
**RECENTLY IMPLEMENTED REFORM (THE LAST TEN YEARS) TO
THE CRIMINAL LAW PROCESS IN WESTERN AUSTRALIA: THE
JURY SYSTEM IN WESTERN AUSTRALIA
TEACHER AND STUDENT POST-VISIT RESOURCE**

This resource is for both teachers and students to use for future reference after the FBLEP 'Contemporary Issue Involving the Judicial Process: The West Australian Jury System' empty court activity.

THE WEST AUSTRALIAN JURY SYSTEM

The jury system is an integral part of the State's judicial system that is coordinated by the Sheriff's Office of Western Australia. It is the process by which ordinary citizens become directly involved in the administration of justice in Western Australia by serving as jurors in the District and Supreme Courts.

The electoral roll, maintained by the Western Australian Electoral Commission, is the source database for jury selection. People summoned as jurors are expected to participate in this important civic responsibility.

JURORS – WHO ARE THEY AND WHAT DO THEY DO?

A jury is a group of 12 people randomly chosen from the community who listen to the evidence in a criminal trial in the Supreme Court or the District Court. They weigh up the evidence presented and apply the law as directed by the trial judge. The jury then delivers its verdict as to whether the accused person is guilty or not guilty of the alleged offence.

Jury duty is a civic responsibility and requires the co-operation of all to ensure it functions correctly within the democracy.

Completing jury duty involves giving time and effort for the period of time a juror has been summonsed.

JURIES IN WESTERN AUSTRALIA

Juries in criminal trials have been used in Western Australia since the first English settlement in Perth. The first true jury to sit in Australia was during the Quarter Sessions held in July 1830 in Fremantle.¹ Governor Stirling adopted the laws governing trial by jury that were at the time being used in the United Kingdom.

Initially, all males aged between 21 and 60 years who owned real estate to the value of £50 or personal estate of at least £100 were liable for jury service. Exceptions included court officials, civil servants, clergymen, legal practitioners and medical men. In Western Australia women qualified as jurors in 1957 and Indigenous people qualified in 1962.

HOW ARE JURIES SELECTED?

In March each year the Sheriff's Office notifies the Electoral Commissioner of the number of jurors that in it estimates will be required for jury service for each jury district for the year beginning 1 July.

¹ Enid Russell, (1980) *A History of the Law in Western Australia and its Development from 1829 to 1979*. University of Western Australia Press.

The Electoral Commissioner will then select by ballot the required number of jurors for each district from the respective electoral rolls. The list of jurors selected will form the jury book for each jury district. In Western Australia there are 17 jury districts.

Jurors are then balloted from each jury book as required and issued with a 'Summons to Juror', which they usually receive four to five weeks before they must report for jury duty.

The postal address registered at the Western Australian Electoral Commission for a person registered on the electoral roll is the address that a jury summons is sent.

THE JURY POOL

At present the Perth metropolitan jury pool contains approximately 200-350 people each week. These people must report to the District Court Building in Perth at 8:15am on Monday morning.

WHO CAN BE A JUROR?

Apart from the exceptions below, any person enrolled to vote at an election of members of the Legislative Assembly is liable to serve as a juror, i.e. the person's name must be on the Western Australian electoral roll.

The following people may be ineligible, disqualified or excused as of right from jury duty:

Ineligible

- Persons over the age of 75 years.
- Persons specially excluded by the *Juries Act 1957(Amended 2011)*. Examples: Judges and persons who hold certain offices (such as Police Officers and Members of Parliament). The type of persons excluded in the Juries Act was significantly reduced in 2011.

Not qualified

- Persons who have been convicted of an offence and sentenced to life imprisonment or imprisonment for a term exceeding two years;
- Persons who in the relevant period (5 years) in WA or elsewhere:
 - have been subject to a sentence of imprisonment or been on parole in respect of any such sentence
 - have been found guilty of an offence and detained in a juvenile detention centre;
 - have been subject of a parole order or a community order;
- Persons who have in the relevant period (5 years) in WA:
 - been convicted of 2 or more offences the statutory penalty for which includes imprisonment;
 - been convicted of 3 or more offences against the *Road Traffic Act, 1974*.

Deferring jury duty for summoned people or excusing them for good reason

The following circumstances allow a person who has received a Summons to Juror to defer jury duty for up to six months on application:

- the nature of the person's business or occupation makes it difficult to participate in jury duty at the time requested;

- the person has a special or pressing commitment;
- the person's state of physical health; and
- other circumstances personal to the person.

The deferral of jury duty resulted from Amendments made to the Juries Act in 2011.

The WA Law Reform Commission noted that a significant proportion of persons receiving a Summons to Juror were excused '*as of right*' due to the person's occupation, religion or family commitments. As a result, the excused '*as of right*' clause was removed from the Juries Act (Amended 2011) and the deferral of jury duty was introduced.

