

JURIES AMENDMENT BILL

AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE

COMMENTARY

Recommendation

The Justice and Law Reform Committee has examined the Juries Amendment Bill and recommends that it be passed with the amendments shown in the bill.

Conduct of the examination

The Juries Amendment Bill, which provides for amendments to the Juries Act 1981, was referred to the committee on 2 December 1997. The closing date for submissions was 20 March 1998.

Decision to combine consideration of bill with Juries (Entitlement to Serve) Amendment Bill

The Juries (Entitlement to Serve) Amendment Bill, a Member's bill before the committee, also provides for amendments to the Juries Act. In February 1998 we sought the Minister for Courts's agreement to a proposal to consider the Juries (Entitlement to Serve) Amendment Bill together with the Juries Amendment Bill in order to facilitate timely consideration of the bills. By including the provisions of the Juries (Entitlement to Serve) Amendment Bill within the Government bill, the original Act need be amended only once. The Minister had no objection to the committee incorporating the provisions of the Juries (Entitlement to Serve) Amendment Bill into the Juries Amendment Bill.

The issue of scope was traversed during our decision to combine consideration of the two bills. Based on advice from the Office of the Clerk of the House of Representatives, we concluded that there are no significant issues relating to matters of scope preventing us from incorporating the contents of the Juries (Entitlement to Serve) Amendment Bill as amendments to the Juries Amendment Bill.

Hearing of evidence and consideration of both bills combined

We heard evidence on the two bills together on 8 April 1998. Six submissions were heard orally. One hour and 53 minutes were spent on the hearing of evidence and consideration took two hours and 37 minutes. Advice was received from the Department for Courts.

We have included the provisions proposed by the Juries (Entitlement to Serve) Amendment Bill as amendments to the Juries Amendment Bill. We are reporting the Juries (Entitlement to Serve) Amendment Bill back to the House recommending that it not proceed.

This commentary sets out the details of our consideration of the bills and the major issues we addressed.

Background to the bills

Juries Amendment Bill

The bill amends the Juries Act 1981 (the principal Act) to allow full implementation of a new jury management system. The amendments are largely technical. Until recently, juries were selected and managed in all courts using a cumbersome and inefficient manual system. A Department for Courts project has redesigned the jury management system, changing the processes involved in jury selection and management and introducing technology in order to create efficiencies and to enhance the service provided to jurors and prospective jurors.

The new jury management system has been partly implemented by making administrative changes and changes to the Jury Rules 1990. However, it is not possible to implement the full new jury management system without a number of minor and largely technical changes to the principal Act.

The main changes provided for in the bill are:

- to allow for jury lists to be provided on request by the chief executive of the Department for Courts at more frequent intervals than at present, which will enable jury lists to be more up-to-date and more accurate
- to allow for jury lists to be provided initially to a central point rather than being supplied to all courts individually, with the courts having access to the list either electronically or in hard copy, which will enable the computerised system of management to be cost-effective for all courts
- to allow for different systems for selecting and summoning jurors to operate in different courts so that a pilot computerised system for randomly selecting jurors, replacing the current method of drawing numbers out of a barrel, can run in one or more courts while the current system is operational in the rest
- to clarify the offence provision (which currently makes it an offence to fail to “obey” a jury summons) to make it clear that jurors commit an offence if they fail to turn up in response to a summons, but not if they simply fail to follow incidental requests on the summons, and to allow for more helpful information to be included on the summons forms
- to update references to people ineligible to serve as jurors, in particular in relation to Judges of the Employment Court and various people associated with the corrections system.

Juries (Entitlement to Serve) Amendment Bill

The Juries (Entitlement to Serve) Amendment Bill, which we considered at the same time as the Juries Amendment Bill, provides that persons of or over the age of 65 years of age, and persons with disabilities may serve as jurors. We refer to

the provisions of the Juries (Entitlement to Serve) Amendment Bill as the “entitlement to serve provisions”.

Submissions received on both bills

The two submissions we received on the Juries Amendment Bill (the bill), from the Legislation Advisory Committee and the National Assembly for People with Disabilities (DPA), are supportive of the general aims of the bill. The majority of submissions we considered, however, relate primarily to the entitlement to serve provisions. These submissions are in support of the bill’s provisions to remove discrimination against those persons of or over 65 years of age and those persons with a physical disability. The New Zealand Law Society (the Law Society) was the only submission against allowing persons with physical disabilities to serve as jurors.

Change to commencement provisions

The bill, as introduced, will come into force on 1 November 1998. However, jury rules need to be made and certain provisions require the completion of administrative work within the Department for Courts on the summons forms and the arrangements in courts. This will affect the date at which the provisions can come into force. Therefore, we recommend that the commencement date for the bill be amended to 1 March 1999.

