



NSW Legislative Council Hansard

Jury Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 9 December 2004.

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [11.23 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

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 that a jury's verdict might be 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 that she or he is judged on the evidence given in Court.

In the last 12 months the NSW 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 & 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 of the scene of the crime or discuss the matter with anyone who is not a fellow juror.

Each of these matters require a retrial. A retrial creates significant hardships for the witnesses and their families, for the accused, for the Police and for everyone as a taxpayer who has to fund these trials. It is particularly distressing for a victims of horrific crimes such as sexual assault.

As a result of the two cases in the Court of Criminal Appeal, the Court and the Jury Taskforce 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 NSW, the NSW 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.

In terms of the Legislative Provisions, there are three main parts 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, 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 enquiries, a new offence is created under section 68C which 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 using 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 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 the 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 which have 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 them, however, the long standing 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*. This allows 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 of 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] 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 a juror 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 to 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, which may have affected a jury's verdict. It is not the place of the Sheriff to investigate a criminal offence; although any information they gather will be used to assist the police in any subsequent investigation.

Where it is reasonably suspected that an offence under s68C 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.