

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 (the Act):

- (a) to change the categories of persons disqualified from jury service or ineligible to undertake jury service, and
- (b) to remove certain exemptions as of right from jury service and enable, instead, a person to apply for an exemption from jury service for “good cause” (a term which is defined), and
- (c) to improve the administrative provisions governing the way in which the sheriff, courts and coroners determine persons who are excluded from jury service or are exempt from jury service, and
- (d) to increase the workplace protections for employees who are required to attend for jury service, and
- (e) to enable the sheriff to request certain information from the Commissioner of Police and the Roads and Traffic Authority in relation to persons being considered for inclusion on a jury roll.

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The Bill also amends the Jury Regulation 2004 (the Regulation):

- (a) to enable a person to be included on more than one jury roll, and
- (b) to revise the allowances payable to persons for attendance for jury service.

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 a day or days to be appointed by proclamation.

Schedule 1 Amendment of Jury Act 1977 No 18

Changes in categories of persons disqualified from or ineligible for jury service or able to claim exemptions from jury service

Currently, Schedule 1 to the Act lists categories of persons who are disqualified from jury service and Schedule 2 to the Act lists categories of persons who are ineligible for jury service. The amendments replace the concept of disqualification from jury service and ineligibility for jury service with the concept of exclusion from jury service.

Schedule 1 [22] omits Schedules 1 and 2 to the Act and replaces those Schedules with a single Schedule which contains categories of persons who are excluded from jury service.

The changes to the categories of persons who will be excluded from jury service include the following:

- (a) persons who have been found guilty of certain serious offences will be excluded from jury service for life,
- (b) persons who have been imprisoned or detained for committing other offences will be excluded from jury service for a specified number of years depending on the length of the period of detention and whether the offences were committed as adults or juveniles,
- (c) persons awaiting trial or sentencing for an offence or the determination of an appeal in relation to an offence, or subject to certain orders, will be excluded from jury service,
- (d) persons will be excluded from jury service during any period of 12 months or more in which they are disqualified from holding a driver licence,
- (e) Australian lawyers will no longer be excluded from jury service,
- (f) the holders of certain specified offices or certain positions will be excluded from jury service but, with certain exceptions, only while holding the office or

position and for 3 years afterwards,

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(g) a person who is unable to read or understand English will no longer be excluded from jury service (but will instead be eligible for an exemption for good cause under proposed section 14),

(h) a person who is unable, because of sickness, infirmity or disability, to discharge the duties of a juror will no longer be excluded from jury service (but will instead be eligible for a permanent exemption or exemption for good cause under proposed section 14 depending on the nature of the sickness, infirmity or disability),

(i) a person who is an undischarged bankrupt will be excluded from jury service.

Schedule 1 [23] omits Schedule 3 to the Act which contains the categories of persons who have a right to claim an exemption from jury service and inserts a new Schedule 2 which contains a revised list of those categories. The following current categories of exemptions have been excluded from the new Schedule, but persons within those categories will be able to apply for an exemption for good cause under proposed section 14:

(a) mining managers and under-managers of mines,

(b) persons who are at least 70 years old,

(c) pregnant women,

(d) a person who has the care, custody and control of children under the age of 18 years (other than children who have ceased attending school), and who, if exempted, would be the only person exempt under this item in respect of those children,

(e) a person who resides with, and has full-time care of, a person who is sick, infirm or disabled.

Schedule 1 [3] substitutes sections 13–15 of the Act dealing with the procedure for including persons on a supplementary jury roll.

Proposed section 13 requires the sheriff (as is currently the case) to send a notice to each person that the sheriff intends to include on a supplementary jury roll informing the person of that intention and the various categories of exclusion and exemption from jury service. The notice also includes a questionnaire designed to elicit information as to whether the person is excluded from jury service or has a claim for exemption from jury service.

Proposed section 14 provides for the manner in which a person may claim to be excluded or exempt from jury service as of right or may apply to the sheriff for some other exemption.

