

[Act 1996 No 4]



New South Wales

Jury Amendment Bill 1995

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*:

- (a) to require periodic updating of jury rolls by the use of supplementary jury rolls, instead of the remaking of jury rolls once every 3 years, and
 - (b) to allow jurors to be summoned from a supplementary jury roll, as well as from the certified jury roll to which it relates, and
 - (c) to provide the sheriff with more flexibility in summoning jurors by removing requirements for juries to be summoned in response to precepts and removing provisions relating to jury pools, and
 - (d) to restate and add to offences relating to the provision of information to the sheriff for the purpose of promoting the preparation of accurate and complete jury rolls, and
 - (e) to improve the supply of information to the sheriff about trials, and coronial inquests and inquiries, that will or may require juries, or for which juries have been summoned, so as to allow greater efficiency in the summoning of jurors, and
-

Explanatory note

- (f) to allow persons to be excepted as of right from jury service if they have served as jurors within the last 3 years or have attended for jury service and been prepared to serve (but not been called) within the last year, and
- (g) to remove the sheriff's discretion to exclude a person from a jury roll if the person has served as a juror during the term of the roll, and
- (h) to allow a court to decide an issue of fact in a civil case if the jury is unable to reach a decision and the parties agree to the court deciding the issue, and
- (i) to remove the present requirement that a jury must be discharged after it has deliberated for more than 6 hours without reaching a decision in a civil case, and
- (j) to allow penalty notices to be used for recovering fines for an offence of failing to return, or incorrectly responding, to a questionnaire sent for the purpose of establishing an accurate supplementary jury roll or for an offence of failing to attend for jury service, and
- (k) to provide that persons summoned for jury service are not entitled to be paid for their attendance if they are excused from service, and
- (l) to make amendments of a savings and transitional nature relating to the commencement and application of other amendments.

The *Justices Act 1902* is consequentially amended for the purpose of allowing the use of penalty notices.

The *Coroners Act 1980* is amended to require coroners to supply information about the need for jurors to the sheriff.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Jury Act 1977* set out in Schedules 1 and 2.

Clause 4 is a formal provision giving effect to the amendments to the *Justices Act 1902* and the *Coroners Act 1980* set out in Schedule 3.

Schedule 1 Amendments to Jury Act 1977 relating to the selection and summoning of jurors

More frequent revision of jury rolls

At present, a jury roll (from which jurors are summoned for service), is required to be prepared for a jury district from electoral rolls each 3 years. For various reasons, such as persons on the jury roll moving from the jury district within the period, the information from which the roll was prepared becomes out-of-date over that period, with the result that estimating and summoning from the roll the number of jurors required to be called up for service to form a jury towards the end of the period is extremely difficult and inefficient. Another shortcoming of the present scheme is that persons who attain the age of 18 after electoral roll data has been collected for a draft jury roll will not be represented on the jury roll until after the end of the next 3-year cycle.

The amendments will replace the present rigid scheme with more flexible arrangements, the main features of which are as follows:

- the sheriff must, not less than once every 15 months, update electoral roll information used in supplementing and culling the jury roll for a jury district (**Schedule 1 [7]**),
- the sheriff must, at intervals of not less than 12 months, make a random selection of names from the electoral rolls for a jury district to compile a supplementary jury roll that will be used in revising the ongoing jury roll. A supplementary roll might be prepared annually for a country jury district, if juries will be required only at a particular time of the year. If there will be requirements for juries throughout the year (as occurs in the more densely populated jury districts) supplementary rolls might be prepared periodically during the year so as to allow the jury roll to be revised in stages throughout the year (**Schedule 1 [8]—proposed section 12**),
- persons whose names are selected for a supplementary roll must be sent a notice requiring them to complete and return to the sheriff a questionnaire about their qualifications to be a juror and their eligibility and availability for jury service (**Schedule 1 [8]—proposed section 13**),

- an appeal may be made to a Local Court against a decision of the sheriff not to delete a person's name from a supplementary jury roll after the person has claimed to be disqualified from serving or to be ineligible to serve or to be entitled to an exemption from service. If a person is summoned to attend for jury service before the 21 days for making such an appeal has expired (and before the appeal has been lodged) any such appeal must be made to the judge or coroner having the conduct of the trial or inquest concerned or to such other judge or coroner, or such master, magistrate or registrar, as is specified in a notice attached to the summons (**Schedule 1 [10]—proposed section 15**),
- the sheriff must supplement a current jury roll by adding persons who have not been deleted from the supplementary roll by the sheriff and cull from the current jury roll persons who have been on the roll for 15 months (or such longer period, not exceeding 2 years, as may be fixed by the regulations under the Act) (**Schedule 1 [10]—proposed section 15A**),
- immediately after so supplementing or culling the current jury roll, the sheriff must certify it as being the jury roll for the time being in force for the jury district to which it relates (**Schedule 1 [11]**),
- the sheriff is required to keep in the records of the sheriff's office the jury roll last certified for each jury district and any supplementary jury roll being used to revise a jury roll (**Schedule 1 [12]—proposed section 17**).

Altered procedures for summoning jurors

The summoning of jurors by the sheriff is presently subject to directions contained in general jury precepts issued by judges of the Supreme Court and District Court, the Prothonotary, the Criminal Listing Director, registrars of the District Court and coroners, except where jury pools may be summoned.

