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# NSW Legislative Assembly Hansard

## JURY AMENDMENT BILL

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**Bill introduced and read a first time.**

### Second Reading

**Mr TONY STEWART** (Bankstown—Parliamentary Secretary) [10.12 a.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Jury Amendment Bill 2004. One of the central attributes of trial by jury is that juries bring the conscience of the community to bear on issues in a trial in a way that a single judge cannot. However, recent cases have demonstrated the danger in a jury's verdict being determined not by the evidence and the relevant law, but by external factors, such as personal experiments or inquiries or prejudicial material bearing on the case. It is a fundamental principle of our criminal law system that an accused is given a fair trial and is judged on the evidence given in court. In the past 12 months the New South Wales Court of Criminal Appeal has overturned two major Supreme Court criminal convictions. One was a murder conviction—*R v K* [2003] NSWCCA 406—and the other was a conviction for sexual assault in company—*R v Skaf and Skaf* [2004] NSWCCA 37. In each case the Court of Criminal Appeal held that the jury's verdict had been tainted by the misconduct of jurors.

Recently, in the District Court in Sydney, a trial was aborted after 24 court days because jurors had disregarded the clear direction of the judge not to search the Internet, conduct private views at the scene of the crime or discuss the matter with anyone who is not a fellow juror. Each of these matters caused a retrial. A retrial creates significant hardships for the witnesses and their families, the accused, the police and every taxpayer, who has to fund these expensive trials. It is particularly distressing for victims of horrific crimes, such as sexual assault. As a result of the two recent cases in the Court of Criminal Appeal, the court and the jury task force recommended amendments to the Jury Act. The Criminal Law Review Division of the Attorney General's Department also sought the views of the Office of the Sheriff, the Law Society of New South Wales, the New South Wales Bar Association, the Public Defender's Office, the Legal Aid Commission, the Office of the Director of Public Prosecutions, the Chief Judge of the District Court and the Chief Justice of New South Wales in developing these legal provisions. The bill incorporates suggestions and recommendations arising from this consultation process.

The Jury Amendment Bill seeks to reduce the incidence of retrials resulting from jury misconduct. The creation of a new offence of juror misconduct is accompanied by non-legislative changes, including stronger directions from judges to juries and improvements in juror education. The bill will discourage jury misconduct and improve the procedures for investigating jury misconduct without discouraging participation in this important civic duty. There will also be broader prohibitions on soliciting information from a juror. There are three main legislative provisions to these amendments. Firstly, the bill creates a new offence of jurors conducting their own inquiries. Secondly, the bill expands the scope of the current offences of soliciting information from a juror and jurors disclosing information. Thirdly, and importantly, the bill empowers the Office of the Sheriff to investigate jury irregularities and report back to the court.

In relation to prohibiting jurors from conducting their own inquiries, an offence has been created in new section 68C that prohibits jurors from making an inquiry for the purpose of obtaining information about the accused or about any matter relevant to the trial. This prohibition applies to jurors in criminal trials and lasts until the jury has given its verdict or the judge has discharged the person. Prohibited inquiries are defined to include: asking a question of another person; conducting research, including use of the Internet; viewing or inspecting a place or object; and conducting experiments. It is also an offence to ask another person to conduct these inquiries. However, inquiries authorised by the court, such as the handling of exhibits in the jury room, are not prohibited. It is also not an offence to make an inquiry of another juror. The maximum penalty for this offence will be two years imprisonment and a fine of 50 penalty units.

This offence will provide an appropriate deterrent to jurors who are tempted to disregard the directions of a judge. More serious instances of jury misconduct, such as the acceptance of a bribe, could be prosecuted as contempt of court or perverting the course of justice—offences that carry much higher maximum penalties. A new section 55DA provides that a judge may examine a juror on oath to determine whether a juror has made prohibited inquiries. A juror will not be able to refuse to answer questions from the judge on the basis that the answers may incriminate the juror. However, the longstanding protection against self-incrimination is retained by providing that the answers given cannot be used against the juror in future prosecutions. The certificate granted to prevent the admission of answers in a subsequent prosecution of the juror is modelled on the provisions of the Evidence Act 1995. These provisions allow a court to find out whether an irregularity has occurred, without a juror refusing to answer questions.

A juror may still be prosecuted on the basis of other evidence, such as the testimony of other jurors. In most cases there will be other evidence against the juror because it is likely that the judge's questioning would arise out of material drawn to the judge's attention. As to broadening the prohibition on soliciting information from jurors, the second main improvement

made by the bill is to expand the scope of the current offences of soliciting information from a juror and jurors disclosing information. The current section 68A of the Act prohibits the soliciting of information from a juror about jury deliberations.

Section 68B prohibits the disclosure by the juror of any information about jury deliberations. Deliberations of a jury are defined to include statements made, opinions expressed, arguments advanced or votes cast in the course of jury deliberations. Items [2] and [4] of schedule 1 extend these prohibitions to encompass all aspects of the activities undertaken by the jury in discharge of their duties, and not simply the final deliberative process after retirement. This will extend the prohibition to include asking jurors whether they considered any extraneous material, and to question jurors about any part of their decision-making. The prohibitions against soliciting information from a juror and disclosing information by a jury do not extend to jurors making inquiries of fellow jurors.

The final improvement proposed by the bill is to provide a power to the Office of the Sheriff to investigate jury irregularities. Item [7] inserts a new section 73A, which empowers the Office of the Sheriff, at the request of the court, to investigate and report back to the court on a matter where a serious irregularity is suspected to have occurred. This new section will formalise a process whereby the trial court or appeal court can ask the Sheriff to investigate a suspected irregularity. It is the function of the Sheriff to inform the court of the nature of an irregularity. The court will use this information to determine whether to discharge a jury, or whether to allow an appeal against a conviction.

It must be emphasised that the principal function of the Sheriff's investigation is to inform the court of the nature of any irregularity that may have affected a jury's verdict. It is not the place of the Sheriff to investigate a criminal offence, although any information he gathers will be used to assist the police in any subsequent investigation. Where it is reasonably suspected that an offence under section 68C has occurred, the matter should be referred to the police for investigation and prosecution. The bill contains a comprehensive set of amendments that are necessary to deter jurors from disobeying judges' instructions. I commend the bill to the House.

**Debate adjourned on motion by Mr Daryl Maguire.**

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