

JURY BILL 1995

EXPLANATORY NOTES

Short title of the Bill

Jury Bill 1995.

Objectives of the Legislation

The Bill represents a complete reform of the jury system in Queensland.

A number of bodies formulated reports about the operation and effectiveness of the *Jury Act 1929*. The most significant of these reports are:

- the Nolan Committee Report [January 1992];
- the Litigation Reform Commission Report Reform of the Jury System in Queensland [August 1993]; and
- the reports of the Criminal Justice Commission as they relate to the operation of the jury system.

In summary, this Bill represents a comprehensive response to the problems associated with the current jury system, which were identified in these reports. The Bill will ensure that juries are more representative of the community, that jury vetting is a thing of the past therefore protecting the privacy of potential jurors and that the confidentiality of jury deliberations is secured.

Achieving the objectives of the legislation.

More representative juries will be achieved by significantly reducing the number of classes of persons who are not eligible for jury service [see clause 4]. Currently, many classes of persons are exempt from jury service [see sections 6 and 8 of the *Jury Act 1929*].

The clause preventing jury vetting is Clause 31—Questions relating to jury service; which creates offences where questions are asked of persons summoned for jury service to find out how the person is likely to react to issues arising in a trial. The clause also provides an offence where questions are asked of anyone about a person who has been summoned for jury service to find out how the other person is likely to react to issues arising in a trial.

Finally, Clause 70—Confidentiality of Jury Deliberations, prohibits a person from publishing to the public confidential information about jury deliberations. The clause also creates offences where a person seeks from a member or former member of a jury the disclosure of confidential information about jury deliberations.

Implementation

It is anticipated that there will be no increase in the administrative cost to government of implementing the Bill, as compared with the administration of the *Jury Act 1929*.

Fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Consultation

Consultation was conducted with a wide range of interests during the formulation of the policy objectives of this Bill. Much of the consultation was conducted by the Nolan Committee, the Litigation Reform Commission, and the Criminal Justice Commission when formulating their reports.

Notes on Clauses

Clause 1 sets out the short title of the Bill.

Clause 2 provides for the commencement of the provisions of the Bill.

Clause 3 provides for the dictionary which is Schedule 3 to the Bill.

Clause 4 sets out who is qualified to serve as a juror. It also sets out the classes of persons who are not eligible for jury service.

Clause 5 states that every person who is qualified to serve as a juror has an obligation to serve as a juror unless that person is excused from jury service by a judge or the Sheriff of Queensland.

Clause 6 provides that the fact that a person who is not qualified has served on a jury is not a basis for challenging the verdict of a jury.

Clause 7 permits jury districts and their boundaries to be established and abolished under regulations.

Clause 8 allows the responsibility for the functions of a “sheriff” [a defined term] for a jury district to be allocated to the Northern Sheriff, the Central Sheriff, a deputy sheriff or another officer specified by regulation. Even where this allocation occurs, the Sheriff of Queensland retains the responsibility of preparing jury rolls and lists of prospective jurors for all jury districts in Queensland.

Clause 9 provides for the preparation of jury rolls for each jury district.

Clause 10 provides that jury rolls are used to make lists of prospective jurors from which people are chosen to be summoned for jury service.

Clause 11 requires the Electoral Commission of Queensland to provide the Sheriff of Queensland with information required to prepare jury rolls and with access to information held by the Commission relevant to keeping jury rolls.

Clause 12 provides that a police officer must make inquiries about matters related to keeping a jury roll when requested by the Sheriff of Queensland. Relevant information held by the Sheriff of Queensland or the Electoral Commission must be given to a police officer making inquiries.

Clause 13 allows the Senior Judge Administrator to make practice directions after consultation with the Chief Judge of the District Court. Practice directions may be made about assembling persons summoned for jury service to select juries, the selection of persons for jury panels and the criteria for excuse from jury service. A practice direction may also be made about jury members being informed of the names of the parties or any witnesses to be called. The practice directions are made under the *Supreme Court Act 1991*.

Clause 14 allows the Senior Judge Administrator to make administrative directions to court staff carrying out functions under the Bill.

Clause 15 provides for the preparation of lists of prospective jurors. All lists of prospective jurors are prepared by the Sheriff of Queensland but, in some cases, these lists will be prepared as a result of a request by another sheriff. A practice direction can state how often lists of prospective jurors must be prepared for a jury district.

