JURIES LEGISLATION AMENDMENT BILL 2010

Committee

Resumed from 23 March. The Chairman of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Michael Mischin (Parliamentary Secretary) in charge of the bill.

Clause 4: Section 104 amended —

Progress was reported after the clause had been partly considered.

Hon GIZ WATSON: We are dealing with the issue of changes to peremptory challenges. I want to ask the parliamentary secretary whether, in consideration of this change, any thought has been given to the Law Reform Commission's comments in its report in respect of the consequences of the abolition of peremptory challenges. I guess that is slightly different because we are looking at a reduction in number rather than abolition, but I think the point may still be relevant. It states —

> In its Discussion Paper, the Commission noted that if peremptory challenges were to be abolished in Western Australia it is possible that challenges for cause will increase. In its submission, the Jury Research Unit at the University of Western Australia agreed. The DPP also submitted that peremptory challenges 'offer a more efficient and less time consuming option than challenges for cause, which can potentially be more controversial and more embarrassing for potential jurors'. Likewise, the Aboriginal Legal Service submitted that the 'right of peremptory challenge enables a juror to participate in removing any perceived bias (to a limited extent) without the need to embarrass the prospective juror'.
>
> Having said that, the Commission acknowledges that while applications to challenge a juror for cause are likely to increase if peremptory challenges are abolished, these applications may not necessarily be successful. The difficulty in establishing a factual basis for a challenge for cause would remain. In addition to an increase in the number of challenges for cause being made, there is also likely to be calls for reform of the challenge for cause process. Without the right to peremptorily challenge jurors who are perceived to be biased (or incompetent), it is likely and understandable that members of the legal profession will advocate for an expanded challenge for cause process. Such an expanded process might involve the provision of additional information about prospective jurors and the questioning of jurors before a challenge is made. While this option may appear to be a more rational foundation for the exercise of challenges, a jury voir dire process would be extremely time consuming and expensive, and may seriously impinge upon a juror's right to privacy and security. For these reasons the Commission does not consider that such an option would be sensible or desirable in Western Australia.

Obviously that is looking at the extreme case of abolishing peremptory challenges. Was consideration given to the possibility that one of the impacts of this change would be that there would be more challenges for cause?

Hon MICHAEL MISCHIN: The honourable member raised a number of matters yesterday before we concluded proceedings, and she has supplemented them with other matters today. If I miss any points, I am happy to address them. In respect of the Law Reform Commission report, yes, regard was given to its views and recommendations. On the issue of peremptory challenges, it was the commission's finding that, on average, there are something like 3.9 peremptory challenges used in the course of trials, or less than five, anyway.

Hon Giz Watson: Just to clarify that, is that currently, or was that figure obtained over a broader period?

Hon MICHAEL MISCHIN: Over the period that was examined by the Law Reform Commission, which was the first half of 2009.

Hon Giz Watson: Okay, so a relatively short period.

Hon MICHAEL MISCHIN: I am informed by my adviser from the Sheriff's office that for 2009–10, the average was the use of four challenges for both the prosecution and defence combined. They each used, on average, less than three.

The Law Reform Commission report makes general recommendations; some of them reflect the government's views, although we may have chosen to implement them differently. Others we have rejected. One of the features that we rejected was the recommendation for parliamentary officers to lose their exemption from jury service. The honourable member has clearly taken a different view—that that ought not be done, contrary to the Law Reform Commission's recommendation, and the government has accepted that. The Law Reform Commission's recommendations are all very well, but the government has to make its decisions. It may accept some as being viable and reject others as being unviable or not in accordance with its policy.

Having said all that, I have already explained, and it is apparent from the records of the debate in the other place, that it is the personal view of the Attorney General that there ought to be a random selection of jurors and that

there be no challenges other than on the basis of cause being shown. The Law Reform Commission's view is different and the view of other legal practitioners is different; my personal view is different from that, and I presented that view: that peremptory challenges ought to be retained. The Attorney General has made a decision that they will be retained, albeit that he is not convinced of the need for up to five peremptory challenges, and the number has been reduced to three. In the end, it is a matter of taste as to whether five, four, three or six peremptory challenges is the right balance to strike. There is always going to be a difference of opinion on that subject. But based on the statistics that have been demonstrated, and anecdotal evidence, three challenges seems to be a suitable figure, particularly if we are to keep as paramount the principle that a jury ought to be selected at random. Unless there is a good reason to reject a citizen from serving on a jury, that person ought to fulfil their civic duty and have the opportunity to participate in the administration of criminal justice. If one takes the view that one ought to try to fashion the jury according to what one thinks, as a representative of one of the parties, will get the result one wants, one would of course take a different approach and would seek to expand the number of peremptory challenges. However, this is the position that the government has taken.

