



New South Wales

# **Jury Amendment Bill 1997**

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The objects of this Bill are as follows:

- (a) to provide that jurors or prospective jurors:
    - are to be addressed during proceedings by the identification number allocated to them so that their anonymity is maintained, and
    - are not required during those proceedings to give their names or any other details that may identify them (unless the person requesting the information is the sheriff),
  - (b) to enable prospective jurors to be informed of the nature of the proceedings and of the identities of persons involved in the proceedings (eg the accused and witnesses for the prosecution in a criminal trial) so that those jurors who feel that they are unable to give an impartial judgment in the proceedings can seek to be excused,
  - (c) to repeal the provision that allows for the inspection of jury panels containing the names of prospective jurors in civil trials,
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- (d) in relation to the offence of soliciting information from or harassing a juror or former juror:
- to omit the limitation that the information must be solicited for the purposes of publication or broadcasting, and
  - to increase the maximum penalty for the offence to 7 years imprisonment (currently the maximum penalty for the offence is \$5000 in the case of a corporation and \$2000 in any other case),
- (e) to make minor consequential amendments.

## Outline of provisions

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments to the *Jury Act 1977*.

**Clause 4** is a formal provision that gives effect to the Schedule containing a consequential amendment to the *Criminal Procedure Act 1986*.

## Schedule 1 Amendment of Jury Act 1977

**Schedule 1 [2]** inserts proposed section 29 which provides for the allocation of identification numbers to jurors summoned to serve on a jury.

The jurors are to be informed of their identification number when they first attend for the purposes of a trial, coronial inquest or coronial inquiry in response to a summons for jury service (the *Jury Act 1977* defines a **coronial inquest** to include a coronial inquiry). The jurors are to be addressed or referred to by their identification number during the relevant proceedings.

Regulations may be made in respect of matters relating to identification numbers (eg the way in which those numbers are allocated). **Schedule 1 [1]** inserts a definition of **identification number** in section 4.

**Schedule 1 [3]** inserts proposed section 37 which provides that a person who is summoned for jury service is not required, at any time the person attends for the purposes of the proceedings, to disclose the person's name or any other matter that identifies or is likely to lead to the identification of the person. The proposed section does not prevent the sheriff from requiring a person so summoned to provide such information to the sheriff.

**Schedule 1 [4] and [5]** amend section 38 (7) to require prospective jurors in a criminal trial to be informed of the details of the proceedings (including the names of the prosecution witnesses) so that they can ask to be excused if they feel that they are unable to give an impartial judgment in the proceedings. At present, the section gives the trial judge a discretion as to whether that information is to be provided to jurors.

**Schedule 1 [6]** amends section 38 to extend the requirement for prospective jurors to be informed of the details of the proceedings concerned to:

- (a) civil trials (proposed section 38 (8)), and
- (b) coronial inquests and coronial inquiries (proposed section 38 (9)).

However, the identity of a witness in a trial, coronial inquest or coronial inquiry is not to be disclosed if the witness is a person in a NSW, Commonwealth or interstate witness protection program (proposed section 38 (10)).

Regulations may be made with respect to informing jurors of the details of the proceedings concerned and associated matters (proposed section 38 (11)).

**Schedule 1 [7]** omits section 40 (which provides for the inspection of jury panels containing the names of prospective jurors in civil trials).

**Schedule 1 [8]** amends section 45 to specify the time for making challenges to jurors. **Schedule 1 [9]** makes a consequential amendment.

**Schedule 1 [10] and [13]** correct incorrect cross-references.

**Schedule 1 [11]** amends section 48 to provide for the use of identification numbers (instead of jurors' names) in the selection of juries in criminal trials.

**Schedule 1 [12]** replaces existing section 49. The proposed section deals with the selection of juries in civil trials and provides for the use of identification numbers (instead of jurors' names).

**Schedule 1 [14]** amends section 50 to provide for the use of identification numbers (instead of jurors' names) in the selection of juries in coronial inquests or coronial inquiries.

**Schedule 1 [15]** amends section 51 to require the identification numbers of additional jurors who are required to complete the ballot for a jury in a trial, coronial inquest or coronial inquiry to be added to the panel of jurors for the trial, coronial inquest or coronial inquiry.