Clause 16 provides that a list of prospective jurors is to be prepared by random selection of persons from the jury roll of a jury district.

Clause 17 requires the Sheriff of Queensland, where another sheriff is responsible for a jury district, to provide a copy of a list of prospective jurors to the sheriff responsible for a jury district.

Clause 18 requires a sheriff to send a notice to persons whose name appears on a list of prospective jurors. This notice will inform the person about the fact they may be summoned for jury service and the jury service period for which they would be required to serve if summoned. The notice is accompanied by a questionnaire about whether a person is qualified to serve as a juror, which must be returned to a sheriff, and a form to apply for exemption from jury service. A person must state a reason in order to apply to be excused from jury service. A person must not knowingly make a false statement in a response to the questionnaire or in an application for an exemption.

Clause 19 authorises a sheriff to excuse a person who applies to be excused from jury service permanently or for a particular period.

Clause 20 authorises a judge to excuse a person from jury service upon the judge's own initiative or at the request of a member of a jury panel. A judge may excuse a person from jury service for a particular period or permanently.

Clause 21 lists the relevant factors to be considered before a sheriff or a judge decides to excuse a person.

Clause 22 provides that where a person has received a summons to serve as a juror and their previous jury service period for an earlier summons ended within the last year, the person who applies to be excused is entitled to be excused for the jury service period.

Clause 23 provides that a prospective juror may be excused from jury service before or after the prospective juror is summoned for jury service.

Clause 24 provides that a list of prospective jurors must be revised after the time set for questionnaires to be returned by prospective jurors. The names of people who are not qualified, who cannot be located or who have been excused must be removed from the list. The sheriff may make reasonable inquiries to determine if a person's name should be excluded from the list because the person is not qualified for jury service.

Clause 25 states that the revised list of prospective jurors is the list from which people are selected for summons for jury service. It is possible, however, for a sheriff to use an unrevised list for selecting people to be summoned where the sheriff believes there is not sufficient time to allow for the revision of the list.

Clause 26 provides for the random selection for summons of enough prospective jurors to enable the selection of juries for trials starting in the jury district. An unrevised list of prospective jurors for summons for jury service. The unrevised list may be used where the sheriff considers there is not sufficient time for revision of the list before the summons are issued.

Clause 27 authorises the sheriff to issue summonses to those people selected for summons. The summons itself does not require a person to attend but requires a person to attend when instructed by the sheriff. An instruction may be given by notice in a newspaper, by radio, by TV or in a way authorised by regulation or in a way agreed between the person and the sheriff.

Clause 28 creates an offence of failing to comply with a summons without reasonable excuse. Where a person has been summoned to serve on a jury, the failure to attend without reasonable excuse can be dealt with as an offence or as contempt of court.

Clause 29 requires the sheriff to prepare a list of the persons who have been summoned for jury service. A copy of the list must be made available on request, made no earlier than 4.00 pm on the day before the selection of a jury for a trial, to each party, or lawyer or other person representing a party. The sheriff must also inform each party, lawyer or other representative of a party, which persons on the list have been instructed to attend on the next day. This will allow the party, lawyer or other representative of a party, to determine the pool of people from which juries will be selected on the next day. This list must be returned to the sheriff by the party to a trial, or lawyer or other person representing a party, for destruction as soon as practicable after the jury is selected.

Clause 30 makes it an offence for a person who has a copy of the list of persons summoned for jury service to reproduce that list or give it to a person other than a party or lawyer or other person representing a party. It is not an offence for the sheriff or a person acting under the authority of a sheriff to reproduce the list or allow it to be reproduced or to give it to a person, such as a Judge's associate or another sheriff, where it is reasonably necessary for the proper administration of the provisions of the Bill.

Clause 31 makes it an offence for a person to ask questions of anyone or a person summoned for jury service about how that person is likely to react to issues arising in a trial or for other purposes related to the selection or possible selection of the person as a juror in a trial. It is not an offence where the questions are authorised or required by the Bill or where they are authorised by a judge.

Clause 32 provides that a jury for a civil trial has 4 persons.

Clause 33 provides that a jury for a criminal trial has 12 persons.

