

## Jury Amendment Bill 2004

New South Wales

### 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* as follows:

- (a) to prevent jurors in a trial of any criminal proceedings from making inquiries about the accused, or matters relevant to the trial, except in the proper exercise of functions as a juror,
- (b) to prevent a person soliciting information from, or harassing, a juror or former juror for the purpose of obtaining information about how a juror, or the jury, formed any opinion or conclusion in relation to an issue arising in a trial or coronial inquest, and to prevent a person from disclosing such information in certain circumstances,
- (c) to allow the sheriff to investigate any irregularities in the conduct of jury members in a trial for criminal proceedings that may affect or have affected the jury verdict.

#### 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 the date of assent.

**Clause 3** is a formal provision that gives effect to the amendments to the *Jury Act 1977* set out in Schedule 1.

#### Schedule 1 Amendments

##### Inquiries by jurors about trial matters

An amendment makes it an offence for a juror for the trial of any criminal proceedings to make an inquiry for the purpose of obtaining information about the accused, or any other matters relevant to the trial, except in the proper exercise of his or her functions as a juror. The maximum penalty for the offence is 50 penalty units (\$5,500) or imprisonment for 2 years, or both. See **Schedule 1 [6]** (proposed section 68C).

The object of the amendment is to prevent jurors, during a trial, from making private inquiries in relation to the accused or trial matters, such as by searching the Internet for information about the trial or the accused, conducting private experiments in relation to matters raised in the trial or inspecting the crime scene without court authority. Such conduct can result in a trial being aborted.

An ancillary amendment allows a judge to examine a juror on oath to determine whether the juror has made inquiries of a kind prohibited by the new provision. The amendment provides that the privilege against self-incrimination in relation to the new offence does not apply to a juror in respect of any such examination by a judge, but evidence given by the juror cannot be used against the juror in any proceedings for the offence. See **Schedule 1 [1]** (proposed section 55DA).

##### Disclosure of trial information by jurors and others

At present, it is an offence for a person to solicit information from, or harass, a juror or former juror for the purpose of obtaining information about jury deliberations. It is also an offence for a juror to disclose information about jury deliberations during a trial or coronial inquest or for any person to disclose information about jury deliberations for fee, gain or reward.

Amendments extend those provisions so that it will be an offence to solicit information from, or harass, a juror or former juror for the purpose of obtaining information about how a juror, or the jury, formed any opinion or conclusion in relation to an issue arising in a trial or inquest. It will also be an offence for a juror to disclose that information during a trial or inquest or for any person to disclose that

information for fee, gain or reward. The object of the amendments is to make it clear that any information relating to how the jury reaches or reached its verdict, not limited to jury deliberations, is protected from disclosure in the same way as jury deliberations. The provisions do not prevent law enforcement authorities from soliciting information about those matters. See **Schedule 1 [2] and [4]**.

Consequential amendments make it clear that the new provisions do not prevent discussions between jurors during a trial or inquest. See **Schedule 1 [3] and [5]**.

#### **Inquiries by sheriff**

An amendment confers power on the sheriff to conduct an investigation into any suspected improper conduct by a jury member or members in a criminal trial. Such an investigation may be conducted if there is reason to suspect that the verdict of the jury may be, or may have been, affected because of improper conduct. The investigation may be carried out only with the consent of or at the request of the Supreme Court or the District Court. Provisions of the *Evidence Act 1995*, which require persons who are questioned in respect of suspected offences to be cautioned that answers given may be used in evidence, will apply in relation to any questioning conducted by the sheriff for the purpose of an investigation. See **Schedule 1 [7]**.

#### **Other amendments**

The amendments also provide for savings and transitional matters. See **Schedule 1 [8] and [9]**.