Interpretation provisions clarified

We recommend amendments to clause 2 of the bill relating to interpretation. We propose adding a definition of the term “physical disability” to include visual or aural impairment. This will clarify the amendments we propose with regards to the entitlement to serve provisions, discussed below.

The Legislation Advisory Committee’s submission questions the bill’s failure to refer to both the general electoral district and the Maori electoral district. We were advised that this is a matter of drafting and the Act, once amended, will no longer refer to electoral districts, but rather to those persons registered as electors on the electoral roll. Therefore, we recommend that the definitions of the terms “General electoral district” and “Maori electoral district” be repealed.

Eligibility of certain age groups only to serve

The principal Act currently provides that only persons over 20 years of age and under 65 years may serve on a jury. The entitlement to serve provisions would make people of or over the age of 65 eligible to serve as jurors. We received a number of submissions on the issue of eligibility of persons over 65 years of age.

Support for persons 65 years or over to be eligible to serve on juries

Grey Power argues that people 65 and over have a valuable contribution to make to jury service. Age Concern also supports the removal of the upper age limit on the basis that older people should have the right to participate in society and have a pool of experience that should be able to be drawn upon. The Law Commission agrees that people 65 and over should be able to serve on the basis that juries should be selected from the broadest pool possible.

The Human Rights Commission argues that the exclusion of older people is discriminatory. Moreover, it points to the fact that New Zealand’s population is progressively ageing and that those 65 and over will be needed on juries more and more.

Eligibility of those between 18 and 20 years of age considered

The joint submission from the Ministry of Justice and the Department for Courts on the entitlement to serve provisions suggests lowering the age of eligibility to 18 years of age, as is the position in England and Australia.

This suggestion accords with work done by the Ministry of Youth Affairs, which is looking at the ages at which young people become able to exercise rights under law. Eighteen has become an age at which many civil rights and duties can now be exercised, including the right to vote, the right to stand as a candidate at elections, the ability to enter into a binding contract (unless it is harsh or oppressive) and the ability to join the New Zealand Police or the armed services. The ministry's work suggests a presumption that young people ought in general to be able to participate fully in society and exercise all legal rights at 18, unless there is an identifiable reason why this should not be the case.

Moreover, juries are intended to provide trial by peers. Many young people under 20 years of age come before the courts. A lowering of the age at which a person is eligible to serve on a jury to 18 years at least provides that representation of younger people is possible. At 18 years of age a person is also registered to vote on the electoral roll. The electoral rolls are currently the basis for summoning jurors. Lowering the age of eligibility to 18 may therefore be practicable.

Persons over 18 years of age should be entitled to serve

We support the entitlement to serve provisions in that they seek to remove discrimination against older persons. The majority of us also support aligning the principal Act with other civil rights and duties able to be exercised by persons at the other end of the age spectrum. We recommend that individuals 65 and over should be eligible to serve. The majority of us also consider that individuals 18 to 20 should also be eligible to serve. This will be achieved by amending section 6 in a new clause 3A. This provides that every person who is registered as an elector in accordance with the Electoral Act 1993 is qualified and liable to serve as a juror. This provision will remain subject to section 7, which disqualifies anyone who has been sentenced to imprisonment under certain conditions, and section 8, which excludes certain persons involved in the justice system and mentally disordered persons.

Therefore, all jury lists prepared in accordance with new section 9 (as provided for in clause 5) will contain a random selection of names of all people who, according to the electoral roll, reside in the district and are registered as electors. We recommend that the bill be amended accordingly.

Certain persons ineligible to serve as jurors

Masters of High Court as judicial officers should not be eligible

Clause 4 of the bill relates to certain persons not being eligible to serve as jurors. One of the principles of the jury system is that Judges of any court are ineligible to serve, given that judicial officers have an involvement in the justice system inconsistent with serving on a jury. It appears that Masters of the High Court (in essence, Judges with a specialist jurisdiction in the High Court) have been omitted from section 8 (c) of the principal Act as being ineligible to serve on a jury. We consider that an amendment is required so that Masters of the High Court cannot serve as jurors and recommend that clause 4 be amended accordingly.

Persons with physical disability should be eligible

We consider that an amendment to clause 4 would be an appropriate mechanism by which to amend the Act so that those who have a physical disability may serve

as jurors. The entitlement to serve provisions seek to align the policy of eligibility to serve on a jury with the principles of law embodied in the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990.

