



**LAW REFORM
COMMITTEE**

Jury Service in Victoria

ISSUED FOR PUBLIC DISCUSSION AND COMMENT

ISSUES PAPER No 1

NOVEMBER 1994

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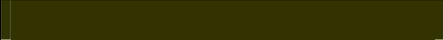
NOVEMBER 1994

JURY SERVICE IN VICTORIA

LAW REFORM COMMITTEE

PARLIAMENT OF VICTORIA

COMMENTS AND SUBMISSIONS INVITED



JURY SERVICE – HAVE YOUR SAY

How to make comments and submissions

You are invited to make comments and submissions on issues relevant to the Review of Jury Service in Victoria, including but not limited to the issues raised in this Issues Paper.

Written comments and submissions should be sent to –

The Director of Research
Law Reform Committee
Level 19, Nauru House
80 Collins Street
MELBOURNE 3000
Phone: (03) 655 6957
Fax: (03) 655 6075

Closing date – Monday, 23 January 1995

Anyone can make a submission or comment. If you have served on a jury or have a particular interest in the area of jury service, the Committee would like to hear from you. It is not necessary to have legal or any other special qualifications. The Committee is keen to hear from all those who have something to say about jury service.

The Committee is interested in any comments on how the law is operating or how it might be improved. You may wish to address some or all of the issues raised in this Issues Paper. It may be that you are currently exempt from jury service or believe you should be exempt. It may be that you or your organisation employs or represents a category of persons who are disqualified, ineligible or have a right to be excused from jury service. If so, the Committee would like your views as to whether the category should be expanded, limited or abolished, or if any new categories should be created.

Confidentiality – All submissions are treated as public documents, unless confidentiality is requested.



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FOREWORD

The Law Reform Committee is a joint investigatory committee of the Victorian Parliament. It consists of members of both Houses of Parliament, who represent all political parties, and who come from a range of backgrounds and work experience. Appendix 1 details the Committee's functions.

At the request of the Victorian Government, the Committee has been asked to conduct a review into certain aspects of the jury system in Victoria. Appendix 2 contains the formal Terms of Reference for the inquiry.

The Committee is required to review and make recommendations with respect to the following matters –

- 1.2 The composition of Victorian juries, and, more particularly, their general representativeness, and any qualifications or limitations to the principle that they should be representative of the Victorian adult population.
- 2.1 The basic qualification for jury service.
- 2.3 The categories of disqualification; whether they should be abolished, limited, expanded, new categories be added, or existing categories be redefined.
- 2.4 The categories of ineligibility; whether they should be abolished, limited, expanded, new categories be added, or existing categories be redefined.
- 2.5 The categories of entitlement to be excused as of right; whether they should be abolished, limited, expanded, new categories be added, or existing categories be redefined. This includes whether moral, ethical or religious objections to jury service should be a basis for excusal.
- 2.6 The categories of entitlement to be excused for good reason; whether they should be limited, expanded, or further and better defined. This includes matters concerning juror's remuneration and the physical conditions of jury service.

- 2.7 The categories of ineligibility from serving on civil juries.
- 2.8 The categories of exemption from jury service in Victoria under Commonwealth legislation.
- 3.2 The method of jury district formation, particularly the 32 kilometre radius.
- 3.3 The method of compilation of jury lists and the period for which they remain current.
- 3.4 The preselection of jurors, including the role of questionnaires, their content, and the quantum and enforcement of fines for not responding to them.
- 3.5 The preparation of jury panels, including the role of the Chief Commissioner of Police in vetting them.
- 3.6 The summoning of jurors and the period for which their attendance is required.

The purpose of this Issues Paper is to provide those interested in the Inquiry with a brief summary and discussion of what the Committee believes are the relevant issues. It also includes in the Appendices certain legislative provisions, and other information, which may be of assistance in understanding the nature of the review.

The Committee invites written submissions from any individual or organisation who wishes to express views relating to any aspect of this inquiry. **It may be that you have been sent a copy of this Issues Paper because you are currently exempt from jury service, or your organisation may employ, or in some manner represent those who are. If so, the Committee would especially like to receive your views as to whether the relevant exemption should continue to operate.**

Submissions need not be limited to the issues raised in this Issues Paper. Submissions need not be formal, and no legal or other special qualification is necessary. **The closing date is Monday, 23 January 1995.**

SUMMARY OF ISSUES RAISED

Jury Representativeness

- *Issue 1.2.1* Should the Committee for the purposes of its Inquiry accept as a general proposition that a jury should be **representative** of the **Victorian community**?
- *Issue 1.2.2* Should **courts be given specific statutory powers** to discharge juries, and/or to stay proceedings, in circumstances where the jury is considered to be not sufficiently representative of the community?
- *Issue 1.2.3* What, if any, **qualifications or limitations** should be placed **upon the general proposition** referred to in issue 1.2.1? Are there circumstances where, either by reason of the characteristics of the accused or the victim, or the nature of the offence, a jury which is deliberately designed not to be representative of the community, is justified?

Basic Qualification for Jury Service

- *Issue 2.1* Should the **basic qualification** for jury service be altered?

Categories of Disqualification

- *Issue 2.3.1* Should any of the categories of persons disqualified from serving as jurors be **abolished, limited or expanded**?
- *Issue 2.3.2* Should any **new categories** of persons disqualified from serving as jurors be **added**?
- *Issue 2.3.3* Should any of the categories of persons disqualified from serving as jurors be **redefined** as categories of persons ineligible to serve as jurors, or as persons entitled as of right to be excused from serving as jurors?

Categories of Ineligibility

- Issue 2.4.1 *Should any of the categories of persons ineligible to serve as jurors by reason of their **current or previous occupation be abolished, limited or expanded?***
- Issue 2.4.2 *Should any **new categories** of persons ineligible to serve as jurors by reason of their current or previous occupation be **added?***
- Issue 2.4.3 *Should any of the categories of persons ineligible to serve as jurors by reason of their current or previous occupation be **redefined** as categories of persons entitled as of right to be excused from serving as jurors?*
- Issue 2.4.4 *Should any of the categories of persons ineligible to serve as jurors by reason of **perceived practical difficulties in their serving** be **abolished, limited or expanded?***
- Issue 2.4.5 *Should any **new categories** of persons ineligible to serve as jurors by reason of perceived practical difficulties in their serving be **added?***
- Issue 2.4.6 *Should any of the categories of persons ineligible to serve as jurors by reason of perceived practical difficulties in their serving be **redefined** as categories of a right to be excused from serving as jurors?*

Categories of Entitlement to be Excused as of Right

- Issue 2.5.1 *Should any of the categories of persons entitled as of right to be excused from serving as jurors be **abolished, limited or expanded?***
- Issue 2.5.2 *Should any **new categories** of persons entitled as of right to be excused from serving as jurors be **added**. For example, should there be a category exempting those persons who have a conscientious objection to serving as jurors on **moral, ethical or religious grounds?***

- Issue 2.5.3 *Should any of the categories of persons entitled as of right to be excused from serving as jurors be **redefined** as categories of persons ineligible to serve as jurors?*
- Issue 2.5.4 *Should any change be made to the system of granting **certificates of exemption** for up to ten years to persons on account of lengthy jury service?*

Categories of Entitlement to be Excused for Good Reason

- Issue 2.6.1 *Should the categories of entitlement to be excused from jury service for good reason be **limited or expanded, or further or better defined**?*
- Issue 2.6.2 *Should the **remuneration for jurors** and/or the **physical conditions of jury service** be improved to enable more persons to serve as jurors?*
- Issue 2.6.3 *Should any change be made to the current practice of **excusing** from jury service **those who have served on a jury in the preceding three or five years**? Should this practice be extended to include those who, being summoned for jury service, attend but never sit as jurors?*
- Issue 2.6.4 *Should **guidelines for the exercise of the discretion to excuse** a person from jury service for good reason be established? How should any such guidelines be established, and what should they provide?*
- Issue 2.6.5 *Should the **court** at which a person is required to serve, retain an **overriding discretion to excuse** any person from jury service where it appears just and reasonable so to do?*

Civil Juries

- Issue 2.7.1 *Should the category of **ineligibility** from serving as a civil juror be **abolished, limited or expanded**?*
- Issue 2.7.2 *Should any **new categories** of ineligibility or exemption from serving as a civil juror be **added**?*

Commonwealth Exemptions

- *Issue 2.8.1* Should the Committee recommend that the Victorian Attorney-General approach the Commonwealth Attorney-General to introduce legislation to **abolish, limit or expand any of the categories** of Commonwealth exemptions from State jury service?
- *Issue 2.8.2* Should the Committee recommend that the Victorian Attorney-General approach the Commonwealth Attorney-General to introduce legislation to **add any new categories** of Commonwealth exemptions from State jury service?

Jury District Formation

- *Issue 3.2.1* Should the **32 kilometre** radius which presently defines a jury district be **increased** so as to make eligible for jury service more Victorians? Should it be increased to a 40, 50 or 100 kilometre radius, or some other distance?
- *Issue 3.2.2* What impact, if any, should an increase in the radius have on the **distance which entitles a person to be excused** as of right from jury service?
- *Issue 3.2.3* Instead of relying on a distance radius, should the **whole State be divided into jury districts** in such a manner that every person enrolled for the Legislative Assembly, lives within a jury district? Should this be subject to the continuation of the present, or some other, basis for excusing those who live long distances from the nearest court town?
- *Issue 3.2.4* If yes to issue 3.2.3, **what spatial unit or geographical area should be used** as a basis for defining the jury districts? Some possible alternatives are; in increasing order of size –
 - census collection districts (CCD)*
 - postcode areas*
 - local government areas (LGA)*
 - State electoral subdivisions*
 - Legislative Assembly electoral districts*
 - Legislative Council electoral provinces*

- *Issue 3.2.5* As none of the spatial units or geographical areas listed above are immutable, **who should be responsible for recommending** to the Governor in Council what **new or changed jury districts** should be proclaimed? Should it be the Electoral Boundaries Commission, the State Electoral Commissioner, the Surveyor-General, or some other body or office?
- *Issue 3.2.6* As the maps in figures 5 and 6 show, some jury districts overlap, even at a 32 kilometre radius. **How should overlapping jury districts be dealt with?** Should persons who live in more than one jury district be liable for jury service at each court town? If not, how should their liability be determined?

Jury List Compilation

- *Issue 3.3.1* Is there any manner in which the process of jury list compilation can be **improved**?
- *Issue 3.3.2* Should the **period for which jury lists are compiled** be reduced? How should the risk that some people may be called upon to perform jury service unreasonably often be minimised?

Preselection of Jurors

- *Issue 3.4.1* Is there any manner in which the process of pre-selection of jurors can be **improved**?
- *Issue 3.4.2* Are there any improvements which could be made to the form of **questionnaire**?
- *Issue 3.4.3* Should **questions** directed towards ascertaining the **impartiality of a prospective juror be included in the questionnaire**? If so, should these answers be provided to the Crown and the defence to assist with challenges?
- *Issue 3.4.4* Is the quantum of **finest** for the offences of failing to return questionnaires, or for wilfully making untrue and misleading statements, **adequate**?
- *Issue 3.4.5* Should a **method of enforcement of fines** involving the issue of infringement notices, coupled with enforcement provisions similar to the **PERIN procedure** set out in Schedule 7 to the

Magistrates' Court Act 1989 be adopted under the Juries Act (see Appendix 5)?

- *Issue 3.4.6 What **evidentiary provisions** should be enacted to assist in proving compliance with the Act?*

Jury Panel Preparation

- *Issue 3.5.1 Is there any manner in which the process of jury panel preparation can be **improved**?*
- *Issue 3.5.2 Is the **Chief Commissioner of Police** the most appropriate person to **inquire whether the name of any person who is disqualified** from serving as a juror is included in any **jury panel**? If some other person or body were given this task, what provisions would be necessary to facilitate the **sharing of information** while maintaining protection of **individual privacy**? Do any other considerations need addressing?*

Summoning of Jurors

- *Issue 3.6.1 Is there any manner in which the process of summoning jurors can be **improved**?*
- *Issue 3.6.2 What **period of time** should persons summonsed to attend **for jury service** who do not serve as jurors on a jury be required to remain available for selection?*

1. JUDGMENT OF ONE'S PEERS

No freeman shall be seized, or imprisoned, or dispossessed or outlawed, or in any way destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the lawful judgement of his peers, or by the law of the land.

Clause 39 Magna Carta 1215
Clause 29 Magna Carta 1225

1.1 **The Lawful Judgment of One's Peers**

1.1.1 Geoffrey Hindley in *The Book of Magna Carta* observes that the words quoted above, "coined by a distant society in a half forgotten language, have been treasured by generations of men and women in the English speaking world as a safeguard of individual liberty".¹

1.1.2 Few would argue nowadays that the institution of trial by jury should be completely abolished. In any event, this issue is not within the Committee's Terms of Reference. What is relevant, is the issue of what content is to be given to the concept of trial by a jury of one's peers. Who are an accused person's "peers"?

1.1.3 It has been suggested that "the word Peer was probably originally derived of the Latin Par an equal".² It has also been said that "in contemporary Australia, all individuals are equal before the law".³ It might be concluded that the tradition of *Magna Carta* requires trial by a representative group of members of the community. Given the inevitably local nature of most jury trials, at least before the advent of the railway, the description of the community in which an accused's peers are to be found may be arguable.

¹ Geoffrey Hindley, *The Book of Magna Carta*, Constable & Co., London, 1990; pp. ix-x.

² Richard Thomson, *Magna Carta*, 1829, reprinted Legal Classics Library, Birmingham, Alabama.

³ *Walker v. R* (1988) 38 A Crim R, 150 per McPherson J.

1.1.4 If the provisions of chapter 39 of *Magna Carta* have ever formed part of the law of Victoria⁴, they have long since been displaced by local statutes. For example, under section 395 of the Victorian *Crimes Act* all persons presented for trial who plead "not guilty" place themselves on the "country" for trial. At the end of the jury impanelling process, the Judge's Associate charges the jury to the effect that the prisoner has pleaded "not guilty" and "for his [her] trial has placed himself [herself] upon God and his [her] country, which country you are".

1.1.5 However, this formulation itself dates back to medieval times when the jury was a body of witnesses summoned from the neighbourhood to decide the litigated question by their sworn testimony. Moreover, it is only in recent times that property qualifications for jury service ceased to apply. It follows that the community which a jury should represent is not clearly determined by history or statute, and that other principles may suggest that mere statistical representation of Victorian adults is not sufficient.

1.2 The Right to a Fair Trial and the Jury System

1.2.1 In a number of recent decisions the High Court has affirmed as "a fundamental element of our criminal justice system",⁵ the right of an accused to receive a fair and impartial trial according to law.⁶ While this principle has been long established, "the practical content of the requirement that a criminal trial be fair may vary with changing social standards and circumstances".⁷ Rules of evidence and rules of procedure gradually evolve as notions of fairness develop.⁸

1.2.2 In performance of its duty to conduct a trial fairly, a court may stay proceedings as "an incident of the general power of a court of justice to ensure

⁴ See *Australian Courts Act 1828 (Imp)*, s.24; *Imperial Acts Application Act 1980 (Vic)*, s 3. schedule 1 & Part II, Division 3. See also, *Clarkson v. Director-General of Corrections* [1986] VR 425.

⁵ *Dietrich v. R* (1992) 177 CLR 292, 303 per Mason CJ & McHugh J.

⁶ See, e.g., *ibid.* 320 per Deane J, 335 per Toohey J, 340 per Gaudron J; *Jago v. District Court (NSW)* (1989) 168 CLR 23; *McKinney v. R* (1991) 171 CLR 468, 478; *R v. Glennon* (1992) 173 CLR 592.

⁷ *Dietrich v. R*, *ibid.*, 321.

⁸ *The State (Healy) v. Donoghue* [1976] IR 325, 350.

fairness".⁹ In a number of recent cases, accused persons have sought to invoke this power where they believed that the jurors (or prospective jurors) for their trials, were not representative, or may not act impartially.¹⁰ Although these attempts have been largely unsuccessful, one can hypothesise a situation where a jury could be so unrepresentative of society in general, that a judge would be justified in discharging it, or staying proceedings, until a more representative jury could be impanelled.

1.2.3 Conversely, there may be occasions when, by reason of the circumstances of the accused, a jury which is deliberately designed not to be representative of the whole community, is justified. As noted by Associate Professor Findlay in his study on *Jury Management in New South Wales*,¹¹ a recent report from the United Kingdom Royal Commission on Criminal Justice recognised the problems associated with manufacturing a "representative" and "impartial" jury to try a defendant from a minority group within society. The Commission recommended that in exceptional circumstances, a judge should be given power to order that a jury include up to three representatives of racial minority communities, and that one of the three be of the same racial background as the accused or the victim.¹²

1.2.4 There may also be occasions when, by reason of the nature of the offence with which the accused is charged, the court should be permitted, or even required, to ensure that the composition of the jury conforms to certain prescribed criteria. For example, in cases where the accused is charged with sexual offences, should the law require that there be an equal representation of men and women on the jury? To cite another example, in cases of complicated commercial fraud, is it desirable that the jurors have achieved a minimum educational standard, or possess certain qualifications?

