, require larger numbers of jurors to be summoned and which therefore makes the jury selection process more time consuming.</p> <p>The proposed amendment will:</p> <p>(1) limit to three the number of peremptory challenges available to parties, both prosecution and defence, at a criminal trial held in the Supreme Court or the District Court sitting at Perth; and</p> <p>(2) limit to five the number of peremptory challenges available to parties, both prosecution and defence, at a criminal trial held in the Supreme Court or the District Court sitting at a place other than Perth (recognising that in smaller communities and regional areas there are a number of issues at play which make the empanelling of jurors more problematic than in Perth).</p>

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<p>Section 38.</p> <p>(2) Those prosecuting for the Crown have and may exercise in any case the right of challenge peremptorily of 8 jurors and the right to pray for an order to stand 4 jurors aside.</p>	<p>Section 38 amended (cont'd).</p>	<p>In addition to the rights of peremptory challenge, the Act also allows the Crown a right to “stand aside” four jurors. This is not a formal “challenge” and it does not preclude the juror from being called again in the event that the jury pool is exhausted prior to the panel being finalised. The Bill removes the Crown’s right in this regard as it is time consuming and causes undue concern and anxiety for prospective jurors.</p>
	<p>Part IXA inserted.</p> <p><u>Part IXA – Jury Confidentiality</u></p> <p><u>56A. Interpretation and application</u></p> <p><u>(1) In this Part –</u></p> <p><u>“prosecuting officer” means –</u></p> <p><u>(a) the Director of Public Prosecutions or the Deputy Director of Public Prosecutions appointed under the <i>Director of Public Prosecutions Act 1991</i>;</u></p> <p><u>(b) a member of the staff referred to in section 30 of the <i>Director of Public Prosecutions Act 1991</i> who is a practitioner as defined by the <i>Legal Practitioners Act 1893</i>;</u></p>	

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	<p><u>(c) the Director of Public Prosecutions or the Associate Director of Public Prosecutions appointed under the <i>Director of Public Prosecutions Act 1983</i>, as amended from time to time, of the Parliament of the Commonwealth;</u></p> <p><u>(d) a member of the staff referred to in section 27(1) of the <i>Director of Public Prosecutions Act 1983</i>, as amended from time to time, of the Parliament of the Commonwealth who is a legal practitioner defined in that Act; or</u></p> <p><u>(e) a person employed under section 27(3) of the <i>Director of Public Prosecutions Act 1983</i>, as amended from time to time, of the Parliament of the Commonwealth who is a legal practitioner as defined in that Act;</u></p> <p><u>“protected information” means –</u></p> <p><u>(a) statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations, other than anything said or done in open court; or</u></p> <p><u>(b) information that identifies, or is likely to identify, a person as having been, a juror in particular proceedings;</u></p>	

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	<p><u>“publish”, in relation to protected information, means communicate or disseminate the information in such a way or to such an extent that it is available to, or likely to come to the notice of, the public or a section of the public.</u></p> <p><u>(e) to a prosecuting officer or a police officer for the purpose of an investigation concerning an alleged contempt of court or alleged offence relating to jury deliberations or a juror’s identity;</u></p> <p><u>(f) as part of a fair and accurate report of an investigation referred to in paragraph (e);</u></p> <p><u>(g) to a person in accordance with an authorization granted by the Minister to conduct research into matters relating to juries or jury service; or</u></p> <p><u>(h) to a practitioner as defined by the <i>Legal Practitioners Act 1893</i> for the purpose of obtaining advice in relation to a matter referred to in paragraph (a), (b), (c), (d) or (e).</u></p> <p><u>56C. Protected information not to be solicited or obtained</u></p> <p><u>(1) A person who solicits or obtains protected information with the intention of publishing or facilitating the publication of that information commits an offence.</u></p>		

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	<p><u>Penalty: \$5 000 or imprisonment for 6 months, or both.</u></p> <p><u>(2) Subsection (1) does not prohibit soliciting or obtaining protected information –</u></p> <p><u>(a) in the course of proceedings in a court;</u></p> <p><u>(b) by a board or commission appointed by the Governor;</u></p> <p><u>(c) by the Anti-Corruption Commission established under section 5 of the <i>Anti-Corruption Commission Act 1988</i>;</u></p> <p><u>(d) by the Parliamentary Commissioner for Administrative Investigations or the Deputy Parliamentary Commissioner for Administrative Investigations appointed under section 5 of the <i>Parliamentary Commissioner Act 1971</i>;</u></p> <p><u>(e) by a prosecuting officer or a police officer for the purpose of an investigation concerning an alleged contempt of court or alleged offence relating to jury deliberations or a juror's identity;</u></p> <p><u>(f) by a person in accordance with an authorization granted by the Minister to conduct research into matters relating to juries or jury service; or</u></p>	

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	<p><u>(g) by a practitioner as defined by the Legal Practitioners Act 1893 for the purpose of obtaining advice in relation to a matter referred to in paragraph (a), (b), (c), (d) or (e).</u></p> <p><u>56D. Protected information not to be published</u></p> <p><u>(1) A person who publishes protected information commits an offence.</u></p> <p><u>Penalty: \$5 000 or imprisonment for 6 months, or both.</u></p> <p><u>(2) Subsection (1) does not prohibit publishing protected information –</u></p> <p><u>(a) in accordance with an authorization granted by the Minister to conduct research into matters relating to juries or jury service;</u></p> <p><u>(b) as a part of a fair and accurate report of –</u></p> <p><u>(i) proceedings in respect of an alleged contempt of court, an alleged offence against this Part or an alleged offence otherwise relating to jury deliberations or a juror's identity;</u></p> <p><u>(ii) proceedings by way of appeal from proceedings referred to in subparagraph (i); or</u></p>	

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	<p><u>(iii) if the protected information relates to jury deliberations, proceedings by way of appeal from the trial in the course of which the deliberations took place if the nature or circumstances of the deliberations is an issue relevant to the appeal;</u></p> <p><u>or</u></p> <p><u>(c) about a prosecution for an alleged offence against section 56B, 56C or this section if, before the prosecution was instituted, that information had been published generally to the public.</u></p> <p><u>56E. Lawful disclosure of protected information</u></p> <p><u>Sections 56B, 56C, and 56D do not prohibit a person –</u></p> <p><u>(a) during the course of a trial, disclosing, soliciting or obtaining, or publishing, with the leave of the court or otherwise with lawful excuse, information that identifies, or is likely to identify, the person or another person as, or as having been, a juror in the trial; or</u></p> <p><u>(b) after the trial has been completed, disclosing, soliciting or obtaining, or publishing –</u></p> <p><u>(i) information that identifies, or is likely to identify, the person as having been a juror in the trial; or</u></p>	

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<p>Part II of the Second Schedule.</p>	<p>(ii) information that identifies, or is likely to identify, another person as having been a juror in the trial if the other person has consented to the publication or disclosure of that information.</p> <p>11. Part II of the Second Schedule amended.</p> <p>Part II</p> <p><u>5. Age.</u></p> <p><u>Persons who have reached the age of 65 years.</u></p>	<p>The Second Schedule contains the provisions under which a person summoned to jury duty may claim exemption from attending.</p> <p>Elsewhere in this Bill provision is made for increasing the age of eligibility for jury duty to 70 years.</p> <p>This clause recognises that provision needs to be made for jurors over 65 years to have an automatic right to be excluded from jury duty on the basis of age. This is consistent with other categories in Part II of the Schedule, which contains provision for exemption on the grounds of Health, Religion, Family, and staff of the Emergency Services.</p>