The Human Rights Commission points to international obligations which it argues suggest that disabled people should have the right to full participation in society. The DPA submits that the provisions would also allow disabled accused persons better access to trial by peers, since there would be at least the possibility of having someone in a similar situation selected as a juror on that case.

Section 8 (j) of the principal Act currently provides that “persons who are incapable of serving because of blindness, deafness, or any other permanent physical infirmity” are not to serve on a jury. This section has sometimes been interpreted to mean that *all* blind and deaf persons shall not serve. This interpretation is not currently applied, and blind persons who are *capable* of serving have served on juries. It is the actual capacity of the person, not the disability *per se* which is the basis for eligibility. Provisions that allow for the determination of the person’s capacity to serve will be discussed in full later in this commentary.

We propose repealing section 8 (j) to remove the possibility of a blanket disqualification for service by people with disabilities. We recommend that clause 4 of the bill be amended accordingly.

Right to excusal of physically disabled and those persons of or over 65 years of age considered

In order to be excused from jury service, there are certain requirements that a person must satisfy under the principal Act. These requirements relate to:

- matters that may result in undue hardship or serious inconvenience to the person, any other person or the general public, or
- religious beliefs held by the person regarding service as a juror, or
- previous jury service by the person within the preceding period of two years, or
- the person having already been excused for a period that has not yet expired.

Age as a basis for excusal

We considered whether persons of or over the age of 65 years, while eligible to serve, should be entitled to a right to excusal from serving. The entitlement to serve provisions recognise that the civic burden of jury service may fall heavily on people 65 and over, and that they have, over the course of their lives, already been liable for service for some time.

In oral submissions, those presenting the Grey Power submission were of the view that a right to excusal on the grounds of age was not justified. They argued that an excusal as of right for persons of or over 65 years of age merely perpetuates age-based discrimination. Excusal based on hardship or serious inconvenience due to health or personal circumstances is available to persons of any age. It is undesirable to use age as a proxy for “hardship”. Age Concern, however, supports the excusal as of right for those 65 years and over. This is because some older people may find it difficult to serve for physical or other reasons which they may not perceive as health problems justifying excusal on the normal grounds. Age Concern also argues that older people may have already served on a jury and may not now want to offer themselves again in retirement. The Law Commission also considers that an excusal is justified to recognise that those 65 and over will have served the community for a number of years and deserve respite from jury service at this age. The Human Rights Commission supports an excusal on the basis of age.

Position in other jurisdictions on eligibility and excusal of those individuals over 65

During our consideration of the bill, we considered the positions of other like jurisdictions on eligibility and excusal of persons of or over 65 years of age. In England and Wales, people are liable for jury service between the ages of 18 and 70 years. Those 65 and over have an excusal as of right. The Australian position is summarised in figure 1 below.

Figure 1. Eligibility and the right of excusal in Australian jurisdictions

Jurisdiction	Eligibility	Right of excusal
Victoria	Over 18	Excusal as of right if over 65
New South Wales	Over 18	Excusal as of right if over 70
Queensland	Over 18	Excusal as of right if over 70
South Australia	Over 18 and under 70	No right to excusal
Western Australia	Over 18 and under 65	No right to excusal
Tasmania	Over 18 and under 65	No right to excusal
Northern Territory	Over 18 and under 65	No right to excusal

We consider that an excusal recognises that those 65 years and over have been available for jury service, and other community service, for the course of their lives. An excusal also recognises that those over 65 may well have physical or other impairments that may make jury service particularly onerous. We propose that individuals of or over the age of 65 should be eligible to serve as jurors, but should have a right to excusal. We recommend that new clause 6A be inserted into the bill to amend section 15(2) of the principal Act so that being aged 65 years or over is a ground for excusal as of right.

Physical disability as a basis for excusal

As with those persons of or over the age of 65 years, we considered whether persons with a physical disability should also have a right to excusal. Those who are physically disabled but who are in fact able to serve on a jury should arguably bear the same responsibilities as other members of society.

Conversely, persons who are physically disabled in some way may not wish to serve on a jury for a number of reasons related to their disability. They may feel that negotiating their way into a courthouse and dealing with the process of jury selection, as well as the time spent on jury duty is for them an undue burden. At this time, a number of courthouses and courtrooms do provide particular challenges for people whose mobility is impaired, or who may be hard of hearing. In older non-refurbished courts some courtrooms are located upstairs, with no lift access and, although all courts have wheelchair accessible toilets, not all are in areas accessible to jurors. However, new courthouses and courtrooms now make provision for jurors whose mobility is impaired. New courts provide lifts for ease of access to the courtroom, provision for wheelchair seating in the jury box and disabled toilets for jurors.