Clause 34 allows for up to 3 reserve jurors to be selected for criminal and civil trials. Reserve jurors are present during a trial and take the place of a juror if a juror dies or is discharged. When a jury retires to consider its verdict, any reserve jurors who have not replaced the original jurors are discharged.

Clause 35 requires each party to a criminal trial to disclose to the other party information that party has about a person summoned for jury service which relates to the suitability of that person to serve as a juror in the trial.

Clause 36 provides for the formation of jury panels by the sheriff from amongst the persons summoned for jury service who have been required to attend, are not serving on a jury and have not been excused.

Clause 37 requires the sheriff, before a trial begins, to give certain information about a jury panel to the clerk or associate of the trial judge.

Clause 38 provides for the summoning of supplementary jurors. Where there are insufficient persons available for the selection of a jury, the judge may direct the sheriff to make up a jury panel from among persons qualified for jury service.

Clause 39 states that, before a trial begins, the court must inform a defendant that the persons whose names are called may be sworn as jurors for the defendant's trial and, if the defendant wants to challenge them, the defendant must challenge them before they are sworn.

Clause 40 provides that a challenge to a jury panel as a whole must be made before any juror is selected. The court must decide the challenge before proceeding with the selection of the jury for the trial.

Clause 41 provides that to select a jury, persons are selected from a jury panel by a random selection of cards bearing the names of the members of the jury panel and the name of the person selected must be called aloud. A judge may decide, for security or other reasons, that the persons selected should be identified by number only.

Clause 42 provides that, in a criminal trial, the prosecution and defence are entitled to 8 peremptory challenges each. In a civil trial, each party is entitled to 2 peremptory challenges. Additional challenges are available, in criminal and civil trials, where reserve jurors are to be selected.

Clause 43 provides for challenge for cause in both criminal and civil trials. A challenge for cause may be made where a person is not qualified to serve as a juror or where a person is not impartial. A party who makes a challenge for cause must state the reasons for the challenge. If a judge is satisfied of certain matters, questions may be put to a juror in a way and in a form decided by the judge. The judge may then permit examination or cross-examination of the person, if the answers to the earlier questions justify further inquiry. A challenge for cause is decided by the judge and is not subject to interlocutory appeal but may be considered on any appeal against the final judgment.

Clause 44 provides the time at which peremptory challenges and challenges for cause must be made.

Clause 45 defines when the final stage of the jury selection process is reached.

Clause 46 provides that a judge may discharge a particular juror, after the jury is formed, if certain factors are shown to exist.

Clause 47 provides a special procedure for challenge for cause where special reasons exist to question persons selected to be jurors or reserve jurors. A party must apply at least 3 days in advance of the date fixed for the start of the trial for the trial judge to authorise the questioning of persons selected to be jurors or reserve jurors. If the judge decides to authorise the questioning, the judge must then decide what questions are to be put and the way in which the questions are to be put. The applicant may suggest questions to be put to the jurors and reserve jurors. If, after hearing the

answers to the questions, the judge decides further inquiry is justified, the judge may permit parties to cross-examine the jurors and reserve jurors on oath. The judge may limit the cross-examination. After the completion of questioning and cross-examination, a party may make a challenge for cause against a person on the ground the person is not impartial. The challenge for cause is decided by the judge and is not subject to interlocutory appeal but may be considered on any appeal against the final judgment. If the judge upholds the challenge for cause, the juror or reserve juror must be discharged and a new person selected.

Clause 48 provides that a judge may discharge the whole jury whose composition is such that the trial might be or might appear to be unfair. It is modelled on Section 47A of the Jury Act (NSW).

Clause 49 creates a presumption that a challenge made by counsel or another representative of a party has been made with the party's authority.

Clause 50 provides that a jury must be sworn.

Clause 51 provides that, once a jury has been sworn in a criminal trial, the court must inform the jury of the charge contained in the indictment and the jury's duty on the trial.

Clause 52 allows a judge to give necessary directions for a view of a place or object where the judge considers it desirable. The view must be in the presence of the judge. The parties and their counsel or other representatives are entitled to be present. Where the directions of the judge are contravened, the judge can discharge the jury if the judge considers the contravention would prejudice a trial. A contravention of the directions of the judge does not otherwise affect the validity of the proceedings.

