

Juries (Jury Service and Protection of Particulars of Jury List Information) Amendment Bill

Government Bill

As reported from the Law and Order
Committee

Commentary

Recommendation

The Law and Order Committee has examined the Juries (Jury Service and Protection of Particulars of Jury List Information) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

The Juries (Jury Service and Protection of Particulars of Jury List Information) Amendment Bill is divided into two parts. The aim of Part 1 is to improve the administration and integrity of the jury system, and that of Part 2 is to help to maintain the privacy and security of jurors, while still upholding the right of defendants to challenge potential jury members.

Excusals from jury service

Proposed new clause 15A(2) provides that a Registrar must permanently excuse from jury service those aged 65 years or over who request such an excusal in writing.

Some concern was expressed to us that making such a provision available would perpetuate the stereotype of age as a form of disability and thus discriminate against older people.

The Labour members are concerned that extending the Registrar's power to grant permanent excusal solely because a person is 65 or over is at odds with progressive measures advanced over recent years to eliminate ageism and stereotypes, and to promote participation.

We note, however, that the bill does not propose to reintroduce an age limit for jury service, and that those aged 65 years and over would retain all their current rights in relation to serving on a jury. The amendment would allow people in the specified age bracket who no longer wished to be available for jury service to make one request for permanent excusal, rather than a separate request each time that they were summoned, which is required at present.

We do not consider that what is proposed implies that older people are less capable of serving on a jury. On the contrary, we consider that the life experience of older people is of significant value to society and we would encourage those who are able to do so to continue to undertake jury service.

After considering this issue, we do not recommend any amendment to the proposal in the bill to offer older people permanent excusal. At the same time, however, we note that there is currently no mechanism to allow those who choose permanent excusal to opt back in at a later date if they should change their minds.

Jury panel information

We recommend an amendment to clauses 16(2) and 17 to allow a Police employee to access the jury panel or the protected particulars of a jury panel only if he or she is performing a function of the Police in relation to the proceedings, and is not personally concerned with the facts of the proceedings, or closely connected with a party, witness, or prospective witness.

A jury panel is drawn from the people available to form a jury, and records the information about them that is used in court when chal-

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lenges to jurors are made. Under the Jury Rules, that information must include the name, occupation, date of birth, and full address of a potential juror.

Concern was raised in 2010 when a self-represented defendant corresponded with people whose names and addresses were on the jury panel for his trial. The bill is intended to address this problem by amending the Juries Act 1981 to allow some information to be excluded from the jury panel. It would be called protected information, and access to it would be restricted.

Clauses 16(2) and 17 of the bill, as introduced, name “constables” as one group of persons eligible to inspect the jury panel list and the protected particulars. We consider that it would be inappropriate for any constable (or any other police employee) who was a party to proceedings, or in some way personally concerned with the proceedings, to view the jury panel or the protected particulars.

Appendix

Committee process

The Juries (Jury Service and Protection of Particulars of Jury List Information) Amendment Bill was referred to the committee on 12 April 2011. The closing date for submissions was 26 May 2011. We received and considered five submissions from interested groups and individuals. We heard two submissions.

We received advice from the Ministry of Justice.

Committee membership

Jacqui Dean (Chairperson)

Shane Ardern

Hon Rick Barker (until 18 May 2011)

Dr Cam Calder

Hilary Calvert

Hon Clayton Cosgrove

Raymond Huo

Melissa Lee

Louisa Wall (from 18 May 2011)

Jonathan Young

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Power

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Juries (Jury Service and Protection of Particulars of Jury List Information) Amendment Act **2011**.