The DPA considers that the right of disabled persons to be excused from jury service where that would be onerous should be provided. The DPA suggests clarifying section 15 of the Act to make it clear that disability itself may give rise to a hardship or serious inconvenience, which could then be the basis for excusal.

Section 15 currently provides that excusal may be sought and granted if the Registrar is satisfied that “because of . . . that person’s state of health, or family circumstances or other personal circumstances, attendance on that occasion would cause or result in undue hardship or serious inconvenience to that person”. We consider that persons who would be caused undue hardship or serious inconvenience by reason of their physical disability should have a right to excusal. We recommend that new clause 6A be inserted into the bill to amend section 15 (1) of the principal Act so that hardship and serious inconvenience on the basis of disability is a ground for excusal.

Capacity of juror to serve is paramount

All submissions, apart from that of the Law Society, support the principle of clarifying the law to ensure that there is no blanket exclusion of persons who are physically disabled from jury service. By repealing section 8 (j), we consider that any reference to incapacity to serve on a jury solely for reason of disability is removed. We consider that the capacity of each individual juror or potential juror should be determined on a case-by-case basis.

Capacity of blind or deaf persons to examine evidence considered

The Law Society argues that trial by jury involves listening to evidence and examining exhibits and that these functions require jurors to be able to see and hear witnesses. Conversely, the Royal New Zealand Foundation for the Blind argues against the assumption that “to see is to understand”. The Foundation argues that being able to see evidence takes second place to being able to form an opinion as to whether respective arguments are plausible. The Foundation also argues that it is “illogical” that blind persons can be lawyers, Judges and defendants in the justice system, but not jurors.

We were also advised by the Department for Courts and the DPA that there have been cases in the United States where deaf people sought and gained the right to serve on a jury and to use interpreters to do so. All courtrooms in New Zealand have provision for amplified sound. New courts will also have, as a standard part of design provisions, closed loop sound for persons who are hearing-impaired.

Determining capacity on a case-by-case basis recommended

We recognise that in at least some cases a physical disability may be a real barrier to effective jury service. For instance, if the case involves items of real evidence that need to be examined or viewed by the jury, a person who is severely visually-impaired arguably ought not to serve. However, not all cases are in this category. We therefore consider that a case-by-case determination would handle this.

The Law Society argues against determining blind or deaf persons’ capacities to serve as jurors on a case-by-case basis. The Law Society argues that a case-by-case assessment may be difficult in advance of a hearing because the characteristics of the case may be unclear. We note that though the characteristics of a case may not be entirely clear in advance of the trial, by the time the jury is to be empanelled the parties ought to know whether a substantial amount of real evidence, tape-recorded evidence or a view of the evidence is necessary. We recommend that the position for physically disabled persons who are summoned to serve on a jury be determined on a case-by-case basis and that the bill be amended accordingly.

Disabled jurors may increase costs to courts

We considered the costs that may have to be borne by the courts if disabled persons are entitled to serve as jurors. As we have already noted, new and refurbished courts now make provision for jurors whose mobility is impaired. New

courts provide lifts for ease of access to the courtroom, provision for wheelchair seating in the jury box and disabled toilets for jurors. The DPA told us that in the United States courts are public entities subject to the requirements of Title II of the Americans with Disabilities Act 1990, enforced by the United States Department of Justice. The Americans with Disabilities Act provides that, to the maximum extent feasible, facilities must be accessible to and usable by individuals with disabilities. Revised guidelines issued in 1993 specified access to “elements in the courtroom itself such as the jury box” and made provision for “permanently installed assistive listening devices” in jury orientation and deliberation rooms. Several states have their own policy on providing qualified interpreters for participants who are deaf or hard of hearing.

We consider that it is a right of disabled persons to be able to participate in the jury system. Costs associated with disabled jurors are no different to costs associated with disabled parties, witnesses, counsel or Judges. The Department for Courts recognises the need to provide court facilities that allow ease of access by persons who are physically disabled and, where necessary and appropriate, interpreters for deaf persons.

The DPA told us in its oral submission that it did not consider that the costs, aggregated over time, would be prohibitive. Cost itself should not be a ground for exclusion of a certain group of society.

Judge ought to determine jurors’ capacity to serve

Society’s overriding concern is to provide a trial for the accused that is fair and accurate. The Judge is ultimately responsible for ensuring that this occurs. The joint submission from the Ministry of Justice and the Department for Courts notes that capacity to serve is ultimately an issue for a court to determine in a particular case. It suggests a process should be available for capacity to be brought to the attention of the Judge and for the Judge to make a determination on a case-by-case basis.