Clause 53 provides that the jury must not separate until they have given their verdict. A trial judge may allow a jury to separate during an adjournment or when proceedings are held in their absence. Where a juror separates from the jury without the permission of the trial judge, the judge can discharge the jury if the contravention would prejudice a fair trial. Such a separation does not otherwise affect the validity of the proceedings.

Clause 54 provides that a person must not communicate with a juror without the permission of the court. This does not apply to an officer of the court who has charge of the jury or, where a juror is ill, communication to arrange or administer medical assistance. A person who contravenes this provision may be punished for contempt of court. The communication

which was made in contravention of this provision does not affect the validity of proceedings but the trial judge may, if the contravention is likely to prejudice a fair trial, discharge the jury.

Clause 55 requires the jury to be kept, when it is not allowed to separate during an adjournment or while proceedings are held in its absence, in a private place or as the trial judge allows.

Clause 56 provides for the discharge or death of an individual juror. Where it becomes apparent that a juror is not impartial, or is incapable of continuing to act as a juror or becomes unavailable, the trial judge can discharge the juror. If a juror is discharged, the trial judge may direct that another juror shall be selected.

Clause 57 provides that, if a juror is discharged or dies and there is no reserve juror to replace the juror, the trial judge can direct that the trial continue. A civil trial cannot continue with less than 3 jurors and a criminal trial cannot continue with less than 10 jurors.

Clause 58 provides that where a civil jury cannot reach a verdict within 6 hours, the court may discharge the jury or the court may, if the parties agree, take the verdict of 3 of the jurors as the verdict of the jury.

Clause 59 provides that the verdict in criminal trials must be unanimous.

Clause 60 authorises a trial judge to discharge a jury without giving a verdict where the jury cannot agree on a verdict or the trial judge is of the opinion that some other proper reason exists for discharging the jury without giving a verdict.

Clause 61 provides that where a trial judge dies, or becomes incapacitated, the appropriate officer of the court must discharge the jury.

Clause 62 provides that a trial judge may, where a jury is discharged, proceed with the selection of a new jury or adjourn the trial. Where a criminal trial is adjourned, the defendant remains in custody unless granted bail.

Clause 63 allows a regulation to be made for the remuneration and allowances to be paid to a person who is required to attend or serve as a juror or reserve juror.

Clause 64 authorises the Governor in Council to make special payments in certain cases upon the recommendation of the Minister.

Clause 65 provides for fees to be imposed in respect of civil trials for which a jury is required by a court or requested by a party.

Clause 66 makes impersonating a member of a jury panel, a juror or a reserve juror an offence.

Clause 67 makes it an offence to make false records under the Bill or to interfere with the proper formation of a jury under the Bill.

Clause 68 creates an obligation for a person to truthfully answer questions put by a sheriff or person authorised by a sheriff and to produce documents required by a sheriff or person authorised by a sheriff where the questions or documents relate to whether the person is qualified for jury service. A failure to do so is an offence.

Clause 69 prohibits the termination of employment, or prejudice in employment, because a person is, was, or will be, absent from work on jury service.

Clause 70 protects the confidentiality of jury deliberations. It does so by prohibiting a person from publishing to the public confidential information about jury deliberations, by prohibiting the seeking of confidential information about jury deliberations from members or former members of juries and by prohibiting the disclosure of confidential information about jury deliberations by a member or former member of a jury.

A person who is a member or former member of a jury must not disclose confidential information about jury deliberations, if the person has reason to believe the information will be published to the public.

It is not an offence for a member or former member to disclose the information in certain circumstances e.g. research purposes.

Clause 71 creates an obligation for a police officer sworn to assist the officer of a court in charge of a jury to carry out duties as directed by the court or the officer of the court in charge of the jury.

Clause 72 deals with power of a sheriff to delegate under the Bill.

Clause 73 relates to the approval of forms under the Bill.

Clause 74 states that regulations may be made under the Bill.

Clause 75 repeals the Acts listed in Schedule 1.

Clause 76 amends the Acts mentioned in Schedule 2.

Clause 77 provides that in statutes or documents reference to the *Jury Act 1929*, will be taken to be a reference to the *Jury Act 1995*.

Clause 78 is a transitional provision.