

JURY (AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Jury Act 1977 to give effect to certain recommendations of the Law Reform Commission in its report on the jury in a criminal trial (L.R.C. 48) and to make other changes. The recommendations and other changes—

- (a) seek to reduce the potential for bias and prejudice in criminal trials;
- (b) place restrictions on disclosing the deliberations of the jury;
- (c) further protect jurors; and
- (d) seek to improve the procedures for selecting juries.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

Clause 4 amends the Oaths Act 1900 and an amending Act to repeal provisions that will become redundant as a consequence of the proposed Act.

Schedule 1 (1) entitles a person on request to be excluded from a jury roll after having served on a jury.

Schedule 1 (2) provides that a criminal trial may continue when the number of jurors falls below 10 (but not below 8) if the trial has been in progress for 2 months. At present the consent of the prosecution and accused must be obtained when the number of jurors falls below 10. Provision is also made to allow a civil trial to continue when the number of jurors (in a jury of 12) falls below 8 instead of 10.

Schedule 1 (3) (a) permits the sheriff to excuse a person from jury service for good cause before or on the day of the trial or inquest (instead of before that day only).

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Schedule 1 (3) (b) enables the judge at a criminal trial to call on the jurors (before the trial commences and after being informed of the nature of the charge and the identity of the accused and of the principal prosecution witnesses) to apply to be excused if they feel they cannot give impartial consideration to the case.

Schedule 1 (4) is consequential on the amendment effected by Schedule 1 (18).

Schedule 1 (5) reduces the maximum number of peremptory challenges to jurors available to an accused person and to the prosecution to 3. At present the maximum is 20 for murder and 8 in other cases. However, provision is made for an unrestricted number of peremptory challenges where both the prosecution and the defence agree to the challenge.

Schedule 1 (6) is consequential on the amendment effected by Schedule 1 (5).

Schedule 1 (7) provides that the right to challenge a particular juror for cause may be exercised before or after all rights of peremptory challenge have been exhausted.

Schedule 1 (8) expressly confers power on the judge in a criminal trial to discharge a jury if the process of exercising peremptory challenges has created the potential for (or the appearance of) unfairness.

Schedule 1 (9) makes it clear that a court may issue a further general jury precept to obtain the required number of jurors to complete a ballot when insufficient jurors attend for jury service.

Schedule 1 (10) provides that a jury may be permitted to separate after they have retired to consider their verdict.

Schedule 1 (11) inserts proposed new sections 55A–55E into the Principal Act.

Proposed section 55A enables a judge or coroner to direct that exhibits not be left with jurors if the exhibits or the jurors' safety would be put at risk.

Proposed section 55B confirms the discretionary power of a judge or coroner to give the jury directions of law in writing.

Proposed section 55C confirms the discretionary power of a judge or coroner to provide, at the jury's request, a copy of the transcript of evidence at the trial or inquest.

Proposed section 55D provides that if alleged prejudicial material has been published during the course of a trial or inquest the judge or coroner may examine a juror to determine whether the juror has read, heard or seen the material or has been influenced by it.

Proposed section 55E provides that the jury is to be discharged immediately after delivering their verdict.

Schedule 1 (12) enables a judge in a criminal trial to discharge at any time a jury which is not likely to agree. At present the jury cannot be discharged until they have retired for at least 6 hours.

Schedule 1 (13) is consequential on the amendment made by Schedule 1 (2).

Schedule 1 (14) increases the penalty for failing to inform the sheriff of a disqualification or ineligibility to serve as a juror to \$1,000.

Schedule 1 (15) increases the penalty for making false representations to evade jury service to \$1,000.

Schedule 1 (16) increases the penalty for failing to attend for jury service to \$200.

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Schedule 1 (17) is consequential on the amendment made by Schedule 1 (16).

Schedule 1 (18) provides that it is an offence (penalty \$1,000) for any person to inspect a panel annexed to a general jury precept of a list of jury members except for official or authorised purposes.

Schedule 1 (19) provides that it is an offence (penalty \$5,000 if a corporation or \$2,000 if an individual) to publish, broadcast or otherwise disclose any material, matter or information during the course of a trial which identifies a juror or former juror. The present prohibition does not apply to a former juror nor to disclosures that are not published or broadcast.

Schedule 1 (20) inserts proposed new sections 68A and 68B into the Principal Act.

Proposed section 68A provides that it is an offence to solicit information from, or harass, a juror or former juror for the purpose of publishing or broadcasting information relating to the deliberations of a jury. The offence does not apply to the conduct of authorised research.

Proposed section 68B provides that it is an offence for a jury member to disclose during a trial or inquest the deliberations of the jury except with the sanction of the judge or a coroner (penalty \$2,000). The section also makes it an offence to seek gain or financial advantage by disclosing, or offering to disclose, the deliberations of a jury (penalty \$5,000).

