



New South Wales

# Jury Amendment Bill 2004

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Jury Act 1977* as follows:

- (a) to prevent jurors in a trial of any criminal proceedings from making inquiries about the accused, or matters relevant to the trial, except in the proper exercise of functions as a juror,
- (b) to prevent a person soliciting information from, or harassing, a juror or former juror for the purpose of obtaining information about how a juror, or the jury, formed any opinion or conclusion in relation to an issue arising in a trial or coronial inquest, and to prevent a person from disclosing such information in certain circumstances,
- (c) to allow the sheriff to investigate any irregularities in the conduct of jury members in a trial for criminal proceedings that may affect or have affected the jury verdict.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

**Clause 3** is a formal provision that gives effect to the amendments to the *Jury Act 1977* set out in Schedule 1.

## Schedule 1 Amendments

### Inquiries by jurors about trial matters

An amendment makes it an offence for a juror for the trial of any criminal proceedings to make an inquiry for the purpose of obtaining information about the accused, or any other matters relevant to the trial, except in the proper exercise of his or her functions as a juror. The maximum penalty for the offence is 50 penalty units (\$5,500) or imprisonment for 2 years, or both. See **Schedule 1 [6]** (proposed section 68C).

The object of the amendment is to prevent jurors, during a trial, from making private inquiries in relation to the accused or trial matters, such as by searching the Internet for information about the trial or the accused, conducting private experiments in relation to matters raised in the trial or inspecting the crime scene without court authority. Such conduct can result in a trial being aborted.

An ancillary amendment allows a judge to examine a juror on oath to determine whether the juror has made inquiries of a kind prohibited by the new provision. The amendment provides that the privilege against self-incrimination in relation to the new offence does not apply to a juror in respect of any such examination by a judge, but evidence given by the juror cannot be used against the juror in any proceedings for the offence. See **Schedule 1 [1]** (proposed section 55DA).

### Disclosure of trial information by jurors and others

At present, it is an offence for a person to solicit information from, or harass, a juror or former juror for the purpose of obtaining information about jury deliberations. It is also an offence for a juror to disclose information about jury deliberations during a trial or coronial inquest or for any person to disclose information about jury deliberations for fee, gain or reward.

Amendments extend those provisions so that it will be an offence to solicit information from, or harass, a juror or former juror for the purpose of obtaining information about how a juror, or the jury, formed any opinion or conclusion in relation to an issue arising in a trial or inquest. It will also be an offence for a juror to disclose that information during a trial or inquest or for any person to disclose that information for fee, gain or reward. The object of the amendments is to make it clear that any information relating to how the jury reaches or reached its verdict, not limited to jury deliberations, is protected from disclosure in the same way as jury

deliberations. The provisions do not prevent law enforcement authorities from soliciting information about those matters. See **Schedule 1 [2] and [4]**.

Consequential amendments make it clear that the new provisions do not prevent discussions between jurors during a trial or inquest. See **Schedule 1 [3] and [5]**.

### **Inquiries by sheriff**

An amendment confers power on the sheriff to conduct an investigation into any suspected improper conduct by a jury member or members in a criminal trial. Such an investigation may be conducted if there is reason to suspect that the verdict of the jury may be, or may have been, affected because of improper conduct. The investigation may be carried out only with the consent of or at the request of the Supreme Court or the District Court. Provisions of the *Evidence Act 1995*, which require persons who are questioned in respect of suspected offences to be cautioned that answers given may be used in evidence, will apply in relation to any questioning conducted by the sheriff for the purpose of an investigation. See **Schedule 1 [7]**.

### **Other amendments**

The amendments also provide for savings and transitional matters. See **Schedule 1 [8] and [9]**.

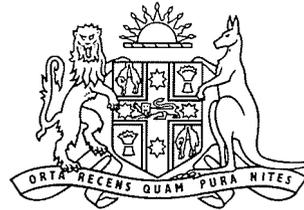
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New South Wales

## Jury Amendment Bill 2004

No. , 2004

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### **A Bill for**

An Act to amend the *Jury Act 1977* to prohibit improper inquiries by jurors and the disclosure of information by jurors; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Jury Amendment Act 2004</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent.	5
<b>3 Amendment of Jury Act 1977 No 18</b>	6
The <i>Jury Act 1977</i> is amended as set out in Schedule 1.	7