⁹ *Jago* (1989) 168 CLR 23, 31 *per* Mason CJ; see also 58 *per* Deane J, 71-72 *per* Toohey J, 77-78 *per* Gaudron J; *Barton v. R* (1980) 147 CLR 75, 96 *per* Gibbs ACJ & Mason J, 103 *per* Stephen J, 107 *per* Murphy J, 109 *per* Wilson J, 109 *per* Aickin J; *Dietrich* (1992) 177 CLR 292, 338 *per* Toohey J.

¹⁰ "*R v. Smith*" [1981] *Aboriginal Legal Bulletin*, 3:11; *Walker v. R* (1988) 38 A Crim R 150; *Bush v. R* (1993) 48 A Crim R 416. See also, *A Judge of the District Courts at Brisbane and Paul Shelley; Ex parte Attorney-General for Queensland* (1990) 48 A Crim R 139.

¹¹ Australian Institute of Judicial Administration Inc., Melbourne, 1994, p.4.

¹² Lord Runiciman, *Report of the Royal Commission on Criminal Justice*, HMSO, London, 1993.

1.2.5 Although the jury system should seek to provide juries which are generally representative of the whole community, there may be circumstances where, in the interests of justice, this principle should be subordinated to other considerations.

- *Issue 1.2.1 Should the Committee for the purposes of its inquiry accept as a general proposition that a jury should be representative of the Victorian community?*
- *Issue 1.2.2 Should courts be given specific statutory powers to discharge juries, and/or to stay proceedings, in circumstances where the jury is considered to be not sufficiently representative of the community?*
- *Issue 1.2.3 What, if any, qualifications or limitations should be placed upon the general proposition referred to in issue 1.2.1? Are there circumstances where, either by reason of the characteristics of the accused or the victim, or the nature of the offence, a jury which is deliberately designed not to be representative of the community, is justified?*

1.3 The Representativeness of Victorian Juries

1.3.1 Within the purview of the Committee's Terms of Reference, it could be asserted that two main factors presently operate to restrict the representativeness of Victorian juries:

- a. The extensive categories of persons who are either disqualified or ineligible to serve as jurors, or who are entitled to be excused from jury service as of right; and
- b. The processes whereby persons are pre-selected for jury service.

1.3.2 These two main factors will be examined in detail in the remainder of this Issues Paper.

2. INELIGIBILITY, DISQUALIFICATION AND EXCUSAL

2.1 *Current Qualification*

2.1.1 The qualification for jury service is enrolment as an elector for the Legislative Assembly. This includes people who are aged eighteen years and over, who are Australian citizens, or were British subjects enrolled to vote on a Victorian, Commonwealth, or Territorial electoral roll before 26 January 1984. However, people of unsound mind, and those convicted of treason, or under sentence for offences punishable by imprisonment for five years or longer are not entitled to vote. Neither are those holding temporary entry permits, or who are prohibited immigrants.¹³

- *Issue 2.1 Should the basic qualification for jury service be altered.?*

2.2 *History of Qualification*

2.2.1 Until 1956, only men over the age of twenty-one years who owned property of a specified annual rateable value were liable to serve as jurors. The property ownership requirement was removed in that year when the qualification for jury service was extended to include "every man residing in Victoria and enrolled as an elector for the Legislative Assembly".¹⁴

2.2.2 Although the *Women's Qualification Acts* of 1926, 1928 and 1958 purported to remove disqualifications of women "from the exercise of any public function", each of those acts contained a provision that: "Nothing in this Act shall impose upon a woman any liability to serve as a juror". The 1958 provision was repealed in 1964 by the *Juries (Women Jurors) Act* which by section 2 extended the qualification for jury service to every person enrolled as an elector for the Legislative Assembly. The Act enabled any

¹³ *Constitution Act 1975 (Vic)*, s. 48 .

¹⁴ The operation of the common law, and the provisions of various Interpretation Acts which provide that words importing the masculine gender include the feminine gender, are excluded by a contrary intention appearing in the *Juries Act*.

woman to cancel her liability to serve as a juror by giving the Chief Electoral Officer a notice to that effect.¹⁵ This mechanism was substituted in the *Juries Act 1967* for a right in all women to be excused from serving as jurors.

2.2.3 Section 4 of the *Juries (Women Jurors) Act 1964* in effect empowered the Chief Electoral Officer to exclude from any jury list women, unless notified by the Attorney-General that they were to be included in the next draft juror's roll. Thus, despite the general provisions of this Act, women were effectively disqualified from jury service. This remained the situation until it was remedied by legislation in 1977.¹⁶

2.2.4 In 1975 the qualification was extended to all persons of or over the age of eighteen years.¹⁷

2.3 Categories of Disqualified Persons

2.3.1 *Juries Act 1967*, section 4, in combination with Schedule 2 of that Act, declares certain categories of persons to be disqualified from jury service. In the following list of these categories the figures in square brackets indicate the earliest year in which that or a similar category came into operation in Victoria.

2.3.2 Any person convicted of treason, unless granted a free pardon. [1847]

2.3.3 Any person convicted of an indictable offence or offences and sentenced to imprisonment for not less than three years for that offence or in the aggregate for those offences, unless granted a free pardon. [1847]

2.3.4 Any person who, within the last five years has been imprisoned or on parole, unless the sentence of imprisonment did not exceed three months or was for non-payment of a fine, unless granted a free pardon. [1967]

2.3.5 Any person who is bound by a recognisance entered into after conviction for any offence. [1967]

¹⁵ *Juries (Women Jurors) Act 1964*, s 2.

¹⁶ *Equal Opportunity Act 1977*, s. 57.

¹⁷ *Constitution Act 1975 (Vic)*, s. 48.

2.3.6 Any person subject to a community-based order that includes a condition that he/she be under the supervision of a community corrections officer. [1967]

2.3.7 Any person who is an undischarged bankrupt. [1865]

- *Issue 2.3.1 Should any of the categories of persons disqualified from serving as jurors be abolished, limited or expanded?*
- *Issue 2.3.2 Should any new categories of persons disqualified from serving as jurors be added?*
- *Issue 2.3.3 Should any of the categories of persons disqualified from serving as jurors be redefined as categories of persons ineligible to serve as jurors, or as persons entitled as of right to be excused from serving as jurors?*

2.4 Categories of Ineligible Persons

2.4.1 *Juries Act 1967*, section 4, in combination with Schedule 3 of that Act, declares certain categories of persons to be ineligible to serve as jurors. In the following list of these categories the figures in square brackets indicate the earliest year in which that or a similar category came into operation in Victoria. Where two dates appear, this indicates that an earlier general provision has been replaced by one more specific.

Persons Ineligible by Reason of Current or Former Occupations

Any person who is or has at any time in the last ten preceding years been –

2.4.2 A Supreme or County Court judge or holder of other judicial office. [1847]

2.4.3 A duly qualified legal practitioner. [1847]

2.4.4 A person employed by a duly qualified legal practitioner in connexion with the practice of the law. [1890]

2.4.5 A minister of religion, monk, nun or other vowed member of a religious community. [1847]

2.4.6 A person employed by the Attorney-General. [1865, 1967]

2.4.7 The Chief Commissioner of Police [1847, 1958], the Director-General of Community Services [1865, 1967] or the Electoral Commissioner [1865, 1967].

2.4.8 A person employed by the Chief Commissioner of Police [1847, 1958], the Director-General of Community Services [1865, 1967], the Director-General of Corrections [1847, 1958, 1986] or the Electoral Commissioner [1865, 1967].

2.4.9 An honorary probation officer [1967], justice of the peace [1847], bail justice [1989] or a person whose name appears in the Register of Volunteers kept under Part 4 of the *Corrections Act 1986* [1986].

2.4.10 A person employed as a Government shorthand writer, licensed court reporter or in connexion with any court recording service. [1967]

2.4.11 An officer of the Ombudsman. [1983]

Persons Ineligible by Reason of Perceived Difficulties in Their Serving

2.4.12 Any person who is unable adequately to see, hear or speak. [1847]

2.4.13 Any person who is intellectually disabled and eligible for services under the *Intellectually Disabled Persons' Services Act 1986*. [1847, 1987]

2.4.14 Any person who is a patient within the meaning of the *Mental Health Act 1986*. [1847, 1987]

2.4.15 Any person who is a represented person under the *Guardianship and Administration Act 1986*. [1847, 1987]

2.4.16 Any person who is unable to read or write. [1890]

2.4.17 Any person who has an inadequate knowledge of the English language. [1967]

- *Issue 2.4.1 Should any of the categories of persons ineligible to serve as jurors by reason of their current or previous occupation be abolished, limited or expanded?*
- *Issue 2.4.2 Should any new categories of persons ineligible to serve as jurors by reason of their current or previous occupation be added?*
- *Issue 2.4.3 Should any of the categories of persons ineligible to serve as jurors by reason of their current or previous occupation be redefined as categories of persons entitled as of right to be excused from serving as jurors?*
- *Issue 2.4.4 Should any of the categories of persons ineligible to serve as jurors by reason of perceived practical difficulties in their serving be abolished, limited or expanded?*
- *Issue 2.4.5 Should any new categories of persons ineligible to serve as jurors by reason of perceived practical difficulties in their serving be added?*
- *Issue 2.4.6 Should any of the categories of persons ineligible to serve as jurors by reason of perceived practical difficulties in their serving be redefined as categories of a right to be excused from serving as jurors?*

2.5 Categories of Persons Entitled as of Right to be Excused

2.5.1 *Juries Act 1967*, section 4, in combination with Schedule 4 of that Act, declares certain categories of persons to be entitled as of right to be excused from jury service. In the following list of these categories the figures in square brackets indicate the earliest year in which this or a similar category came into operation in Victoria. Where two dates appear, this indicates that an earlier general provision has been replaced by one more specific.

2.5.2 Members of the Governor's household and the Official Secretary to the Governor. [1847]

2.5.3 The permanent heads of all State Government Departments. [1847, 1956]

- 2.5.4 Commissioners, members and secretaries of all statutory corporations. [1907, 1956]
- 2.5.5 Members of the Public Service Board, the Police Service Board and the Teachers' Tribunal. [1967]
- 2.5.6 The Auditor General. [1847, 1967]
- 2.5.7 Medical Practitioners [1847], Dentists [1887] and Pharmacists [1847].
- 2.5.8 School Teachers. [1847]
- 2.5.9 Masters and crews of trading vessels. [1847]
- 2.5.10 Pilots holding a licence under the *Marine Act 1988* . [1847]
- 2.5.11 Airline pilots and crews regularly engaged on international flights. [1967]
- 2.5.12 Members and Officers of the Legislative Council [1847] and the Legislative Assembly [1865].
- 2.5.13 Mayors, presidents, councillors, town clerks and secretaries of municipalities. [1847]
- 2.5.14 Persons over the age of sixty-five. [1956—age of sixty applied 1847-1956]
- 2.5.15 Pregnant women. [1975; and see the comments at 2.2.2 & 2.2.3]
- 2.5.16 Persons who are required to undertake the full-time care of children or persons who are aged or in ill-health. [1975]
- 2.5.17 Persons who are so physically handicapped as to be unable to perform the duties of jurors without undue hardship. [1847 Blind persons were specifically exempted from jury service—1890-1958]

2.5.18 Persons who reside more than 32 kilometres from the court house at which they would be required to serve. [30 miles – 1847; 25 miles – 1865; 20 miles – 1890; 32 kms – 1973]

2.5.19 Persons who hold current certificates of entitlement to be excused as of right on account of lengthy jury service. [1956]

2.5.20 The Ombudsman and the Acting Ombudsman. [1983]

Certificates of Exemption

2.5.21 At the conclusion of a lengthy trial, the court may determine that the jurors shall be entitled to be excused as of right from serving as jurors for such ensuing period, not exceeding ten years, as the court specifies. The sheriff then issues those jurors with a certificate of exemption for the specified period of time.¹⁸

- *Issue 2.5.1 Should any of the categories of persons entitled as of right to be excused from serving as jurors be abolished, limited or expanded?*
- *Issue 2.5.2 Should any new categories of persons entitled as of right to be excused from serving as jurors be added. For example, should there be a category exempting those persons who have a conscientious objection to serving as jurors on moral, ethical or religious grounds?*
- *Issue 2.5.3 Should any of the categories of persons entitled as of right to be excused from serving as jurors be redefined as categories of persons ineligible to serve as jurors?*
- *Issue 2.5.4 Should any change be made to the system of granting certificates of exemption for up to ten years to persons on account of lengthy jury service?*

2.6 Entitlement to be Excused for Good Reason

2.6.1 Under sections 11 (3), and 13, a person may claim to be excused by reason of illness or incapacity, or any other matter of special urgency or

¹⁸ *Juries Act*, s. 13 (4).

importance, from serving as a juror, during the whole or any part of the period for which the jury list is current. Such claim is to be submitted in writing in the first instance to the sheriff, or later, either in writing or orally, to the sheriff or the court at which the person would be required to serve. There is provision for an appeal to the court from a decision of the sheriff refusing to grant a claim.

2.6.2 Experience shows that many people seek to be excused under this category because lengthy jury service would cause them significant financial hardship. Others are excused on this basis because, the physical conditions of jury service are too onerous for them.

2.6.3 As a matter of present practice, the sheriff excuses under this category a person who has been impanelled as a juror on a trial in the three years preceding or, in the case of a person who has served on more than one occasion, in the five years preceding, the receipt by them of a questionnaire. This ground of excuse does not apply to those who are summoned and attend for jury service, but who never serve on a jury.

2.6.4 In addition to a person's right to be excused for good reason, where it appears to the court to be just and reasonable so to do, the court may determine that a person shall not serve as a juror during the whole or any part of the current sittings of the court.

- *Issue 2.6.1 Should the categories of entitlement to be excused from jury service for good reason be limited or expanded, or further or better defined?*
- *Issue 2.6.2 Should the remuneration for jurors and/or the physical conditions of jury service be improved to enable more persons to serve as jurors?*
- *Issue 2.6.3 Should any change be made to the current practice of excusing from jury service those who have served on a jury in the preceding three or five years? Should this practice be extended to include those who, being summoned for jury service, attend but never sit as jurors?*
- *Issue 2.6.4 Should guidelines for the exercise of the discretion to excuse a person from jury service for good reason be established?*

How should any such guidelines be established, and what should they provide?

- *Issue 2.6.5 Should the court at which a person is required to serve, retain an overriding discretion to excuse any person from jury service where it appears just and reasonable so to do?*

2.7 Certain Persons not to Act as Civil Jurors

2.7.1 Under section 5 of the *Juries Act 1967*, no person engaged in the business of liability insurance or employed in any capacity by a person or company carrying on the business of liability insurance, otherwise than as an agent, shall serve as a juror on any civil inquest. This category of ineligibility was first introduced into Victorian law in 1956.¹⁹

- *Issue 2.7.1 Should the category of ineligibility from serving as a civil juror be abolished, limited or expanded?*
- *Issue 2.7.2 Should any new categories of ineligibility or exemption from serving as a civil juror be added?*

2.8 Exemptions Under Commonwealth Law

2.8.1 Under the laws of the Commonwealth a number of Commonwealth officers and employees are exempt from jury service in State courts on the grounds that they are employed in connection with the administration of justice, or that their exemption is justified on the basis of public need or due public administration. These exemptions are contained in the *Jury Exemption Act 1965 (Cwlth)* and the *Jury Exemption Regulations 1987 (Cwlth)*. Appendix 3 reproduces the Act and Regulations.

2.8.2 Owing to the fact that the place of home of most of those exempted under the Commonwealth legislation is probably somewhere other than Victoria; these exemptions are unlikely to strongly affect the representativeness of Victorian juries. Nevertheless, some categories are worth recording here:

- a. Senators and members of the House of Representatives.
- b. Justices, officers and employees of all federal courts and many federal tribunals.

¹⁹ *ibid.*, s. 8 as amended by *Juries (Amendment) Act 1957*, s. 2.

- c. Senior Commonwealth public servants (Senior Executive Band 3 and above).
 - d. Officers and employees of the Commonwealth Attorney-General's department and the Office of the Commonwealth Director of Public Prosecutions, whose duties involve the provision of legal professional services.
 - e. Members of the permanent Defence Forces and members of the Reserve Forces rendering continuous full time service.
 - f. Members and most other employees of the Australian Federal Police Force, the National Crime Authority, the Australian Protective Service, the Australian Bureau of Criminal Intelligence, the Australian Police Staff College and the National Police Research Unit.
- *Issue 2.8.1 Should the Committee recommend that the Victorian Attorney-General approach the Commonwealth Attorney-General to introduce legislation abolishing, limiting or expanding any of the categories of Commonwealth exemptions from State jury service?*
 - *Issue 2.8.2 Should the Committee recommend that the Victorian Attorney-General approach the Commonwealth Attorney-General to introduce legislation designed to create any new categories of Commonwealth exemptions from State jury service?*

3. JURY LIST COMPILATION AND PRE-SELECTION OF JURORS

3.1 Introduction

3.1.1 The compilation of jury lists and the pre-selection of jurors, form part of a process set out in the *Juries Acts 1967*. It facilitates the availability of eligible persons for jury service in civil and criminal trials. The overall process, whereby persons whose names appear on the electoral roll for the Legislative Assembly find themselves in a jury pool awaiting selection, is divisible into five stages. These stages are shown diagrammatically in figures 1 to 4, and are as follows –

Stage 1 – jury district formation.