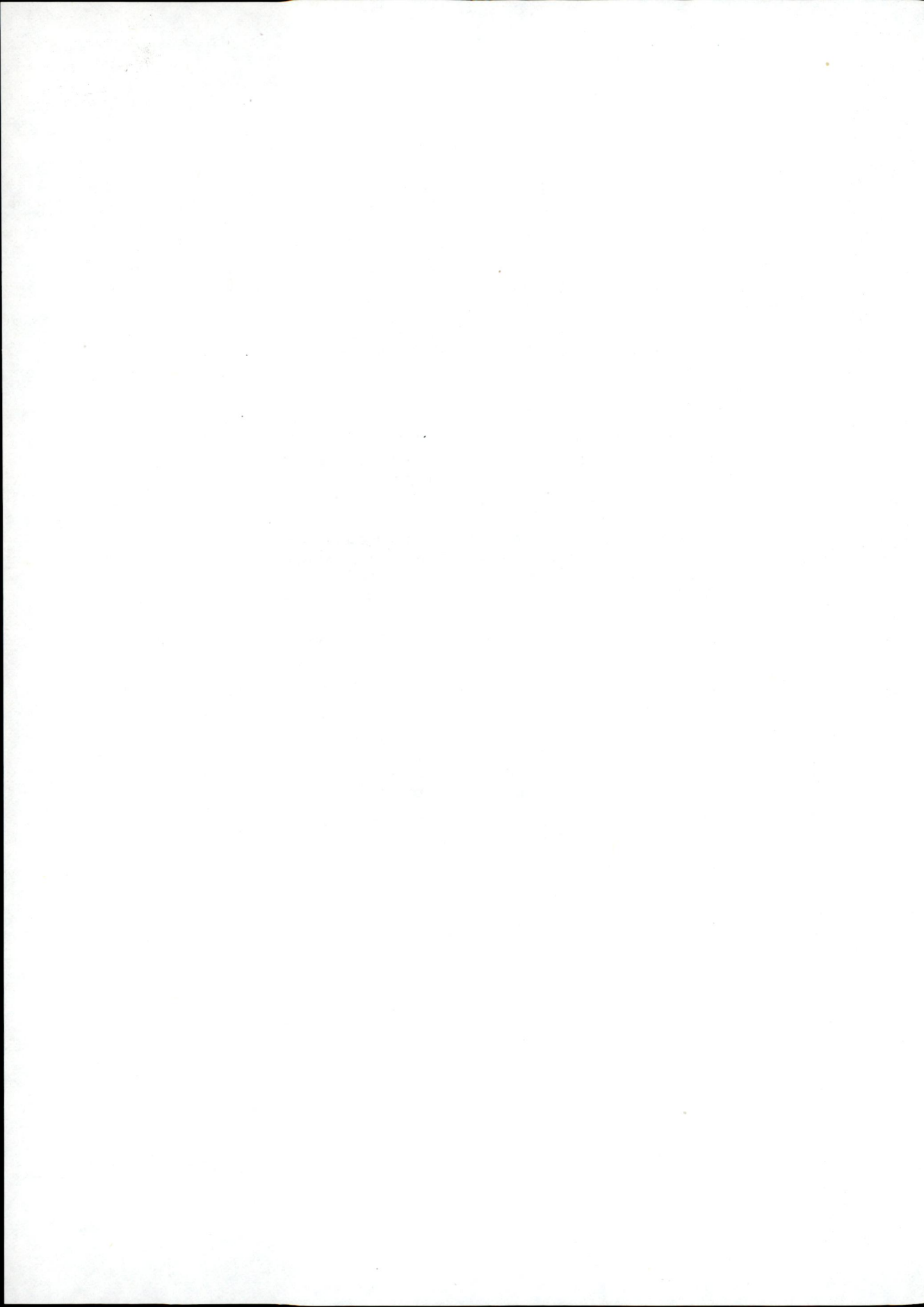
Schedule 1 (21) increases the monetary penalty for unlawfully dismissing employees summoned for jury service to \$2,000.

Schedule 1 (22) prescribes the form of the oath or affirmation to be taken or made by a person before serving as a juror.

Schedule 1 (23) replaces Schedules 1, 2 and 3 to the Principal Act (dealing with persons who are disqualified from serving as jurors, who are ineligible to serve as jurors or who can claim exemption as of right) with revised Schedules to extend and clarify the classes of persons who are disqualified, ineligible or exempted.

Schedule 1 (24) inserts transitional and savings provisions into the Principal Act as a consequence of the proposed Act.

Schedule 2 effects amendments by way of statute law revision.



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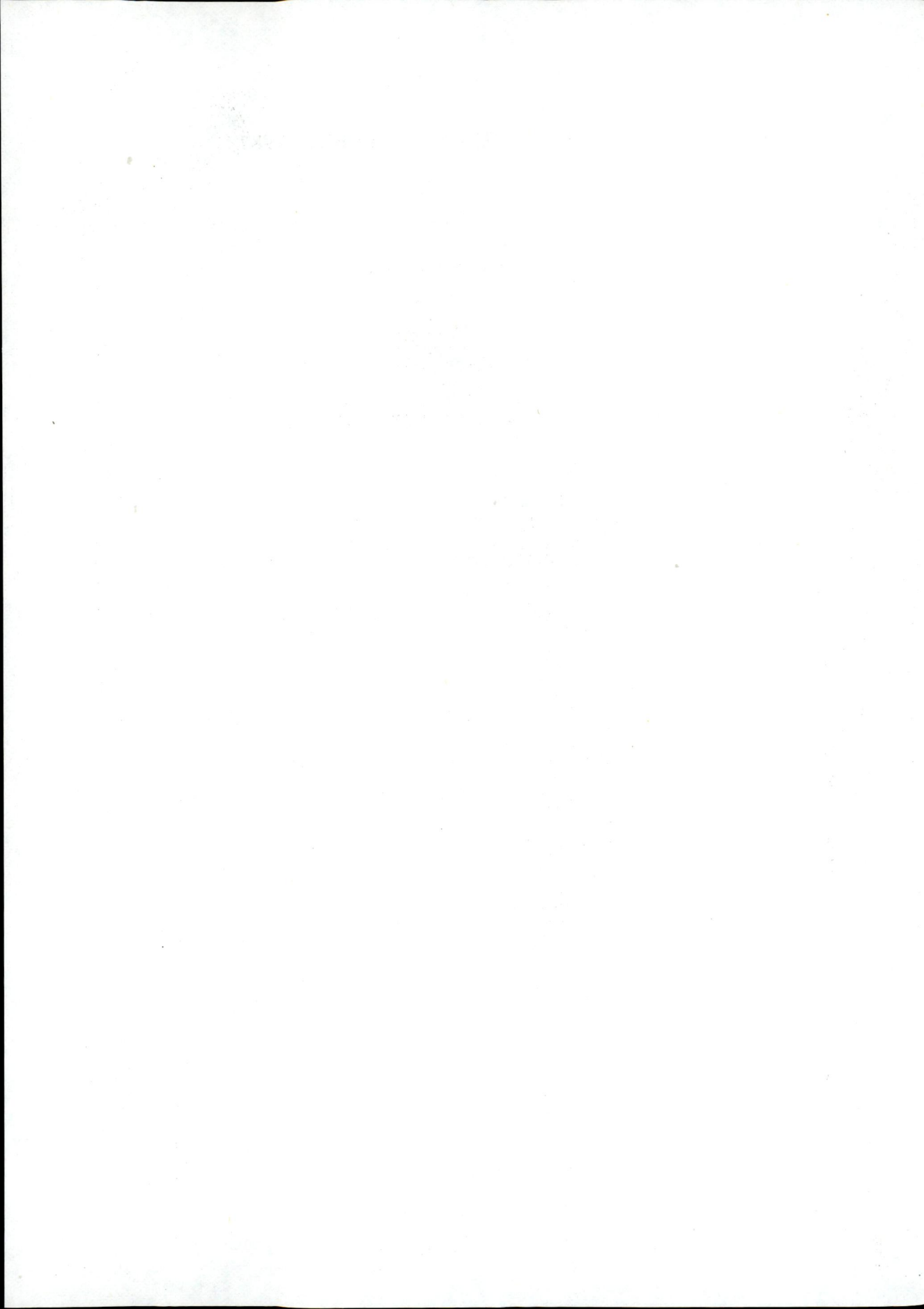


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JURY (AMENDMENT) BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Jury Act 1977 to make further provision with respect to juries.