**Schedule 1 [16]** amends section 67A as a result of the use of identification numbers for jurors. At present, the section makes it an offence for a person to inspect, or make available to another person, certain documents relating to jurors unless the person has access to those documents for the purposes of

executing the Act or in accordance with an order of the judge or coroner concerned or section 40 (Inspection of panel permitted in certain circumstances).

The amendment will permit access to such documents only for the purposes of executing the Act.

**Schedule 1 [17] and [18]** amend section 68A. At present, the section makes it an offence to solicit information from or harass a juror or former juror for the purpose of obtaining information about the deliberations of a jury for inclusion in any material to be published or any matter to be broadcast.

The amendments:

- (a) omit the limitation that the information must be solicited for the purpose of including the information in any material to be published or any matter to be broadcast, and
- (b) increase the maximum penalty for the offence to 7 years imprisonment.

**Schedule 1 [19]** makes a consequential amendment.

**Schedule 1 [20] and [21]** insert provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of Criminal Procedure Act 1986**

Schedule 2 amends the *Criminal Procedure Act 1986* so that offences under section 68A (Soliciting information from or harassing jurors or former jurors) of the *Jury Act 1977* are dealt with summarily unless an election is made under the *Criminal Procedure Act 1986* to proceed on indictment.

First print



New South Wales

# Jury Amendment Bill 1997

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New South Wales

## Jury Amendment Bill 1997

No , 1997

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### **A Bill for**

An Act to amend the *Jury Act 1977* to provide for the anonymity of jurors and to make further provision with respect to offences relating to the obtaining of information about the deliberations of a jury; to amend the *Criminal Procedure Act 1986* consequentially; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Jury Amendment Act 1997*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Jury Act 1977 No 18**

The *Jury Act 1977* is amended as set out in Schedule 1.

**4 Amendment of Criminal Procedure Act 1986 No 209**

The *Criminal Procedure Act 1986* is amended as set out in Schedule 2. 10

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## Schedule 1    Amendment of Jury Act 1977

(Section 3)

### [1]    Section 4 Definitions

Insert in alphabetical order in section 4 (1):

*identification number* of a person means the 5  
identification number allocated to the person under  
section 29.

### [2]    Section 29

Insert after section 28:

#### **29 Identification numbers for jurors** 10

- (1) Before furnishing the return and cards referred to in section 28 in respect of a trial or coronial inquest, the sheriff is to allocate a separate identification number to each person included in the panel referred to in section 28. 15
- (2) The sheriff must record a person's identification number:
  - (a) against the place where the name of the person appears on that panel, and
  - (b) on the card referred to in section 28 (3) relating to the person. 20
- (3) The sheriff must inform a person of the person's identification number when the person attends on the first day on which the person's attendance is required in accordance with a summons.
- (4) A person who is allocated an identification number is to be addressed or referred to only by that identification number when the person is present at the court or coronial inquest for the purposes of the relevant proceedings. 25

- (5) A computer may be used to carry out a procedure under this section relating to identification numbers.
- (6) The regulations may make provision for or with respect to identification numbers. In particular, regulations may be made for or with respect to the following: 5
  - (a) the allocation of identification numbers,
  - (b) the manner in which persons are to be informed of their identification number,
  - (c) the recording of identification numbers on the panel and on the cards relating to the persons in respect of whom the identification numbers have been allocated. 10

**[3] Section 37**

Insert before section 38:

**37 Certain persons and jurors not required to disclose identity** 15

- (1) A person who is summoned under Division 1 is not required, when the person attends at a trial or coronial inquest in accordance with the summons, to disclose the person's name or any other matter that identifies or is likely to lead to the identification of the person (for example, when the person requests to be excused under section 38 (1) (b) or the person, while serving as a juror, is examined on oath under Part 8). 20
- (2) However, a person so summoned is to provide such information to the sheriff: 25
  - (a) when the person attends on the first day on which the person's attendance at the trial or coronial inquest is required in accordance with the summons, or 30
  - (b) if requested to do so by the sheriff, at any other time during the course of the trial or coronial inquest.

**[4] Section 38 Person summoned for jury service may be excused before or at trial or inquest**

Omit "A judge may, at any criminal trial and before the selection of the jury" from section 38 (7).

Insert instead "Before the selection of the jury at a criminal trial, the judge must, subject to the regulations".

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**[5] Section 38 (7) (a)**

Omit "request". Insert instead "direct".

