

JURIES AMENDMENT BILL 2003

EXPLANATORY MEMORANDUM

Clause 1 Short Title

This clause provides for the Act to be cited as the *Juries Amendment Act 2003*.

Clause 2 Commencement

The amending Act commences on proclamation.

Clause 3 The Act amended

The Act amends the *Juries Act 1957* (WA).

Clause 4 Section 3 amended

This clause adds to the interpretation section of the Act the definition of an identification number that is allocated to a juror and corrects an omission by listing the categories of persons who are for the purpose of the Act, a “proper officer”.

Clause 5 Section 18 replaced and transitional

The existing section provides that for a criminal trial the jury shall consist of 12 jurors and that the trial judge may direct that up to a further six persons be chosen to serve as reserve jurors. Reserve jurors are only required to sit as part of the panel of 12 jurors in the event of one of the original jurors being unable to continue and are otherwise discharged when the jury retires to consider its verdict. Clause 5 removes the distinction between jurors and reserve jurors and provides that whatever number of jurors the trial judge determines to be necessary all are to be returned as jurors. If immediately before the jury retires to consider its verdict there are more than 12 jurors, a ballot is to be conducted to select 11 of the jurors to retire with the foreperson to consider the verdict. The object of the clause is to ensure that all jurors participate fully during the course of the trial.

Clause 5 is a transitional clause providing that in a subsection in respect to juries, selected prior to this Act coming into operation, the former section continues to apply.

Clause 6 Section 26 amended

This clause inserts a new provision to protect juror anonymity by providing that as part of the procedure for choosing jurors for criminal trials the summoning officer must ensure that each person summoned for jury service be allocated a unique identification number that is notified on the summons and inserted against the person’s name on the jury panel list.

Clause 7 Section 29A amended

This clause is a consequential amendment to include reference to the sub section inserted by Clause 6.

Clause 8 Section 30 amended

The existing section 30 directs the summoning officer to keep in his office for at least four clear days prior to the day appointed for the attendance of jurors a copy of the list of every panel or pool of jurors for inspection by the parties in all criminal trials at that session and their solicitors. Clause 8 amends the section to make it subject to an order made under section 43A inserted by this Act.

Clause 9 Section 32D amended

Sections 32A to 32I govern the procedure in respect to jury pools. Clause 9 amends section 32D to provide that every person summoned as part of the selection process for a jury pool shall be issued with a unique identification number that is notified in the summons and further that the allocation of an identification number may be done by computer.

Clause 10 Section 32F amended

Under the existing Section 32F the summoning officer must provide to the jury pool supervisor a list of the names of persons summoned and the names of the persons on separate cards. In furtherance of the requirement for juror anonymity, Clause 10 amends the section to include identification numbers on the list of names of person summoned and to require that identification numbers only be provided on the cards.

Clause 11 Section 32H amended

This section provides for the selection of jurors from the jury pool. Clause 11 amends the section to require the jury pool supervisor to include the identification numbers as well as names on the list of names selected in pursuance of the pool precept and names only on the required cards.

Clause 12 Section 34 amended

Section 34 makes it an offence for any officer entrusted with the serving of a summons to jurors to communicate to any person information relating to jurors that has come to his knowledge during the course of carrying out his duties unless that communication is in answer to questions he is lawfully compellable to answer or for the purposes of carrying out his duties. Similarly, any officer taking part in, or present at, the selection of a jury panel or a jury pool reveals the names of persons on the jury panel or jury pool except for the purpose of carrying out his duties under the Act or in answer to a question he is lawfully compellable to answer, commits an offence. Clause 12 aligns these penalties with those relating to jury confidentiality in Part IXA of the *Juries Act 1957 (WA)* by inserting a new penalty provision of \$5000 or six months imprisonment or both.

Clause 13 Part IV heading amended

This clause amends the existing heading of “Proceedings at criminal trials” to “Proceedings relating to criminal trials.”

Clause 14 Section 35 amended

The existing section provides that on the day appointed for attendance by the jurors, the summoning officer is to deliver to the proper officer in open court the precept with the panel annexed and the names of the jurors written upon separate cards. Pursuant to the amending clause, the cards contain identification numbers only and the clause inserts a new subsection to maintain consistency with the amended section 32H.

Clause 15 Section 36 amended

As part of the empanelment process the existing section 36 requires the proper officer to agitate the ballot box containing the cards on which jurors names were written, draw cards out one after the other and to call aloud the name written on each card. Clause 15 amends the section to require the proper officer to call aloud the identification number on each card. Further, consistent with the amendments effected by Clause 5, which eliminates the distinction between jurors and reserve jurors, section 36 is amended by deleting at subsection 36(5) “constitute a jury” and inserting “have been sworn as jurors”.

Clause 16 Section 36A inserted

This clause is a key provision to protect juror anonymity and inserts a new section 36A which provides that during Court proceedings a juror is not required to state his or her name and address and will be referred to only by his or her identification number.

Clause 17 Section 43 amended

This clause is a technical consequential amendment

Clause 18 Section 43A inserted

This clause inserts a new section which gives the Court power to protect the security of jurors when it considers it necessary to do so.

Presently, the Act provides, at section 30, that the list of the names of prospective jurors, their occupations and residential address, must be made available for inspection by the parties and their respective solicitors at least four days prior to the day appointed for attendance by the jurors. The parties are provided with a copy on request. The parties use this information to make a decision about whether or not to challenge a particular juror – it is believed that, on the basis of name residential address and occupation, an informed decision can be made about the likelihood of a juror deciding the case to be tried one way or another. As well as the right of right of challenge to the array or for cause parties also may challenge up to five jurors peremptorily.

Section 43A(1)(a) to (e) allows a judge to impose prohibition, restriction or conditions on access to the personal details of jurors to protect their security and to give such other direction as considered necessary for juror security.

Sub section 43A(1)(f) gives the Court power to make whatever other orders it thinks necessary in the circumstances.

Clause 19 Section 52 amended

In the event of an insufficient number of jurors to form a jury Section 52 provides for any party to “pray a tales” which means that the Court may order the summoning officer to require eligible persons, wherever found, to immediately serve as jurors. Presently the section only operates in respect to jury panels and 52 (2) corrects an omission by extending the right to “pray a tales” to jury pools as well as jury panels.

52(1) is amended to ensure consistency with the new method of constituting a jury envisaged by Clause 5.

Subsection 52(2) is deleted and replaced by new subsections (2) and (3) to provide for identification numbers to ensure consistency with other jury selection procedures.

Clause 20 Section 58A inserted.

This clause inserts a new section to secure juror anonymity by excluding the public from all procedures relating to the summoning of jurors, the calling of the rolls to ascertain the attendance of jurors in response to a summons, further balloting prior to attending open court and a procedure where identifying numbers are allocated to prospective jurors.

Clause 21 Section 62 amended

This clause inserts a new subsection to provide a regulation making power relating to identification numbers, their allocation, the manner in which prospective jurors are to be informed of their number and in respect to the recording of identification numbers.

Clause 22 *The Criminal Code* amended

This is a consequential amendment to include in section 611A of the *Criminal Code* (matters that may be dealt with before trial) the new section 43A Juries Act Amendment Bill procedure which empowers the Court to make Orders as considered necessary to protect the security of jurors and to amend section 262 (3) of the Code by deleting names and inserting instead identification numbers.