*Jury (Amendment) 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Jury (Amendment) Act 1987.

Commencement

- 5 2. (1) Except as provided by this section, this Act shall commence on a day occurring 28 days after the date of assent to this Act or on such earlier day or days as may be appointed by proclamation.

(2) Schedule 1 (5), (6), (22) and (23), and section 3 in its application to those provisions, shall commence on a day or days to be appointed by
10 proclamation.

Amendment of Act No. 18, 1977

3. The Jury Act 1977 is amended as set out in Schedules 1 and 2.

Consequential amendments of certain other Acts

4. (1) The Oaths Act 1900 is amended—

- 15 (a) by omitting from section 12 the matter “sections 13 and 14” and by inserting instead the matter “section 13”; and
(b) by omitting section 14.

(2) The Miscellaneous Acts (Community Welfare) Repeal and
20 Amendment Act 1987 is amended by omitting so much of Schedule 3 to that Act as amends the Jury Act 1977.

SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977

(Sec. 3)

- (1) Section 18 (**Sheriff may amend jury roll**)—

- (a) Section 18 (1) (a) (ii)—

25 Omit “or”.

- (b) Section 18 (1) (a) (iii), (iv)—

After section 18 (1) (a) (iii) insert:

; or

30 (iv) who has served on a jury while on the roll and has duly requested to be excluded from the roll under subsection (5);

- (c) Section 18 (5), (6)—

After section 18 (4), insert:

(5) A person who—

*Jury (Amendment) 1987*SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued*

- (a) is on a jury roll; and
 (b) has served as a juror while on the roll,
 may request to be excluded from the roll by notice given to the
 sheriff at any time.
- 5 (6) The exclusion of a person from a jury roll as a result of such
 a request does not affect an obligation under a summons issued
 to the person before the request was made.
- (2) **Section 22 (Continuation of trial or inquest on death or discharge of
 juror)—**
- 10 (a) Section 22 (a)—
 Omit the paragraph, insert instead:
- (a) in the case of criminal proceedings, the number of its
 members—
- 15 (i) is not reduced below 10;
 (ii) is reduced below 10 but approval in writing is given
 to the reduced number of jurors by or on behalf of
 both the person prosecuting for the Crown and the
 accused or each of the accused; or
- 20 (iii) is reduced below 10 but not below 8 and the trial has
 been in progress for at least 2 months;
- (b) Section 22 (b)—
 Omit “10”, insert instead “8”.
- (3) **Section 38 (Person summoned for jury service may be excused before
 or at trial etc.)—**
- 25 (a) Section 38 (1) (a)—
 After “required”, insert “or on that day at any time before the
 commencement of the trial or inquest at which the person may
 be selected as a juror”.
- (b) Section 38 (7)—
- 30 After section 38 (6), insert:
- (7) A judge may, at any criminal trial and before the selection
 of the jury—
- 35 (a) request the person prosecuting for the Crown to inform the
 jurors on the panel of the nature of the charge and the
 identity of the accused and of the principal witnesses to
 be called for the prosecution; and
- (b) call on the jurors on the panel to apply to be excused if
 they consider that they are not able to give impartial
 consideration to the case.

*Jury (Amendment) 1987*SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued*(4) Section 40 (**Inspection of panel permitted in certain circumstances**)—

Section 40 (1)—

Omit the subsection.

(5) Section 42—

5 Omit the section, insert instead:

Peremptory challenges in criminal proceedings

42. (1) In any criminal proceedings, each person prosecuted shall be allowed—

(a) 3 peremptory challenges without restriction; and

10 (b) any number of additional peremptory challenges if the Crown and the other persons (if any) prosecuted agree to the challenge.

(2) In any criminal proceedings, the Crown shall be allowed—

15 (a) 3 peremptory challenges without restriction for each person prosecuted; and

(b) any number of additional peremptory challenges if all the persons prosecuted agree to the challenge.

20 (3) Any additional peremptory challenge under subsection (1) (b) or (2) (b) shall not be allowed until all the peremptory challenges without restriction of each person prosecuted and the Crown have been exhausted.

(6) Section 43 (**Crown may challenge for cause but not require jurors to stand aside**)—

Section 43 (1)—

25 Omit the subsection, insert instead:

(1) The Crown has the right to challenge a juror for cause in any criminal proceedings or in any civil proceedings in which it is a party.

(7) Section 45 (**Time for making challenge to juror**)—

30 Section 45 (1A)—

After section 45 (1), insert:

(1A) A challenge for cause to a juror in criminal proceedings may be made either before or after all rights of peremptory challenge have been exhausted.

*Jury (Amendment) 1987***SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—continued****(8) Section 47A—**

After section 47, insert:

Discharge of jury as a result of challenges

5 47A. The judge presiding at the trial of any criminal proceedings may discharge the jury that has been selected if, in the opinion of that judge, the exercise of the rights to make peremptory challenges has resulted in a jury whose composition is such that the trial might be or might appear to be unfair.

(9) Section 51 (Procedure where insufficient jurors to complete ballot)—

10 Section 51 (1)—

Omit the subsection, insert instead:

15 (1) If there are an insufficient number of jurors summoned pursuant to a general jury precept in attendance at a court or coronial inquest for the purposes of a ballot under section 48, 49 or 50, the trial or inquest may be adjourned and—

- 20 (a) the jurors may be discharged and a further general jury precept may be issued in respect of the trial or inquest;
- (b) the jurors may be retained and a further general jury precept may be issued in order to obtain the further number of jurors required to complete the ballot; or
- 25 (c) the jurors may be retained and the further number of jurors required to complete the ballot may be required by the sheriff to attend at the court or inquest for that purpose if they have been summoned to attend at another court or inquest in the same jury district and are not required at that other court or inquest.

(10) Section 54—

Omit the section, insert instead:

Jury permitted to separate in criminal trials

30 54. The jury in criminal proceedings—

- (a) shall, unless the court otherwise orders, be permitted to separate at any time before they retire to consider their verdict; and
- 35 (b) may, if the court so orders, be permitted to separate at any time after they retire to consider their verdict.

*Jury (Amendment) 1987*SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued*

(11) Sections 55A–55E—

After section 55, insert:

Exhibits in jurors' deliberation room

5 55A. A judge or coroner may refuse to allow an exhibit at the trial or inquest being left with the jurors after they have retired if satisfied that the exhibit or the safety of the jurors would be put at risk.