**[6] Section 38 (8)–(11)**

Insert after section 38 (7):

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(8) Before the selection of the jury at a civil trial, the judge must, subject to the regulations:

(a) direct the parties to the proceedings to inform the jurors on the panel of the nature of the action and the identity of the parties and of the principal witnesses to be called by the parties, and

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(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.

(9) Before the selection of the jury at a coronial inquest, the coroner must, subject to the regulations:

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(a) direct the person assisting the coroner to inform the jurors on the panel of the nature of the inquest and of the principal witnesses to be called, 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 matter.

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(10) The identity of a person who is a principal witness must not be disclosed under subsection (7) (a), (8) (a) or (9) (a) if the person is a witness who is included in a witness protection program:

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Jury Amendment Bill 1997

Schedule 1      Amendment of Jury Act 1977

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- (a) within the meaning of the *Witness Protection Act 1995*, or
  - (b) conducted by the Commonwealth, another State or a Territory under a complementary witness protection law within the meaning of the *Witness Protection Act 1995*. 5
- (11) The regulations may make provision for or with respect to:
  - (a) the directions and the calling on jurors under subsections (7)–(9), and 10
  - (b) the informing and the excusing of jurors under those subsections.
- [7] Section 40 Inspection of panel permitted in certain circumstances**  
Omit the section. 15
- [8] Section 45 Time for making challenge to juror**  
Omit section 45 (1). Insert instead:
  - (1) A challenge for cause or a peremptory challenge to a juror in criminal proceedings, or a challenge for cause to a juror in civil proceedings, can be made only after the juror has been called to the book to be sworn and before the juror is sworn. 20
- [9] Section 45 (2)**  
Omit the subsection.
- [10] Section 48 Balloting for jury in criminal proceedings** 25  
Omit “furnished under section 28 (2) or 34 (3)” from section 48 (2) (a).  
Insert instead “provided under section 28 (3)”.

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**[11] Section 48 (2) (b)**

Omit "names thereon".

Insert instead "identification numbers on those cards".

**[12] Section 49**

Omit the section. Insert instead:

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**49 Balloting for jury in civil proceedings**

- (1) The jury for the trial of any civil proceedings in the Supreme Court or the District Court is to be selected by ballot in open court in accordance with this section whether the jury is to consist of 4 or 12 jurors. 10
- (2) At the trial the presiding judge or an officer of the court must:
  - (a) place in a box provided for that purpose the cards provided under section 28 (3) in respect of that trial, and 15
  - (b) draw out of that box those cards, one after another, and call out the identification numbers on those cards, until the number of persons required to constitute the jury for the trial appear, and
  - (c) call each of those persons to be sworn. 20
- (3) If any challenge for cause is made and allowed in respect of any number of those persons, that number of persons must be so drawn and called to be sworn.
- (4) Such further number of persons as is required is to be so drawn and called to be sworn until all just challenges have been allowed and the number of persons required to constitute the jury for the trial have been sworn. 25
- (5) The persons referred to in subsection (4) that have been sworn are to constitute the jury for the trial.

**[13] Section 50 Balloting for jury at coronial inquest**

Omit "furnished under section 28 (2)" from section 50 (2) (a).  
Insert instead "provided under section 28 (3)".

**[14] Section 50 (2) (b)**

Omit "names thereon" from section 50 (2) (b).  
Insert instead "identification numbers on those cards".

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**[15] Section 51 Procedure where insufficient jurors to complete ballot**

Omit "names of those jurors" from section 51 (2).  
Insert instead "names and identification numbers of those jurors are".

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**[16] Section 67A Inspection of panel**

Omit section 67A (2) (b) and (c).

**[17] Section 68A Soliciting information from or harassing jurors or former jurors**

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Omit "for inclusion in any material to be published or any matter to be broadcast" from section 68A (1).

**[18] Section 68A (1)**

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

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Insert instead:

Maximum penalty on indictment: imprisonment for 7 years.