In respect of the pooling of challenges, which was mentioned yesterday as one of the anecdotal criticisms of the use of peremptory challenges, that risk will now be eliminated by providing the prosecution with as many challenges as the defence. There will be no pooling of defence challenges to exhaust those of the prosecution and to fashion a jury in accordance with the desires of the defence.

With regard to the way in which challenges are exercised and have been exercised in the past, and whether it makes a difference to the verdicts, we may never know the answer. Certainly, theories abound. How one actually works out what the result would be if the jury had been composed slightly differently, I have no idea, but that is part of the inscrutability and mystery of the process. As I say, theories abound; I can recount umpteen theories. A few of them have been floated by the Criminal Lawyers' Association and by Mr Percy. Whether there is any substance to them, I do not know; prosecutors also have their own theories about the way in which juries might act. I am comforted by the fact that the Law Reform Commission has concluded that it may not make any difference anyway, and if that is correct, the stuff that the member has been fed—I accept that they are not her views and that she is reflecting views that have been provided to her—is nonsense.

There is a perception that this bill has somehow been motivated by the results of the McLeod–Butcher case. That is not the first case—I venture to suggest that it will not be the last case—in which media attention is drawn to a verdict that, on its face, appears perverse. That situation is always going to be there. It is certainly not the first such case; there have been many in the past, but the perception was raised yet again by that case that a jury had been selected, fashioned and crafted by the defence in such a way as to pervert justice. That, of course, has informed the necessity for a restoration of confidence in juries.

That is not the sole reason by any means; in fact, jury reform was something that the Attorney General was anxious to pursue in any event. A question was asked about the practicability of challenging for cause and if we eliminate peremptory challenges, the possibility exists there will be a bias towards trying to use challenges for cause. That sort of thing poses practical difficulties: it drags out the trial process and it may give jurors and potential jurors the impression that the accused is being difficult and bolshie, which might create a bias. Challenges for cause have to be handled very carefully. Western Australia, to my knowledge and in my experience, does not have challenges for cause frequently. I have been involved in only one and in circumstances that were not edifying for the trial or the jurors. I was prosecuting, and when the accused's lawyer did not challenge a particular juror, the accused got on his feet and exercised his personal right of challenge—it is always the accused's right, not the lawyer's—and said he thought that a person in the second row was at the police station when he was brought in by the police and charged and he thought he might be biased against him because of that. I could not understand how, but that was his contention. When asked by the judge, the juror said that he had never seen this man before in his life and he had not been at a police station for 20 years; that was the end of that story. Of course, that gave the impression that the accused was someone who was prepared to make things up as he went along. These things have to be handled delicately. I maintain that there is a place for peremptory challenges, but whether there needs to be as many as eight, as in the old days, or as few as five or three, time will tell. I feel the balance has been struck correctly.

Hon GIZ WATSON: I thank the parliamentary secretary for that information, which allays some of my concerns. I am pleased to hear that the number of three challenges is reflective of current practice, which is fine. However, it might be argued that it was a use-it-or-lose-it principle and maybe if people had made more peremptory challenges, we may not be considering reducing the number available to three. I mentioned the Butcher case because it was referred to in the second reading speech and that is why I was asking whether there was a link.

Hon Michael Mischin: It was simply raised as an example of the sorts of concerns, but the second reading speech did not rely on it in any way as informing or motivating this legislation.

Hon GIZ WATSON: In that case, will there be a review of any impact on the operation of the jury system by reducing the number of peremptory challenges; and, if so, how will that review be carried out and when?

Hon MICHAEL MISCHIN: No formal review process is in place or contemplated, but, as the honourable member would have gleaned, the Sheriff's Office keeps statistics and monitors what happens with jury attendance and how juries are performing, and other statistics are available. For example, I am informed that in 2009, out of something like 600 trials that were conducted, only 10 were mistrials that had to be aborted part way through, and not all of those would have been caused by problems with the jury itself. We are looking at a very small failure rate, as it were, as things stand. The performance of the legislation and the functioning of juries are always under the supervision of the Sheriff's Office, and if problems do arise, they will be drawn to the government's attention. I understand that some of the detail we have been talking about is published in the annual report produced by the Sheriff's Office

Hon GIZ WATSON: Finally, could the parliamentary secretary remind me how Western Australia stands in a comparison with other states? Are we at about the same level? Can the parliamentary secretary advise the level of peremptory challenges in the other states?