The deferral of jury duty is expected to result in the following benefits:

- Generally, less people will be required to be summoned for jury service because the sheriff's office will have a number of people flagged in the system who have undertaken to attend for jury service when summoned at a later time.
- The deferral system will benefit regional areas by allowing more community members to participate in Jury Duty.
- Deferral enables a broader range of people to participate in jury service and therefore it should increase the representative nature of juries.
- Deferral enables the burden of jury service to be shared more equitably because many people who would otherwise be excused are able to participate in jury service.
- Deferral reduces the potential inconvenience caused by jury service because generally those prospective jurors who are permitted to defer can nominate a suitable time to complete their jury service and they will have additional time to organise their affairs.²

The Department of the Attorney General, under its department policy, will pay for child care on the days a juror is required to attend court only. The centre must be a *licensed childcare facility*.

WHEN ARE JURORS USED?

In criminal proceedings, jurors will only be empanelled in the District and Supreme Courts after an accused has pleaded 'not guilty' to indictable charges.

It should be noted that after the prosecutor's case and before the jury retires to consider their verdict, the trial judge may determine that the accused has no case to answer. If this occurs the judge will find the accused not guilty of the charge and discharge the jury without a verdict being returned.

THE PROCESS OF EMPANELLING THE JURY

When a jury is required, the Jury Supervisor ballots approximately 20 - 40 people (the number of people balloted depends on the expected length of the trial and the number of accused and is usually determined by the court) from the jury pool to form the jury panel for that trial.

² Law Reform Commission of Western Australia *Selection, Eligibility and Exemption of Jurors Final Report Law*, <http://www.lrc.justice.wa.gov.au/_files/P99-FR.pdf>.

Cards with a number allocated to each person in the jury panel are placed in the court ballot box. The Judge's Associate draws a card out of the box and reads out the number. The juror whose card has been selected then stands and walks to the jury box. If no challenge (objection) is made then the person is empanelled by taking an oath or affirmation and becomes a member of the jury.

CHALLENGING THE JURORS

Each party (the prosecution and defence) may challenge up to 3 jurors peremptorily, i.e. without giving a reason. Amendments to the Jury Act in 2011 reduced the number of challenges for each party to 3 from 5.

In addition, the prosecution or an accused may challenge a juror for cause, i.e. on the ground that the juror is not qualified by law to act as a juror or that the juror is not indifferent as between the accused and the State of Western Australia. The trial Judge decides on the facts in such a challenge.

When a juror is challenged, they return to a seat in the public gallery and the Judge's Associate draws another number. This process continues until the required number of jurors has been empanelled. Any challenge must be issued before a juror is sworn.

REASONS FOR CHALLENGING

As mentioned above, either party can challenge. No reason for a challenge will be given to potential jurors and it is simply the right of the defence and prosecution. They exercise this right based on their desire to reach the best outcome for their client.

WHAT HAPPENS TO THE 'CHALLENGED or NON-SELECTED JUROR'?

A challenged or non-selected juror's card with his/her number is returned to the jury pool. That person may be selected for another jury panel and s/he may be empanelled on a jury in another trial. Jurors are required to attend until they are discharged – in reality jurors usually attend for between one to five days unless they are empanelled on a lengthy trial.

MORE THAN 12 JURORS

A Judge may direct that up to 18 jurors be empanelled. This occurs if the trial is to extend beyond a few days. A large jury will be required as a safety net, in the event of death or serious illness of a juror or of a juror's immediate family. A trial may be aborted if the jury reaches less than 12 people, so by swearing in more jurors for longer cases, this issue can be avoided. All sworn jurors are given equal status.

If more than 12 jurors remain immediately before the jury retires to deliberate, the Associate selects the final 12 members of the jury by placing all the jurors' cards, except for the foreperson, into the ballot box. The Associate then selects 11 cards and these represent the jurors who will join the foreperson in the deliberations. The Foreperson is the only juror that cannot be eliminated at this point. The Judge releases those jurors who have not been selected and thanks them for the important civic duty they have performed.

LESS THAN 12 JURORS

It is interesting to note that the *Criminal Procedure Act of 2004* does allow judges to discharge a juror during the trial if the discharge will leave at least 10 jurors remaining. Hence it is possible, although very rare, for a jury in WA to be made up of 10 jurors.

FOREPERSON

The Foreperson is appointed by the jury members themselves and is simply a spokesperson for the jury. The Foreperson is selected by the other jurors when directed to do so by the trial judge. The Foreperson's role is to communicate with the Judge on behalf of the jury and to deliver the jury's verdict to the court.

FAILURE TO RESPOND TO SUMMONS

A person who ignores or does not respond to a summons faces a minimum \$800.00 infringement, the possibility of losing their driver's license and a maximum fine of \$5000 if it proceeds to court.

The minimum infringement was increased from \$200 to \$800 in 2011 at the recommendation of the WA Law Reform Commission.

TAKING OF THE OATH OR AFFIRMATION

A juror elects to take either the oath or affirmation. A juror takes an oath as a way of swearing before God that s/he will give a true verdict according to the evidence and the issues to be tried by him/her. There are specific oaths and holy books for the different recognized religions in our community, e.g. Christian oath/Bible, Muslim oath/Koran, Hebrew oath/Pentateuch, Buddhist oath/ no holy book required.