Stage 2 – jury list compilation.

Stage 3 – pre-selection of jurors.

Stage 4 – jury panel preparation.

Stage 5 – summoning of jurors.

3.2 Jury District Formation

3.2.1 A jury district is proclaimed for each Supreme Court and County Court town, that is, the city of Melbourne, and every place where sittings of the Supreme Court or County Court are held. At present the Supreme Court has sittings at the following places – Ballarat, Bendigo, Geelong, Hamilton, Horsham, Melbourne, Mildura, Morwell, Sale, Shepparton, Wangaratta and Warrnambool. In addition to these locations, the County Court also sits at Bairnsdale and Kerang.

3.2.2 The *Juries Act 1967* declares each jury district to comprise certain specified Legislative Assembly electoral districts or subdivisions thereof.²⁰ In the event of changes to the electoral districts or the addition of new court towns, the Governor in council proclaims the changed or additional jury district. However, in practice the Electoral Commissioner defines a jury district as that area, which as nearly as possible falls within a radius of 32 kilometres of the Supreme or County Court town it serves.²¹

3.2.3 Figures 5 and 6 are electoral district maps of Victoria and the Melbourne/Geelong areas respectively, which show a 32 kilometre radius around each Supreme and County Court town. A large number of Victorians do not live within any jury district. Indeed, of the nearly 2.9 million persons enrolled to vote for the Legislative Assembly, over 25% of voters do not live within a jury district. Thus, a significant number of Victorians are never likely to be required to perform jury service.

3.2.4 An increase in the 32 kilometre radius would have the effect of increasing the number of persons potentially liable for jury service. This may result in juries becoming more representative of the Victorian community. However, any decision to increase the size of jury districts needs to take account of the operation of the present provision that entitles persons who live more than 32 kilometres from the court house where they would serve, to be excused as of right from serving as jurors (see para. 2.5.18). Provided the distance for excusal purposes remains constant, more people would be given an opportunity to serve on juries if they so wished, by an increase in the radius defining the jury district. A similar result would be achieved, if the distance for excusal purposes were increased by a lesser amount than the increase in the radius defining the jury district.

- *Issue 3.2.1 Should the 32 kilometre radius that presently defines a jury district be increased so as to make more Victorians eligible for jury service? Should it be increased to a 40, 50 or 100 kilometre radius, or some other distance?*
- *Issue 3.2.2 What impact, if any, should an increase in the radius have on the distance which entitles a person to be excused as of right from jury service?*

²⁰ s. 7; Schedules 5 & 6.

²¹ See *Juries Act* s. 8 (4).

- *Issue 3.2.3 Instead of relying on a distance radius, should the whole State be divided into jury districts in such a manner that every person enrolled for the Legislative Assembly lives within a jury district? Should this be subject to the continuation of the present, or some other, basis for excusing those who live long distances from the nearest court town?*
- *Issue 3.2.4 If yes to issue 3.2.3, what spatial unit or geographical area should form the basis for defining jury districts? Some possible alternatives are; in increasing order of size –
census collection districts (CCD)²²
postcode areas
local government areas (LGA)
State electoral subdivisions
Legislative Assembly electoral districts
Legislative Council electoral provinces*
- *Issue 3.2.5 As none of the spatial units or geographical areas listed above is immutable, who should be responsible for recommending changes to existing jury districts? Should it be the Electoral Boundaries Commission²³, the State Electoral Commissioner, the Surveyor-General, or some other body or office?*
- *Issue 3.2.6 As the map in figure 5 shows, some jury districts overlap even at a 32 kilometre radius. How should the potential difficulties that may arise by the presence of overlapping jury districts be dealt with? Should persons who live in more than one jury district be liable for jury service at each court town? If not, how should their liability be determined?*

²² A CCD is the smallest geographic area defined in the Australian Standard Geographic Classification. In urban areas, there is an average of about 250 dwellings in each CCD. In rural areas, the number of dwellings per CCD declines as the population densities decrease.

²³ See *Electoral Boundaries Commission Act 1982*.

3.3 Jury List Compilation

3.3.1 Under the existing legislation the sheriff has responsibility for the administration of the jury system. The sheriff notifies the State Electoral Commissioner of the number of persons required for jury service in each jury district. The notification is for the ensuing six to fifteen months.²⁴

3.3.2 The Electoral Commissioner initiates a computer generated random selection from the relevant electoral rolls, of the required number of people within each jury district, and notifies the sheriff accordingly. The list generated becomes the jury list for each jury district. The Electoral Commissioner is not required to include in any jury list the names of people who apparently live more than 32 kilometres from the court house at which they would be required to serve.²⁵

3.3.3 The jury list remains in force for such period of time, between six and fifteen months, as is notified to the Electoral Commissioner by the sheriff. At present, jury lists remain valid for fifteen months. This minimises the likelihood of any one person repeatedly being required to perform jury service over a short space of time. However, by the end of the period, the information contained in the jury list, particularly addresses, may be outdated. This will increase the number of people who fail to respond to questionnaires. Furthermore, by the end of the period, the absence of persons aged eighteen, or even nineteen, who have enrolled for the first time during the term of the jury list, may affect the representativeness of the panel.

- *Issue 3.3.1 Is there any manner in which the process of jury list compilation can be improved?*
- *Issue 3.3.2 Should the period for which jury lists remain current be reduced? How should the risk that some people may be called upon to perform jury service unreasonably often be minimised?*

²⁴ *Juries Act*, s. 8.

²⁵ *id.*

3.4 Pre-Selection of Jurors

3.4.1 For the purpose of determining the qualification and liability of persons to serve as jurors, the legislation requires the sheriff to send a questionnaire by post, to as many persons selected at random from the jury list as are thought necessary.²⁶ Appendix 4 contains the form of questionnaire.²⁷

3.4.2 The questionnaire asks questions directed towards establishing the qualification and liability for jury service of the recipient. United States laws permit the questioning of prospective jurors in an effort to ascertain whether they would act impartially as jurors. In Victoria, some questions of this kind could be included in an expanded questionnaire sent to prospective jurors. The answers if provided to the Crown and the defence may assist with challenges.

3.4.3 The Act requires that the sheriff take the questionnaires, together with a list of recipients, to a post office. The person in charge of the post office must check the names and addresses on the questionnaires against the names and addresses on the list, and forward the questionnaires through the post.

3.4.4 A person who receives a questionnaire directed to them must complete it, and return it to the sheriff within seven days. Failure to do so is punishable by a fine not exceeding \$100. Wilfully making an untrue or misleading statement in completing a questionnaire is punishable by a fine not exceeding \$200.²⁸ At present about 20% of persons sent questionnaires do not initially respond; 50% of these respond to a reminder notice. Nevertheless, prosecutions are rare because of the cost involved.

3.4.5 On receipt of a duly completed questionnaire from any person, the sheriff must determine the qualification and liability of the person to serve as a juror. The sheriff bases this determination on the answers to the questionnaire, together with any current certificate of exemption,²⁹ and any

²⁶ *ibid.*, s. 10.

²⁷ See *Jury Regulations 1992*.

²⁸ *ibid.*, s.65 (1).

²⁹ See *ibid.*, s. 13(4).

written material submitted by the person. The sheriff must record in respect of all persons that they are: liable, disqualified, ineligible, excused as of right, or excused for good reason. At present, only about 33% of persons sent questionnaires are liable for jury service.

3.4.6 The sheriff must give written notice to any person qualified and liable to serve as a juror, and whose claim to be disqualified, ineligible or entitled to be excused has not been accepted. Any person aggrieved by such determination may appeal against it to the Supreme or County Court, within seven days.

3.4.7 The persons recorded as liable to serve as jurors are the persons from whom the sheriff must from time to time select when preparing panels of persons from which to strike juries.³⁰

3.4.8 In order to be excused as of right from serving as a juror during the currency of the jury list, a person must submit any claim in reply to the questionnaire.³¹ However, a person recorded as liable for service as a juror may, before being required by a summons to attend in any court for jury service,³² apply in writing to the sheriff to be excused for good reason; provided that reason did not exist at the date when the questionnaire was returned.³³

- *Issue 3.4.1 Is there any manner in which the process of pre-selection of jurors can be improved?*
- *Issue 3.4.2 Is any improvement in the form of questionnaire possible?*
- *Issue 3.4.3 Should questions directed towards ascertaining the impartiality of a prospective juror be included in the questionnaire? If so, should these answers be provided to the Crown and the defence to assist with challenges?*
- *Issue 3.4.4 Is the quantum of fines for the offences for failing to return questionnaires, or for wilfully making untrue and misleading statements, adequate?*

³⁰ *ibid*, ss. 13 & 20.

³¹ *ibid*, s. 12.

³² See below at para. 3.6.4.

³³ See above at para 2.6.1.

- *Issue 3.4.5 Should a method of enforcement of fines involving the issue of infringement notices, coupled with enforcement provisions similar to the PERIN procedure set out in Schedule 7 to the Magistrates' Court Act 1989 be adopted under the Juries Act (see Appendix 5)?*
- *Issue 3.4.6 What evidentiary provisions should be enacted to assist in proving compliance with the Act?*

3.5 Jury Panel Preparation

3.5.1 The proper officer of each court advises the sheriff of the likely number of persons required to attend for jury service at the respective courts. Acting on this advice, the sheriff must prepare lists of persons selected at random from the list of persons liable for jury service. This list is the jury panel for the sittings of each court in every jury district.³⁴

3.5.2 The sheriff may randomly select additional persons from the jury list, where the number of persons listed as liable for jury service is insufficient to complete the panel.³⁵

3.5.3 In the event that the panel size, as advised to the sheriff, appears to be greater than the number required, the sheriff may, before or after the issue of summonses – but before the attendance of the jurors – reduce the number of jurors by a process of random selection.³⁶

3.5.4 In accordance with the Act, the sheriff must forward a copy of every jury panel to the Chief Commissioner of Police, who shall make such inquiries as he/she considers necessary, as to whether any person whose name appears on such panel is disqualified. The Chief Commissioner of Police must report the result of those inquiries to the sheriff.³⁷

3.5.5 These statutory procedures aside, for many years the Chief Commissioner of Police has provided the Director of Public Prosecutions with a list of those persons in each panel who have non-disqualifying criminal

³⁴ *ibid*, s. 20.

³⁵ *id*.

³⁶ *ibid*, s. 20A.

³⁷ *ibid.*, s. 21.

convictions, which might make them unsuitable to serve as jurors in criminal trials. The solicitors who instruct prosecutors at trials routinely receive copies of these lists, which assists the Crown in exercising its right of peremptory challenge. However, neither persons accused nor their legal representatives receive copies of these lists. Judicial opinion varies as to the merits of this practice.³⁸

- *Issue 3.5.1 Is there any manner in which the process of jury panel preparation can be improved?*
- *Issue 3.5.2 Is the Chief Commissioner of Police the most appropriate person to inquire whether the name of any person who is disqualified from serving as a juror is included in any jury panel? If some other person or body was given this task, what provisions would be necessary to facilitate the sharing of information while maintaining protection of individual privacy? Do any other considerations need addressing?*
- *Issue 3.5.3 Should the Chief Commissioner of Police continue the practice of providing the Director of Public Prosecutions with lists of persons named in jury panels, who have non-disqualifying criminal convictions? If so, should accuseds' representatives also receive copies of the lists?*

3.6 Summoning Jurors

3.6.1 Following completion of each panel, the sheriff must issue a summons to every juror named therein. Appendix 6 contains a form of summons.³⁹

3.6.2 Not less than ten days before the day on which jurors are to attend, the sheriff must take the summonses, together with a copy of the jury panel, to a post office. The person in charge of the post office must check the names and addresses on the summonses against the names and addresses on the jury panel, and forward the summonses to their recipients.

³⁸ Compare *In the Trial of D* [1988] VR 937 and *R.v. Robinson* [1989] VR 289,307-8 per Nathan J. with *R.v. Robinson pp.* 290-297. See also, *R. v. Thomas* [1958] V.R. 97.

³⁹ *ibid*, s. 23.

3.6.3 The Act contains a power in the Attorney-General to direct that summonses to jurors be served by the sheriff or by a member of the police force, in which case a list known as a summons list completed. ⁴⁰

3.6.4 A person summoned to attend to serve as a juror may apply to the court to be excused for good reason. Additionally, the court retains an overriding discretion to excuse any person otherwise required to serve as a juror where it appears just and reasonable so to do. A person can be excused for the whole or any part of the sittings.⁴¹

3.6.5. The jurors in the jury panel not excused, are the jurors to try all issues in both civil and criminal trials at the sittings to which they are summoned.⁴² In practice, persons summoned and attending for jury service attend the relevant court house for three days unless impanelled as members of a jury, in which case, they are to attend as required until discharged by the trial judge.

- *Issue 3.6.1 Is there any manner in which the process of summoning jurors can be improved?*
- *Issue 3.6.2 What period of time should persons summonsed to attend for jury service who do not serve as jurors on a jury be required to remain available for selection?*

⁴⁰ *ibid.*, ss. 24 & 25.

⁴¹ *ibid.*, ss. 13 (2) & 13 (3).

⁴² *ibid.*, s. 26.

PARLIAMENTARY COMMITTEES ACT 1968

4E. The functions of the Law Reform Committee are—

- (a)* to inquire into, consider and report to the Parliament where required or permitted so to do by or under this Act, on any proposal, matter or thing concerned with legal, constitutional or Parliamentary reform or with the administration of justice but excluding any proposal, matter or thing concerned with the joint standing orders of the Parliament or the standing a House of the Parliament;
- (b)* to examine, report and make recommendations to the Parliament in respect of any proposal or matter relating to law reform in Victoria where required so to do by or under this Act, in accordance with the terms of reference under which the proposal or matter is referred to the Committee.

APPENDIX 2

TERMS OF REFERENCE

Pursuant to section 4F (1) (a) (ii) of the *Parliamentary Committees Act 1968*, the Governor in Council refers the following matters to the Law Reform Committee:

1. To review and make recommendations on the criteria governing ineligibility for, and disqualification and excusal from, jury service under sections 4 and 5 of the *Juries Act 1967*;
2. To review and make recommendations in respect of the compilation of jury lists under Part II and the pre-selection of jurors under Part III of the *Juries Act 1967*;

Under section 4F (3) of the *Parliamentary Committees Act 1968*, the Governor in Council specifies 31 March 1995 as the date by which the Committee is required to make its final report to the Parliament on this matter.

Dated: 20 September 1994

Responsible Minister: JAN WADE, MP
Attorney-General

Sections of the *Juries Act 1967* of Relevance to the Jury Service Inquiry

Section 3 – Definitions

In this Act unless inconsistent with the subject- matter or context –

"**additions**" used in reference to any juror means description as to residence and profession trade or occupation of such person.

"**card**" includes paper or other similar material.

"**civil inquest**" means trial of any issue or inquiry of damages before a court of civil jurisdiction.

"**County Court town**" means every place at which sittings of the County Court are held which is not a Supreme Court town.

"**Court**" includes Supreme Court and County Court.

"**criminal inquest**" means trial before a court of criminal jurisdiction of any issue joined upon an indictment for any indictable offence.

"**indictment**" includes information inquisition and presentment.

"**inquest**" includes both criminal and civil inquests.

"**prescribed**" means prescribed by the regulations.

"**prothonotary**" means the prothonotary of the Supreme Court and includes a deputy of the prothonotary.

"**questionnaire**" means the questionnaire referred to in section 10.

"**sheriff**" means the sheriff of Victoria or a deputy sheriff.

"**Supreme Court town**" includes the city of Melbourne and every place which may for the time being be fixed as a place at which sittings of the Supreme Court are to be held.

"**trial**" includes inquiry.

"**view**" includes inspection, and

"**viewers**" includes inspectors.

PART I—LIABILITY FOR JURY SERVICE

Section 4 – Persons qualified to serve as jurors

- (1) Subject to this section and section 5 every person enrolled as an elector for the Legislative Assembly shall be qualified and liable to serve as a juror.
- (2) Any person referred to in Schedule 2 is disqualified from serving as a juror.
- (3) Any person referred to in Schedule 3 is ineligible to serve as a juror.
- (4) Any person who is or is a member of a class referred to in Schedule 4 is entitled as of right to be excused from serving as a juror if he claims to be excused in accordance with the provisions of this Act.
- (5) Any person may pursuant to the provisions of this Act be excused for good reason from serving as a juror.

Section 5 – Certain persons not to act as civil jurors

- (1) No person—
 - (a) who is engaged in the business of liability insurance (that is to say the insurance or indemnity of persons against liabilities to which they may be subject by law); or
 - (b) who is employed in any capacity by a person or company carrying on the business of liability insurance otherwise than as an agent—shall serve as a juror on any civil inquest
- (2) Any such person summoned to serve as a juror for a civil inquest who fails to inform the court that he is so engaged or employed shall be guilty of an offence against this Act.