The proposed section enables a person to request a permanent exemption from jury service on the grounds that he or she has a permanent mental or physical impairment that results in jury service being incompatible with the person's good health or that otherwise renders the person unable to perform jury service.

The proposed section also enables a person to request an exemption from jury service for the whole or part of the period for which the person is liable to be summoned for jury service by showing good cause. The sheriff may exempt a person from jury

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service for good cause whether or not a request for exemption has been made. (See proposed section 14A as to what constitutes "good cause".)

Any such claim or application may be made in response to a notice under proposed section 13, or in writing in an approved form to the sheriff, at any time before the person is actually in attendance at a trial or coronial inquest pursuant to a summons

for jury service.

Proposed section 14A sets out what generally constitutes good cause to be exempted or excused from jury service, being grounds involving hardship, serious inconvenience, disability or conflict of interest, or some other reason that would affect the person's ability to perform the functions of a juror.

Proposed section 14B enables a person to apply to the sheriff for deferral of jury service.

Proposed section 14C enables the sheriff to require verification by statutory declaration or the provision of other evidence of claims, requests or applications in connection with exclusions and exemptions from, and deferrals of, jury service.

Proposed section 14D imposes a general duty on the sheriff to update the information on jurors contained in jury rolls and supplementary jury rolls.

Proposed section 15 re-enacts the current section 15 of the Act dealing with appeals to the Local Court from decisions of the sheriff in connection with exemptions from jury service as a consequence of the removal of the concepts of disqualification from, and ineligibility for, jury service.

Schedule 1 [1], [2], [4], [5], [6], [9], [10], [11], [12], [18], [19] and [21] contain consequential amendments.

Employment related amendments

Schedule 1 [13] and [15] amend section 69 of the Act to increase the penalties for an offence against that section from 20 penalty units to 200 penalty units (in the case of a corporation) or 50 penalty units or imprisonment for 12 months, or both (in the case of an individual). That section contains offences relating to dismissing a person from his or her employment, injuring a person in his or her employment or altering a person's position to his or her prejudice because the person has been summoned for jury service.

Schedule 1 [14] amends section 69 of the Act to make it clear that it extends to certain casual employees.

Schedule 1 [16] inserts proposed section 69A into the Act to create offences to prevent employers requiring employees to use their leave if they are summoned for jury service or to work extra time to make up for work time lost while attending for jury service.

Powers of sheriff to request certain information

Schedule 1 [20] amends section 75A of the Act to enable the sheriff to obtain information from the Commissioner of Police relating to the criminal record of a person proposed to be summoned for jury service to determine whether the person is

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excluded from jury service. The amendment also enables the sheriff to obtain information from the Chief Executive of the Roads and Traffic Authority for the purpose of checking the relevant details of a person proposed to be summoned for jury service.

Miscellaneous

Schedule 1 [7] amends section 38 of the Act to enable a person making a request for an exemption from jury service to a court at a trial or a coroner at a coronial inquest to make the request in writing if it relates to the person's health or may cause embarrassment or distress if made public.

Schedule 1 [8] removes an unnecessary word by way of statute law revision.

Schedule 1 [11] substitutes section 62 of the Act to include as an offence the provision of false or misleading information to the sheriff in connection with a claim for jury allowance and to increase the penalty for existing offences of providing false or misleading information to the sheriff from 10 penalty units to 50 penalty units (currently, \$5,500).

Schedule 1 [17] amends section 72 as a consequence of the amendments to the Regulation in Schedule 2 relating to allowances to persons attending for jury service. Schedule 1 [24] and [25] amend Schedule 8 to the Act to provide for savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Jury Regulation 2004

Schedule 2 [1] amends clause 3 of the Regulation to enable a person to be included in more than one jury district and, as a result, on more than one jury roll.

Schedule 2 [2] and [3] substitute clause 5 and Schedule 1 to the Regulation to revise the allowances payable to persons who are required to attend for jury service. The attendance allowance is the same for all persons for the first 10 days of attendance and then is increased from day 11 onwards for persons who are employed.