



**THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA**

Project No 71

Exemption from Jury Service

WORKING PAPER

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The Law Reform Commission of Western Australia was established by the *Law Reform Commission Act 1972*.

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PREFACE

The Law Reform Commission has been asked to review the law relating to exemption from jury service.

The Commission having completed its first consideration of the matter now issues this working paper. The paper does not necessarily represent the final views of the Commission.

Comments and criticisms (with reasons where appropriate) on individual issues raised in the working paper, on the paper as a whole or any other aspect coming within the terms of reference, are invited. The Commission requests that they be submitted by 10 November 1978.

The research material on which the paper is based is at the offices of the Commission and will be made available there on request.

1. TERMS OF REFERENCE

1.1 The Commission has been asked:

"To review the present law with regard to exemption from jury service and to make proposals for establishing the principles and procedures necessary to ensure that exemption - particularly class exemption - applies only in proper cases".

2. PRESENT LAW AND PRACTICE IN WESTERN AUSTRALIA

HISTORY OF LEGISLATION

2.1 The law relating to the qualifications of jurors, their mode of selection, and the right to obtain exemption from jury service is contained principally in the *Juries Act 1957-76*.¹ This Act was based on the recommendations of a Select Committee of the Legislative Council which was appointed in September 1956 and which reported in November of the same year. The Act replaced the *Jury Act 1898* and introduced a number of important reforms into the law. In particular, it made the electoral roll the basis for general liability for jury service instead of a list compiled by the police from among those with certain property qualifications. It also gave women the right to serve as jurors.² These reforms had the result of extending liability for jury service to a much wider range of the State's population.

2.2 The Act also altered the categories of persons whose occupation was such as to enable them to claim exemption from jury service, and, in effect, significantly reduced the number of persons who could claim exemption. However, in the Commission's view, the legislation did not distinguish clearly enough between those persons who should not perform jury service on the grounds that their occupation rendered them **ineligible** for jury service and those whose occupation was such as to give them a **right to be excused** from Jury service.³

USE OF JURIES IN WESTERN AUSTRALIA

2.3 In Western Australia, juries are normally used only in criminal trials in the Supreme and District Courts.⁴

It is very seldom that a jury is empanelled in a civil trial - at the most once or twice a year. Normally, civil actions are tried by a judge alone. Juries are only used in civil actions if -

- (a) there is an allegation of fraud against a party, or

¹ The *Psychologists Registration Act 1976* also contains a provision relevant to jury service: see note 16 below.

² It also abolished special juries, composed of persons with occupational or property qualifications. These were empanelled if the judge ordered.

³ See paragraphs 4.1 to 4.23 below.

⁴ Juries are sometimes used under the *Coroners Act 1920*: see paragraphs 6.12 to 6.14 below.

- (b) the action is one for defamation, malicious prosecution, false imprisonment, seduction or breach of promise of marriage,

and a party makes application for the case to be heard by a jury.⁵

Even in these cases, the action will not be tried by a jury if the judge considers that the trial requires a prolonged examination of documents or accounts or scientific or local examination.⁶

2.4 The number of persons in a criminal jury is twelve and in a civil jury it is six.⁷

QUALIFICATION FOR JURY SERVICE

2.5 The *Juries Act 1957* lays down two grounds for general eligibility (and liability) to serve as a juror.⁸ A person who is -

- (a) 18 years old or over and less than 65 years old, and
- (b) enrolled on an electoral roll for the election of members of the Legislative Assembly,

is eligible and liable to serve as a juror at trials in the Jury District in which he or she is shown by the electoral roll to live.⁹

⁵ *Supreme Court Act 1935*, s.42.

⁶ *Ibid.* The section also gives the judge a general discretion to order an action to be tried by a jury. However, such power is seldom, if ever, exercised.

⁷ *Juries Act*, ss18 and 19.

⁸ *Ibid.*, s.4(1).

⁹ See Appendix I below for the current Jury Districts. Under the *Electoral Act 1907* (WA) residential requirements are imposed. A person cannot be enrolled as an elector unless he or she has lived -

- (a) in the Commonwealth of Australia for six months continuously;
- (b) in the State for three months continuously; and
- (c) in the relevant electoral district or subdistrict for one month continuously immediately preceding his claim for enrolment: s.17(1).