Penalty: 5 penalty units.

Section 6 – Reason for impeaching any verdict

No want of qualification or ineligibility if not submitted before the juror is sworn shall afterwards form a sufficient reason for impeaching any verdict.

PART II—JURY DISTRICTS AND JURY LISTS

Section 7 – Jury districts

- (1) There shall be a jury district for every Supreme Court town and County Court town.
- (2) The jury district for Melbourne shall be the area comprising the electoral districts or subdivisions thereof for the Legislative Assembly set forth in Schedule 5.
- (3) The jury district for every other such town shall consist of the electoral subdivisions of electoral districts for the Legislative Assembly set forth in Schedule 6.
- (4) Whenever any town is constituted a Supreme Court town or County Court town the Governor in Council by proclamation published in the Government Gazette—

- (a) shall declare which electoral districts or subdivisions for the Legislative Assembly shall form the jury district for that town; and
 - (b) may amend or vary Schedules 5 and 6 in order to exclude an electoral district or subdivision from a jury district where that electoral district or subdivision is declared under this sub-section to form part of a new jury district.
- (5) Where a proclamation has been made under sub-section (4)(b) the Governor in Council may by proclamation published in the Government Gazette amend or vary Schedules 5 and 6 in order to include in a jury district an electoral district or subdivision which was excluded from that jury district by the first-mentioned proclamation.

Section 8 – Preparation of jury lists

- (1) The sheriff shall from time to time notify the Electoral Commissioner of the number of persons that in his estimate will be required for jury service for any jury district for the next ensuing period of not more than fifteen months nor less than six months as he sees fit.
- (2) The Electoral Commissioner shall as soon as practicable after being so notified select at random from the electoral rolls for the subdivisions of the electoral districts for the Legislative Assembly in that jury district such number of persons apparently qualified and liable to serve as jurors in that district as is so required.
- (3) The Electoral Commissioner shall forthwith on completion of the selection at random pursuant to sub-section (2) send a list of the persons selected and their additions in respect of each jury district to the sheriff and each such list shall be the jury list for that district until a new list has been prepared in accordance with the provisions of this Act notwithstanding any alteration in the boundaries of the district during the period for which such list has been issued.
- (4) Nothing in this Act shall require the Electoral Commissioner to include in any jury list—
 - (a) (repealed)
 - (b) any person who apparently resides more than 32 kilometres from the court house at which he would be required to serve.

Section 9 – Re-definition of jury districts

- (1) If pursuant to the powers contained in *The Constitution Act Amendment Act 1958* or any other Act any electoral district for the Legislative Assembly is at any time redivided into subdivisions the Governor in Council may by proclamation published in the Government Gazette make such alterations in Schedules 5 and 6 as are necessary because of such redivision and Schedules 5 and 6 shall to the extent specified in such proclamation be deemed to be amended accordingly as from the date specified in such proclamation.
- (2) If pursuant to the powers contained in *The Constitution Act Amendment Act 1958* or any other Act a redivision of the State into electoral districts for the Legislative Assembly is adopted or is deemed to be adopted and such electoral districts are divided into subdivisions the Governor in Council may by proclamation published in the Government Gazette determine which of such new electoral districts or subdivisions thereof shall comprise the jury district for each Supreme Court town and County Court town and Schedules 5 and 6

shall be deemed to be amended accordingly as from the date specified in such proclamation.

- (3) Whenever a new jury district is declared under this Part the Electoral Commissioner shall on the request in writing of the sheriff prepare forthwith a jury list for that district in accordance with the provisions of this Act and shall forward the list to the sheriff.
- (4) On the receipt of any such jury list from the Electoral Commissioner the sheriff shall deal therewith in accordance with the provisions of this Act.

PART III—PRE-SELECTION OF JURORS

Section 10 – Sheriff to pre-select jurors

- (1) For the purpose of determining the qualification and liability of persons to serve as jurors the sheriff shall from time to time cause to be sent by post to as many persons selected at random from the jury list as he thinks necessary for the purposes of this Act a questionnaire in the prescribed form together with an envelope addressed to the sheriff with postage paid or payable by the sheriff.
- (2) A questionnaire shall be addressed to a person at the address recorded in the jury list and the sheriff shall take or cause to be taken such questionnaire together with a copy of a list of persons to whom questionnaires are to be sent signed by the sheriff, to a post office and the person in charge of such post office or a person authorised in that behalf shall (subject to and under any law of the Commonwealth) compare the name and address on the questionnaire with the name and address on the copy of the list and on being satisfied that they are the same shall forward the questionnaire to its address by post and shall return such copy to the person from whom he received it duly stamped with the stamp of the post office.
- (3) The production of such stamped copy shall be proof that a questionnaire has been delivered at the address of each person named therein on the day on which in the ordinary course of post it would have been delivered unless it appears that it was returned as undelivered, and any questionnaire so delivered at the post office and not returned as undelivered shall be deemed to have been delivered.
- (4) Subject to and under any law of the Commonwealth any such questionnaire which is not delivered shall be returned to the sheriff by the person in charge of the post office endorsed with the reason for non-delivery.
- (5) A person shall within seven days of receipt of a questionnaire complete it in the manner specified therein and return it to the sheriff.

Section 11 – Sheriff to determine persons to serve as jurors

- (1) The sheriff shall on receipt of a completed questionnaire from any person determine the qualification and liability of that person to serve as a juror.
- (2) The sheriff shall, on receiving from any person a completed questionnaire and a current certificate of exemption from serving as a juror granted to him under section 13 of this Act or under any corresponding previous enactment or sufficient evidence of the grant thereof, determine in accordance with the terms of that certificate that such person is ineligible or excused as of right from serving as a juror.

- (3) Any person may claim in his reply to a questionnaire that he ought to be excused by reason of illness or incapacity or any other matter of special urgency or importance from serving as a juror during the whole or any part of the period for which the jury list is current and the sheriff on being satisfied by proof on oath or by affidavit or statutory declaration or otherwise in writing that there is good reason may if he thinks fit excuse such person for the whole or any part of the period for which the jury list is current, and shall make a record thereof.
- (4) The sheriff shall give notice in writing by post to any person whom he determines is qualified and liable to serve as a juror and whose claim to be disqualified, ineligible or entitled to be excused he has not accepted.
- (5) Any person aggrieved by a determination of the sheriff of which he has received notice under sub-section (4) may appeal against the determination within seven days of receipt of the notice from the sheriff.
- (6) An appeal made under sub-section (5) shall be lodged with the sheriff and shall be determined subject to and in accordance with the rules by the Supreme Court or by the County Court.
- (7) The sheriff shall on determining the qualification and liability of any person to serve as a juror cause to be recorded in respect of that person that he is—
 - (a) liable;
 - (b) disqualified;
 - (c) ineligible;
 - (d) excused as of right; or
 - (e) excused for good reason.
- (8) The persons recorded as liable to serve as jurors under sub-section (7) shall be the persons from whom the sheriff shall from time to time select jurors under section 20.

Section 12. — (repealed)

Section 13. — Excuse of jurors for special reasons etc.

- (1) On proof on oath or by affidavit or statutory declaration or otherwise in writing to the satisfaction of the sheriff by or on behalf of a person whom he has recorded as liable for service as a juror that such person ought to be excused from service as a juror by reason of any illness or incapacity or any other matter of special urgency or importance the sheriff may if he thinks fit at any time before such person is required by his summons to attend in any court, excuse such person from serving as a juror for the whole or any part of the period of the currency of the jury list.
- (2) On proof on oath or by affidavit or statutory declaration or otherwise in writing to the satisfaction of the court in which a person is summoned to attend and serve as a juror—
 - (a) that such person has not applied to the sheriff to be excused as aforesaid but that there was good reason for his failure to apply or has applied and the sheriff has not excused such person; and

- (b) that such person ought to be excused from attendance by reason of any illness or incapacity or any other matter of special urgency or importance—the court may at any time if it thinks fit excuse such person from attendance for the whole or any part of the current sittings of the court and the court shall direct the sheriff to make a record thereof.
- (3) Notwithstanding the provisions of this Part, where it appears to the court to be just and reasonable so to do, the court may determine that a person shall not serve as a juror during the whole or any part of the current sittings of the court.
- (4) At the conclusion of any inquest which has required the attendance of jurors for a lengthy period the court may determine that the jurors shall be entitled to be excused as of right from serving as jurors for such ensuing period not exceeding ten years as the court specifies and the court shall notify the sheriff who shall issue to those jurors a certificate of exemption accordingly.
- (5) Where a ballot has been held in accordance with section 48A to reduce the number of jurors to 12, the court may order that the jurors whose cards are drawn be excused as of right from serving as jurors for any period not exceeding 10 years that the court specifies and the court must notify the sheriff who must issue to those jurors a certificate of exemption accordingly.

PART IV – SUMMONING OF JURORS

20. Preparation of panels

- (1) The sheriff shall as often as necessary prepare panels of persons from which juries may be struck for inquests in each court in every jury district.
- (2) The panel for each court shall contain the names and additions of persons selected at random from those persons previously selected pursuant to Part III and liable to serve as jurors in the jury district for that court.
- (3) Where the number of persons previously selected pursuant to Part III is insufficient to complete the panel for a court the sheriff shall cause to be selected at random from the jury list additional persons to complete that panel.
- (4) The sheriff shall as often as necessary ascertain from the proper officer of each court within the jury district for Melbourne the requirements from time to time of that court for jurors for the trial of inquests.

20A. Reduction of panel after summonses issued

- (1) Where it appears to the sheriff whether before or after the issue of summonses to the jurors named in any panel and before the attendance of the jurors thereon that the number of jurors on the panel is greater than the number which will actually be required the sheriff may reduce the number of jurors by writing the name of each juror on a card or by dividing the number of jurors in the panel into groups of jurors as nearly equal in number as is possible and by writing the names of all the jurors in the group on a card, placing the cards in a box, drawing cards out of the box at random and striking out the names selected.
- (2) The sheriff shall forthwith notify any person who has been served with a summons and whose name is struck off a panel under sub-section (1) that his name has been struck off the panel and the reason therefor and that the summons served upon him is withdrawn.

21. Copies of panels to be made

- (1) For the purposes of this Act the sheriff shall cause to be made a sufficient number of copies of every panel.
- (2) Subject to this Act the sheriff or any of his officers shall not make known to any person the names in any panel from which the jury is to be struck in any inquest.
- (3) A copy of every panel from which the jury is to be struck in every inquest shall be forwarded to the Chief Commissioner of Police not later than 12 days before the day appointed for the holding of the inquest, and the Chief Commissioner of Police shall make such inquiries as he sees fit as to whether any person disqualified under section 4 from serving as a juror is named on such panel and shall report the result of those inquiries to the sheriff.

23. Summons to jurors

- (1) When each panel has been completed the sheriff shall issue a summons in the prescribed form to every juror named therein.
- (2) Every such summons shall be addressed to the juror at the address recorded in the jury list and the sheriff shall not less than ten days before the day on which the juror is to attend take or cause to be taken such summons together with a copy of the panel signed by the sheriff to a post office and the person in charge of such post office or a person authorised in that behalf shall (subject to and under any law of the Commonwealth) compare the name and address on the summons with the name and address on the copy of the panel and on being satisfied that they are the same shall forward the summons to its address by post and shall return such copy to the person from whom he received it duly stamped with the stamp of the post office.
- (3) The production of such stamped copy of the panel shall be proof that any summons mentioned therein has been delivered at the address of the juror on the day on which in the ordinary course of post it would have been delivered unless it appears that it was returned as undelivered, and any summons so delivered at the post office and not returned as undelivered shall be deemed to be duly served.
- (4) Subject to and under any law of the Commonwealth any such summons which is not delivered shall be returned to the sheriff by the person in charge of the post office endorsed with the reason for non-delivery.

24. As to service of summonses by police

- (1) Notwithstanding anything in this Act the Attorney—General may direct either generally or in any particular case that summonses to jurors shall be served by the sheriff or a member of the police force.
- (2) Any summons so directed to be served shall be delivered to the sheriff or the member of the police force by whom it is to be served not less than ten days before the day on which the juror is to attend and shall be deemed to be duly served if delivered not less than seven days before the day on which the juror is to attend, to the juror personally at the address shown on it, or, if such juror is absent from such address, by leaving the summons with some person apparently an inmate at such address and apparently not less than sixteen years of age.

25. Duties of police serving summons

- (1) The sheriff or a member of the police force who serves any summons on a juror shall complete a list (hereinafter referred to as a summons list) in the prescribed form with particulars of the name and additions of any such juror and the date of service of the summons or the reason for non-delivery thereof and deliver the summons list to the sheriff.
- (2) A summons list shall on production thereof be prima facie evidence of the fact that the names and additions of the jurors in such summons list were those endorsed on the summonses from which the summons list was made and of the other facts stated in the summons list.
- (3) Except for the purpose of carrying into effect the provisions of this Act or in answer to any question which he is legally compellable to answer the sheriff or every member of the police force who wilfully communicates or makes known to any person whomsoever any information or matter whatsoever relating to jurors which has come to his knowledge in carrying out his duties under this section or under any other provision of this Act relating to the service of summonses on jurors in criminal inquests shall be guilty of an offence against this Act.

Penalty: 5 penalty units.

26. Attendance of jurors

- (1) Any juror who does not attend when summoned shall remain liable for service as a juror.
- (2) A juror who has attended when summoned shall not be liable for further service as a juror in the period for which the jury list is current.

27. Jurors in the panel to try issues

Subject to this Act the jurors in the panel shall be the jurors to try all issues upon inquests at the sittings to which they are summoned, and all such proceedings may be taken before such juries in like manner and with the like consequences as before any jury summoned in pursuance of any writ or precept before the commencement of this Act; and on any trial no assessment of costs or damages by way of costs shall be made.

PART V - PROCEEDINGS UPON TRIAL, ETC.

50. Compensation to be paid to jurors

- (1) The prescribed rate of compensation shall be paid to every juror who has been summoned and who has attended court (whether he has actually served or not).
- (2) Notwithstanding sub-section (1), where a juror who is serving on a jury is not required to attend during the course of a trial, the judge may direct that that juror be paid compensation at the prescribed rate for any day on which the juror is not required to attend court but in respect of which he or she has lost income as a result of serving on the jury.

- (3) A talesman who has been added to any panel and has served shall be entitled to the same compensation for his service as if his name had been originally written on the panel.
- (4) A juror shall not under any pretence whatever receive any sum by way of remuneration from any of the parties.
- (4A) Despite anything in the Employee Relations Act 1992 or in any award or employment agreement under that Act, an employee within the meaning of that Act who has been summoned as a juror and who has attended court (whether he or she has actually served on a jury or not) is entitled to be reimbursed by his or her employer an amount equal to the difference between the amount of compensation paid under this section and the amount of pay he or she would have been entitled to receive in respect of his or her ordinary hours of work had he or she not been summoned as a juror.
- (4B) An employee must notify his or her employer as soon as possible of the date on which he or she is required to attend court for service as a juror and must give to his or her employer written details of-
 - (a) the date or dates on which he or she attended court;
 - (b) the duration of the period of jury service;
 - (c) any amount of compensation paid under this section.
- (5) The Minister may at any time review the prescribed rate of compensation payable to jurors, and in carrying out the review shall have regard to average weekly earnings statistics.
- (6) Where after reviewing the prescribed rate of compensation the Minister is of the opinion that a new rate should be prescribed he may make a recommendation to this effect to the Governor in council.
- (7) For the purposes of this section "average weekly earnings statistics" means the seasonally adjusted statistics relating to average weekly earnings published by the Commonwealth Statistician for Victoria.

51. Jurors to be allowed heating and refreshments

Jurors after having been impanelled may be in the discretion of the court be allowed at any time before giving their verdict the use of a fire or other means of heating when out of court, and may be permitted by the court to have reasonable refreshment, such refreshment to be procured at the expense of the Crown.

SCHEDULES

SCHEDULE 1

(repealed)

SCHEDULE 2

PERSONS DISQUALIFIED FROM SERVING AS JURORS

1. Any person who has been—
 - (a) convicted of treason; or
 - (b) convicted of one or more indictable offences and sentenced to imprisonment for a term or terms in the aggregate not less than three years—

but any conviction for an offence in respect of which a free pardon has been granted shall be disregarded.
2. Any person who at any time within the last preceding five years—
 - (a) has been imprisoned; or
 - (b) has been on parole—

but there shall be disregarded—

 - (i) all sentences of imprisonment served during that period if together they do not exceed a period of three months;
 - (ii) any imprisonment incurred as a result of failure to pay a fine; and
 - (iii) any imprisonment in respect of a conviction for an offence in respect of which a free pardon has been granted.
3. Any person who is bound by a recognizance entered into after conviction for any offence.
4. Any person who is subject to a community-based order that includes a condition referred to in section 38 (1) (b) of the *Sentencing Act 1991* made by a court.
5. Any person who has been declared bankrupt and has not obtained a discharge.