Hon MICHAEL MISCHIN: I recall its being mentioned in the course of the debate in the other place that at least one other state, and possibly a second state, has three peremptory challenges. My advisers are trying to find out which states they are, but as I say, at the end of the day, it is a question of taste and some states will take a particular position and some another. I will provide the member with that information at a later time—unless she requires it now to be able to pursue her consideration of the bill.

Hon Giz Watson: It would be useful if the parliamentary secretary could provide that at some point later today. I am interested in learning whether any other states have maintained a higher level of challenge or have even done away with them.

Clause put and passed.

Clauses 5 to 7 put and passed.

Clause 8: Section 3 amended —

Hon GIZ WATSON: This clause will insert some new definitions into the Juries Act 1957 at section 3, "Terms used". I do not have any problem with the terms, but when going through the bill and looking at how the Juries Act 1957 will look, as amended, I noted that two of the definitions to be included involve mental illness and mental impairment. I do not have any objection to the way those definitions are worded, but I am curious about why they are there and why they are needed. Proposed section 5(3)(d) deals with ineligibility because of mental impairment and refers to the definitions in the appropriate acts; and it struck me why we would also need to insert them in section 3, "Terms used". I hope that is sufficient information for the parliamentary secretary to follow my argument. Normally there would be a definition and we would rely on it for the rest of the bill, but if we are saying in this clause the definition is X but then also referring back to the original act, we seem to be doubling up.

Hon MICHAEL MISCHIN: That is true, but that is not the only place that the terms appear in the legislation. I draw the member's attention to proposed section 5 as it would stand after amendment. It will exclude as not qualified to serve on a jury a mentally impaired accused; that is, an accused as defined in the Criminal Law (Mentally Impaired Accused) Act. We are therefore talking about a specific type of person. That is where the reference to the definition goes back to a particular act, and we are saying that that person is not qualified to serve on a jury. However, proposed section 34H, which we hope will be inserted by clause 34 of the bill, refers to the reasons that will be regarded as good reasons to excuse someone from a summons to serve as a juror on the basis of mental impairment and other bases. Therefore, "mental impairment" will be defined in clause 8 of the bill. There may be other references throughout the bill to the terms "mental illness" and "mental impairment" that I cannot put my finger to at the moment, and so will be referable back to the proposed definitions of those terms. That may or may not accord with the use of those terms in, say, the Criminal Code for the purposes of criminal responsibility or under various acts that specifically deal with questions of mental health.

Hon GIZ WATSON: I thank the parliamentary secretary for that clarification. I can see two kinds of levels at which the issues of mental impairment or mental illness are dealt with in relation to juries. I will ask this question to seek clarification that my understanding is correct. The class of person not qualified to serve as a juror—I guess the class that will excluded—is the class of person ineligible on the basis that the person is an involuntary patient as defined in section 3 of the Mental Health Act 1996; secondly, a represented person as defined in the Guardianship and Administration Act; or, thirdly, a mentally impaired accused as defined in the Criminal Law (Mentally Impaired Accused) Act; and fourthly, a person under the Criminal Law (Mentally Impaired Accused) Act who is not mentally fit to stand trial. There are therefore four categories in which people as a class will be excluded from eligibility as a juror.

Further on, where the bill deals with the reasons for deferring jury duty for summonsed persons and excusing them for good reason, part of it also deals with people who may be mentally impaired. I note, though, that it does not seem to deal with people who have a mental illness. I realise I am asking a bit much, but I could not find anywhere else in the bill a reference to "mental illness". I guess, therefore, I am questioning the need for that definition. Perhaps others who are more familiar with the bill can indicate whether that term is used elsewhere.

Hon MICHAEL MISCHIN: I mentioned the Criminal Code a moment ago. It has been pointed out to me that the definition to be inserted for the words "mental illness" and "mental impairment" reflects the terms in the Criminal Code, so that there is now consistency.

Hon Giz Watson: Do these words in this definition reflect the words in the Criminal Code?