Judge or coroner may give directions to jury in writing

10 55B. Any direction of law to a jury by a judge or coroner may be given in writing if the judge or coroner considers that it is appropriate to do so.

Supply of transcripts to jury

15 55C. A copy of all or any part of the transcript of evidence at a trial or inquest may, at the request of the jury, be supplied to the members of the jury if the judge or coroner considers that it is appropriate and practicable to do so.

Examination of jurors—publication of prejudicial material during trial or inquest

20 55D. A judge or coroner may examine a juror on oath to determine—

(a) whether the juror has read, seen or heard alleged prejudicial material published or broadcast during the trial or inquest; and

(b) whether the juror has been influenced by the material.

Discharge of jury after delivery of verdict

25 55E. (1) The jury shall be discharged immediately after delivering their verdict.

30 (2) Nothing in this section prevents any member of the jury from remaining in court as an ordinary member of the public after being so discharged.

(12) Section 56 (**Discharge of jury that disagree in criminal proceedings**)—

Omit “for more than 6 hours”.

(13) Section 57 (**Majority verdicts in civil proceedings**)—

Section 57 (b)—

35 Omit the paragraph, insert instead:

(b) in the case of a jury consisting of 12 persons or, pursuant to section 22 (b), 9, 10 or 11 persons, the decision of 8 jurors,

*Jury (Amendment) 1987*SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued*(14) Section 61 (**Failure to inform sheriff of disqualification or ineligibility**)—

Omit “\$500”, insert instead “10 penalty units”.

(15) Section 62 (**False representations to evade jury service**)—

5 Omit “\$500”, insert instead “10 penalty units”.

(16) Section 63 (**Failure to attend for jury service**)—

Omit “\$100”, insert instead “2 penalty units”.

(17) Section 64 (**Penalty notice procedure for failure to attend for jury service**)—

10 Section 64 (2) (a)—

Omit “\$100”, insert instead “2 penalty units”.

(18) Section 67A—

After section 67, insert:

Inspection of panel etc.

15 67A. (1) A person shall not inspect, or make available to any other person, the panel annexed to a general jury precept or to a jury pool precept or a list referred to in section 32 (1) or the cards furnished in relation to that precept or list.

Penalty: 10 penalty units.

20 (2) This section does not apply to anything inspected or made available to another person—

(a) for the purposes of executing this Act;

(b) in accordance with an order of the court or coroner concerned; or

25 (c) in accordance with section 40.

(19) Section 68—

Omit the section, insert instead:

Disclosure etc. of identity or address of juror

30 68. (1) A person shall not, except in accordance with this Act, wilfully publish any material, broadcast any matter or otherwise disclose any information which is likely to lead to the identification of a juror or former juror in a particular trial or inquest.

35 Penalty: In the case of a corporation, 50 penalty units; in any other case, 20 penalty units.

(2) Subsection (1) does not apply to the identification of a former juror with the consent of the former juror.

*Jury (Amendment) 1987*SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued*

(3) A reference in this section to the identification of a juror or former juror includes a reference to the disclosure of the address of the juror or former juror.

(20) Sections 68A, 68B—

5 After section 68, insert:

Soliciting information from jurors etc.

68A. (1) A person shall not solicit information from, or harass, a juror or former juror for the purpose of obtaining information on the deliberations of a jury for inclusion in any material to be published or any matter to be broadcast.

Penalty: In the case of a corporation, 50 penalty units; in any other case, 20 penalty units.

(2) The deliberations of a jury include statements made, opinions expressed, arguments advanced or votes cast by members of the jury in the course of their deliberations.

(3) Subsection (1) does not prohibit a person from soliciting information from a juror or former juror in accordance with an authority granted by the Attorney General for the conduct of a research project into matters relating to juries or jury service.

Disclosure of information by jurors etc.

68B. (1) A juror shall not, except with the consent or at the request of the judge or coroner, wilfully disclose during the trial or inquest information on the deliberations of the jury to any person.

Penalty: 20 penalty units.

(2) A person (including a juror or former juror) shall not, for a fee, gain or reward, disclose or offer to disclose to any person information on the deliberations of a jury.

Penalty: 50 penalty units.

(3) The deliberations of a jury include statements made, opinions expressed, arguments advanced or votes cast by members of the jury in the course of their deliberations.

(21) Section 69 (**Unlawful dismissal etc. of employees summoned for jury service**)—

35 (a) Section 69 (1)—

Omit "In the case of a corporation, \$1,000; in any other case, \$500 or imprisonment for a period of 6 months", insert instead "20 penalty units".

(b) Section 69 (5)—

*Jury (Amendment) 1987***SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—continued**

Omit “For each day that the order is not given effect to, \$50”, insert instead “20 penalty units”.

(22) Section 72A—

After section 72, insert:

5 Juror’s oath or affirmation

72A. The form of oath or affirmation to be taken or made by a person before serving as a juror is an oath or affirmation that the person will give a true verdict according to the evidence.

(23) Schedules 1, 2, 3—

10 Omit the Schedules, insert instead:

SCHEDULE 1—PERSONS DISQUALIFIED FROM SERVING AS JURORS

(Sec. 6 (a))

15 1. A person who at any time within the last 10 years in New South Wales or elsewhere has served any part of a sentence of imprisonment or penal servitude.

2. A person who at any time within the last 5 years in New South Wales or elsewhere has been found guilty of an offence and detained in a detention centre or other institution for juvenile offenders.

20 3. A person who is currently bound by an order of a court made in New South Wales or elsewhere pursuant to a criminal charge or conviction (including a probation or parole order, community service order, order disqualifying the person from driving, recognizance to be of good behaviour or to keep the peace, apprehended domestic violence order, released on bail pending trial or sentence, remanded in custody pending trial or sentence, or released on licence).

SCHEDULE 2—PERSONS INELIGIBLE TO SERVE AS JURORS

(Sec. 6 (b))

30 1. Judges (including members of the Industrial Commission), Masters of the Supreme Court, and their spouses or de facto partners.

2. Members and officers of the Executive Council, Legislative Council and Legislative Assembly, and their spouses or de facto partners.

3. Barristers and solicitors.

4. Magistrates and coroners, and their spouses or de facto partners.

35 5. A person who is a member of the Corrective Services Commission or who is employed in the Department of Corrective Services.