SCHEDULE 3

PERSONS INELIGIBLE TO SERVE AS JURORS

1. Any person who is or has at any time within the last ten preceding years been –
 - (a) a judge of the Supreme Court or of the County Court or the holder of any other judicial office;
 - (b) a duly qualified legal practitioner;
 - (c) employed by a duly qualified legal practitioner in connexion with the practice of the law;
 - (d) a minister of religion, monk, nun or other vowed member of a religious community;
 - (e) in receipt of a salary provision for which is or was made in the annual appropriations of the Attorney-General;
 - (f) the Chief Commissioner of Police the Director-General of Community Services or the Electoral Commissioner;
 - (g) employed under the direction and control of the Chief Commissioner of Police or the Director-General of Community Services or the Director-General of Corrections or in the Police Department or under the direction and control of the Electoral Commissioner;
 - (h) an honorary probation officer;
 - (i) a justice of the peace;
 - (ia) a bail justice;
 - (j) employed as a Government shorthand writer licensed court reporter or in connexion with any court recording service;
 - (k) an officer of the Ombudsman.
 - (l) a volunteer within the meaning of the *Corrections Act 1986*.
2. Any person who –
 - (a) is unable adequately to see hear or speak;
 - (b) is intellectually disabled and eligible for services under the *Intellectually Disabled Persons' Services Act 1986*;
 - (ba) is a patient within the meaning of the *Mental Health Act 1986*;
 - (c) is a represented person within the meaning of the *Guardianship and Administration Board Act 1986*;
 - (d) is unable to read or write;
 - (e) has an inadequate knowledge of the English language.

SCHEDULE 4

PERSONS ENTITLED AS OF RIGHT TO BE EXCUSED FROM SERVING AS JURORS

1. Officers and servants of the household of, and the Official Secretary to, the Governor.
2. The permanent heads of all State Government Departments.
3. The Commissioners, members and secretaries of all statutory corporations.
4. The members of the Public Service Board, Police Service Board and Teachers' Tribunal.
5. The Auditor-General.
6. Registered medical practitioners, dentists and pharmacists registered under the *Medical Practice Act 1994*, the *Dentists Act 1972* or the *Pharmacists Act 1974* (as the case may be).
7. Masters and teachers in State schools or schools registered under the *Education Act 1958*.
8. Masters and crews of trading vessels.
9. Pilots holding a licence or certificate under the *Marine Act 1988*.
10. Airline pilots and crews regularly engaged on international flights.
11. Members and officers of the Legislative Assembly.
12. Members and officers of the Legislative Council.
13. Mayors, presidents, councillors, town clerks and secretaries of municipalities.
14. Persons over the age of sixty-five.
15. Pregnant women.
- 15A. Persons who are required to undertake the full-time care of children or of persons who are aged or in ill-health.
16. Persons who are so physically handicapped as to be unable to perform the duties of jurors without undue hardship.
17. Persons who reside more than 32 kilometres from the court house at which they would be required to serve.
18. Persons who hold current certificates of entitlement to be excused as of right on account of lengthy jury service.
19. The Ombudsman and the Acting Ombudsman.

SCHEDULE 5

STATE ELECTORAL DISTRICTS OR SUBDIVISIONS THEREOF COMPRISING THE MELBOURNE JURY DISTRICT

Albert Park	Keilor
Balwyn	Kew
Bennettswood	Knox
Bentleigh	Malvern
Box Hill	Melbourne
Brighton	Mentone
Broadmeadows	Mitcham
Brunswick	Niddrie
Bulleen	Northcote
Bundoora	Oakleigh
Burwood	Pascoe Vale
Carrum – Sub-division of Carrum	Prahran
Caulfield	Preston
Clayton	Reservoir
Coburg	Richmond
Dandenong	Ringwood
Dandenong North	St. Albans
Derrimut – Sub-division of Albanvale	St. Kilda
Doncaster	Sandringham
Essendon	Springvale
Footscray	Sunshine
Forest Hill	Syndal
Glen Waverley	Thomastown
Greensborough	Wantirna
Hawthorn	Warrandyte
Ivanhoe	Williamstown

SCHEDULE 6

<i>Supreme Court or County Court Town</i>	<i>District</i>	<i>Sub-divisions Comprising Jury District</i>
Ararat	Ripon	Ararat Pyrenees
Bairnsdale	Gippsland East	Gippsland East
Ballarat	Ballarat North	Wendouree
	Ballarat South	Ballan Eureka Gong Gong
Bendigo	Bendigo East	Eppalock Sandhurst
	Bendigo West	Castlemaine Marong
Colac	Polwarth	Camperdown Colac
Geelong	Bellarine	Bellarine Thomson
	Geelong	Belmont North Geelong
	Geelong North	Geelong North Gheringhap
	South Barwon	South Barwon
Hamilton	Portland	Portland
Horsham	Lowan	Harrow Lowan
Kerang	Swan Hill	Kerang
	Rodney	Rodney
Korumburra	Gippsland South	Gippsland South
	Gippsland West	Korumburra Bass
Mildura	Mildura	Mildura
Morwell	Narracan	Trafalgar Thorpdale
	Morwell	Morwell Toongabbie
	Gippsland South	Gippsland South
Sale	Gippsland South	Gippsland South
	Gippsland East	Gippsland East
Shepparton	Shepparton	Shepparton
Wangaratta	Murray Valley	Murray Valley
Warragul	Narracan	Trafalgar Thorpdale
	Gippsland West	Drouin

Warrnambool

Warrnambool

Warrnambool

APPENDIX 4 PROVISIONS OF OTHER VICTORIAN LEGISLATION

A. *Provisions relevant to qualification for jury service*

CONSTITUTION ACT 1975

Section 48 – Qualification of electors for the Council and the Assembly

- (1) Subject to this Act, a person who –
- (a) is –
 - (i) an Australian citizen; or
 - (ii) a person (other than an Australian citizen) who would, if the relevant citizenship law had continued in force, be a British subject within the meaning of that relevant citizenship law and whose name was, at any time within the three months immediately before 26 January 1984, enrolled on –
 - (A) an electoral roll for an electoral district of the Assembly; or
 - (B) an electoral roll maintained under any one of the Commonwealth Acts known as the Commonwealth Electoral Act 1918, the Australian Capital Territory Representation (House of Representatives) Act 1973 and the Northern Territory Representation Act 1922; and
 - (b) is of the full age of eighteen years –
- shall be entitled to enrol as an elector for the Council and the Assembly.
- (2) A person who –
- (a) has been convicted of treason under the law of Victoria or treason or treachery under the law of the Commonwealth or a State or Territory of the Commonwealth and has not been pardoned;
 - (b) has been convicted and is under sentence for an offence punishable under the law of Victoria or of the Commonwealth or of a State or Territory of the Commonwealth by imprisonment for five years or longer;
 - (c) is –
 - (i) the holder of a temporary entry permit for the purposes of the Commonwealth Act known as the Migration Act 1958; or
 - (ii) a prohibited immigrant under that Act; or

- (d) by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting—

is not entitled to have the person's name placed on or retained on a roll of electors for the Council or Assembly.

- (2A) An elector who has changed his or her name under Part V of the Registration of Births Deaths and Marriages Act 1959 is not by reason only of that change of name disqualified from voting under the name appearing on the roll.
- (3) Any entitlement to enrolment shall be subject to compliance with any law relating to enrolment for and voting at elections for the Council or Assembly.
- (4) Subject to this section, the Parliament may make such laws as it deems necessary or expedient for or with respect to enrolment for and voting at elections for the Council or Assembly.
- (5) In sub-section(1), "relevant citizenship law" means the Australian Citizenship Act 1948 of the Commonwealth as amended and in force immediately before the day fixed by Proclamation for the purposes of section 2(2) of the Australian Citizenship Amendment Act 1984 of the Commonwealth and the regulations in force immediately before that day under the Australian Citizenship Act 1948 as so amended and in force.

B. Provisions relevant to categories of disqualification from jury service

1. Under Juries Act 1967 Schedule 2, Item 4

SENTENCING ACT 1991

PART 3—SENTENCES

Division 3—Community-Based Orders

Section 36—When court may make community-based order

- (1) A court may only make a community-based order in respect of an offender if—
 - (a) it has convicted the offender, or found the offender guilty, of an offence or offences punishable on conviction by imprisonment or a fine of more than 5 penalty units
- (3) The period of a community-based order must not exceed 24 months.

Section 37—Core conditions

- (1) Core conditions of a community-based order are—
 - (a) that the offender does not commit during the period of the order another offence punishable on conviction by imprisonment;

- (b) that the offender reports to a specified community corrections centre within 2 clear working days after the coming into force of the order;
 - (c) that the offender reports to, and receives visits from, a community corrections officer;
 - (d) that the offender notifies an officer at the specified community corrections centre of any change of address or employment within 2 clear working days after the change;
 - (e) that the offender does not leave Victoria except with the permission of an officer at the specified community corrections centre granted either generally or in relation to the particular case;
 - (f) that the offender obeys all lawful instructions and directions of community corrections officers.
- (2) A community-based order must have all the core conditions attached to it.

Section 38 – Program conditions

- (1) Program conditions of a community-based order are –
- (a) that the offender performs unpaid community work as directed by the Regional Manager for a period determined by the court in accordance with section 39;
 - (b) that the offender be under the supervision of a community corrections officer;**
 - (c) that the offender attends for educational or other programs as directed by the Regional Manager for a period of not less than one month or more than 12 months;
 - (d) that the offender undergoes assessment and treatment for alcohol or drug addiction or submits to medical, psychological or psychiatric assessment and treatment as directed by the Regional Manager;
 - (e) that the offender submits to testing for alcohol or drug use, as directed by the Regional Manager;
 - (f) subject to Division 6 of Part 3, that the offender participates in the services specified in a justice plan;
 - (g) any other condition that the court considers necessary or desirable, other than one about the making of restitution or the payment of compensation, costs or damages.
- (2) A community-based order must have at least one, but may have more than one, program condition attached to it.
- (3) A court must not impose any more program conditions than are necessary to achieve the purpose or purposes for which the order is made.

Section 40 – Supervision condition

The purpose of a supervision condition is to allow for the rehabilitation of an offender in the community and the monitoring, surveillance or supervision of an offender who demonstrates a high risk of re-offending.

C. Provisions relevant to categories of ineligibility from jury service.

1. Under Juries Act 1967 Schedule 3, Item 1(l)

CORRECTIONS ACT 1986

Section 3—Definitions [As relevant to the Jury Service Inquiry]

"volunteer" means a person whose name appears in the Register of Volunteers kept under Part 4.

PART 4— OFFICERS

Section 13— Volunteers

- (1) The Director-General may by instrument authorize a person to work in an unpaid capacity for prison purposes or at a location.
- (2) The Director-General must not under sub-section(1)authorize a person to do work which is part of the duties of a prison officer.
- (3) The period for which and the other terms and conditions under which, a person is authorized to work under sub-section (1) are those stated in the person's instrument of authority.
- (4) If a person is authorized to work as an officer under Part 5 or Part 9 other than a prison officer the provisions of this Act relating to officers of that kind (except provisions relating to remuneration) apply to the person.
- (5) The Director-General must as soon as possible give to a person authorized to work under sub-section (1) a copy of the person's instrument of authority.
- (6) The Director-General must keep a register containing copies of instruments of authority issued under this section.
- (7) A person who immediately before the commencement of this section held a position as an honorary probation officer under section 507 of the Crimes Act 1958 or an honorary parole officer under Division 4 of Part VIII of the Community Services Act 1970 is deemed to be authorized under sub-section (1) to work as a volunteer on the same terms and conditions as those stated in the person's instrument of appointment as an honorary probation officer or an honorary parole officer.

2. *Under Juries Act 1967 Schedule 3, Item 2(b)*

INTELLECTUALLY DISABLED PERSONS' SERVICES ACT 1986

Section 3 – Definitions [As relevant to the Jury Service Inquiry]

"**eligible person**" means a person in respect of whom the Director-General has issued a declaration of eligibility under section 8.

"**intellectual disability**" in relation to a person over the age of 5 years means a significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behaviour and manifested during the developmental period.

PART 3 – ELIGIBILITY, ASSESSMENT AND CASE PLANNING

Section 7 – Application to assess eligibility

- (1) A person who has attained the age of 16 years who believes that she or he is intellectually disabled or a parent, guardian or primary-carer of a person who has attained the age of 16 years who believes that the person is intellectually disabled may request the Director-General to assess the eligibility of that person for services.
- (2) A parent, guardian or primary-carer of a person under the age of 16 years who believes that the person is developmentally disabled or intellectually disabled may request the Director-General to assess the eligibility of that person for services.
- (3) The Director-General must ensure that an assessment of the eligibility of a person for services is undertaken within 60 days of receiving the request during the first 12 months after the commencement of this section and within 30 days of receiving the request after the first 12 months of the commencement of this section.
- (4) In the case of an emergency a person is entitled to services provided that an assessment of the eligibility of the person for services is undertaken within 14 days of being provided with the service.

Section 8 – Assessment of eligibility

- (1) The eligibility of a person is to be assessed –
 - (a) [...]
 - (b) in the case of persons over the age of five, by the use of one or more standardized measurements of intelligence or an assessment of the effectiveness with which the person meets standards of personal independence and social responsibility expected of persons of that age and cultural group or both measurements and assessments.
- (2) If the Director-General is satisfied that a person is eligible for services the Director-General must within 14 days of the assessment being completed issue a declaration of eligibility.
- (3) [...]

- (4) A declaration of eligibility entitles the eligible person to receive services under this Act.

MENTAL HEALTH ACT 1986

PART 1 – PRELIMINARIES

Section 3 – Definitions [As relevant to the Jury Service Inquiry]

"patient" means –

- (a) a voluntary patient; or
- (b) an involuntary patient; or
- (c) a security patient

"voluntary patient" means a person admitted to a psychiatric in-patient service under section 7.

"involuntary patient" means a person admitted to a psychiatric in-patient service under –

- (a) Division 2 of Part 3; or
- (b) Part 5 (except section 93(1)(e)) of the *Sentencing Act 1991*; or
- (c) section 16(3)(a) –

or deemed to be an involuntary patient under section 13 or 14;

"security patient" means –

- (a) a person detained in a psychiatric in-patient service under section 16(3)(b) of this Act or section 93(1)(e) of the *Sentencing Act 1991*; or
- (b) a person ordered to be kept in safe custody in a psychiatric in-patient service either until the Governor's pleasure be known or during the Governor's pleasure under the *Crimes Act 1958*;

PART 3 – ADMISSION OF PATIENTS

Division 1 – Voluntary Patients

Section 7 – Voluntary admissions

- (1) A person may be admitted to a psychiatric in-patient service as a voluntary patient.
- (3) The authorized psychiatrist may refuse to admit a person as a voluntary patient if the authorized psychiatrist is not satisfied that the person is likely to benefit from care and treatment as a voluntary patient.
- (6) A voluntary patient may at any time –
 - (a) leave a psychiatric in-patient service; or

- (b) be discharged from the psychiatric in-patient service by the authorized psychiatrist.
- (7) If the senior psychiatric nurse on duty considers that a voluntary patient who intends to discharge himself or herself from a psychiatric in-patient service meets the criteria specified in section 8 (1), the senior psychiatric nurse may reasonably restrain the voluntary patient and prevent the voluntary patient from discharging himself or herself for a period not exceeding six hours so that the voluntary patient can be examined by a medical practitioner.

Division 2 – Involuntary Patients

Section 8 – Criteria for admission and detention as an involuntary patient

- (1) A person may be admitted to and detained in a psychiatric in-patient service as an involuntary patient in accordance with the procedures specified in this Act only if –
- (a) the person appears to be mentally ill; and
 - (b) the person's mental illness requires immediate treatment or care and that treatment or care can be obtained by admission to and detention in a psychiatric in-patient service; and
 - (c) the person should be admitted and detained as an involuntary patient for that person's health or safety or for the protection of members of the public; and
 - (d) the person has refused or is unable to consent to the necessary treatment or care for the mental illness; and
 - (e) the person cannot receive adequate treatment or care for the mental illness in a manner less restrictive of that person's freedom of decision and action.
- (2) A person is not to be considered to be mentally ill by reason only of any one or more of the following:
- (a) That the person expresses or refuses or fails to express a particular political opinion or belief;
 - (b) That the person expresses or refuses or fails to express a particular religious opinion or belief;
 - (c) That the person expresses or refuses or fails to express a particular philosophy;
 - (d) That the person expresses or refuses or fails to express a particular sexual preference or sexual orientation;
 - (e) That the person engages in or refuses or fails to engage in a particular political activity;
 - (f) That the person engages in or refuses or fails to engage in a particular religious activity;
 - (g) That the person engages in sexual promiscuity;
 - (h) That the person engages in immoral conduct;

- (i) That the person engages in illegal conduct;
 - (j) That the person is intellectually disabled;
 - (k) That the person takes drugs or alcohol;
 - (l) That the person has an antisocial personality.
- (3) Sub-section(2)(k) does not prevent the serious temporary or permanent physiological, biochemical or psychological effects of drug or alcohol taking from being regarded as an indication that a person is mentally ill.