Hon MICHAEL MISCHIN: Yes. It is true that the range of people who are specified as having a mental impairment or those categorised under proposed section 34H(2)(d) and proposed subsection (3) will not be qualified to serve as jurors. However, under proposed section 34H(2), a person with a mental impairment can persuade a judge or a summoning officer that, by reason of their impairment, they will encounter undue hardship or serious inconvenience to them, their family or the public if they are required to perform their civic duty. Mental impairment may not be obvious unless the person actually alerts the summoning officer or the judge to it. Although a person may have an intellectual disability to some degree, it does not necessarily mean that they cannot function in society and pass themselves off as being free of any mental impairment. They may be quite capable of fulfilling their function on a jury. But it may be that the character of the mental impairment is such that it will affect their ability to absorb information, to focus on the issues of the trial, to deliberate and to return a verdict. If that sort of impairment is brought to the attention of the summoning officer or the judge and if sufficient hardship requirements are satisfied, the court would excuse them from service. But not all people in the community who suffer an intellectual disability are incapable of serving on a jury. I think that addresses part of the concern that the member had at one stage about how representative juries might be. Unless there is something glaring about the way that a person's mental impairment displays itself, there is no reason why they cannot fulfil their civic duty in this as in other ways. Likewise, depression is widely regarded as a mental illness. It may be that someone is suffering depression so profoundly that to serve on a jury for a length of time might result in undue hardship for themselves or in problems for the system or for their family. Although it is a basis, if the criteria are satisfied, for being excused from service, it does not eliminate a person from service per se. I think the honourable member would see the merit in that. The range of mental illnesses to which people are subject nowadays is very broad, but not all of them are so debilitating that they would make a person incapable of performing their civic duty or to act rationally. I am sure a number of members of this house suffer depression. Broadly speaking that is a mental illness, but it does not make them incapable of performing their function.

Hon GIZ WATSON: I have no problem with that; I think it is fair and reasonable to make an assessment about a person's mental impairment. I apologise to the Chair for skipping between different parts of the bill, but I think it is necessary to make the linkages. The provisions of proposed section 34H do not actually include mental illness, so am I to read from that, that in assessing what is a good reason for exempting, deferring or excusing someone from jury duty, if they fell into the category of having a mental illness rather than a mental impairment they will not be catered for under the new provisions?

Hon MICHAEL MISCHIN: I can answer that question now, if I may. The definition of "mental impairment" states "mental impairment means intellectual disability, mental illness, brain damage, dementia or senility". Proposed section 34H states that a basis for exclusion is the ability to show hardship in that someone has a mental impairment, which embraces not only dementia, senility, brain damage and intellectual disability but also a mental illness, which is further defined, so it falls within that.

Hon GIZ WATSON: I think I understand that now. That might have been more transparent if those linkages had somehow been made by stating it in the definitions.

Hon Michael Mischin: The definition of mental impairment includes a mental illness.

Hon GIZ WATSON: Yes. That is okay; I understand now. So the term "mental illness" will not be used as a stand-alone term in this bill; it is actually part of the definition of mental impairment?

Hon Michael Mischin: Yes.

Hon GIZ WATSON: I think that satisfies my need for clarity around that.

Clause put and passed.

Clauses 9 to 30 put and passed.

Clause 31: Section 33A replaced —

Hon GIZ WATSON: I move —

Page 18, after line 19 — To insert —

(d) the consequences for failing to attend.

During my second reading contribution I mentioned that we are looking at a change that will mean that the fine incurred by a person who ignores a summons will be significantly higher—$800, potentially. The point has been made, I think, that $800 would be considered to be quite a large fine to a considerable portion of the population. I am of the view that if the penalty is to be increased, it seems reasonable that a person who has been summonsed should be provided with that information. Clause 31 inserts proposed replacement section 33A into the Juries Act, which relates to the information to be provided to summonsed people. Proposed replacement section 33A reads as follows —

> The summoning officer must ensure that every summons issued under this Act to a person requiring attendance as a juror has in it or with it a notice informing the person of the following —
>
> (a) the manner in which a claim that he or she is not eligible or not qualified to serve as a juror may be made;
>
> (b) the grounds on which and the procedure by which he or she may apply to be excused from serving as a juror;
>
> (c) the matters in Schedule 2 that he or she is obliged to disclose to the summoning officer or the court.

This amendment is designed to make it very clear to summonsed people that significant financial penalties apply if they fail to attend. I understand that the parliamentary secretary's response will be that the intention is that people will have that information conveyed to them, but it would seem reasonable to include that in the primary legislation, rather than it being something to be dealt with either by regulations or in a procedural manual. It would be fair to provide that information to make clear to members of the community who are unlikely to be familiar with this sort of process their obligations and the consequences of a failure to comply, and Parliament should support an amendment to make that plain.