We examined the English procedure as a useful model. Section 9B of the United Kingdom’s Juries Act 1974 provides:

Where it appears to an appropriate officer, in the case of a person attending in pursuance of a summons under this Act, that on account of physical disability there is a doubt as to his capacity to act effectively as a juror, the person may be brought before the Judge.

The Judge shall determine whether or not the person should act as a juror; but he shall affirm the summons unless he is of the opinion that the person will not, on account of his disability, be capable of acting effectively as a juror, in which case he shall discharge the summons.

We consider that the assessment of whether a juror is capable of participating adequately on a jury is a question that should ultimately be determined by a Judge with some input from the parties.

In the New Zealand legislative context, this results in the need for three amendments to the principal Act. We propose, therefore, that if a person is unable to act effectively as a juror because of physical disability the Judge can discharge the summons, discharge the juror or accept that as a basis for a challenge. Each of our proposals is discussed in turn below.

Judge may discharge summons

We consider that if a Judge is satisfied that a person is not capable of acting effectively as a juror because of physical disability the Judge should be able to discharge the summons of the person. This may apply to the whole period for which the person is summoned, or just to a particular proceeding.

The dignity of the potential juror must also be preserved. If the capacities of an individual for service are to be assessed, this must be done in a way that preserves the dignity of the potential juror. For this reason, we consider that the determination should not occur in open court, but rather in chambers. We recommend that new clause 6B be inserted into the bill to provide that a Judge can discharge the summons of a person because of physical disability, before a jury is constituted, and to provide for this procedure to take place in private.

Judge may discharge juror

Under existing section 22 of the principal Act, jurors can be discharged on the basis of some connection to the case that means they have an apparent bias. This is a matter that is judged on a case-by-case basis and determined at the empanelling of the jury. We considered whether a similar provision could be made to allow for the discharge of a juror incapable of acting effectively as a juror in the proceedings because of physical disability.

This model would allow court staff to bring matters to the Judge's attention and can be used at any time after summons. We consider that if a juror is incapable of acting effectively because of physical disability the Judge should be able to discharge the juror. The Judge may conduct the hearing, and may consider such evidence as he or she sees fit.

We recommend that new clause 7A be inserted into the bill to amend section 22 of the principal Act to provide that a Judge can discharge a juror because he or she is not capable of acting effectively for reason of physical disability, after the jury is constituted but before the trial commences.

Challenge for cause

The DPA submits that the proper safeguard for the accused in having a fair and accurate trial lies in jury challenges. Under sections 23 to 26 of the principal Act, the parties have access to challenge at the point where the jury is being empanelled. The parties may challenge six jurors without cause. This means that the parties are not required to state publicly the reason behind the challenge. The parties also have access to challenge for cause, on the ground that a juror is "not indifferent between the parties".

We consider that section 25 of the principal Act should be amended so that the capacity of a person in acting effectively as a juror in the proceedings because of physical disability can be used as a ground to challenge for cause. We recommend that new clause 7B be inserted into the bill accordingly.

Jury lists may be provided more or less frequently

The principal Act currently requires that jury lists are prepared annually for all courts. We suggest redrafting new section 9 (as provided for in clause 5 of the bill) so that the chief executive of the Department for Courts may ask the Chief Registrar of Electors to prepare jury lists "whenever he or she considers expedient". This amendment is desirable in that it will ensure that there is some flexibility as to when the lists are provided. It may not be necessary to update the jury lists for the smaller courts with the same frequency as the lists for the larger courts, for example. The amendment also specifies what the chief executive's request must include. The regulation-making power in clause 9 of the bill also

requires some minor consequential amendments to clarify its scope. We recommend that the bill be amended accordingly.

Amendment of jury list to omit those persons already excused

Section 12 of the principal Act allows the Registrar to amend a jury list. This may occur if a person is dead or has left New Zealand, or has been excused from serving by the principal Act or by a Judge, for example. The Legislation Advisory Committee notes that new section 12A as provided for in clause 5 of the bill is intended to substantially re-enact the current section 12(1) in clearer terms. However, it also notes that the new section does not allow the Registrar to strike off the list people who are excused from jury service by order of a Judge or according to the principal Act.

People who are excused from jury service may serve if they choose. An excusal gives the person the right to decide whether to make themselves available for service or not. People should be given this choice, rather than have it made for them by court staff. However, there are situations when an excusal should be recorded and result in temporary removal from the jury list and future lists. Technology is being developed in the Department for Courts to achieve this. We agree that it would be useful to retain the power to amend the list for excusal where, for example, the registrar could amend the list to delete those with a long-term basis for excusal. We recommend that new section 12A be amended accordingly.