Section 9 – Involuntary admission

- (1) A person may be admitted to and detained in a psychiatric in-patient service as an involuntary patient upon production of –
- (a) a request in the prescribed form and containing the prescribed particulars; and
 - (b) a recommendation in the prescribed form by a medical practitioner following a personal examination of the person made not more than three clear days before the admission of the person.
- (3) A medical practitioner must not make a recommendation under sub-section(1) unless the medical practitioner considers that –
- (a) the criteria specified in section 8(1) apply to the person; and
 - (b) the person should be admitted to a psychiatric in-patient service for observation.
 - (c) a registered psychiatric nurse; or
 - (d) a person who is a member of a class of health service providers prescribed for the purposes of this section;

"prescribed medical practitioner" means a medical practitioner of a class prescribed for the purposes of this section;

"prescribed person" means –

- (a) a member of the police force; or
- (b) an ambulance officer; or
- (c) a person who is a member of a class prescribed for the purposes of this section.

Section 14 – Community treatment orders

- (1) If a person satisfies the criteria specified in section 8 (1) and the authorized psychiatrist considers that a community treatment order is appropriate, the authorized psychiatrist may make a community treatment order instead of confirming the admission of the person to a psychiatric in- patient service as an involuntary patient or continuing to detain the person in a psychiatric in-patient service.
- (1A) For the purposes of sub-sections (1) and (6), the criteria specified in section 8 (1) apply as if a reference to admission to and detention in a psychiatric in-patient service were a reference to making a person subject to a community treatment order.
- (2) A community treatment order must specify –

- (a) the medical practitioner who is to supervise the treatment or care of the patient; and
 - (b) where the patient is to receive the treatment or care; and
 - (c) the manner in which the medical practitioner is to report on the progress of the patient; and
 - (d) the duration of the community treatment order which must not exceed 12 months.
- (2A) A community treatment order may specify where the patient must live, if this is necessary for the treatment of the patient's illness.
- (3) A person who is subject to a community treatment order –
- (a) is deemed to be an involuntary patient detained under section 12.

Division 3 – Persons Convicted of Criminal Offences or in a Prison

Section 15A – Restricted community treatment orders

- (1) A person may be made subject to a restricted community treatment order in accordance with the procedures specified in this section only if –
- (a) the person appears to be suffering from a mental illness that requires treatment; and
 - (b) the treatment can be obtained by making the person the subject of a restricted community treatment order; and
 - (c) the person should be made subject to the restricted community treatment order for that person's health or safety or for the protection of members of the public.
- (2) If a person to whom a hospital order under section 93 (1) (d) of the Sentencing Act 1991 applies –
- (a) satisfies the criteria specified in sub-section(1); and
 - (b) is in the opinion of the authorised psychiatrist suitable for treatment or care subject to a restricted community treatment order –

the authorised psychiatrist may apply to the chief psychiatrist for the making of a restricted community treatment order in respect of that person.

- (3) Upon receiving an application the chief psychiatrist may make a restricted community treatment order if he or she is satisfied that the person to whom the application relates is suitable for treatment or care subject to a restricted community treatment order.
- (4) A restricted community treatment order must specify –
- (a) the psychiatrist who is to supervise the treatment of the patient; and
 - (b) where the patient is to receive the treatment; and
 - (c) the intervals at which the patient must attend the psychiatrist for treatment; and

- (d) the intervals at which the psychiatrist must submit a written report concerning the treatment of the patient to the chief psychiatrist; and
 - (e) the intervals at which the patient must attend the psychiatric in-patient service for monitoring by the psychiatric in-patient service; and
 - (f) the duration of the restricted community treatment order; and
 - (g) any other conditions that the chief psychiatrist considers appropriate.
- (5) A person who is subject to a restricted community treatment order is deemed to be an involuntary patient detained under section 93(1)(d) of the Sentencing Act 1991.

Section 16 – Transfer of mentally ill prisoners

- (1) The Director-General of Corrections may by a hospital order transfer a person who –
- (a) is lawfully imprisoned or detained in a prison or other place of confinement; and
 - (b) appears to be mentally ill –
to a psychiatric in-patient service.
- (2) The Director-General of Corrections cannot make a hospital order unless –
- (a) the Director-General has received a certificate by a psychiatrist and is satisfied that –
 - (i) the person appears to be suffering from a mental illness that requires treatment; and
 - (ii) the treatment can be obtained by admission to and detention in a psychiatric in-patient service; and
 - (iii) the person should be admitted to and detained in a psychiatric in-patient service for her or his health or safety or for the protection of members of the public; and
 - (b) the Director-General has received a report from the authorized psychiatrist of the psychiatric in-patient service to which it is proposed to admit the person which recommends that the transfer be made.
- (3) The Director-General may make either of the following hospital orders:
- (a) A hospital order under which the person is admitted to and detained in a psychiatric in-patient service as an involuntary patient;
 - (b) A restricted hospital order under which the person is admitted to and detained in a psychiatric in-patient service as a security patient.
- (4) In determining whether to make a hospital order or a restricted hospital order the Director-General of Corrections must have regard to the public interest and all the circumstances of the case including the person's criminal record and psychiatric history.
- (5) Upon admission a security patient is to be detained and treated for his or her mental illness.

SENTENCING ACT 1991

PART 5 – HOSPITAL ORDERS

Section 90 – Assessment orders

If on the trial of a person for an offence –

- (a) the person is found guilty; and
- (b) the court is of the opinion that –
 - (i) the person appears to be suffering from a mental illness that may require treatment; and
 - (ii) the treatment can be obtained by admission to and detention in a psychiatric in-patient service; and
 - (iii) the person may require to be admitted as an involuntary patient for his or her health or safety or for the protection of members of the public; and
- (c) the court has received advice in writing from the authorised psychiatrist of the psychiatric in-patient service to which it is proposed to admit the person that it has the facilities to undertake an assessment of the person's suitability for an order under section 93 –

the court may make an order (an assessment order) under which the person is admitted to and detained in a psychiatric in-patient service as an involuntary patient for a period (not exceeding 72 hours) to be specified in the order to enable an assessment to be made of his or her suitability for an order under section 93.

Section 91 – Diagnosis, assessment and treatment orders

If on the trial of a person for an offence –

- (a) the person is found guilty; and
- (b) the court is satisfied by the production of a certificate in the prescribed form of a psychiatrist and any other evidence that it may require that –
 - (i) the person appears to be suffering from a mental illness that requires treatment; and
 - (ii) the treatment can be obtained by admission to and detention in a psychiatric in-patient service; and
 - (iii) the person should be admitted as an involuntary patient for his or her health or safety or for the protection of members of the public; and
- (c) the court has received a report in the prescribed form from the authorised psychiatrist of the psychiatric in-patient service to which it is proposed to admit the person recommending the proposed admission –

the court may make an order(a diagnosis, assessment and treatment order) under which the person is admitted to and detained in the psychiatric in-patient service as an involuntary patient to enable diagnosis, assessment and treatment for a period(not exceeding 3 months) to be specified in the order.

Section 93 – Hospital orders and hospital security orders

- (1) If on the trial of a person for an offence –
- (a) the person is found guilty; and
 - (b) the court is satisfied by the production of a certificate in the prescribed form of a psychiatrist and any other evidence that it may require that –
 - (i)the person appears to be suffering from a mental illness that requires treatment; and
 - (ii) the treatment can be obtained by admission to and detention in a psychiatric in-patient service; and
 - (iii)the person should be admitted as a patient for his or her health or safety or for the protection of members of the public; and
 - (c) the court has received a report in the prescribed form from the authorised psychiatrist of the psychiatric in-patient service to which it is proposed to admit the person recommending the proposed admission –
- the court may –
- (d) instead of passing sentence make an order(a hospital order) under which the person is admitted to and detained in a psychiatric in-patient service as an involuntary patient; or
 - (e) by way of sentence make an order(a hospital security order) under which the person is admitted to and detained in a psychiatric in-patient service as a security patient for a period specified in the order.

CRIMES ACT 1958

Section 393 – Person on arraignment found to be insane

- (1) If any person indicted or presented for any indictable offence is insane and is upon arraignment so found by a jury lawfully impanelled for that purpose so that such person cannot be tried upon such indictment or presentment, or if upon the trial of any person so indicted or presented such person appears to the jury charged with such indictment or presentment to be insane, it shall be lawful for the court before whom any such person is brought to be arraigned or tried as aforesaid to direct such finding to be recorded; and thereupon to order such person to be kept in strict custody until the Governor's pleasure shall be known. And if any person who has been charged with any indictable offence is brought before any court to be discharged for want of prosecution and such person appears to be insane, it shall be lawful for such court to order a jury to be impanelled to try the sanity of such person; and if the jury so impanelled finds such person to be insane, it shall be lawful for the court to order such person to be kept in strict custody in such place and in such manner as to such

court seems fit until the Governor's pleasure is known. And in all cases of insanity so found the Governor may by order direct that he be kept in safe custody during the Governor's pleasure in the place designated in the order or in such other place as a person or authority designated in the order may from time to time determine.

- (2) Instead of making an order under sub-section (1) the court after having regard to any evidence before the court relating to the person's mental health or intellectual disability may make such order as it thinks fit to enable the person to receive appropriate services under the *Mental Health Act 1986* or the *Intellectually Disabled Persons' Services Act 1986*.

Section 420 – When person charged acquitted on the ground of insanity

- (1) In cases where it is given in evidence on the trial of any person charged with any indictable offence that such person was insane at the time of the commission of such offence and such person is acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence and to declare whether such person was acquitted by them on account of such insanity; and if they find that such person was insane at the time of the committing of such offence, the court before which such trial is had shall order such person to be kept in strict custody in such place and in such manner as to the court seems fit until the Governor's pleasure is known; and thereupon the Governor may by the order direct that he be kept in safe custody during the Governor's pleasure in the place designated in the order or in such other place as a person or authority designated in the order may from time to time determine.
- (2) Instead of making an order under sub-section (1) the court after having regard to any evidence before the court relating to the person's mental health or intellectual disability may make such order as it thinks fit to enable the person to receive appropriate services under the *Mental Health Act 1986* or the *Intellectually Disabled Persons' Services Act 1986*.

2. Under Juries Act 1967 Schedule 3, Item 2(b)

GUARDIANSHIP AND ADMINISTRATION BOARD ACT 1986

Section 3 – Definitions [As relevant to the Jury Service Inquiry]

"represented person" means any person in respect of whom –

- (a) a guardianship order is in effect; or
- (b) an administration order is in effect; or
- (c) both a guardianship order and an administration order are in effect.

"guardianship order" means –

- (a) an order of the Board appointing a person as plenary guardian or limited guardian under section 22; or
- (b) an order of the Board appointing a person as an alternative guardian under section 34; or

(c) a temporary order of the Board made under section 33.

"administration order" means –

(a) an order of the Board appointing a person as an administrator of the estate of a person under section 46; or

(b) a temporary order of the Board under section 60.

"disability" in relation to a person, means intellectual impairment, mental illness, brain damage, physical disability or senility.

PART 4 – GUARDIANSHIP ORDERS

Division 2 – Appointment of Guardian

Section 22 – Guardianship order

- (1) If the Board is satisfied that the person in respect of whom an application for an order appointing a guardian is made –
 - (a) is a person with a disability; and
 - (b) is unable by reason of the disability to make reasonable judgments in respect of all or any of the matters relating to her or his person or circumstances; and
 - (c) is in need of a guardian –

the Board may make an order appointing a plenary guardian or a limited guardian in respect of that person.

- (2) In determining whether or not a person is in need of a guardian, the Board must consider whether the needs of the person in respect of whom the application is made could be met by other means less restrictive of the person's freedom of decision and action.
- (3) The Board cannot make an order under sub-section (1) unless it is satisfied that the order would be in the best interests of the person in respect of whom the application is made.
- (4) The Board cannot make an order appointing a plenary guardian unless it is satisfied that a limited guardianship order would be insufficient to meet the needs of the person in respect of whom the application is made.
- (5) Where the Board makes an order appointing a limited guardian in respect of a person the order made must be that which is the least restrictive of that person's freedom of decision and action as is possible in the circumstances.

Division 4 – Temporary Orders

Section 33 – Temporary order

- (1) If the Board is satisfied that the person in respect of whom an application has been made under section 32 –

- (a) is a person with a disability; and
- (b) is unable to make reasonable judgments in respect of all or any of the matters relating to her or his person or circumstances; and
- (c) is in need of a guardian –

the Board may make a temporary order appointing the Public Advocate as the plenary guardian or limited guardian of that person.

- (2) A temporary order remains in effect for such period not exceeding 21 days as is specified in the order.
- (3) The Board must hold a hearing to determine whether a guardianship order should be made under section 22 before the expiry of the temporary order.
- (4) Section 20 applies with such modifications as are necessary in respect of the hearing.

Division 5 – Appointment of Alternative Guardian

Section 34 – Appointment of alternative guardian

- (1) The Board at the time of making or reviewing a guardianship order may by order appoint an alternative guardian if –
 - (a) the person proposed as alternative guardian has consented to act as guardian of the represented person in the event of the death, absence or incapacity of the original guardian; and
 - (b) the Board is satisfied that the persons to whom notice of the hearing of a guardianship order is given under section 20 have had sufficient notice of the willingness of the person proposed as alternative guardian to act as alternative guardian.
- (2) Section 23 (other than sub-section (5)) applies to and in relation to the person proposed as alternative guardian as if that person were the proposed guardian.

PART 5 – ADMINISTRATION ORDERS

Division 2 – Appointment of Administrator

Section 46 – Appointment of administrator

- (1) If the Board is satisfied that –
 - (a) the person in respect of whom an application for an order appointing an administrator is made –
 - (i) is a person with a disability; and
 - (ii) is unable to make reasonable judgments in respect of the matters relating to all or any part of her or his estate by reason of the disability; and
 - (iii) is in need of an administrator of her or his estate; and

- (b) in the case of an application in respect of a person who does not reside in Victoria, the State Trust has not been authorized under section 39 of the *State Trust Corporation of Victoria Act 1987* to collect, manage, sell or otherwise dispose of or administer any property in Victoria which forms part of the estate of the person in respect of whom the application is made—the Board may make an order appointing an administrator of that person's estate.
- (2) In determining whether or not a person is in need of an administrator of her or his estate, the Board must consider whether the needs of the person in respect of whom the application is made could be met by other means less restrictive of the person's freedom of decision and action.
- (3) The Board cannot make an order under sub-section (1) unless it is satisfied that the order would be in the best interests of the person in respect of whom the application is made.
- (4) Where the Board makes an order appointing an administrator of a person's estate, the order made must be that which is the least restrictive of that person's freedom of decision and action as is possible in the circumstances.

Division 4 – Temporary Orders

Section 60 – Temporary order

- (1) If the Board is satisfied that –
 - (a) the person in respect of whom an application has been made under section 59 –
 - (i) is a person with a disability; and
 - (ii) is unable to make reasonable judgments in respect of the matters relating to all or any part of her or his estate by reason of the disability; and
 - (iii) is in need of an administrator of her or his estate; and
 - (b) in the case of an application in respect of a person who does not reside in Victoria, the State Trust has not been authorized under section 39 of the *State Trust Corporation of Victoria Act 1987* to collect, manage, sell or otherwise dispose of or administer any property in Victoria which forms part of the estate of the person in respect of whom the application is made –

the Board may make an order appointing the State Trust as an administrator of that person's estate.

D. Provisions relevant to categories of right to be excused from jury service

1. Under Juries Act 1967 – Schedule 4

MEDICAL PRACTICE ACT 1994

Section 3 – Definitions [As relevant to the Jury Service Inquiry]

"**Board**" means the Medical Practitioners Board of Victoria established under Part 6;

"**register**" means the register of medical practitioners kept under Part 2;

"**registered medical practitioner**" means a person registered under Part 2, whether or not the registration of that person is general, specific or provisional;

Section 17 – The Register

- (1) The Board must cause to be kept a register of all medical practitioners to whom the Board has granted registration under this Act.
- (2) The register is to be called the Register of Medical Practitioners.

DENTISTS ACT 1972

Section 3 – Interpretation

"**dentist**" means a person registered under this Act or under any corresponding previous enactment.

Section 10 – Contents and form of register

- (1) A register shall be kept by the registrar to be called the Dentists' Register which shall contain the full names (arranged in alphabetical order according to surname) and addresses of all registered dentists and the description and date of the qualifications in respect of which they are registered.

PHARMACISTS ACT 1974

Section 3 – [Definitions]

"**pharmacist**" or "**registered pharmacist**" means a person registered as a pharmacist under this Act or as a pharmaceutical chemist under any corresponding previous enactment whose name appears on the Pharmacists' Register of Victoria.

"**Register**" means the Pharmacists' Register of Victoria.

Section 7—[Register]

- (1) The Board shall from time to time cause the names of all persons certified by the Board as duly qualified for registration as pharmacists to be registered with their qualifications and residences in a register to be kept by the Board for that purpose in the prescribed form, and the register shall be called 'The Pharmacists' Register of Victoria.
- (3) Every person who immediately prior to the commencement of this Act was registered as a pharmaceutical chemist under Part III of the *Medical Act 1958* shall, on the commencement of this Act, be deemed to be registered as a pharmacist under this Act.