Hon MICHAEL MISCHIN: The government will not support this amendment. We appreciate the sentiment behind it, but it is already catered for under the Criminal Procedure Rules—specifically rules made in part 13 of those rules made under the Criminal Procedure Act—which refer to the Juries Act 1957 rules. Rule 54 provides that —

> For the purposes of sections 26(5) and 31, Form 15 is the prescribed form of a summons to a juror.

Form 15, which is a summons to a juror, presents a warning that —

> **If you do not attend as required you may be fined.**

So provision has already been made, and for as long as those forms have been in operation—probably since about 2005—jurors have been warned that there will be consequences. It would not be practical to include the potential amount of a fine, and it has not been to date because it was always at the discretion of the judge dealing with the recalcitrant jurors, or non-attending jurors, to set the monetary penalty, so a penalty could not be specified. The requirement of the Interpretation Act is that forms should obey the substance of those prescribed under regulations and rules, but the option is always there, should the Sheriff's Office feel it appropriate to do so, to include the monetary penalty as well as the warning as it stands; that is a matter for the sheriff to determine. But at the moment the issue is catered for and the government will not support the amendment because it is not necessary.

Hon GIZ WATSON: I thank the parliamentary secretary for that additional information. I was not proposing that the amendment include a particular sum.

Hon Michael Mischin: I know that, but I am saying that that is something that can be done if the sheriff considers it prudent to do so. The current form does not require it because it could not set a sum—that is at large and for the judge to decide—but it is always an option. The nub of it is that it is already provided for; there is a requirement in the regulations and the forms that a warning appear in a jury summons.

Hon GIZ WATSON: Perhaps then the question is: if a monetary sum will now be specified, will the form be modified to reflect that?

Hon MICHAEL MISCHIN: I am informed in fact that the draft new forms the Sheriff's Office has already prepared, which reflect any amendments, already make provision for specifying the monetary penalty.

Hon GIZ WATSON: Will the parliamentary secretary be kind enough to table the existing formula so I can look at it? I think it basically satisfies my concerns. Can he make it available so that I can see it?

Hon MICHAEL MISCHIN: If the committee is still going I might be able to get a copy and table it. At the moment we do not have a copy of the existing form or of the draft new form that has been prepared. The form prescribed in the regulations is part of the law of the land. It appears in current regulations under the Criminal Procedure Act.

Hon Giz Watson: I was interested to see a copy of it.

Hon MICHAEL MISCHIN: I understand the draft new form is under review. The Sheriff's Office has in mind to include a reference to the actual figure as the penalty. The warning will still be there; that will not change. If the member wants to see the current form, I can show her a copy of the regulations, but not the actual version posted out to people.

Amendment, by leave, withdrawn.

Clause put and passed.

Clauses 32 and 33 put and passed.

Clause 34: Part VC Division 2 inserted —

Hon GIZ WATSON: As I read it, this deals with a new division 2 in relation to excusing people. Proposed section 34E(3)(a), in relation to certificates permanently excusing people, reads —

> On issuing a certificate to a person under subsection (1), the sheriff must —
>
> (a) notify the Electoral Commissioner of that fact;

What will the Electoral Commission do in response to that? What will be the consequence of that notification?

Hon MICHAEL MISCHIN: The jurors' book is the basis for the selection of the pool. It can be seen in proposed section 34E(4). Once the Electoral Commissioner is notified under subsection (3) of the issue of the certificate, the Electoral Commissioner will ensure that the person's name does not appear on any jury list prepared under the act and submitted to the Sheriff's Office for the purpose of issuing summonses.

Hon GIZ WATSON: Am I correct in understanding that the Electoral Commissioner is the custodian of the jurors' book? Proposed section 34E(3)(b) states —

> cause the person's name to be removed from the jurors' book and omitted from any future jurors' book.

Is the Electoral Commission the body doing the causing?

Hon MICHAEL MISCHIN: The process essentially is that the electoral roll is the basis for the selection of names by the Electoral Commissioner and their compilation into a jurors' book. The book is then passed on to the sheriff. The sheriff then selects at random from the juror's book and summons the people who are to attend for jury service for particular periods of the year. In this case, if the sheriff is satisfied in accordance with proposed section 34E(1) that the person has a permanent physical disability or mental impairment and ought to permanently be excused from jury service, he will advise the Electoral Commissioner, who will exclude that person's name from the jurors' book. The sheriff will cross-check to ensure that the name has been removed from the jurors' book and that the certificates he issues are reflected in the jurors' book that is provided to him for the purposes of summonsing jurors.

