

Act No. 286

JURY (AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Jury Act 1977 to give effect to certain recommendations of the Law Reform Commission in its report on the jury in a criminal trial (L.R.C. 48) and to make other changes. The recommendations and other changes—

- (a) seek to reduce the potential for bias and prejudice in criminal trials;
- (b) place restrictions on disclosing the deliberations of the jury;
- (c) further protect jurors; and
- (d) seek to improve the procedures for selecting juries.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

Clause 4 amends the Oaths Act 1900 and an amending Act to repeal provisions that will become redundant as a consequence of the proposed Act.

Schedule 1 (1) entitles a person on request to be excluded from a jury roll after having served on a jury.

Schedule 1 (2) provides that a criminal trial may continue when the number of jurors falls below 10 (but not below 8) if the trial has been in progress for 2 months. At present the consent of the prosecution and accused must be obtained when the number of jurors falls below 10. Provision is also made to allow a civil trial to continue when the number of jurors (in a jury of 12) falls below 8 instead of 10.

Schedule 1 (3) (a) permits the sheriff to excuse a person from jury service for good cause before or on the day of the trial or inquest (instead of before that day only).

Jury (Amendment) 1987

Schedule 1 (3) (b) enables the judge at a criminal trial to call on the jurors (before the trial commences and after being informed of the nature of the charge and the identity of the accused and of the principal prosecution witnesses) to apply to be excused if they feel they cannot give impartial consideration to the case.

Schedule 1 (4) is consequential on the amendment effected by Schedule 1 (18).

Schedule 1 (5) reduces the maximum number of peremptory challenges to jurors available to an accused person and to the prosecution to 3. At present the maximum is 20 for murder and 8 in other cases. However, provision is made for an unrestricted number of peremptory challenges where both the prosecution and the defence agree to the challenge.

Schedule 1 (6) is consequential on the amendment effected by Schedule 1 (5).

Schedule 1 (7) provides that the right to challenge a particular juror for cause may be exercised before or after all rights of peremptory challenge have been exhausted.

Schedule 1 (8) expressly confers power on the judge in a criminal trial to discharge a jury if the process of exercising peremptory challenges has created the potential for (or the appearance of) unfairness.

Schedule 1 (9) makes it clear that a court may issue a further general jury precept to obtain the required number of jurors to complete a ballot when insufficient jurors attend for jury service.

Schedule 1 (10) provides that a jury may be permitted to separate after they have retired to consider their verdict.

Schedule 1 (11) inserts proposed new sections 55A–55E into the Principal Act.

Proposed section 55A enables a judge or coroner to direct that exhibits not be left with jurors if the exhibits or the jurors' safety would be put at risk.

Proposed section 55B confirms the discretionary power of a judge or coroner to give the jury directions of law in writing.

Proposed section 55C confirms the discretionary power of a judge or coroner to provide, at the jury's request, a copy of the transcript of evidence at the trial or inquest.

Proposed section 55D provides that if alleged prejudicial material has been published during the course of a trial or inquest the judge or coroner may examine a juror to determine whether the juror has read, heard or seen the material or has been influenced by it.

Proposed section 55E provides that the jury is to be discharged immediately after delivering their verdict.

Schedule 1 (12) enables a judge in a criminal trial to discharge at any time a jury which is not likely to agree. At present the jury cannot be discharged until they have retired for at least 6 hours.

Schedule 1 (13) is consequential on the amendment made by Schedule 1 (2).

Schedule 1 (14) increases the penalty for failing to inform the sheriff of a disqualification or ineligibility to serve as a juror to \$1,000.

Schedule 1 (15) increases the penalty for making false representations to evade jury service to \$1,000.

Schedule 1 (16) increases the penalty for failing to attend for jury service to \$200.

Jury (Amendment) 1987

Schedule 1 (17) is consequential on the amendment made by Schedule 1 (16).

Schedule 1 (18) provides that it is an offence (penalty \$1,000) for any person to inspect a panel annexed to a general jury precept of a list of jury members except for official or authorised purposes.

Schedule 1 (19) provides that it is an offence (penalty \$5,000 if a corporation or \$2,000 if an individual) to publish, broadcast or otherwise disclose any material, matter or information during the course of a trial which identifies a juror or former juror. The present prohibition does not apply to a former juror nor to disclosures that are not published or broadcast.

Schedule 1 (20) inserts proposed new sections 68A and 68B into the Principal Act.

Proposed section 68A provides that it is an offence to solicit information from, or harass, a juror or former juror for the purpose of publishing or broadcasting information relating to the deliberations of a jury. The offence does not apply to the conduct of authorised research.

Proposed section 68B provides that it is an offence for a jury member to disclose during a trial or inquest the deliberations of the jury except with the sanction of the judge or a coroner (penalty \$2,000). The section also makes it an offence to seek gain or financial advantage by disclosing, or offering to disclose, the deliberations of a jury (penalty \$5,000).

Schedule 1 (21) increases the monetary penalty for unlawfully dismissing employees summoned for jury service to \$2,000.

Schedule 1 (22) prescribes the form of the oath or affirmation to be taken or made by a person before serving as a juror.

Schedule 1 (23) replaces Schedules 1, 2 and 3 to the Principal Act (dealing with persons who are disqualified from serving as jurors, who are ineligible to serve as jurors or who can claim exemption as of right) with revised Schedules to extend and clarify the classes of persons who are disqualified, ineligible or exempted.

Schedule 1 (24) inserts transitional and savings provisions into the Principal Act as a consequence of the proposed Act.

Schedule 2 effects amendments by way of statute law revision.