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**[19] Section 71 Proceedings for offences**

Insert at the end of the section:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 68A. 5

**[20] Schedule 8 Transitional and savings provisions**

Insert at the end of clause 1A (1):

*Jury Amendment Act 1997.* 10

**[21] Schedule 8, Part 5**

Insert after Part 4:

**Part 5 Transitional and savings provisions consequent on enactment of Jury Amendment Act 1997** 15

**14 Uncompleted proceedings**

An amendment made by Schedule 1 [1], [2], [3], [4], [5], [6], [7], [8], [9], [11], [12], [14], [15] or [16] to the *Jury Amendment Act 1997* does not apply in respect of a trial or coronial inquest commenced but not completed before the commencement of the amendment. 20

**Schedule 2    Amendment of Criminal Procedure  
Act 1986**

(Section 4)

**Part 9A, Table 1**

Insert after item 20:

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**20A Jury Act 1977**

An offence under section 68A of the *Jury Act 1977*.



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# Jury Amendment Act 1997 No 15

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New South Wales

## Jury Amendment Act 1997 No 15

Act No 15, 1997

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An Act to amend the *Jury Act 1977* to provide for the anonymity of jurors and to make further provision with respect to offences relating to the obtaining of information about the deliberations of a jury; to amend the *Criminal Procedure Act 1986* consequentially; and for other purposes.  
[Assented to 29 May 1997]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Jury Amendment Act 1997*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Jury Act 1977 No 18**

The *Jury Act 1977* is amended as set out in Schedule 1.

**4 Amendment of Criminal Procedure Act 1986 No 209**

The *Criminal Procedure Act 1986* is amended as set out in Schedule 2.

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## Schedule 1    Amendment of Jury Act 1977

(Section 3)

### [1]    Section 4 Definitions

Insert in alphabetical order in section 4 (1):

*identification number* of a person means the identification number allocated to the person under section 29.

### [2]    Section 29

Insert after section 28:

#### **29 Identification numbers for jurors**

- (1) Before furnishing the return and cards referred to in section 28 in respect of a trial or coronial inquest, the sheriff is to allocate a separate identification number to each person included in the panel referred to in section 28.
- (2) The sheriff must record a person's identification number:
  - (a) against the place where the name of the person appears on that panel, and
  - (b) on the card referred to in section 28 (3) relating to the person.
- (3) The sheriff must inform a person of the person's identification number when the person attends on the first day on which the person's attendance is required in accordance with a summons.
- (4) A person who is allocated an identification number is to be addressed or referred to only by that identification number when the person is present at the court or coronial inquest for the purposes of the relevant proceedings.

- (5) A computer may be used to carry out a procedure under this section relating to identification numbers.
- (6) The regulations may make provision for or with respect to identification numbers. In particular, regulations may be made for or with respect to the following:
  - (a) the allocation of identification numbers,
  - (b) the manner in which persons are to be informed of their identification number,
  - (c) the recording of identification numbers on the panel and on the cards relating to the persons in respect of whom the identification numbers have been allocated.

**[3] Section 37**

Insert before section 38:

**37 Certain persons and jurors not required to disclose identity**

- (1) A person who is summoned under Division 1 is not required, when the person attends at a trial or coronial inquest in accordance with the summons, to disclose the person's name or any other matter that identifies or is likely to lead to the identification of the person (for example, when the person requests to be excused under section 38 (1) (b) or the person, while serving as a juror, is examined on oath under Part 8).
- (2) However, a person so summoned is to provide such information to the sheriff:
  - (a) when the person attends on the first day on which the person's attendance at the trial or coronial inquest is required in accordance with the summons, or
  - (b) if requested to do so by the sheriff, at any other time during the course of the trial or coronial inquest.

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**[4] Section 38 Person summoned for jury service may be excused before or at trial or inquest**

Omit "A judge may, at any criminal trial and before the selection of the jury" from section 38 (7).

Insert instead "Before the selection of the jury at a criminal trial, the judge must, subject to the regulations".

**[5] Section 38 (7) (a)**

Omit "request". Insert instead "direct".

**[6] Section 38 (8)–(11)**

Insert after section 38 (7):

- (8) Before the selection of the jury at a civil trial, the judge must, subject to the regulations:
  - (a) direct the parties to the proceedings to inform the jurors on the panel of the nature of the action and the identity of the parties and of the principal witnesses to be called by the parties, 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.
- (9) Before the selection of the jury at a coronial inquest, the coroner must, subject to the regulations:
  - (a) direct the person assisting the coroner to inform the jurors on the panel of the nature of the inquest and of the principal witnesses to be called, 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 matter.
- (10) The identity of a person who is a principal witness must not be disclosed under subsection (7) (a), (8) (a) or (9) (a) if the person is a witness who is included in a witness protection program:

- (a) within the meaning of the *Witness Protection Act 1995*, or
  - (b) conducted by the Commonwealth, another State or a Territory under a complementary witness protection law within the meaning of the *Witness Protection Act 1995*.
- (11) The regulations may make provision for or with respect to:
- (a) the directions and the calling on jurors under subsections (7)–(9), and
  - (b) the informing and the excusing of jurors under those subsections.