6. Members of the Police Force, and their spouses or de facto partners.

7. A person employed in the Attorney General’s Department.

8. A person employed in the Police Department.

40 9. Department Heads within the meaning of the Public Service Act 1979.

10. Members of the Public Service Board.

*Jury (Amendment) 1987***SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued***

11. A person who is unable to read or understand the English language.

12. A person who is unable, because of illness or infirmity, to discharge the duties of a juror.

13. A person employed by the Board of Fire Commissioners.

5 14. An officer within the meaning of the State Emergency Services and Civil Defence Act 1972.

15. A person employed by the Health Administration Corporation in connection with ambulance services.

10 16. A person exempted under the Jury Exemption Act 1965 of the Commonwealth.

17. The Ombudsman and Deputy Ombudsman.

18. Crown prosecutors, and their spouses or de facto partners.

19. Public defenders, and their spouses or de facto partners.

15 20. A person who holds a commercial agent's licence, a private inquiry agent's licence or a subagent's licence under the Commercial Agents and Private Inquiry Agents Act 1963.

21. A person who is the spouse or de facto partner of a person employed as a prison officer in the Department of Corrective Services.

22. A member of the staff of the Security Service of the State Rail Authority.

20 23. A member of the staff of the Legal Aid Commission.

24. A member of the staff of the Corporate Affairs Commission.

25 25. The Director of Public Prosecutions, a Deputy Director of Public Prosecutions and the Solicitor for Public Prosecutions, and their spouses or de facto partners.

26. A person who has at any time been a Judge, Master of the Supreme Court, Magistrate, coroner, member of the Police Force, Crown prosecutor, public defender, Director or Deputy Director of Public Prosecutions or Solicitor for Public Prosecutions.

30 **SCHEDULE 3—PERSONS WHO MAY CLAIM EXEMPTION AS OF RIGHT**

(Sec. 7)

1. Clergymen in holy orders, ministers of religion having established congregations and vowed members of any religious order.

35 2. Dentists registered under the Dentists Act 1934 and actually practising.

3. Medical practitioners registered under the Medical Practitioners Act 1938 and actually practising.

4. Persons of or above the age of 65 years.

5. Pregnant women.

40 6. A person having the care, control and custody of children under the age of 18 years (other than children who have ceased to attend school) but not including more than one person having the care, custody and control of the same children.

7. A person residing with, and having the full-time care of, a person who is aged or in ill-health.

*Jury (Amendment) 1987*SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued*

8. A person notified of his or her inclusion on the draft jury roll for a jury district who is on the existing jury roll for that jury district or for any other jury district.

5 9. A person who is entitled to be exempted under section 39 on account of previous lengthy jury service.

10. A person who resides more than 56 kilometres from the place at which the person is required to serve.

11. Members and secretaries of all statutory corporations, boards and authorities.

10 12. Pharmacists registered under the Pharmacy Act 1966 and actually practising.

13. Mining managers and under-managers of mines.

14. Members of a permanent rescue corps established under section 14 (1) of the Mines Rescue Act 1925.

15 15. A person who holds the office of—

- (a) superintendent or assistant superintendent of; or
- (b) instructor at,

a central rescue station under the Mines Rescue Act 1925.

20 16. A person who holds the office of—

- (a) Manager, Maintenance;
- (b) Assistant Manager, Maintenance; or
- (c) Operating Trouble Officer,

in the Mechanical Branch of the State Rail Authority.

(24) Schedule 8 (**Transitional and savings provisions**)—

25 (a) Part 1, heading—

Before clause 1, insert:

PART 1—Preliminary and regulations

(b) Clause 1A—

After clause 1, insert:

30 **Transitional and savings regulations**

1A. (1) The regulations may make provision of a transitional or savings nature consequent on the enactment of the following Acts:

This Act.

35 Jury (Amendment) Act 1987.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

*Jury (Amendment) 1987*SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued*

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- 5 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

10 (4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

(c) Part 2, heading—

Before clause 2, insert:

15 PART 2—Transitional and savings provisions consequent on enactment of this Act

(d) Part 3—

At the end of Schedule 8, insert:

20 PART 3—Transitional and savings provisions consequent on enactment of Jury (Amendment) Act 1987

Pending trials and inquests

25 8. The amendments made by the Jury (Amendment) Act 1987 (except Schedule 1 (5), (6), (22) and (23) to that Act) apply to and in respect of a trial or inquest even though the trial or inquest commenced before the commencement of those amendments.

Existing rolls

9. The amendments made by Schedule 1 (1) and (23) to the Jury (Amendment) Act 1987 do not apply to or in respect of a jury roll in force before the commencement of those amendments.

30 SCHEDULE 2—AMENDMENTS TO THE JURY ACT 1977 BY WAY OF STATUTE LAW REVISION

(Sec. 3)

(1) Section 3—

Omit the section.

35 (2) Section 4 (1), definition of “subdivision”—

Omit “Part IV of”.

(3) Section 14 (2)—

Omit “court of petty sessions”, insert instead “Local Court”.

Jury (Amendment) 1987

 SCHEDULE 2—AMENDMENTS TO THE JURY ACT 1977 BY WAY OF
 STATUTE LAW REVISION—*continued*

- 5 (4) (a) Section 15 (1)—
 Omit “court of petty sessions, constituted by a stipendiary magistrate sitting alone and situated in the jury district in which that person resides” and by inserting instead the words “a Local Court, constituted by a Magistrate sitting alone”.
- (b) Section 15 (2), (3)—
 Omit “court of petty sessions” wherever occurring, insert instead “the Local Court”.
- 10 (5) Section 18 (4)—
 Omit “court of petty sessions”, insert instead “Local Court”.
- (6) (a) Section 65 (4)—
 Omit “a clerk of petty sessions”, insert instead “the clerk of a Local Court”.
- (b) Section 65 (5)—
 Omit “Courts of Petty Sessions”, insert instead “Local Courts”.
- 15 (7) (a) Section 66 (1)—
 Omit “court of petty sessions constituted by a stipendiary magistrate sitting alone and situated in the jury district within which the person was required to attend for jury service”, insert instead “Local Court constituted by a Magistrate sitting alone”.
- 20 (b) Section 66 (3)—
 Omit “court of petty sessions”, insert instead “Local Court”.
- (c) Section 66 (4)—
 Omit “Courts of Petty Sessions”, insert instead “Local Courts”.
- (8) Section 69 (4)—
 Omit “Courts of Petty Sessions”, insert instead “Local Courts”.
- 25 (9) Section 71—
 Omit “court of petty sessions constituted by a stipendiary magistrate”, insert instead “Local Court constituted by a Magistrate”.
- (10) Section 76 (2)—
 30 Omit the subsection, insert instead:
 (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.