Addition of transitional provisions

Since the bill affects the pool from which the jury list is drawn, there will be a period where jury summonses will be issued from jury lists drawn up from old eligibility provisions. For this reason, we consider that transitional provisions are necessary so that jury lists, jury panels and jury summonses that are prepared and in use before the commencement of the bill are not rendered invalid. We recommend that new clause 11 be inserted into the bill to allow transitional provisions.

Conclusion

We consider that the technical amendments to the principal Act provided for in this bill will allow for a more modern and efficient jury management system. The improved system that will be provided by the Department for Courts will achieve a better service to jurors and prospective jurors.

The overarching purpose of the bill is to enhance the jury system. We have used the opportunity of this bill to further amend the Act so that provisions which were previously part of the Juries (Entitlement to Serve) Amendment Bill, which we consider would also improve the jury system, may be passed into law in a more timely manner.

We have altered the entitlement to serve provisions somewhat during our consideration of the bill. The amendments we propose deal with the capacity of the person and circumstances of the case on a case-by-case basis. We consider that, due to these provisions, the courts will have a greater pool from which to select jurors and that a better jury system will result.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Rt Hon D A M Graham

JURIES AMENDMENT

ANALYSIS

Title	
1. Short Title and commencement	12A. Registrar may amend list
2. Interpretation	6. Summoning of jurors
3. Disqualification	6A. Registrar may excuse from jury service
3A. Qualification and liability	6B. Judge may discharge summons of person with physical disability
4. Certain persons not to serve	7. Selection of jurors
5. New sections inserted	7A. Judge may discharge juror
9. Preparation of jury lists	7B. Challenges for cause
10. Jury lists sent to chief executive	8. Failure to attend
11. Currency of jury lists	9. Jury rules
12. Access to, and confidentiality of, jury lists	10. Consequential repeals
	11. Transitional provisions

A BILL INTITULED

An Act to amend the Juries Act 1981

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Juries Amendment Act 1997, and is part of the Juries Act 1981 (“the principal Act”).

Struck Out (Unanimous)

(2) This Act comes into force on 1 November 1998.

New (Unanimous)

10 (2) This Act comes into force on 1 March 1999.

Struck Out (Unanimous)

2. Interpretation—Section 2 of the principal Act is amended by inserting, before the definition of the term “Chief Registrar of Electors”, the following definition:

“‘Chief executive’ means the chief executive of the Department for Courts:”.

New (Unanimous)

2. Interpretation—(1) Section 2 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Chief executive’ means the chief executive of the Department for Courts:

“‘Physical disability’ includes visual or aural impairment:”.

(2) Section 2 of the principal Act is amended by repealing the definitions of the terms “General electoral district” and “Maori electoral district”.

3. Disqualification—Section 7 (b) of the principal Act is amended by omitting the words “borstal training”, and substituting the words “corrective training”.

New (Unanimous)

3A. Qualification and liability—The principal Act is amended by repealing section 6, and substituting the following section:

“6. Every person who is currently registered as an elector in accordance with the Electoral Act 1993 is qualified and liable to serve as a juror upon all juries that may be impanelled for any trial within the jury district in which the person resides. This section is subject to sections 7 and 8.”

4. Certain persons not to serve—(1) Section 8 of the principal Act is amended by omitting from paragraph (c) the words “Judges and members of the Arbitration Court”, and substituting the words “(Judges of the Employment Court) Masters of the High Court, Judges of the Employment Court”.

(2) Section 8 of the principal Act is amended by repealing paragraph (h), and substituting the following paragraphs:

- 5 “(h) An employee of the Public Service who is employed—
 “(i) In the Ministry of Justice; or
 “(ii) In the Department of Corrections; or
 “(iii) In the head office of the Department for Courts; or
 “(iv) As an officer of the High Court or of a District Court; or
10 “(ha) A party to a management contract entered into under section 4A of the Penal Institutions Act 1954 or to a security contract entered into under section 36G of that Act; or
15 “(hb) A security officer within the meaning of section 2 (1) of the Penal Institutions Act 1954.”

New (Unanimous)

(3) Section 8 (j) of the principal Act is repealed.

20 **5. New sections inserted**—The principal Act is amended by repealing sections 9 to 12, and substituting the following sections:

Struck Out (Unanimous)

25 “9. **Preparation of jury lists**—(1) The chief executive must require the Chief Registrar of Electors to prepare a jury list for each jury district, and must specify the number of names to be included in each jury list.