2 Commencement

- (1) **Parts 1 and 2** come into force on a date appointed by the Governor-General by Order in Council. 5
- (2) One or more orders may be made bringing different provisions into force on different dates, so long as the provisions in **Part 2** are not brought into force on different dates.
- (3) Any provisions in **Parts 1 and 2** that are not in force on the expiry of the period of 12 months that starts on the date on which this Act receives the Royal assent come into force on that expiry. 10

3 Principal Act amended

This Act amends the Juries Act 1981. 15

Part 1
Jury service

4 Purpose of this Part

The purpose of this **Part** is to amend the principal Act so that it—

- (a) disqualifies from jury service a person who, at any time within the preceding 5 years, has been sentenced to home detention for a period that is, or is more than, 3 months; and
- (b) requires a person on whom a court has imposed a sentence of home detention for a period of less than 3 months, and who is summoned to serve as a juror on an occasion in a week during which he or she will be subject to the sentence, to be permitted to defer that person’s attendance to serve as a juror to a date after the person has ceased to be subject to the sentence, or to be excused from serving as a juror on that occasion; and
- (c) ensures that the Registrar has a discretion or duty to excuse a person summoned to attend as a juror on any occasion from attending not only on that occasion, but also in any court on any occasion, and also that a person who the Registrar has excused from jury service permanently is no longer qualified and liable to serve as a juror.

5 Disqualification

Section 7(b) is amended by omitting “corrective training” and substituting “home detention for a period that is, or is more than, 3 months”.

6 Certain persons not to serve

Section 8 is amended by inserting the following paragraph after paragraph (hb):

- “(hc) a person who, under **section 15A**, is excused by the Registrar from attending as a juror in any court on any occasion.”.

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Part 1 cl 7

7 Summoning of jurors

- (1) Section 13(3A)(b) and (c) are amended by inserting “on a particular occasion” after “excused the person from jury service”.
- (2) Section 13(3A) is amended by inserting the following paragraph after paragraph (b): 5
 - “(ba) the Registrar has, under **section 15A**, excused the person from jury service permanently; or”.

8 New section 14D inserted

The following section is inserted after section 14C:

“14D Deferral of, or excusal from, jury service of person subject to home detention for less than 3 months” 10

- “(1) This section applies to a Registrar who becomes aware from information available to the Registrar that a person summoned to attend as a juror on an occasion is—
 - “(a) an offender on whom a court has imposed a sentence of home detention for a period of less than 3 months; and 15
 - “(b) summoned to serve in a week during which the person will be subject to the sentence of home detention.
- “(2) The Registrar must, despite any provision of this Act to the contrary,— 20
 - “(a) permit the person to defer the person’s attendance to serve as a juror under section 14B to a date after the person has ceased to be subject to the sentence of home detention; or
 - “(b) excuse that person from serving as a juror on that occasion under section 15.” 25

9 Registrar may excuse from jury service

- (1) The heading to section 15 is amended by—
 - (a) omitting “**Registrar may**” and substituting “**Registrar’s discretion and duty to**”; and 30
 - (b) adding “**on particular occasion**”.
- (2) Section 15(2) is amended by omitting “A person summoned to attend as a juror on any occasion shall, on application to the Registrar, be excused by the Registrar from attending on that occasion if that person—” and substituting “The Registrar must excuse a person summoned to attend as a juror on 35

an occasion from attending on that occasion if satisfied, on a written application for the purpose made by or on behalf of the person, that the person—”.

(3) Section 15(2)(aa) is amended by inserting “years” after “65”.

(4) Section 15 is amended by repealing subsection (3) and substituting the following subsection: 5

“(3) The Registrar may ask a person to provide evidence in support of an application under this section if the Registrar reasonably thinks that evidence of that kind is necessary in order to determine the application.” 10

10 New sections 15A and 16 substituted

Section 16 is repealed and the following sections are substituted:

“15A Registrar’s discretion and duty to excuse from jury service permanently 15

“(1) The Registrar may excuse a person summoned to attend as a juror on an occasion from attending in any court on any occasion if satisfied, on a written application for the purpose made by or on behalf of the person, that, because of the person’s disability or state of health, the person would not, if required to attend as a juror in any court on any occasion, be able to perform a juror’s duties satisfactorily. 20