JURY (AMENDMENT) ACT 1987 No. 286

NEW SOUTH WALES



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LAW REVISION



JURY (AMENDMENT) ACT 1987 No. 286

NEW SOUTH WALES



Act No. 286, 1987

An Act to amend the Jury Act 1977 to make further provision with respect to juries. [Assented to 16 December 1987]

*Jury (Amendment) 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Jury (Amendment) Act 1987.

Commencement

2. (1) Except as provided by this section, this Act shall commence on a day occurring 28 days after the date of assent to this Act or on such earlier day or days as may be appointed by proclamation.

(2) Schedule 1 (5), (6), (22) and (23), and section 3 in its application to those provisions, shall commence on a day or days to be appointed by proclamation.

Amendment of Act No. 18, 1977

3. The Jury Act 1977 is amended as set out in Schedules 1 and 2.

Consequential amendments of certain other Acts

4. (1) The Oaths Act 1900 is amended—

- (a) by omitting from section 12 the matter “sections 13 and 14” and by inserting instead the matter “section 13”; and
- (b) by omitting section 14.

(2) The Miscellaneous Acts (Community Welfare) Repeal and Amendment Act 1987 is amended by omitting so much of Schedule 3 to that Act as amends the Jury Act 1977.

SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977

(Sec. 3)

- (1) Section 18 (**Sheriff may amend jury roll**)—

- (a) Section 18 (1) (a) (ii)—

Omit “or”.

- (b) Section 18 (1) (a) (iii), (iv)—

After section 18 (1) (a) (iii) insert:

; or

- (iv) who has served on a jury while on the roll and has duly requested to be excluded from the roll under subsection (5);

- (c) Section 18 (5), (6)—

After section 18 (4), insert:

- (5) A person who—

*Jury (Amendment) 1987***SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued***

- (a) is on a jury roll; and
 - (b) has served as a juror while on the roll,
- may request to be excluded from the roll by notice given to the sheriff at any time.
- (6) The exclusion of a person from a jury roll as a result of such a request does not affect an obligation under a summons issued to the person before the request was made.
- (2) **Section 22 (Continuation of trial or inquest on death or discharge of juror)—**
- (a) Section 22 (a)—
- Omit the paragraph, insert instead:
- (a) in the case of criminal proceedings, the number of its members—
 - (i) is not reduced below 10;
 - (ii) is reduced below 10 but approval in writing is given to the reduced number of jurors by or on behalf of both the person prosecuting for the Crown and the accused or each of the accused; or
 - (iii) is reduced below 10 but not below 8 and the trial has been in progress for at least 2 months;
- (b) Section 22 (b)—
- Omit “10”, insert instead “8”.
- (3) **Section 38 (Person summoned for jury service may be excused before or at trial etc.)—**
- (a) Section 38 (1) (a)—
- After “required”, insert “or on that day at any time before the commencement of the trial or inquest at which the person may be selected as a juror”.
- (b) Section 38 (7)—
- After section 38 (6), insert:
- (7) A judge may, at any criminal trial and before the selection of the jury—
 - (a) request the person prosecuting for the Crown to inform the jurors on the panel of the nature of the charge and the identity of the accused and of the principal witnesses to be called for the prosecution; and
 - (b) call on the jurors on the panel to apply to be excused if they consider that they are not able to give impartial consideration to the case.

Jury (Amendment) 1987

SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued***(4) Section 40 (Inspection of panel permitted in certain circumstances)—**

Section 40 (1)—

Omit the subsection.

(5) Section 42—

Omit the section, insert instead:

Peremptory challenges in criminal proceedings

42. (1) In any criminal proceedings, each person prosecuted shall be allowed—

- (a) 3 peremptory challenges without restriction; and
- (b) any number of additional peremptory challenges if the Crown and the other persons (if any) prosecuted agree to the challenge.

(2) In any criminal proceedings, the Crown shall be allowed—

- (a) 3 peremptory challenges without restriction for each person prosecuted; and
- (b) any number of additional peremptory challenges if all the persons prosecuted agree to the challenge.

(3) Any additional peremptory challenge under subsection (1) (b) or (2) (b) shall not be allowed until all the peremptory challenges without restriction of each person prosecuted and the Crown have been exhausted.

(6) Section 43 (Crown may challenge for cause but not require jurors to stand aside)—

Section 43 (1)—

Omit the subsection, insert instead:

(1) The Crown has the right to challenge a juror for cause in any criminal proceedings or in any civil proceedings in which it is a party.

(7) Section 45 (Time for making challenge to juror)—

Section 45 (1A)—

After section 45 (1), insert:

(1A) A challenge for cause to a juror in criminal proceedings may be made either before or after all rights of peremptory challenge have been exhausted.

Jury (Amendment) 1987

SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued***(8) Section 47A—**

After section 47, insert:

Discharge of jury as a result of challenges

47A. The judge presiding at the trial of any criminal proceedings may discharge the jury that has been selected if, in the opinion of that judge, the exercise of the rights to make peremptory challenges has resulted in a jury whose composition is such that the trial might be or might appear to be unfair.

(9) Section 51 (Procedure where insufficient jurors to complete ballot)—

Section 51 (1)—

Omit the subsection, insert instead:

(1) If there are an insufficient number of jurors summoned pursuant to a general jury precept in attendance at a court or coronial inquest for the purposes of a ballot under section 48, 49 or 50, the trial or inquest may be adjourned and—

- (a) the jurors may be discharged and a further general jury precept may be issued in respect of the trial or inquest;
- (b) the jurors may be retained and a further general jury precept may be issued in order to obtain the further number of jurors required to complete the ballot; or
- (c) the jurors may be retained and the further number of jurors required to complete the ballot may be required by the sheriff to attend at the court or inquest for that purpose if they have been summoned to attend at another court or inquest in the same jury district and are not required at that other court or inquest.

(10) Section 54—

Omit the section, insert instead:

Jury permitted to separate in criminal trials

54. The jury in criminal proceedings—

- (a) shall, unless the court otherwise orders, be permitted to separate at any time before they retire to consider their verdict; and
- (b) may, if the court so orders, be permitted to separate at any time after they retire to consider their verdict.

Jury (Amendment) 1987

SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued***(11) Sections 55A–55E—**

After section 55, insert:

Exhibits in jurors' deliberation room

55A. A judge or coroner may refuse to allow an exhibit at the trial or inquest being left with the jurors after they have retired if satisfied that the exhibit or the safety of the jurors would be put at risk.