**[7] Section 40 Inspection of panel permitted in certain circumstances**

Omit the section.

**[8] Section 45 Time for making challenge to juror**

Omit section 45 (1). Insert instead:

- (1) A challenge for cause or a peremptory challenge to a juror in criminal proceedings, or a challenge for cause to a juror in civil proceedings, can be made only after the juror has been called to the book to be sworn and before the juror is sworn.

**[9] Section 45 (2)**

Omit the subsection.

**[10] Section 48 Balloting for jury in criminal proceedings**

Omit “furnished under section 28 (2) or 34 (3)” from section 48 (2) (a).

Insert instead “provided under section 28 (3)”.

**[11] Section 48 (2) (b)**

Omit "names thereon".

Insert instead "identification numbers on those cards".

**[12] Section 49**

Omit the section. Insert instead:

**49 Balloting for jury in civil proceedings**

- (1) The jury for the trial of any civil proceedings in the Supreme Court or the District Court is to be selected by ballot in open court in accordance with this section whether the jury is to consist of 4 or 12 jurors.
- (2) At the trial the presiding judge or an officer of the court must:
  - (a) place in a box provided for that purpose the cards provided under section 28 (3) in respect of that trial, and
  - (b) draw out of that box those cards, one after another, and call out the identification numbers on those cards, until the number of persons required to constitute the jury for the trial appear, and
  - (c) call each of those persons to be sworn.
- (3) If any challenge for cause is made and allowed in respect of any number of those persons, that number of persons must be so drawn and called to be sworn.
- (4) Such further number of persons as is required is to be so drawn and called to be sworn until all just challenges have been allowed and the number of persons required to constitute the jury for the trial have been sworn.
- (5) The persons referred to in subsection (4) that have been sworn are to constitute the jury for the trial.

**[13]    Section 50 Balloting for jury at coronial inquest**

Omit “furnished under section 28 (2)” from section 50 (2) (a).  
Insert instead “provided under section 28 (3)”.

**[14]    Section 50 (2) (b)**

Omit “names thereon” from section 50 (2) (b).  
Insert instead “identification numbers on those cards”.

**[15]    Section 51 Procedure where insufficient jurors to complete ballot**

Omit “names of those jurors” from section 51 (2).  
Insert instead “names and identification numbers of those jurors are”.

**[16]    Section 67A Inspection of panel**

Omit section 67A (2) (b) and (c).

**[17]    Section 68A Soliciting information from or harassing jurors or former jurors**

Omit “for inclusion in any material to be published or any matter to be broadcast” from section 68A (1).

**[18]    Section 68A (1)**

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

Insert instead:

Maximum penalty on indictment: imprisonment for  
7 years.

**[19] Section 71 Proceedings for offences**

Insert at the end of the section:

- (2) Part 9A of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 68A.

**[20] Schedule 8 Transitional and savings provisions**

Insert at the end of clause 1A (1):

*Jury Amendment Act 1997.*

**[21] Schedule 8, Part 5**

Insert after Part 4:

**Part 5 Transitional and savings provisions  
consequent on enactment of Jury  
Amendment Act 1997**

**14 Uncompleted proceedings**

An amendment made by Schedule 1 [1], [2], [3], [4], [5], [6], [7], [8], [9], [11], [12], [14], [15] or [16] to the *Jury Amendment Act 1997* does not apply in respect of a trial or coronial inquest commenced but not completed before the commencement of the amendment.

## **Schedule 2      Amendment of Criminal Procedure Act 1986**

(Section 4)

### **Part 9A, Table 1**

Insert after item 20:

#### **20A Jury Act 1977**

An offence under section 68A of the *Jury Act 1977*.

[Minister's second reading speech made in—  
Legislative Council on 9 April 1997  
Legislative Assembly on 22 May 1997]