“(2) The Registrar must excuse a person summoned to attend as a juror on an occasion from attending in any court on any occasion if satisfied, on a written application for the purpose made by or on behalf of the person, that the person is of or over the age of 65 years. 25

“(3) The Registrar may ask a person to provide evidence in support of an application under this section if the Registrar reasonably thinks that evidence of that kind is necessary in order to determine the application. 30

“(4) If the Registrar declines an application under this section, the applicant may, in accordance with the jury rules, appeal against that decision to the court before which the applicant is summoned to appear. 35

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Part 1 cl 11

- “16 Judge’s discretion to excuse from jury service on particular occasion**
- “(1) A Judge may in accordance with this section excuse a person summoned to attend as a juror on any occasion in the court in which the Judge sits from attending on that occasion. 5
- “(2) The person may be excused only on an application for the purpose made by or on behalf of the person.
- “(3) The Judge may excuse the person from attending on that occasion if—
- “(a) the panel that was used in summoning the person to attend as a juror has been compiled in respect of 1 trial only; and 10
- “(b) the Judge is satisfied that the person is personally concerned in the facts of the case, or is closely connected with one of the parties or with one of the prospective witnesses. 15
- “(4) The Judge may excuse the person from attending on that occasion if satisfied of either of the following:
- “(a) a ground on which the Registrar could have excused that person under section 15; or 20
- “(b) that the person objects to jury service on grounds of conscience, whether or not of a religious character.
- “(5) **Subsection (4)(a)** applies whether or not the Registrar has declined to do either or both of the following:
- “(a) permit the person to defer jury service under section 14B: 25
- “(b) excuse the person from attending as a juror (whether on that occasion, or in any court on any occasion) under section 15 or **15A**.”
- 11 Jury rules: amendment relating to methods by which applications for permanent excusal made** 30
- Section 35(1)(d)(ii) is amended by inserting “, **15A**,” after “section 15”.
- 12 New section 36A inserted**
- The following section is inserted after section 36: 35

“36A Purpose and application of 2011 amendments on jury service

“(1) The purpose of Part 1 of the Juries (Jury Service and Protection of Particulars of Jury List Information) Amendment Act 2011 is to amend this Act so that it—

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“(a) disqualifies from jury service a person who, at any time within the preceding 5 years, has been sentenced to home detention for a period that is, or is more than, 3 months; and

“(b) requires a person on whom a court has imposed a sentence of home detention for a period of less than 3 months and who is summoned to serve as a juror on an occasion in a week during which he or she will be subject to the sentence to be permitted to defer that person’s attendance to serve as a juror to a date after the person has ceased to be subject to the sentence, or to be excused from serving as a juror on that occasion; and

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“(c) ensures that the Registrar has a discretion or duty to excuse a person summoned to attend as a juror on any occasion from attending not only on that occasion, but also in any court on any occasion, and also that a person who the Registrar has excused from jury service permanently is no longer qualified and liable to serve as a juror.

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“(2) The amendments made to this Act by a provision of that Part apply only to a person’s attendance to serve as a juror on an occasion after that commencement, but apply to any such attendance even if that person was summoned to attend, sentenced to home detention, or both, before that commencement.”

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Part 2

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Protection of particulars of jury list information

13 Purpose of this Part

The purpose of this **Part** is to amend the principal Act so that it—

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(a) helps to maintain jurors’ privacy, safety, and security by protecting particulars of jury list information; but also

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Part 2 cl 14

- (b) ensures that parties to proceedings have available to them processes, and enough information, to enable them to exercise effectually their rights under the principal Act to challenge persons selected as jurors.