Clause put and passed.

Clause 35 put and passed.

Clause 36: First, Second, Third and Fourth Schedules replaced —

Hon GIZ WATSON: I seek your indulgence, Mr Deputy Chairman (Hon Jon Ford). Clause 34 is a long clause; it inserts a lot of new provisions. Can I ask one question on that?

The DEPUTY CHAIRMAN: Yes.

Hon GIZ WATSON: That is very kind.

The DEPUTY CHAIRMAN: We are here to facilitate.

Hon GIZ WATSON: In clause 34, we touched on proposed section 34H "Deferring jury duty for summonsed people or excusing them for good reason" when we talked about mental impairment. I note that there is a list of persons who have good reason to be excused from being summonsed if they meet certain criteria. Proposed section 34H(2) states, in part —

> attendance in accordance with the summons would cause undue hardship or serious inconvenience to the person, the person's family or the general public.

Will there be any written guidelines for the sheriff's discretion in this matter and will it be a public document?

The DEPUTY CHAIRMAN: For members' information, we are on clause 36, but referring to a question relating to clause 34 in general terms.

Hon MICHAEL MISCHIN: I am informed that the sheriff has in mind the production of internal policy documents and guidelines for how the power under this proposed section is to be exercised for the benefit of officers, because they not only have a Sheriff's Office in Perth but also in each of the regional centres where District Courts and the Supreme Court convene. Those will be prepared, but at present none has been because the legislation has not passed. In any event, whether they become public documents is another matter. But, certainly, something that will provide information and achieve a level of consistency for some of the officers within the Sheriff's Office will be formulated in due course.

Hon GIZ WATSON: I move —

Page 28, after line 14 — To insert —

(c) the Clerk of the Legislative Council, Clerk of the Legislative Assembly, Deputy Clerk of the Legislative Council, Deputy Clerk of the Legislative Assembly, Clerk Assistant, Usher of the Black Rod or Sergeant-at-Arms of the Parliament of Western Australia.

This is a question of whether officers of the Parliament as a group should be excused from jury duty. I note this was a matter that the Law Reform Commission looked at in its review. It has been noted in this debate that the commission recommended at page 66 of its discussion paper that duly elected members of the Legislative Assembly or Legislative Council should remain ineligible for jury service during their term of office and for a period of five years thereafter. In its discussion paper the commission expressed the view that the exclusion should not extend, as it currently does, to the officers of the houses of Parliament. The commission noted that there is no clear definition of the "officers of Parliament". It went on to make recommendation 33 that officers of the Legislative Assembly and Legislative Council be removed from the list. Part of the problem is that lack of clear definition. I humbly suggest that if the issue of the definition had been interrogated a little more thoroughly, perhaps a different conclusion might have been reached. I have read the case put by the Clerk of the Legislative Assembly in correspondence to the Law Reform Commission and to the Attorney General with regard to the necessity for the duty to Parliament to be primary and unassailable for parliamentary officers. That is the key argument and why I was certainly persuaded of the need for this bill to be amended to at least exclude what I would describe as senior officers of the Parliament. For the workings of Parliament to be interfered with by any other executive office or judicial functions of the state starts to trespass into the areas of the privilege of Parliament.

I can understand there is less of an argument for perhaps the full suite of officers of the Parliament to be excluded from jury duty—for example, committee clerks or research officers. The argument was made that jury trials do not go for very long and so for somebody to be unavailable for their parliamentary work for a few days would not be a huge imposition. On the other hand there is a clear argument to be made that the senior officers of the Parliament should not be called on to do the duties, in this case jury duty, because their duty is to the Parliament. It is for that reason that I have suggested this amendment with a more limited group of clearly defined parliamentary officers, which I think partly addresses the concerns of the Law Reform Commission that the definition of an "officer of the Parliament" was unclear.

I am pleased that the parliamentary secretary has said the government will be supporting this amendment. I would also argue the case on pure numbers. To remove a very small number of parliamentary officers from what is hopefully going to be a greatly expanded pool of potential jurors will not have any impact on the policy intention of the bill, but it will achieve a recognition of the particular duty that senior parliamentary officers have to serve the Parliament. Therefore, I commend this amendment to the house.

Hon MICHAEL MISCHIN: For the reasons I articulated during my reply to the second reading debate, the government will support the proposed amendment and the form of words used as it allows for some certainty and clarity as to who is relieved of jury duty under the act. We will support the amendment.

Amendment put and passed.