Judge or coroner may give directions to jury in writing

55B. Any direction of law to a jury by a judge or coroner may be given in writing if the judge or coroner considers that it is appropriate to do so.

Supply of transcripts to jury

55C. A copy of all or any part of the transcript of evidence at a trial or inquest may, at the request of the jury, be supplied to the members of the jury if the judge or coroner considers that it is appropriate and practicable to do so.

Examination of jurors—publication of prejudicial material during trial or inquest

55D. A judge or coroner may examine a juror on oath to determine—

- (a) whether the juror has read, seen or heard alleged prejudicial material published or broadcast during the trial or inquest; and
- (b) whether the juror has been influenced by the material.

Discharge of jury after delivery of verdict

55E. (1) The jury shall be discharged immediately after delivering their verdict.

(2) Nothing in this section prevents any member of the jury from remaining in court as an ordinary member of the public after being so discharged.

(12) Section 56 (Discharge of jury that disagree in criminal proceedings)—

Omit “for more than 6 hours”.

(13) Section 57 (Majority verdicts in civil proceedings)—

Section 57 (b)—

Omit the paragraph, insert instead:

- (b) in the case of a jury consisting of 12 persons or, pursuant to section 22 (b), 9, 10 or 11 persons, the decision of 8 jurors,

*Jury (Amendment) 1987*SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued*

- (14) Section 61 (**Failure to inform sheriff of disqualification or ineligibility**)—

Omit “\$500”, insert instead “10 penalty units”.

- (15) Section 62 (**False representations to evade jury service**)—

Omit “\$500”, insert instead “10 penalty units”.

- (16) Section 63 (**Failure to attend for jury service**)—

Omit “\$100”, insert instead “2 penalty units”.

- (17) Section 64 (**Penalty notice procedure for failure to attend for jury service**)—

Section 64 (2) (a)—

Omit “\$100”, insert instead “2 penalty units”.

- (18) Section 67A—

After section 67, insert:

Inspection of panel etc.

67A. (1) A person shall not inspect, or make available to any other person, the panel annexed to a general jury precept or to a jury pool precept or a list referred to in section 32 (1) or the cards furnished in relation to that precept or list.

Penalty: 10 penalty units.

(2) This section does not apply to anything inspected or made available to another person—

(a) for the purposes of executing this Act;

(b) in accordance with an order of the court or coroner concerned; or

(c) in accordance with section 40.

- (19) Section 68—

Omit the section, insert instead:

Disclosure etc. of identity or address of juror

68. (1) A person shall not, except in accordance with this Act, wilfully publish any material, broadcast any matter or otherwise disclose any information which is likely to lead to the identification of a juror or former juror in a particular trial or inquest.

Penalty: In the case of a corporation, 50 penalty units; in any other case, 20 penalty units.

(2) Subsection (1) does not apply to the identification of a former juror with the consent of the former juror.

*Jury (Amendment) 1987*SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued*

(3) A reference in this section to the identification of a juror or former juror includes a reference to the disclosure of the address of the juror or former juror.

(20) Sections 68A, 68B—

After section 68, insert:

Soliciting information from jurors etc.

68A. (1) A person shall not solicit information from, or harass, a juror or former juror for the purpose of obtaining information on the deliberations of a jury for inclusion in any material to be published or any matter to be broadcast.

Penalty: In the case of a corporation, 50 penalty units; in any other case, 20 penalty units.

(2) The deliberations of a jury include statements made, opinions expressed, arguments advanced or votes cast by members of the jury in the course of their deliberations.

(3) Subsection (1) does not prohibit a person from soliciting information from a juror or former juror in accordance with an authority granted by the Attorney General for the conduct of a research project into matters relating to juries or jury service.

Disclosure of information by jurors etc.

68B. (1) A juror shall not, except with the consent or at the request of the judge or coroner, wilfully disclose during the trial or inquest information on the deliberations of the jury to any person.

Penalty: 20 penalty units.

(2) A person (including a juror or former juror) shall not, for a fee, gain or reward, disclose or offer to disclose to any person information on the deliberations of a jury.

Penalty: 50 penalty units.

(3) The deliberations of a jury include statements made, opinions expressed, arguments advanced or votes cast by members of the jury in the course of their deliberations.

(21) Section 69 (**Unlawful dismissal etc. of employees summoned for jury service**)—

(a) Section 69 (1)—

Omit “In the case of a corporation, \$1,000; in any other case, \$500 or imprisonment for a period of 6 months”, insert instead “20 penalty units”.

(b) Section 69 (5)—

*Jury (Amendment) 1987***SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued***

Omit “For each day that the order is not given effect to, \$50”, insert instead “20 penalty units”.

(22) Section 72A—

After section 72, insert:

Juror’s oath or affirmation

72A. The form of oath or affirmation to be taken or made by a person before serving as a juror is an oath or affirmation that the person will give a true verdict according to the evidence.

(23) Schedules 1, 2, 3—

Omit the Schedules, insert instead:

SCHEDULE 1—PERSONS DISQUALIFIED FROM SERVING AS JURORS

(Sec. 6 (a))

1. A person who at any time within the last 10 years in New South Wales or elsewhere has served any part of a sentence of imprisonment or penal servitude.

2. A person who at any time within the last 5 years in New South Wales or elsewhere has been found guilty of an offence and detained in a detention centre or other institution for juvenile offenders.

3. A person who is currently bound by an order of a court made in New South Wales or elsewhere pursuant to a criminal charge or conviction (including a probation or parole order, community service order, order disqualifying the person from driving, recognizance to be of good behaviour or to keep the peace, apprehended domestic violence order, released on bail pending trial or sentence, remanded in custody pending trial or sentence, or released on licence).

SCHEDULE 2—PERSONS INELIGIBLE TO SERVE AS JURORS

(Sec. 6 (b))

1. Judges (including members of the Industrial Commission), Masters of the Supreme Court, and their spouses or de facto partners.

2. Members and officers of the Executive Council, Legislative Council and Legislative Assembly, and their spouses or de facto partners.

3. Barristers and solicitors.

4. Magistrates and coroners, and their spouses or de facto partners.

5. A person who is a member of the Corrective Services Commission or who is employed in the Department of Corrective Services.