“(2) The Chief Registrar of Electors must prepare a jury list for each jury district that contains a random selection of the names of people who, according to the electoral roll,—

- 30 “(a) Reside in the jury district; and
 “(b) Are registered as electors; and
 “(c) Are of or over the age of 20, and under the age of 65.
“(3) A jury list must not contain the name of any person—
 “(a) Who, according to the electoral roll, holds any office, or is engaged in any occupation, referred to in
35 section 8:
 “(b) In respect of whom a direction is in force under section 115 of the Electoral Act 1993 that his or her name, residence and occupation be not published.

New (Unanimous)

“9. **Preparation of jury lists**—(1) Whenever the chief executive considers it expedient he or she may ask the Chief Registrar of Electors to prepare a jury list for one or more jury districts. 5

“(2) In relation to each jury list requested under **subclause (1)**, the chief executive must advise the Chief Registrar of Electors of—

“(a) The number of names to be included in the jury list; and

“(b) The date by which the list is required. 10

“(3) The Chief Registrar of Electors must, for each jury district, prepare a jury list containing a random selection of the names of people who, according to the electoral roll, reside in the jury district and are registered as electors.

“(4) A jury list must not contain the name of any person— 15

“(a) Who, according to the electoral roll, holds any office, or is engaged in any occupation, referred to in section 8:

“(b) In respect of whom a direction is in force under section 115 of the Electoral Act 1993 that his or her name, residence, and occupation not be published. 20

“10. **Jury lists sent to chief executive**—The Chief Registrar of Electors must, within the time specified by the chief executive, forward a jury list for each jury district to the chief executive in accordance with the jury rules. 25

“11. **Currency of jury lists**—A jury list remains current until it is replaced by a new list provided by the Chief Registrar of Electors under **section 10**.

“12. **Access to, and confidentiality of, jury lists**—(1) The chief executive must give the Registrar of the Court to which a particular jury list relates a copy of, or access to, the jury list in a form that enables the Registrar to carry out his or her functions relating to the selection of juries. 30

“(2) The Registrar of a Court to which a particular jury list relates must ensure that the jury list is kept confidential to— 35

“(a) The Registrar; and

“(b) The Registrar’s staff.

“(3) The chief executive must ensure that jury lists forwarded to him or her under **section 10** are kept confidential to—

“(a) The chief executive; and 40

“(b) Staff of the Department for Courts who are authorised by the chief executive to have access to the lists.

5 “(4) A jury list may be disclosed by an order of the Court or a Judge for the purpose of any proceedings relating to the validity of the jury list or a jury panel or to the eligibility of any juror.

“12A. **Registrar may amend jury list—**

Struck Out (Unanimous)

10 (1) The Registrar may at any time amend a jury list relating to his or her Court, by deleting from it the names of any persons who are dead, or who are, by the application of section 6, section 7, or section 8, ineligible for jury service.

New (Unanimous)

15 “(1) The Registrar may at any time amend a jury list relating to his or her Court by deleting from it the name of any person who is—

“(a) Not qualified according to section 6; or

“(b) Disqualified according to section 7; or

20 “(c) Not to serve on any jury according to section 8; or

“(d) Otherwise prevented or excused from serving on a jury by this Act or by order of a Judge; or

“(e) Dead.

25 “(2) In exercising the power to amend the jury list, the Registrar may act on his or her own knowledge, or on such evidence as he or she considers satisfactory.”

6. Summoning of jurors—Section 13 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

30 “(1) Where jury trials are to be held in any Court, the Registrar must compile a panel from the jury list, using the method determined in accordance with the jury rules, containing a sufficient number of jurors, and must summon those jurors to attend the Court *(of)* for the purposes of the
35 trials.”

New (Unanimous)

6A. Registrar may excuse from jury service—(1) Section 15 (1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(aa) That person’s physical disability; or”.

5

(2) Section 15 (2) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(aa) Is of or over the age of 65; or”.

6B. Judge may discharge summons of person with physical disability—The principal Act is amended by inserting, after section 16, the following section: 10

“16AA. (1) On application in accordance with subsection (3), or on his or her own motion, a Judge may discharge the summons of a person if the Judge is satisfied that, because of physical disability, the person is not capable of acting effectively as a juror. 15

“(2) A discharge may apply to the whole period for which the person is summoned, or to a particular proceeding.

“(3) An application under this section must be made—

“(a) Before the jury is constituted; and 20

“(b) By the Registrar, or by a member of the Registrar’s staff who is involved in, or responsible for, the administration of juries.