Hon MICHAEL MISCHIN: I draw the chamber's attention to page 2 of the supplementary notice paper and a series of amendments standing my name. I move —

Page 28, line 18 — To insert after "Court" —

or an associate to any such officer;

Page 28, line 20 — To insert after "Court" —

or an associate to any such officer;

The purpose of these amendments is to reflect the intentions of the other place to exempt the associates and support staff of judicial officers and to exempt legal practitioners from jury service. These amendments propose to insert after the words "Supreme Court" and "District Court" in schedule 1, clause 2(1)(a) and (b), the words "or an associate to any such officer", being a reference to judges, auxiliary judges, commissioners, masters or registrars of the Supreme Court and judges, auxiliary judges or registrars of the District Court.

At present the provision dealing with the intentions of the other place appears at clause 2(1)(j) and (k) of the schedule. In due course I will be moving to delete those two paragraphs in favour of the greater clarity provided by including the appropriate range of officers stated in clause 2(1)(a) and (b).

Hon GIZ WATSON: Having had a look at these amendments, we are happy to support them.

Amendments put and passed.

Hon MICHAEL MISCHIN: In the same vein, I move —

Page 28, line 22 — To delete "magistrate or registrar" and insert —

magistrate, registrar or judicial support officer

The paragraph will then read, "magistrate, registrar or judicial support officer of the Magistrates Court", thus excluding those people from jury service as a matter of course.

Hon GIZ WATSON: Could the parliamentary secretary give a bit more information about the specific role of judicial support officers? My understanding is that they provide support to judicial officers and administrative assistance to users of the courts. I perhaps need some convincing that they should be excluded from jury service. Could the parliamentary secretary please indicate what specific service they provide?

Hon MICHAEL MISCHIN: Judicial support officers do essentially all the clerical and support work that would ordinarily, as I understand it, be done by an associate to a judge. They are not administrative officers who are in the clerk of courts' office; they actually work in the court and therefore act as the judge's executive officer, as it were, within the court environment. For the same reasons that one might want to exclude an associate from jury service, one would want to exclude a judicial support officer. There is the potential for them having encountered the accused person in the course of their duties in the Magistrates Court or having heard something about that person. Once again, it is a perception; it is not a reflection of their ability to do their job as a juror effectively, fairly and in accordance with the law, but the perception may be that they will bring with them some knowledge about a particular accused that would be to that accused's detriment—just the very fact that he or she has been charged previously—through recognition. Therefore, those people will be excluded from jury service at least during the course of their term of office.

Hon GIZ WATSON: I thank the parliamentary secretary. My concern is that this is a bit of a marginal area, but the Greens (WA) will support the amendment. The point was made to me that members of Parliament have two full-time equivalents to provide us with assistance and support with our research and electoral work. Those people will still obviously be in the pool of jurors. My research officer in this place certainly argues that they provide a similar level of assistance in the vital work that members of Parliament do, and the same case could be made that electorate and research officers ought to be excluded from jury service as a class. I am not pursuing that amendment, but I simply make that point. It is similar to the point about the support role of parliamentary officers in the functioning of Parliament; in the same way, I argue that our electorate staff and research staff are essential to our function as members of Parliament, and perhaps a case should have been made that they be excluded as a class as well.

Hon MICHAEL MISCHIN: Perhaps I should respond to that just to make it plain that the reason for excluding judicial support officers is not so much that they are irreplaceable in the courtroom context, but because of the perception that there may be a conflict of interest in their roles and that they may bring with them knowledge that ought not be applied to the case. Fortunately, electorate officers do not deal with criminals as a matter of course in their duties, although it is not unknown. In the event that a person may feel that they are not indifferent to the outcome of the case, there is still the opportunity to raise that as a basis for being excluded from a jury in a particular case. Therefore, if an electorate officer is summonsed for jury duty, turns up and realises that they have been dealing with a particular person in the past in the course of their electorate duties, then, of course, they can, and in fact they should, bring to the attention of the court that they know this person in a certain context and do not feel that they could do their job as a juror impartially and indifferently, or, at least, there may be a perception that they would not be able to do so. Therefore, the judge may or may not exclude the person on that basis. Judicial officers are in a different category, because we are dealing with a position that is being excluded rather than a person. Therefore, it is felt, as a matter of policy, that they fall into a totally different character. Likewise, with parliamentary officers, we are looking at the office rather than the person, for the reasons that have been articulated. But I thank the member for her support for the amendment.

Amendment put and passed.