People who do not have any religious beliefs swear by way of an affirmation, which is swearing before the State without any religious connection, to give a true verdict according to the evidence and the issues to be tried by him/her.

Both have the same effect of ensuring that a juror will consider the case on the facts and will not commit a wrong against God or the State by reaching a verdict which they know to be wrong.

JURY DELIBERATIONS AND THE VERDICT

The Judge will adjourn the court to allow the jurors to decide the case. Deliberations occur in the jury room of the court building. While deliberating, if any uncertainties require clarification, the Foreperson may write down questions which are given to the Judge. The Judge then reads out his/her answers in court, after which deliberations can continue. Certain portions of the evidence may also be reviewed, e.g. video evidence. When the jury reaches a verdict, the Foreperson informs the Jury Officer that a decision has been made. The jury returns to the court. The Judge then calls for the Foreperson to announce the jury's decision.

The verdict of the jury **must be** unanimous when a person is accused of murder or manslaughter in Western Australia and all Federal charges.

If a unanimous verdict has not been reached after deliberation, the decision of 10 or more of the jurors may be taken as the verdict on the charge except for the charge of murder, manslaughter and any charges laid under Commonwealth law.

Alternatively, if the jurors are not agreed in their verdict, the Judge may allow the jury to further deliberate if it is felt that a verdict can be reached. If it is felt that no verdict can be

reached by the jury, i.e. a hung jury, the Judge will discharge the jury. The DPP will then have to determine whether to seek another trial at a later date.

REMUNERATION FOR JURORS

In Western Australia persons are reimbursed for any lost income for the period of jury service. Remuneration is commensurate with a person's normal earnings. Employers are required to pay the normal wage or earnings of employees during that person's jury service. The State, through the Sheriff's Office, then reimburses the employer for the wages or earnings of that person during the period of jury service.

It is interesting to note that jurors are not reimbursed for lost income in the other Australian States and Territories. Persons summonsed for jury service receive a jurors allowance which is not commensurate with a person's wage or earnings.

In 2011 amendments to the Jury Act increased fines for employers who commit prejudicial actions toward employees. Penalties charged to a maximum of \$10,000 for individuals and \$50,000 for companies.

PUBLICITY AND COMMUNICATION

Any communications among a jury during the course of their deliberations (i.e. discussions, opinions or votes taken) are classified as 'protected information' and penalties apply to anyone who discloses or publishes protected information.

The jury must reach its verdict based on what it believes to be the true facts, i.e. the evidence that has been presented to them in the trial. If members of the jury were allowed to communicate with members of the public about the matter being tried by them during the trial they could be influenced in their decision.

In the past if a jury had not reached a verdict during its deliberations by the end of the court day, then the jurors were sequestered (confined in hotel rooms away from the public and with no access to television or newspaper reports or persons who have an interest in the outcome of the trial). In 2008 the Western Australian government altered that legislation. Nowadays if a jury has not reached a verdict during its deliberations by the end of the court day it is at the Judge's discretion whether the jury be sequestered or whether they be allowed to return to their own domicile and return to the court the following day.

It is illegal for anyone to photograph, sketch or video the empanelled Jury. Persons who do so will be in contempt of court.

JURIES IN CIVIL CASES

The first civil jury trial in Western Australia occurred in 1832.

In Civil Proceedings, where used, juries decide whether the plaintiff's versions of events is more likely to be true than that asserted by the defendant, i.e. the standard of proof = on the balance of probabilities. Six people are empanelled as jurors in a civil trial.

In Western Australia it is very rare to use a jury in civil cases for two reasons. Firstly, for a jury to be empanelled on a civil trial, the action must be of a particular nature (i.e. actions such as defamation, fraud and false imprisonment), whereas actions for personal injuries can only be heard before a Judge.

Even where a jury trial is allowed, it must be requested by one of the parties to proceedings. The Judge then decides whether the matter is suitable for trial by jury.

Secondly, where a party has successfully requested a jury, it must pay the jury costs before proceedings commence each day. If these costs are not met, the Judge will discharge the jury.

For civil proceedings the majority view after 3 hours will be taken as the decision of the jury.

If only 5 members remain on a civil jury, 4 must be in agreement to have a majority. Where there are only 4 members, all 4 must agree.

For civil proceedings the jury (if used) must only be satisfied on the balance of probabilities that the defendant did what the plaintiff alleges or omitted to do what the plaintiff alleges should have been done by the defendant.

The civil test is easier to satisfy than the criminal test because there is no deprivation or personal liberty or stigma associated with conviction. Basically, if a mistake is made in civil proceedings, the consequences of this mistake are not as severe as in criminal proceedings.

It is important to note that the vast majority of civil trials are heard by a single judge or magistrate and not a jury. Whilst it is possible to have a jury in a civil trial it is very rare for it happen; No civil jury trial has occurred in Western Australia since 1994 and only about a dozen such trials have occurred in last four decades.³

The FBLEP acknowledges the assistance of the Sheriff's Office of WA in 2012 and thanks the Sheriff's Office of WA for ensuring that the details in this document are accurate and up-to-date.



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³ Ibid. 11.

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