14 Interpretation 5

Section 2 is amended by inserting the following definitions in their appropriate alphabetical order:

“**jury list information**, in relation to a person named on a jury list, means the information about the person that is included on the list in accordance with the jury rules 10

“**litigant in person** means, in relation to proceedings that are due to be heard during the week for which the jurors on a panel are summoned to attend for jury service, a person who—

- “(a) is a party to the proceedings; but
- “(b) for the proceedings is not represented by a barrister or solicitor, or is represented only by a barrister or solicitor appointed under, and performing only the function stated in, **section 14AC** 15

“**panel information**, in relation to a person named on a jury list and on a panel, means the jury list information about the person that must be included on the panel in accordance with the jury rules 20

“**protected particulars**, in relation to a person named on a jury list and on a panel, means the jury list information about the person that is not panel information about the person 25

“**public prosecution** means criminal proceedings against a defendant for an offence and commenced by or on behalf of—

- “(a) the Crown (including, without limitation, by a person who is, and is acting in his or her capacity as, a Crown solicitor, an employee or officer of a government department, or a Police employee); or 30
- “(b) a Crown entity within the meaning of section 7 of the Crown Entities Act 2004; or
- “(c) a statutory public body or board (including, without limitation, a local authority)” 35

15 Summoning of jurors

Section 13 is amended by inserting the following subsection after subsection (1):

“(1A) The Registrar must ensure that the only jury list information about a person that is included on the panel is the panel information about the person.” 5

16 Inspection of jury panel

(1) Section 14(1)(b) is amended by inserting “(being days on which the office of the court is open for business)” after “7 days”. 10

(2) Section 14(1A) is amended by repealing paragraphs (b) to (d) and substituting the following paragraphs:

“(b) a person who is a party to proceedings that are due to be heard during that week and is a litigant in person; or

“(c) the Crown or other prosecutor in criminal proceedings that are due to be heard during that week (whether or not those proceedings are a public prosecution); or 15

“(d) a constable Police employee who is performing a function of the Police in respect of, but is not personally concerned in the facts of, or closely connected with a party or witness or prospective witness in, proceedings that are due to be heard during that week.” 20

(3) Section 14(4) is repealed.

17 New sections 14AB and 14AC inserted

The following sections are inserted after section 14A: 25

“14AB Inspection of protected particulars of jury list information excluded from panel

“(1) The Registrar must comply with a request to make a copy of protected particulars excluded from a panel under **section 13(1A)** available for inspection by an eligible person if the request is made— 30

“(a) by that eligible person; and

“(b) at a time not earlier than 7 days (being days on which the office of the court is open for business) before the commencement of the week for which the jurors on the panel are summoned to attend for jury service. 35

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Part 2 cl 17

- “(2) In **subsections (1) and (4)**, **eligible person** means—
- “(a) a barrister or solicitor acting for a party to proceedings that are due to be heard during the week for which the jurors on the panel are summoned to attend for jury service; or 5
 - “(b) a barrister or solicitor appointed under **section 14AC** and acting in respect of a request under **subsection (1)** for a party to proceedings that are due to be heard during that week and who is a litigant in person; or
 - “(c) the Crown or other prosecutor in criminal proceedings that are due to be heard during that week and that are a public prosecution; or 10
 - “(d) a constable Police employee who is performing a function of the Police in respect of, but is not personally concerned in the facts of, or closely connected with a party or witness or prospective witness in, proceedings that are due to be heard during that week. 15
- “(3) A barrister or solicitor to whom a copy of protected particulars is made available under **subsections (1) and (2)(a) or (b)** must use the copy or any copies of it (the **document**) to help the party referred to in **subsection (2)(a) or (b)** to exercise rights of challenge under sections 23 to 26. 20
- “(4) However, an eligible person (despite **subsection (3)**),—
- “(a) must not show the document or disclose all or any of its contents to a person (in this subsection called a **prohibited person**) who is not a person of 1 of the following kinds: 25
 - “(i) an eligible person:
 - “(ii) a Judge, a Registrar, or a member of the court registry staff; and 30
 - “(b) must not leave the document in the possession of a prohibited person; and
 - “(c) must take all reasonable steps to ensure that the document and all or any of its contents are not copied by a prohibited person. 35
- “(5) Every person who, in connection with proceedings that are due to be heard during the week for which the jurors on the panel are summoned to attend for jury service, receives, or makes a copy or copies of, a copy of protected particulars must (despite

subsection (3)) return the copy or copies to the Registrar or a member of the court registry staff as soon as practicable after the case is opened or the accused is given in charge.