6. Members of the Police Force, and their spouses or de facto partners.

7. A person employed in the Attorney General’s Department.

8. A person employed in the Police Department.

9. Department Heads within the meaning of the Public Service Act 1979.

10. Members of the Public Service Board.

*Jury (Amendment) 1987***SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued***

11. A person who is unable to read or understand the English language.
12. A person who is unable, because of illness or infirmity, to discharge the duties of a juror.
13. A person employed by the Board of Fire Commissioners.
14. An officer within the meaning of the State Emergency Services and Civil Defence Act 1972.
15. A person employed by the Health Administration Corporation in connection with ambulance services.
16. A person exempted under the Jury Exemption Act 1965 of the Commonwealth.
17. The Ombudsman and Deputy Ombudsman.
18. Crown prosecutors, and their spouses or de facto partners.
19. Public defenders, and their spouses or de facto partners.
20. A person who holds a commercial agent's licence, a private inquiry agent's licence or a subagent's licence under the Commercial Agents and Private Inquiry Agents Act 1963.
21. A person who is the spouse or de facto partner of a person employed as a prison officer in the Department of Corrective Services.
22. A member of the staff of the Security Service of the State Rail Authority.
23. A member of the staff of the Legal Aid Commission.
24. A member of the staff of the Corporate Affairs Commission.
25. The Director of Public Prosecutions, a Deputy Director of Public Prosecutions and the Solicitor for Public Prosecutions, and their spouses or de facto partners.
26. A person who has at any time been a Judge, Master of the Supreme Court, Magistrate, coroner, member of the Police Force, Crown prosecutor, public defender, Director or Deputy Director of Public Prosecutions or Solicitor for Public Prosecutions.

SCHEDULE 3—PERSONS WHO MAY CLAIM EXEMPTION AS OF RIGHT

(Sec. 7)

1. Clergymen in holy orders, ministers of religion having established congregations and vowed members of any religious order.
2. Dentists registered under the Dentists Act 1934 and actually practising.
3. Medical practitioners registered under the Medical Practitioners Act 1938 and actually practising.
4. Persons of or above the age of 65 years.
5. Pregnant women.
6. A person having the care, control and custody of children under the age of 18 years (other than children who have ceased to attend school) but not including more than one person having the care, custody and control of the same children.
7. A person residing with, and having the full-time care of, a person who is aged or in ill-health.

*Jury (Amendment) 1987***SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued***

8. A person notified of his or her inclusion on the draft jury roll for a jury district who is on the existing jury roll for that jury district or for any other jury district.

9. A person who is entitled to be exempted under section 39 on account of previous lengthy jury service.

10. A person who resides more than 56 kilometres from the place at which the person is required to serve.

11. Members and secretaries of all statutory corporations, boards and authorities.

12. Pharmacists registered under the Pharmacy Act 1966 and actually practising.

13. Mining managers and under-managers of mines.

14. Members of a permanent rescue corps established under section 14 (1) of the Mines Rescue Act 1925.

15. A person who holds the office of—

(a) superintendent or assistant superintendent of; or

(b) instructor at,

a central rescue station under the Mines Rescue Act 1925.

16. A person who holds the office of—

(a) Manager, Maintenance;

(b) Assistant Manager, Maintenance; or

(c) Operating Trouble Officer,

in the Mechanical Branch of the State Rail Authority.

(24) Schedule 8 (Transitional and savings provisions)—

(a) Part 1, heading—

Before clause 1, insert:

PART 1—Preliminary and regulations

(b) Clause 1A—

After clause 1, insert:

Transitional and savings regulations

1A. (1) The regulations may make provision of a transitional or savings nature consequent on the enactment of the following Acts:

This Act.

Jury (Amendment) Act 1987.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

*Jury (Amendment) 1987***SCHEDULE 1—AMENDMENTS TO THE JURY ACT 1977—*continued***

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

(c) Part 2, heading—

Before clause 2, insert:

PART 2—Transitional and savings provisions consequent on enactment of this Act

(d) Part 3—

At the end of Schedule 8, insert:

PART 3—Transitional and savings provisions consequent on enactment of Jury (Amendment) Act 1987

Pending trials and inquests

8. The amendments made by the Jury (Amendment) Act 1987 (except Schedule 1 (5), (6), (22) and (23) to that Act) apply to and in respect of a trial or inquest even though the trial or inquest commenced before the commencement of those amendments.

Existing rolls

9. The amendments made by Schedule 1 (1) and (23) to the Jury (Amendment) Act 1987 do not apply to or in respect of a jury roll in force before the commencement of those amendments.

SCHEDULE 2—AMENDMENTS TO THE JURY ACT 1977 BY WAY OF STATUTE LAW REVISION

(Sec. 3)

(1) Section 3—

Omit the section.

(2) Section 4 (1), definition of “subdivision”—

Omit “Part IV of”.

Jury (Amendment) 1987

 SCHEDULE 2—AMENDMENTS TO THE JURY ACT 1977 BY WAY OF
 STATUTE LAW REVISION—*continued*

(3) Section 14 (2)—

Omit “court of petty sessions”, insert instead “Local Court”.

(4) (a) Section 15 (1)—

Omit “court of petty sessions, constituted by a stipendiary magistrate sitting alone and situated in the jury district in which that person resides” and by inserting instead the words “a Local Court, constituted by a Magistrate sitting alone”.

(b) Section 15 (2), (3)—

Omit “court of petty sessions” wherever occurring, insert instead “the Local Court”.

(5) Section 18 (4)—

Omit “court of petty sessions”, insert instead “Local Court”.

(6) (a) Section 65 (4)—

Omit “a clerk of petty sessions”, insert instead “the clerk of a Local Court”.

(b) Section 65 (5)—

Omit “Courts of Petty Sessions”, insert instead “Local Courts”.

(7) (a) Section 66 (1)—

Omit “court of petty sessions constituted by a stipendiary magistrate sitting alone and situated in the jury district within which the person was required to attend for jury service”, insert instead “Local Court constituted by a Magistrate sitting alone”.

(b) Section 66 (3)—

Omit “court of petty sessions”, insert instead “Local Court”.

(c) Section 66 (4)—

Omit “Courts of Petty Sessions”, insert instead “Local Courts”.

(8) Section 69 (4)—

Omit “Courts of Petty Sessions”, insert instead “Local Courts”.

(9) Section 71—

Omit “court of petty sessions constituted by a stipendiary magistrate”, insert instead “Local Court constituted by a Magistrate”.

Jury (Amendment) 1987

SCHEDULE 2—AMENDMENTS TO THE JURY ACT 1977 BY WAY OF
STATUTE LAW REVISION—*continued*

(10) Section 76 (2)—

Omit the subsection, insert instead:

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.