The amendments will repeal and replace Divisions 1 and 2 of Part 5 of the Act (the current provisions for the summoning of jurors) and allow the sheriff greater flexibility in arranging for the summoning of jurors. Proposed Division 1 of Part 5 (**Schedule 1 [13]**) contains the following proposed sections:

Section 23 (Estimate of number of jurors required) which requires the sheriff to maintain estimates of the number of jurors who will be required to be summoned in each jury district.

Section 24 (Alternate procedure where sheriff is interested in case) which states that the functions of the sheriff in summoning jurors are to be exercised by a person specified by the regulations if the sheriff is a party or in any way interested in the proceedings for which a jury is required.

Section 25 (Selection of jurors by sheriff) which requires the sheriff to select an adequate number of jurors at random from the jury roll for a district. Jurors may also be summoned from a supplementary jury roll for a district if the sheriff believes the jury roll is inadequate.

Section 26 (Persons selected to be summoned) which requires the sheriff to issue a summons to each person selected for jury service requiring the person to attend at the court or coronial inquest concerned. The summons must be served at least 7 days before the day on which the juror is required to attend, unless the court or coroner otherwise orders.

Section 27 (Selection and summoning of additional jurors) which allows the sheriff to summons additional jurors to supplement a jury if a trial or an inquest would otherwise be delayed.

Section 28 (Sheriff's return) which requires the sheriff to make a return of particulars of summonses at the time and place at which they require jurors to attend.

Offences aimed at ensuring jury rolls are accurate

New offences are created by proposed section 61 for the purpose of ensuring that questionnaires sent to persons in the course of preparation of jury rolls are completed accurately and returned to the sheriff within the required period (**Schedule 1 [24]**).

Sections 61 and 62 of the Act presently create offences if a person fails to inform the sheriff of a disqualification or ineligibility to serve as a juror and if false representations are made for the purpose of evading jury service. These offences are restated and expanded by proposed sections 62 and 62A (**Schedule 1 [24]**).

Other amendments are proposed that are consequential on the amendments explained above (**Schedule 1 [1]–[6], [9], [15]–[23] and [25]–[27]**).

Supply of information to the sheriff

Since, as a consequence of the amendments, the sheriff will be required to take a more direct and active role in estimating the number of jurors required for trials and coronial inquests and inquiries, it is essential for relevant information to be readily available to the sheriff to assist in decision making.

Proposed section 75A requires the registrars, judges and coroners of the various courts concerned to provide such information to the sheriff as may be requested by the sheriff for the purpose of exercising functions under the Act (**Schedule 1 [28]**).

Proposed section 75B requires the Commissioner of Police, the Commissioner of Corrective Services and any other person prescribed by the regulations to provide information to the sheriff for the purpose of deciding whether persons are liable to be included on a supplementary jury roll or jury roll or for jury service. The proposed section also requires parties to cases listed for trial by a jury to inform the sheriff about any event of which they become aware relevant to the provision of juries (**Schedule 1 [28]**).

Right to be excepted from jury service for previous service or attendance

Section 37 presently excepts a person from jury service if the person has been called for service on a previous occasion and there are other persons on the jury roll who have not been called.

That section does not allow for a person who may have been called for jury service, but did not serve, and who may wish to render jury service. The section is repealed and replaced with a provision that allows persons to apply and be excepted as of right from jury service if they have served as jurors within the last 3 years or have attended for jury service and been prepared to serve (but not been called) within the last year (**Schedule 1 [14]** and **[29]**).

Schedule 2 Other amendments to Jury Act 1977

Removal of sheriff's discretion to exclude from jury roll

Section 18 is amended to remove the sheriff's present discretion to excuse a person from jury service if the person has already served during the period of the jury roll. This discretion is inconsistent with the proposed scheme for a continuing jury roll that is frequently revised and is unnecessary in view of the last amendment explained above (**Schedule 2 [1]** and **[2]**).

Courts may decide issues of fact

Proposed section 57A provides for a court to decide an issue of fact in a civil case if the jury is unable to reach a decision and the parties agree to the court deciding the issue (**Schedule 2 [3]**).

Extension of time for juries to deliberate in civil cases

Section 58 is amended to remove the present requirement that a jury must be discharged after it has deliberated for more than 6 hours without reaching a decision in a civil case, but does not affect the discretion available to discharge a jury (**Schedule 2 [4] and [5]**).

Use of penalty notices

Proposed section 66 will allow penalty notices to be used for recovering fines for an offence of failing to return, or incorrectly responding, to a questionnaire sent for the purpose of establishing an accurate supplementary jury roll or for an offence of failing to attend for jury service. A consequential amendment is made to section 63 (**Schedule 2 [6] and [7]**).

Payment for jury service

Section 72 is amended to provide that persons summoned for jury service must attend for service in order to be paid and are not entitled to be paid for their attendance if they are excused from service (**Schedule 2 [8]**).

Savings and transitional amendments

Schedule 8 to the Act is amended to make savings and transitional provisions relating to the commencement and application of other amendments referred to above. Clause 1A of that Schedule is amended so as to allow further such provisions to be made by regulations (**Schedule 2 [9] and [10]**).

Schedule 3 Amendment of other Acts

Amendment of Justices Act 1902

The amendment applies provisions of that Act to the penalty notice scheme for the recovery of penalties for offences referred to above.

Amendment of Coroners Act 1980

The amendment requires coroners to give the sheriff prompt notice of any need for a jury for a coronial inquest or inquiry under that Act.