- “(6) However, **subsection (5)** does not apply to—
- “(a) the Registrar or a member of the court registry staff; and 5
 - “(b) any other person if the court or a Judge, in the court’s or Judge’s discretion and on a written application for the purpose, orders that the other person need not return the copy or copies.
- “(7) A breach of **subsection (4) or (5)** may be dealt with as contempt of court. 10

“**14AC Counsel to inspect protected particulars, and exercise rights of challenge, for litigant in person**

- “(1) On a request for the purpose by or on behalf of a party, the Registrar must appoint a barrister or solicitor to act for the party in respect of a request under **section 14AB(1)** if the party— 15
- “(a) is a party to proceedings that are due to be heard during the week for which the jurors on the panel are summoned to attend for jury service; and 20
 - “(b) is a litigant in person who wishes to have, but does not have, a barrister or solicitor appointed under this section to perform the function stated in **subsection (2)**.
- “(2) The only function of a barrister or solicitor appointed under this section is to exercise rights of challenge under sections 23 to 26 for the litigant in person by requesting under **section 14AB(1)**, and acting on the basis of, a copy of protected particulars excluded from a panel under **section 13(1A)**. 25
- “(3) **Subsection (2)** is subject to **section 14AB(4) and (5)**.
- “(4) Fees for professional services provided, and reasonable expenses incurred, by the barrister or solicitor in performing that function— 30
- “(a) must, after a bill for them is submitted, be determined by the Registrar in accordance with any currently in force relevant general directions under **subsection (5)**; and 35
 - “(b) are payable out of public money appropriated by Parliament for the purpose.

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Part 2 cl 18

- “(5) The chief executive may from time to time give written general directions as to how the Registrar must determine under **subsection (4)(a)** the fees and expenses.
- “(6) The general directions are in force until revoked or revoked and replaced in writing, and may (without limitation) require the Registrar, unless satisfied in a particular case that a specified exception applies, to determine the fees and expenses using specified, or specified ranges of, rates or amounts. 5
- “(7) The ranges, rates, or amounts may differ according to—
- “(a) the time spent and the complexity of the proceedings: 10
 - “(b) the barrister’s or solicitor’s level of experience:
 - “(c) whether professional services are provided in a specified number of proceedings during a specified period:
 - “(d) any other factors the chief executive thinks relevant.”
- 18 Jury rules: amendment relating to panel information 15**
Section 35(1)(b) is amended by adding the following subparagraph:
- “(iii) what jury list information about each person named on a jury list and on a panel must be included on the panel:” 20
- 19 New section 36B inserted**
The following section is inserted before section 37:
- “36B Purpose and application of 2011 amendments on protection of particulars of jury list information**
- “(1) The purpose of **Part 2 of the Juries (Jury Service and Protection of Particulars of Jury List Information) Amendment Act 2011** is to amend this Act so that it— 25
- “(a) helps to maintain jurors’ privacy, safety, and security by protecting particulars of jury list information; but also
 - “(b) ensures that parties to proceedings have available to them processes, and enough information, to enable them to exercise effectually their rights under this Act to challenge persons selected as jurors. 30
- “(2) This Act applies to panels compiled before the commencement of that **Part** as if that **Part** had not been enacted.” 35
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Legislative history

5 April 2011
12 April 2011

Introduction (Bill 278–1)
First reading and referral to Law and Order
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