Section 16—Temporary Registration

- (1) Upon application in writing made by the governing body of a teaching or research institution on behalf of a person—
 - (a) who holds a qualification in pharmacy of some university or pharmacy school outside Victoria or who is qualified by law to practise pharmacy outside Victoria; and
 - (b) who is in Victoria or proposes to come to Victoria in some capacity connected with teaching research or post-graduate study in pharmacy—

the Board may issue in respect of that person a certificate of temporary registration in the prescribed form as a pharmacist for the purposes of this Act.

- (5) The Board shall cause to be kept a record (to be called the 'Record of Temporary Pharmacists' Registrations') and shall cause to be entered therein all the material particulars with respect to the issue renewal and cancellation of certificates pursuant to this section.
- (7) Every person in respect of whom a certificate of temporary registration as a pharmacist is issued pursuant to this section shall, while the certificate remains in force and so long as he does not infringe the restrictions or limitations or contravene the conditions specified in the certificate, be deemed, for all the purposes of this Act and any other Act or law, to be a pharmacist within the meaning of this Act.

EDUCATION ACT 1958

Section 3—Definitions

"**State school**" means any school conducted under this Act.

"**teacher**" includes assistant teacher, student teacher, teacher on a special staff, student in training and every person who forms part of the educational staff of the school.

Section 21—Establishment etc. of State schools

- (1) Subject to this Act the Minister may from time to time—
 - (a) establish in such places as are desirable and extend and maintain State schools, including primary schools, special schools, higher elementary

schools, high schools, central schools, consolidated schools, group schools, central classes, special classes, secondary schools for students of the one sex, continuation classes, technical schools, technical colleges and teachers' training colleges(including colleges for training kindergarten teachers for kindergarten schools receiving financial assistance from the State);

- (b) declare or alter the classification of any such school;
 - (c) discontinue any such school.
- (2) The Minister must not establish a State school or a class in a State school to provide post-secondary education unless he or she has consulted with the Minister administering the Tertiary Education Act 1993.

Section 35 – Definition of 'school'

In this Part "school" means an assembly at appointed times of any number of persons of not less than six nor more than eighteen years of age for the purpose of their being instructed by a teacher in all or any of the subjects prescribed for the purposes of this section, but does not include –

- (a) any post-secondary education institution within the meaning of the Tertiary Education Act 1993;
- (b) any class in business or commercial practice held for persons whose ages are greater than school age;
- (c) any registered non-residential service within the meaning of the Intellectually Disabled Persons' Services Act 1986;
- (d) any assembly of persons all of whom are members of not more than two families;
- (e) any State school; or
- (f) any class held outside normal school hours.

Section 36 – Registered Schools Board

- (1) For the purposes of this Part there shall be a Board to be known as the 'Registered Schools Board'.

Section 37 – Registers of teachers and non-government schools

- (1) The Board shall make and keep –
- (a) a register of teachers in schools other than State schools; and
 - (b) a register of the schools.

Section 42 – Registration of schools and approval for opening of schools

- (1) Every school shall be registered in the register of schools as a primary school, secondary school or special school, or as a school which is a combination of all or any two of such schools.
- (2) The proprietor or head teacher of every school shall make application in the prescribed form for registration for the school within fourteen days after the opening thereof.

MARINE ACT 1988

Section 3 – Definitions

"**Board**" means the Marine Board of Victoria established under Part 8.

"**pilot**" means a person who is licensed as a pilot under the regulations, and (where appropriate) includes a pilot exempt master.

"**pilot exempt master**" means a master who is exempted under the regulations from the requirement to engage a pilot for any particular port.

Marine (Vessels) Regulations 1988

Regulation 500 – Board to License Pilots

A pilot's licence is not valid unless the licence is in accordance with a determination of the Board.

Regulation 501 – Board to Certify Pilot Exempt Masters

A certificate for pilot exemption is not valid unless the certificate is in accordance with a determination of the Board.

Marine (Procedures) Regulations 1989

Regulation 501 – Roll of licensed pilots to be kept

The Secretary must keep or arrange to be kept a numbered roll of all pilots currently licensed for Victorian Ports which must be available for inspection at the Board's offices during business hours.

Regulation 502 – Names to be added or deleted from roll

- (1) When a pilot becomes licensed his or her name must be added to the roll.
- (2) When a pilot surrenders or otherwise loses his or her licence, other than by suspension of less than six months, the pilot's name must be deleted from the roll.

APPENDIX 5 COMMONWEALTH LEGISLATION

JURY EXEMPTION ACT 1965

Reprinted as at 31 August 1990

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
4. Certain persons not liable to serve as jurors
5. Proceedings not invalidated where exempt person serves as a juror

THE SCHEDULE

Persons not liable to serve as jurors

An Act to exempt certain persons from liability to serve as Jurors

Short title

1. This Act may be cited as the *Jury Exemption Act 1965*.

Commencement

2. This Act shall come into operation on a date to be fixed by Proclamation.

Certain persons not liable to serve as jurors

4. (1) A person, or a person included within a class of persons, referred to in the Schedule to this Act is not liable, and shall not be summoned, to serve as a juror in a Federal court, a court of a State or a court of a Territory.
 - (2) The Governor-General may make regulations for or in relation to:
 - (a) exempting a Commonwealth employee, or a person included within a class of Commonwealth employees, specified in the regulations from liability to serve as a juror:

- (i) in Federal courts;
- (ii) in Federal courts exercising jurisdiction in a specified State or Territory; or
- (iii) in the courts of a specified Territory; and

(b) exempting a Commonwealth employee, or a person included within a class of Commonwealth employees, specified in the regulations from liability to serve as a juror in the courts of the States or in the courts of a specified State.

(3) A Commonwealth employee shall not be summoned to serve as a juror in a court in which, by reason of the regulations, he is exempt from serving as a juror.

(4) In this section, 'Commonwealth employee' means:

- (a) a person employed under an Act; and
- (b) a member, officer or employee of a body established by or under an Act.

Proceedings not invalidated where exempt person serves as a juror

5. Nothing in this Act operates so as to affect the validity of any verdict or judgment taken or given, or anything done, in proceedings in which a person who, by reason of this Act or the regulations, is not liable to serve as a juror serves as a juror.

THE SCHEDULE

Section 4 (1)

The Governor-General

Members of the Federal Executive Council

Justices of the High Court and of the courts created by the Parliament

Senators

Members of the House of Representatives

Members of the Australian Industrial Relations Commission

Members of the Tariff Board

Commonwealth Police Officers and special Commonwealth Police Officers

Members of the Defence Force other than members of the Reserve Forces

Members of the Reserve Forces who are rendering continuous full time service

Statutory Rules 1987 No. 186

JURY EXEMPTION REGULATIONS

[As amended to Statutory Rule 1992 No. 289]

Citation

1. These Regulations may be cited as the Jury Exemption Regulations.

Commencement

2. These Regulations shall come into operation on 1 October 1987.

Interpretation

3. (1) In these Regulations, unless the contrary intention appears, "the Act" means the *Jury Exemption Act 1965*.

(2) For the purposes of these Regulations, each of the Territories is a specified Territory.

Exemption of certain Commonwealth employees

4. A person holding, or for the time being performing the duties of, an employment as a Commonwealth employee in respect of which the rate of salary equals or exceeds the rate of salary for the time being payable to an officer of the Australian Public Service occupying an office classified as Senior Executive Band 3 is exempt from liability to serve as a juror:

- (a) in Federal courts;
- (b) in the courts of a specified Territory; and
- (c) in the courts of the States.

Exemptions relating to administration of justice

5. (1) A person to whom this regulation applies is exempt from liability to serve as a juror:

- (a) in Federal courts;
- (b) in the courts of a specified Territory; and
- (c) in the courts of the States.

- (2) This regulation applies to:

- (a) an officer or employee of:
 - (i) the Attorney-General's Department;
 - (ii) the Office of Parliamentary Counsel; or

- (iii) the Office of the Director of Public Prosecutions; being an officer or employee whose duties involve the provision of legal professional services;
- (b) an officer or employee of:
 - (i) the High Court of Australia;
 - (ii) the Federal Court of Australia;
 - (iii) the Family Court of Australia;
 - (iv) the Supreme Court of the Australian Capital Territory; or
 - (v) the Magistrates Court of the Australian Capital Territory;
- (c) a person employed as a chemist in the Australian Government Analytical Laboratories, being a person whose duties include appearing as an expert witness in court proceedings;
- (d) a person performing the duties of a parole officer or of a probation officer for the purposes of the *Public Service Act 1922* in relation to the Australian Capital Territory;
- (da) a person holding an appointment under section 6 or 6a of the *Remand Centres Act 1976* of the Australian Capital Territory;
- (db) an authorised officer within the meaning of the *Supervision of Offenders (Community Service Orders) Act 1985* of the Australian Capital Territory;
- (e) a person holding, or for the time being performing the duties of, one of the following positions in the Housing and Community Services Bureau of the Australian Capital Territory:
 - (i) Executive Director, Welfare Services Branch;
 - (ii) Director, Youth and Family Services, Welfare Services Branch;
 - (iii) *revoked*
 - (iv) Social Worker, Welfare Services Branch;
 - (v) *revoked*;
- (f) a person holding, or for the time being performing the duties of, a position as Chief Fire Control Officer or as a Deputy Fire Control Officer under the *Careless Use of Fire Act 1936* of the Australian Capital Territory;
- (g) a member within the meaning of the *Australian Federal Police Act 1979* and a person employed under section 16 of that Act;
- (h) a member within the meaning of the *National Crime Authority Act 1984* and a member of the staff of the Authority within the meaning of that Act;

- (i) a protective service officer or special protective service officer within the meaning of the *Australian Protective Service Act 1987*;
- (j) a person not otherwise referred to in this subregulation for the time being employed by:
 - (i) the Australian Bureau of Criminal Intelligence;
 - (ii) the Australian Police Staff College; or
 - (iii) the National Police Research Unit;
- (k) a member, or a member of the staff, of the Administrative Appeals Tribunal; and
- (l) an officer or employee of:
 - (i) the Attorney-General's Department of the Australian Capital Territory;
 - (ii) the Legal Aid Office of the Australian Capital Territory; or
 - (iii) the Office of the Director of Public Prosecutions of the Australian Capital Territory;being an officer or employee whose duties involve the provision of legal professional services.

Exemptions relating to public need

6. (1) A person to whom this regulation applies is exempt from liability to serve as a juror:

- (a) in Federal courts;
- (b) in the courts of a specified Territory; and
- (c) in the courts of the States.

(2) This regulation applies to:

- (a) a veterinary officer or other person employed in the Department of Primary Industries and Energy whose duties relate to the planning, co-ordination and monitoring of measures to limit the importation of exotic diseases into, or outbreak of exotic diseases in, Australia;
- (b) a person holding, or for the time being performing the duties of, any of the following positions:
 - (i) General Superintendent in the Repatriation General Hospital at Concord in the State of New South Wales;
 - (ii) Medical Superintendent in the Repatriation General Hospital at Heidelberg in the State of Victoria;
 - (iii) Medical Superintendent in the Repatriation General Hospital at Greenslopes in the State of Queensland;

- (iv) Medical Superintendent in the Repatriation General Hospital at Daw Park in the State of South Australia;
 - (v) Medical Superintendent in the Repatriation General Hospital at Hollywood in the State of Western Australia;
 - (vi) Medical Superintendent in the Repatriation General Hospital at Hobart in the State of Tasmania;
- (c) *revoked*
- (d) a person employed by the Australian Institute of Marine Science as Field Operations Manager and Diving Officer or as Assistant Diving Officer.

Exemptions relating to public administration

7. (1) A person to whom this regulation applies is exempt from liability to serve as a juror:

- (a) in Federal courts; and
- (b) in the courts of a specified Territory; and
- (c) in the courts of the States.

(2) This regulation applies to:

- (a) the Official Secretary to the Governor-General; and
- (b) a person performing duties as Secretary to:
 - (i) a Royal Commission; or
 - (ii) a Committee of Inquiry established under an Act; and
- (c) a person holding, or for the time being performing the duties of, one of the following positions in relation to a Minister of State:
 - (i) Principal Private Secretary;
 - (ii) Principal Adviser;
 - (iii) Senior Private Secretary;
 - (iv) Senior Adviser;
 - (v) Private Secretary;
 - (vi) Adviser;
 - (vii) Press Secretary; and
- (d) a person constituting a Coal Industry Tribunal pursuant to section 30 of the *Coal Industry Act 1946*; and
- (e) the Industrial Registrar, and any Deputy Industrial Registrar, within the meaning of subsection 62 (2) of the *Industrial Relations Act 1988*; and

- (f) a person holding, or for the time being performing the duties of, one of the following offices in the Department of the Senate:
- (i) Clerk of the Senate;
 - (ii) Deputy Clerk of the Senate;
 - (iii) Clerk-Assistant (Table);
 - (iv) Clerk-Assistant (Procedure);
 - (v) Clerk-Assistant (Management);
 - (vi) Clerk-Assistant (Committees);
 - (vii) Usher of the Black Rod;
 - (viii) Principal Parliamentary Officer, Table Office;
 - (ix) Secretary to a committee established by the Senate, or jointly by the Senate and the House of Representatives, including a committee established by an Act; and
- (g) a person holding, or for the time being performing the duties of, one of the following offices in the Department of the House of Representatives:
- (i) Clerk of the House of Representatives;
 - (ii) Deputy Clerk of the House of Representatives;
 - (iii) First Clerk Assistant;
 - (iv) Clerk Assistant (Procedure);
 - (v) Assistant Secretary (Committees);
 - (vi) Clerk Assistant (Table);
 - (vii) Assistant Secretary (Corporate Services);
 - (viii) Serjeant-at-Arms;
 - (ix) Senior Parliamentary Officer, Table Office;
 - (x) Senior Parliamentary Officer, Bills & Papers Office;
 - (xi) Secretary to a committee established by the House of Representatives, or jointly by the House of Representatives and the Senate, including a committee established by an Act;
 - (xii) First Assistant Secretary (Committees and Corporate Services); and
- (h) a person holding, or for the time being performing the duties of, one of the following offices in the Department of the Parliamentary Reporting Staff:
- (i) Principal Parliamentary Reporter;
 - (ii) Assistant Principal Parliamentary Reporter;
 - (iii) Leader of Staff;
 - (iv) Supervising Reporter;

- (v) Reporter;
 - (vi) Administrative Officer;
 - (vii) Parliamentary Officer (Finance);
 - (viii) Parliamentary Officer (Personnel);
 - (ix) Personnel Officer; and
- (i) a person holding, or for the time being performing the duties of, the office of Secretary to the Joint House Department; and
- (ia) a person holding, or performing the duties of, any of the following offices of the Legislative Assembly of the Australian Capital Territory:
- (i) Clerk;
 - (ii) Deputy Clerk;
 - (iii) Clerk Assistant;
 - (iv) Serjeant-at-Arms;
 - (v) Editor of Debates;
 - (vi) Secretary of a Committee of the Assembly; and
- (j) a person holding, or for the time being performing the duties of, one of the following positions in the Department of Defence:
- (i) Deputy Director, Defence Signals Directorate;
 - (ii) Assistant Secretary, North America and Europe Branch;
 - (iii) Deputy Chief of Facility, Joint Defence Facility, Pine Gap;
 - (iv) Australian Chief of Security, Joint Defence Facility, Pine Gap;
 - (v) Engineer Class 3, Joint Defence Facility, Pine Gap; and
- (k) a person holding, or for the time being performing the duties of, the position of Parliamentary Liaison Officer in the Department of the Prime Minister and Cabinet.

Repeal

8. Statutory Rules 1970 No. 131, 1971 No. 73 and 1972 No. 61 are repealed.

[no longer on record]

APPENDIX 7 THE PERIN PROCEDURE

Magistrates Court Act 1989 , Section 99

99. PERIN procedure

The procedure set out in Schedule 7 may be used instead of commencing a proceeding against a person for a prescribed offence.

Magistrates Court Act 1989 , Schedule 7

PROCEDURE FOR ENFORCEMENT OF INFRINGEMENT PENALTIES PART 1 – INTRODUCTORY

1. Application of Schedule
 - (1) The procedures set out in this Schedule may be used for the enforcement of infringement penalties and penalties imposed by penalty notices.
 - (2) If the procedures set out in this Schedule are used, they apply without prejudice to the application of so much of any other procedure as is consistent with this Schedule.
 - (3) The procedures set out in Part 2 may be used in relation to any infringement notice, whenever issued.
 - (4) The procedures set out in Part 3 apply to penalty notices and prescribed offences despite anything to the contrary in a Code.