Hon MICHAEL MISCHIN: I move —

Page 28, lines 23 and 24 — To delete the lines and insert —

(e) a judge, magistrate, registrar or judicial support officer of the Children's Court or an associate to a judge of the Court;

Once again, this amendment is to regularise the amendments made in the other place. I do not think I need to say any more about it. It simply reflects the tone of the previous amendments.

Amendment put and passed.

Hon MICHAEL MISCHIN: I move —

Page 29, lines 3 to 6 — To delete the lines.

The purpose of this amendment is to reflect the amendments that have just been made by removing paragraphs (j) and (k) which were inserted in the other place and which have now been regularised by the amendments passed in the chamber far more elegantly than was done in the other place, as one might expect! Now it is like a haiku poem, is it not?

Amendment put and passed.

Hon MICHAEL MISCHIN: I move —

Page 29, lines 9 and 10 — To delete the lines and insert —

3. Australian legal practitioners

A person who is an Australian legal practitioner.

The purpose of this amendment is to delete clause 2(3), which has the effect that legal practitioners ought be ineligible for jury service. It relates to an amendment that was inserted after debate in the other place. The wording of that amendment does not accord with Parliamentary Counsel's normal drafting practice. It currently appears as a subclause under the heading "Judicial and court officers". It is felt it ought be the subject of a discrete clause dealing with Australian legal practitioners. As part of that process we need to delete current subclause (3), reword it a little more elegantly and insert it as a new clause to division 1.

Hon GIZ WATSON: We support this amendment. I understand it is a tidying up of the way this is expressed. I might use this opportunity to ask a question of clarification. I am still not 100 per cent clear about this issue of ineligibility of legal practitioners. I understand this amendment will insert a line that says "A person who is an Australian legal practitioner." One would then be required to go back to the terms used in the act. We passed an amendment that gives a definition of "Australian legal practitioner" in section 3 amended which has the meaning given by section 5 of the Legal Profession Act 2008. That seems pretty clear. Does this apply only to lawyers currently on the roll of legal practitioners? For example, a former lawyer who decides not to renew his or her practising certificate, would that person be eligible for jury duty? Would this apply to a foreign lawyer who became an Australian citizen but has never been on the roll of legal practitioners in Australia? There are a couple of categories in which it is not clear to me whether they are eligible or whether they will be excluded as a class by this definition.

Hon MICHAEL MISCHIN: The easiest way to answer the question is to refer the honourable member to the meaning of the term "Australian legal practitioner" as provided in section 5(a) of the Legal Profession Act 2008 —

an ***Australian legal practitioner*** is an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate; …

"Australian lawyer" is defined in section 4(a) of that act as —

… a person who is admitted to the legal profession under this Act or a corresponding law; …

There may be a definition of "corresponding law" but I would have thought it embraces those in other jurisdictions in Australia or its territories. We are basically looking at a person who is admitted to the legal profession under the Legal Profession Act 2008 or a corresponding law, and who holds a recurrent local practising certificate or a current interstate practising certificate. Once the person no longer holds a current practising certificate, he or she would no longer be regarded as an Australian lawyer for the purposes of the Legal Profession Act or the Juries Act as amended.

Hon GIZ WATSON: That is very useful. It clarifies my understanding, and I appreciate that explanation.

Amendment put and passed.

Hon MICHAEL MISCHIN: I move to the next amendment, which relates to page 29, lines 12 to 33. The passing of the provision that we just dealt with renders unnecessary the separate division, division 2, covering "Certain Australian legal practitioners". As members will recall, the initial intention of the bill was to preserve an exclusion from jury service, including criminal trials, certain categories of legal practitioner; whereas it makes "other" legal practitioners available for jury pools in civil and criminal matters. By introducing a blanket exemption now—that is, an ineligibility—it is no longer necessary to exclude the specific categories of legal practitioner set out in division 2, clause 3 of the schedule.

By way of further information and comfort, government lawyers do not require a practising certificate, but under section 36(3) of the Legal Profession Act 2008 —

> A WA government lawyer engaged in government work is taken to be a local legal practitioner and an Australian legal practitioner.

They would, as a matter of course, be regarded as Australian legal practitioners for the purposes of the ineligibility we have just addressed, and would automatically, by virtue of their position, be ineligible to serve on juries. I move —

> Page 29, lines 12 to 33 — To delete the lines.

That is basically to delete all of clause 3 of division 2 of the schedule.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 37 to 44 put and passed.

Title put and passed.

Bill reported, with amendments.