“(4) An application under this section must be heard in private, and the Judge may conduct the hearing and consider such evidence as he or she thinks fit.” 25

7. Selection of jurors—The principal Act is amended by repealing section 18, and substituting the following section:

“18. Where any case is to be tried by a jury, the persons who are to comprise the jury must be selected in the precincts of the Court using the method determined in accordance with the jury rules.” 30

New (Unanimous)

7A. Judge may discharge juror—Section 22 of the principal Act is amended by repealing subsection (1), and substituting the following subsections: 35

New (Unanimous)

5 “(1) The Judge may discharge a juror if, at any time after the jury is constituted but before the case is opened or the accused is given in charge, it is brought to the attention of the Judge that—

“(a) The juror is personally concerned with the facts of the case, or is closely connected with one of the parties or with one of the prospective witnesses; or

10 “(b) The juror is not capable of acting effectively as a juror in the proceedings because of physical disability.

“(1A) When considering whether to discharge a juror, the Judge may conduct the hearing, and may consider such evidence, as he or she thinks fit.

15 “(1B) If a juror is discharged under this section, the Judge may require a further juror to be selected from the panel and be sworn in accordance with sections 18 and 20.”

7B. Challenges for cause—Section 25 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

20 “(1) In addition to the right to challenge under sections 23 and 24, each party to the proceedings is entitled to any number of challenges for cause on the ground that—

“(a) A juror is not indifferent between the parties; or

25 “(b) A juror is not capable of acting effectively as a juror in the proceedings because of physical disability.”

8. Failure to attend—Section 32 (1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

30 “(a) Fails without reasonable excuse to attend for service as required by the summons; or”.

9. Jury rules—(1) Section 35 (1) of the principal Act is amended by repealing paragraphs (a) to (f), and substituting the following paragraphs:

“(a) In relation to jury lists, prescribing—

Struck Out (Unanimous)

“(i) When, or how often, the lists must be prepared:

“(ii) The information about each person named in the list which is to be included in the lists: 5

“(iii) The form or forms in which the lists must be provided:

“(iv) The powers and duties of the Chief Registrar of Electors, the chief executive, Registrars, and other persons: 10

“(v) That, where more than one form is prescribed under **subparagraph (iii)**, the chief executive must from time to time determine in which one or more of those forms the list relating to each jury district must be provided: 15

New (Unanimous)

“(i) What information about each person named on a list must be included on the list:

“(ii) The form or forms in which lists must be provided: 20

“(iii) The powers and duties of the Chief Registrar of Electors, the chief executive, Registrars, and other persons:

“(iv) That, where more than one form is prescribed under **subparagraph (ii)**, the chief executive may from time to time determine in which one or more of those forms the list relating to each jury district must be provided: 25

“(b) In relation to jury panels, prescribing—

“(i) The method, methods, or the specifications of the method, by which panels must be compiled from jury lists: 30

“(ii) The powers and duties of Registrars and other persons:

“(c) In relation to the summoning of jurors, prescribing— 35

“(i) The form or forms to be used to summons jurors:

“(ii) The method or methods of service of summonses:

“(iii) The minimum period of notice that must be given in a summons:

5 “(d) Prescribing the method or methods by which a person who has been summoned can apply to be excused from attendance:

“(e) Requiring a record to be kept of all jurors who are summoned to attend the Court; and prescribing the form and manner in which that record is to be compiled:

10 “(f) Prescribing the method, methods, or the specifications of the method, for selecting a jury:

“(fa) Prescribing the manner in which challenges are to be made and dealt with:”.

15 (2) Section 35 of the principal Act is amended by inserting, after subsection (1), the following subsections:

20 “(1A) Where rules made under paragraphs (b), (c), or (f) of subsection (1) prescribe more than one form or method, the rules must also require the chief executive to determine from time to time which one of those forms or methods is to be used by each particular Court.

“(1B) For the purposes of subsection (1A), the term ‘method’ includes the specifications of a method.”

25 (3) Section 35 (2) of the principal Act (as amended by section 10 (3) of the Department of Justice (Restructuring) Act 1995) is amended by omitting the words “subsection (1) of”.

10. Consequential repeals—The following provisions are consequentially repealed:

(a) Subsections (1) and (2) of section 23 of the Penal Institutions Amendment Act 1985:

30 (b) Section 4 of the Juries Amendment Act 1994.

New (Unanimous)

35 **11. Transitional provisions**—(1) Nothing in this Act affects the validity of any jury list or jury panel that was prepared and in use immediately before the commencement of this Act.

(2) Nothing in this Act affects the validity of the composition of any jury that was constituted before the commencement of this Act and continued to serve after that date.

New (Unanimous)

(3) The validity of a summons that is issued under the principal Act before the commencement of this Act, and is intended to continue to have effect after that date, is not affected by anything in this Act.