2. Definitions

In this Schedule –

"appropriate officer" means the holder of a prescribed office or the holder of an office in a prescribed class of offices;

"certificate" means a certificate under clause 4(1)(b);

"Code" means a Code within the meaning of section 32 of the Interpretation of Legislation Act 1984;

"continuing offence provision" means a prescribed provision of an Act or a Code;

"courtesy letter" means a notice served under clause 3(1);

"enforcement agency", in relation to an infringement notice, means a person or body authorised by or under an Act to take proceedings for the offence in respect of which the infringement notice was issued;

"enforcement order" means an order under clause 5(1);

"fine" means the amount payable under an enforcement order;

"infringement notice" means an infringement notice under a prescribed provision of any Act or statutory rule;

"infringement penalty" means the amount specified in an infringement notice as payable in respect of the offence for which the infringement notice was issued;

"penalty notice" means a penalty notice under a prescribed provision of an Act or a Code;

"prescribed offence" means an offence within the meaning of, or prescribed under, a prescribed provision of an Act or a Code;

"registrar" means a registrar at a venue of the Court prescribed under section 140(1)(i);

"statutory rule" has the same meaning as in the Subordinate Legislation Act 1962.

PART 2 – INFRINGEMENT NOTICES

3. Courtesy letters

- (1) If it appears to an appropriate officer that an infringement penalty has not been paid before the end of the time specified in the infringement notice, the officer may serve a notice (a `courtesy letter`) on the person on whom the infringement notice was served.
- (2) A courtesy letter must state –
 - (a) that the person on whom it is served has a further 28 days in which to pay the infringement penalty together with any prescribed costs; and
 - (b) that in default of payment, the person may be dealt with under this Part.
- (3) A courtesy letter may contain any other information that is prescribed for the purposes of this sub-clause.
- (4) If a person is served with a courtesy letter in relation to an infringement notice, the time for payment of the infringement penalty is extended until the end of 28 days after service of the courtesy letter.
- (5) The infringement penalty together with the prescribed costs may be paid within the extended period as if the infringement notice or law under which the notice was served also required the payment of those costs.
- (6) A person who has been served with a courtesy letter may decline to be dealt with under this Part by serving a written statement to that effect on the officer or person specified for that purpose in the letter within 28 days after service of the letter.

4. *Registration of infringement penalties*

- (1) An enforcement agency may seek to have an infringement penalty registered by providing to a registrar –
 - (a) a document in the prescribed form containing the prescribed particulars in relation to persons who have not paid infringement penalties; and
 - (b) a certificate in the prescribed form signed by an appropriate officer and certifying that in respect of each person listed in the document the requirements set out in sub-clause (2), and any other prescribed requirements, have been satisfied.
- (2) A certificate under sub-clause (1) (b) must certify that –
 - (a) an infringement notice has been served on the person; and
 - (b) a courtesy letter has been served on the person after the end of the time specified in the infringement notice as the time within which the infringement penalty may be paid; and
 - (c) a period of at least 28 days has passed since the courtesy letter was served; and
 - (d) the infringement penalty and any prescribed costs had not been paid before the certificate was issued; and
 - (e) the person has not, under clause 3 (6), declined to be dealt with under this Part; and
 - (f) a charge in relation to the offence has not been filed; and
 - (g) a charge may still be filed in relation to the offence, having regard to the time when the offence is alleged to have been committed; and
 - (h) if the infringement notice was served under section 87 of the Road Safety Act 1986, the person was at the time of the alleged offence –
 - (i) the owner of the vehicle within the meaning of Part 7 of that Act; or
 - (ii) the person in charge of the vehicle as shown in a sworn statement supplied in accordance with section 86 (3) (a) of that Act; and
 - (i) if the infringement notice was issued in respect of an offence to which section 66 of the Road Safety Act 1986 applies, the person was at the time of the alleged offence –
 - (i) the owner of the motor vehicle within the meaning of section 66 of that Act; or
 - (ii) the driver of the motor vehicle as shown in a sworn statement supplied in accordance with section 66 (3) (a) of that Act.
- (3) If it appears to the registrar from the certificate provided under sub-clause (1)(b) that the requirements listed in sub-clause (2) and any other prescribed requirements have been satisfied in relation to a person listed in the document provided with the certificate, the registrar may register the infringement penalty together with any prescribed costs for the purpose of enforcement under this Part.
- (4) The enforcement agency may, by notice in the prescribed form filed with the registrar at any time before an infringement penalty is registered under sub-

clause (3) in relation to a person, request the registrar not to register the infringement penalty.

- (5) A registrar must comply with a request made in accordance with sub-clause (4).

5. *Enforcement orders*

- (1) On registering an infringement penalty together with any prescribed costs, the registrar must make an order –
 - (a) in the case of a natural person, that the person pay to the Court the amount of the infringement penalty and the prescribed amount for costs and that in default of payment the person be imprisoned for a period of 1 day in respect of each \$100 or part of \$100 of the amount then remaining unpaid; or
 - (b) in the case of a corporation, that the corporation pay to the Court the amount of the infringement penalty and the prescribed amount for costs and that in default of payment the amount is to be levied under a warrant to seize property.
- (2) An enforcement order is deemed to be an order of the Court.
- (3) In this clause the prescribed amount for costs is the sum of –
 - (a) the amount of costs (if any) registered together with the infringement penalty; and
 - (b) the prescribed costs of the enforcement order; and
 - (c) any other costs required to be charged in relation to the enforcement order under this or any other Act.

6. *Notice of enforcement order*

- (1) On the making of an enforcement order, the registrar must cause a notice in the prescribed form to be served on the person against whom the order is made.
- (2) The notice must state that if the fine is not paid within 28 days after the date of the notice –
 - (a) in the case of a natural person, a warrant will be issued for the imprisonment of that person for the period specified in the order; or
 - (b) in the case of a corporation, a warrant to seize property will be issued.

7. *Applications concerning payment of fine*

- (1) A person against whom an enforcement order is made may apply to the registrar personally or in writing or in any other manner approved by the registrar for either or both of the following:
 - (a) An order that the time within which the fine is to be paid be extended; or
 - (b) An order that the fine be paid by instalments.
- (2) On receipt of an application under sub-clause (1), the registrar may do one or more of the following:
 - (a) Allow additional time for the payment of the fine or the balance of the fine;

- (b) Direct payment of the fine to be made by instalments;
- (c) Direct payment of the fine or instalments to be made at the time or times specified by the registrar.

8. Issue of warrants

- (1) If a person on whom a notice under clause 6 is served defaults in the payment of the fine –
 - (a) in the case of a natural person, the registrar must issue a warrant to imprison against that person; and
 - (b) in the case of a corporation, the registrar must issue a warrant to seize property against that corporation.
- (2) A warrant issued under sub-clause (1)(a) must not be executed unless the fine or any part of the fine remains unpaid for 7 days after a demand is made on the person in default by the person to whom the warrant is directed.
- (3) The person making the demand under sub-clause (2) must deliver to the person in default a statement in writing in the prescribed form setting out a summary of the provisions of this Part with respect to the allowance of time to pay and payment by instalments and with respect to applications for revocation of enforcement orders.
- (4) Without affecting the operation of any other provision of this Act, a warrant issued under sub-clause (1)(a) or (1)(b) may be directed to the sheriff.
- (5) Section 111(4) to (7) applies to a warrant to seize property issued under sub-clause (1)(b) and directed to the sheriff.
- (6) A person authorised to execute a warrant issued under sub-clause (1)(a) that is directed to the sheriff may also execute any unexecuted warrant issued under that sub-clause against the same person that is not directed to the sheriff.

9. Effect of enforcement order

- (1) Subject to clause 10, if an enforcement order is made in relation to an offence alleged to have been committed by a person –
 - (a) the person is not thereby to be taken to have been convicted of the offence; and
 - (b) the person is not liable to any further proceedings for the alleged offence; and
 - (c) the making of the order does not in any way affect or prejudice any civil claim, action or proceeding arising out of the same occurrence; and
 - (d) payment in accordance with the order is not an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (2) Any amount recovered as a result of the making of an enforcement order is to be dealt with in the same way as an amount recovered as a result of a conviction.

10. Revocation of enforcement orders

- (1) An enforcement agency or any person against whom an enforcement order has been made may apply to the registrar at the venue of the Court at which the

order was made for the revocation of the enforcement order, unless a warrant has been executed under this Part in enforcement of the order.

- (2) An application under sub-clause (1) must—
 - (a) be filed with the registrar; and
 - (b) if filed by the person against whom the enforcement order has been made, be accompanied by a statutory declaration setting out the grounds on which the revocation is sought.
- (3) If an enforcement agency applies for the revocation of an enforcement order, the registrar must revoke the enforcement order and, on its revocation, the enforcement order ceases to have effect.
- (4) If the person against whom the enforcement order has been made applies for its revocation and the registrar—
 - (a) is satisfied that there are sufficient grounds for revocation, the registrar must revoke the enforcement order and, on its revocation, the enforcement order ceases to have effect; or
 - (b) is satisfied that there are sufficient grounds to vary the prescribed amount for costs within the meaning of clause 5, the registrar must vary the costs and notify the applicant that the amount of the infringement penalty together with costs as varied must be paid within 28 days after the date of the notice; or
 - (c) is not satisfied that there are sufficient grounds for revocation or variation of costs, the registrar must notify the applicant that the order has not been revoked because of insufficient grounds to justify its revocation.
- (5) If the registrar revokes an enforcement order under sub-clause (3) or (4), the registrar must notify the enforcement agency and the person against whom the order was made that—
 - (a) the order has been revoked; and
 - (b) the matter of the alleged offence will be referred to the Court for hearing and determination.
- (6) A person who receives a notice under sub-clause (4)(b) or (4)(c) may, within 28 days after the date of the notice, apply to the registrar to have the application for revocation referred to the Court, and the registrar must thereupon refer the matter to the Court under clause 11.

11. Procedure after revocation or making of application under clause 10(6)

- (1) If an enforcement order is revoked or an application is made under clause 10(6), the registrar must—
 - (a) cause a notice of the time and place of hearing to be given or sent to the enforcement agency and to the person against whom the enforcement order was made; and
 - (b) unless a notice has been received under clause 12 (1) before the date of the hearing, file in the Court for the purpose of the hearing—
 - (i) a copy of the certificate on which the enforcement order was made; and

- ii) a copy of the part of the document provided under clause 4 (1) (a) that relates to the person against whom the order was made.
- (2) For the purpose of the hearing of the alleged offence the copy documents filed under sub-clause (1) (b) are deemed to be a charge in relation to the alleged offence that was filed –
 - (a) with the appropriate registrar on the date on which the certificate was provided under clause 4 (1); and
 - (b) by the appropriate officer who signed the certificate.

12. *Non-prosecution of offence*

- (1) An enforcement agency may, by notice in the prescribed form filed with the registrar, request the registrar not to refer the matter to the Court.
- (2) If a request is made under sub-clause (1) the registrar must –
 - (a) if the enforcement order has not been revoked –
 - (i) revoke the enforcement order and, on its revocation, the enforcement order ceases to have effect; and
 - (ii) not refer the matter to the Court; or
 - (b) if the enforcement order has been revoked, not refer the matter to the Court –
and notify the person against whom the order had been made –
 - (c) of the revocation of the order, if it was revoked under sub-clause (2)(a)(i); and
 - (d) that the matter will not be referred to the Court.

13. *Hearing by Court*

- (1) If the matter has been referred to the Court as a result of the making of an application under clause 10(6), the Court may revoke the enforcement order, which then ceases to have effect, and proceed to hear and determine the matter of the alleged offence.
- (2) If the matter has been referred to the Court as a result of the revocation of an enforcement order, the Court may proceed to hear and determine the matter of the alleged offence.
- (3) The Court may proceed under sub-clause (1) or (2) to hear and determine the matter of an alleged offence even though a charge-sheet has not been served on the defendant.
- (4) If, but for this sub-clause, the hearing of an alleged offence under this clause may not proceed only because –
 - (a) the defendant was not served with a notice of the time and place of the hearing; and
 - (b) the Court is not satisfied that –
 - (i) the defendant had knowledge of the time and place of the hearing; or
 - (ii) if the Court is satisfied that the defendant had that knowledge, the defendant would not be prejudiced by the non-service –

the hearing of the alleged offence may proceed if the Court is satisfied that the defendant is avoiding service of the notice or cannot be found after reasonable search and inquiry.

14. Service of documents

- (1) All documents required or permitted by this Part to be given or served, may be served personally or by post or in any other prescribed manner.
- (2) If a courtesy letter is served by post it must be addressed –
 - (a) to the last known place of residence or business of the person alleged to have committed the offence; or
 - (b) if the infringement notice was served under section 87 of the Road Safety Act 1986 –
 - (i) to the last address of the owner of the vehicle within the meaning of Part 7 of that Act; or
 - (ii) if a sworn statement has been supplied by the owner of the vehicle under section 86 (3) (a) of that Act, to the last address of the person alleged in that statement to have been in charge of the vehicle; or
 - (c) if the infringement notice was issued in respect of an offence to which section 66 of the Road Safety Act 1986 applies –
 - (i) to the last address of the owner of the motor vehicle within the meaning of section 66 of that Act; or
 - (ii) if a sworn statement has been supplied by the owner of the motor vehicle under section 66 (3) (a) of that Act, to the last address of the person alleged in that statement to have been the driver of the motor vehicle.
- (3) Any other document served by post under this Part must be addressed –
 - (a) to the address for service given by the person on whom the document is to be served; or
 - (b) if no address for service has been given, to the address contained in the document provided under clause 4 (1) (a).

PART 3 – PENALTY NOTICES

15. Application of Part 2 to penalty notices

Clauses 3 to 9, with any necessary modifications, apply to penalty notices and prescribed offences as if –

- (a) any reference in those clauses to an infringement notice were a reference to a penalty notice; and
- (b) for clause 9(1)(a) there were substituted the following:
"(a) the person is not thereby to be taken to have been convicted of the offence, except as provided in clause 16;"

16. Deemed conviction where failure to do act or thing

If a penalty notice has been served on a person in relation to a prescribed offence constituted by a failure to do a particular act or thing and—

- (a) the person pays the infringement penalty together with any prescribed costs after the end of the period specified in the penalty notice but before an enforcement order is made under this Part in relation to the prescribed offence but does not do the act or thing and at the date of payment that act or thing was still able to be done, the obligation to do that act or thing continues and the relevant continuing offence provision applies in relation to the continued failure to do the act or thing as if, on the day on which the person made the payment, the person had been convicted of an offence constituted by a failure to do the act or thing; or
- (b) an enforcement order is made and at the date on which the enforcement order was made that act or thing had not been done and was still able to be done, the obligation to do that act or thing continues and the relevant continuing offence provision applies in relation to the continued failure to do that act or thing as if, on the day on which the enforcement order was made, the person had been convicted of an offence constituted by a failure to do the act or thing.

17. Application for revocation of enforcement order

- (1) An enforcement agency or any person against whom an enforcement order has been made in relation to a prescribed offence may apply to the registrar at the venue of the Court at which the order was made for the revocation of the order, unless a warrant has been executed under this Part in enforcement of the order.
- (2) An application under sub-clause (1) must—
 - (a) be filed with the registrar; and
 - (b) if filed by the person against whom the enforcement order has been made, be accompanied by a statutory declaration setting out the grounds on which the revocation is sought.
- (3) If an enforcement agency applies for the revocation of an enforcement order, the registrar must revoke the enforcement order and, on its revocation, the enforcement order ceases to have effect.

18. Referral to the Court of application by person against whom order made

If an application is made under clause 17(1) by the person against whom the enforcement order has been made, the registrar must—

- (a) refer the application to the Court and cause a notice of the time and place of hearing to be given or sent to the enforcement agency and to the person against whom the enforcement order was made; and
- (b) file in the Court for the purpose of the hearing—
 - (i) a copy of the certificate on which the enforcement order was made; and

- (ii) a copy of the part of the document provided under clause 4(1)(a) that relates to the person against whom the order was made.

19. *Hearing by Court*

- (1) On the hearing of an application referred to the Court under clause 18(a), the Court may –
 - (a) refuse to revoke the enforcement order; or
 - (b) revoke the enforcement order, which then ceases to have effect, and proceed to hear and determine the matter of the alleged offence.
- (2) For the purpose of the hearing of the alleged offence the copy documents filed under clause 18(b) are deemed to be a charge in relation to the alleged offence that was filed –
 - (a) with the appropriate registrar on the date on which the certificate was provided under clause 4(1)(b); and
 - (b) by the appropriate officer who signed the certificate.
- (3) The Court may proceed under sub-clause (1)(b) to hear and determine the matter of an alleged offence even though a charge-sheet has not been served on the defendant.
- (4) Clause 13(4) applies to the hearing of an alleged offence under sub-clause (1)(b) of this clause in the same way as it applies to a hearing under that clause.

20. *Service of documents*

Clause 14 applies to the service of documents under this Part as if after sub-clause (2)(a) of that clause there were inserted –

- (aa) if the infringement notice was served under a prescribed provision of a Code –
 - (i) to the address of the registered office of the company alleged to have committed the offence notice of which has been lodged with the National Companies and Securities Commission; or
 - (ii) to the last address of the person alleged to have committed the offence notice of which has been lodged with the National Companies and Securities Commission or the particulars of which appear from documents so lodged; or.

APPENDIX 8

SUMMONS TO JUROR

[no longer on file]