<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 55DA</b>	3
	Insert after section 55D:	4
<b>55DA</b>	<b>Examination of juror—juror making private inquiries about trial matters</b>	5
	(1) A judge may examine a juror on oath to determine whether a juror has engaged in any conduct that may constitute a contravention of section 68C.	6
	(2) A juror is not excused from a requirement to give evidence on such an examination on the ground that the evidence may tend to prove that the juror has committed an offence against section 68C.	7
	(3) However, if the judge is satisfied, after the evidence has been given, that the evidence may tend to prove that the juror has committed an offence against section 68C, the judge is to cause the juror to be given a certificate under this section in respect of the evidence.	8
	(4) In any proceedings for an offence against section 68C, evidence given by a person in respect of which a certificate under this section has been given cannot be used against the person.	9
<b>[2]</b>	<b>Section 68A Soliciting information from or harassing jurors or former jurors</b>	10
	Omit section 68A (1). Insert instead:	11
	(1) A person must not solicit information from, or harass, a juror or former juror for the purpose of obtaining information about:	12
	(a) the deliberations of a jury, or	13
	(b) how a juror, or the jury, formed any opinion or conclusion in relation to an issue arising in a trial or coronial inquest.	14
	Maximum penalty on indictment: imprisonment for 7 years.	15
<b>[3]</b>	<b>Section 68A (4A)</b>	16
	Insert after section 68A (4):	17
	(4A) Subsection (1) does not prohibit a juror from soliciting information from another member of the jury during a trial or coronial inquest.	18

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<b>[4] Section 68B Disclosure of information by jurors etc</b>	1
Omit section 68B (1) and (2). Insert instead:	2
(1) A juror must not, except with the consent of or at the request of the judge or coroner, wilfully disclose to any person during the trial or coronial inquest information about:	3
(a) the deliberations of the jury, or	4
(b) how a juror, or the jury, formed any opinion or conclusion in relation to an issue arising in the trial or coronial inquest.	5
Maximum penalty: 20 penalty units.	6
(2) A person (including a juror or former juror) must not, for a fee, gain or reward, disclose or offer to disclose to any person information about:	7
(a) the deliberations of a jury, or	8
(b) how a juror, or a jury, formed any opinion or conclusion in relation to an issue arising in a trial or coronial inquest.	9
Maximum penalty: 50 penalty units.	10
<b>[5] Section 68B (4)</b>	11
Insert after section 68B (3):	12
(4) Subsection (1) does not prohibit a juror from disclosing information to another member of the jury during a trial or coronial inquest.	13
<b>[6] Section 68C</b>	14
Insert after section 68B:	15
<b>68C Inquiries by juror about trial matters prohibited</b>	16
(1) A juror for the trial of any criminal proceedings must not make an inquiry for the purpose of obtaining information about the accused, or any matters relevant to the trial, except in the proper exercise of his or her functions as a juror.	17
Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.	18
(2) This section applies in respect of a juror from the time the juror is sworn in as a juror and until the juror, or the jury of which the juror is a member, is discharged by the court having conduct of the proceedings.	19
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- (3) This section does not prohibit a juror:
  - (a) from making an inquiry of the court, or of another member of the jury, in the proper exercise of his or her functions as a juror, or
  - (b) from making an inquiry authorised by the court.
- (4) Anything done by a juror in contravention of a direction given to the jury by the judge in the criminal proceedings is not a proper exercise by the juror of his or her functions as a juror.
- (5) For the purpose of this section, *making an inquiry* includes the following:
  - (a) asking a question of any person,
  - (b) conducting any research, for example, by searching an electronic database for information (such as by using the Internet),
  - (c) viewing or inspecting any place or object,
  - (d) conducting an experiment,
  - (e) causing someone else to make an inquiry.

**[7] Section 73A**

Insert after section 73:

**73A Investigation by sheriff of jury irregularities**

- (1) If there is reason to suspect that the verdict of a jury in a trial of any criminal proceedings may be, or may have been, affected because of improper conduct by a member or members of the jury, the sheriff may, with the consent of or at the request of the Supreme Court or District Court, investigate the matter and report to the court on the outcome of the investigation.
- (2) Section 68A (1) does not prohibit the sheriff from soliciting information from a juror or former juror for the purpose of conducting such an investigation.
- (3) Section 68B (1) does not prohibit a juror from disclosing information to the sheriff in connection with such an investigation.
- (4) Section 139 (2) of the *Evidence Act 1995* applies in relation to any questioning conducted by the sheriff for the purpose of an investigation under this section (in the same way as it applies to official questioning by an investigating official).

(5)	The sheriff may, despite sections 29 and 68, include a juror's name or other matter that identifies a juror in a report to the court under this section.	1 2 3
<b>[8]</b>	<b>Schedule 8 Transitional and savings provisions</b>	4
	Insert at the end of clause 1A (1):	5
	<i>Jury Amendment Act 2004</i>	6
<b>[9]</b>	<b>Schedule 8, Part 8</b>	7
	Insert after Part 7:	8
	<b>Part 8 Transitional and savings provisions consequent on enactment of Jury Amendment Act 2004</b>	9 10 11
<b>17</b>	<b>Application of amendments</b>	12
(1)	The amendments made to sections 68A and 68B by the <i>Jury Amendment Act 2004</i> do not apply in respect of a trial or coronial inquest commenced before the commencement of that Act.	13 14 15
(2)	Sections 68C and 73A, as inserted by the <i>Jury Amendment Act 2004</i> , do not apply in respect of a trial commenced before the commencement of that Act.	16 17 18