DISQUALIFICATION FROM JURY SERVICE

2.6 The *Juries Act* goes on to provide for **disqualification** from jury service in certain cases. A person is disqualified if he or she -

- (a) is not a natural born or naturalised subject of Her Majesty;¹⁰
- (b) has been convicted of a crime or misdemeanour unless he or she has received a free pardon;
- (c) is an undischarged bankrupt; or
- (d) cannot read and understand the English language.¹¹

A disqualified person is not eligible for jury service. There is, however, a saving provision to the effect that, notwithstanding any disqualification or exemption, if a person's name is in fact included in a Jurors' Book¹² he or she is liable to serve as a juror.¹³ This provision is in turn subject to any right conferred on a person to be excused from attendance as a juror.¹⁴

EXEMPTION FROM JURY SERVICE

2.7 The *Juries Act* also makes provision for *exemption* from jury service. The Act does not expressly require a person who is exempt to notify the Sheriff of that fact when he is sent a notice by the Sheriff informing him that his name is on a draft jury roll. The procedure for compiling jury rolls and Jurors' Books is outlined in Chapter 3 below.

2.8 Those whom the Act declares to be exempt from serving as jurors are -

- (a) those described in the Second Schedule to the Act (s.6 (1));
- (b) those who occupy any State office in respect to which the Governor has issued a proclamation under s.6(2) of the Act, and

¹⁰ This disqualification was carried forward from the *Jury Act 1898*, but seems to be unnecessary. Eligibility depends on being on an electoral roll, and this in turn requires that a person must be a natural born or naturalised subject of Her Majesty in Australia or elsewhere.

¹¹ s.5(1).

¹² See paragraph 3.5 below.

¹³ s.4(2)

¹⁴ See paragraph 2.15 below.

- (c) those to whom the Sheriff has issued a certificate of permanent exemption under s.14(9) of the Act.

2.9 The following describes these categories in more detail.

(a) Exemptions under the Second Schedule of the Juries Act

2.10 The Second Schedule exempts the following -

*Parliament*¹⁵

Members and officers of the Legislative Assembly.

Members and officers of the Legislative Council.

The Parliamentary Commissioner for Administrative Investigations.

Law

Judges, Stipendiary Magistrates, Judges' Associates and ushers, and the wives of persons in this class.

Legal practitioners, enrolled in the Roll of Practitioners pursuant to the *Legal Practitioners Act 1893*, and their wives.

Justices of the Peace.

Sheriff's officers and court bailiffs.

Emergency Services

Persons actually engaged on Civil Emergency Services.

Officers and members of permanent fire brigades.

*Health*¹⁶

Medical practitioners, dentists, veterinarians, nurses and chiropractors registered as such according to law, if actually practising.

Pharmaceutical chemists registered as such according to law, if actually engaged in business.

¹⁵ These subheadings are the Commission's. They do not appear in the Second Schedule, where the classes are simply listed in alphabetical order. However, the description of each class is as it appears in that Schedule.

¹⁶ Registered psychologists are now also exempt: see s.22(4) of the *Psychologists Registration Act 1976* which came into force on 21 April 1978.

Education

Professors, lecturers and the Registrar of the University of Western Australia and the academic staff and the Secretary of Murdoch University.

School masters and school teachers.

Commerce and Industry

Harbour and marine pilots.

Masters, officers and members of crews of vessels actually trading.

Mining managers and engine-drivers on mines in which not less than ten men are engaged in mining operations.

Pilots, navigators and radio operators of commercial aircraft.

Religion

Clergymen in holy orders, and persons who preach or teach in any religious congregation, but only if they follow no secular occupation except that of a school-master, and the wives of persons in this class.

Local Government

Shire Clerks and Town Clerks.

Commonwealth Public Service

Such persons as are at any time exempted by or under any Act of the Parliament of the Commonwealth.¹⁷

Infirm Persons

Persons incapacitated by disease or by infirmity of mind or body from discharging the duty of jurors.

(b) Exemptions pursuant to proclamation under s.6(2) of the *Juries Act*

2.11 The State officers so exempt are the -

Administrative and professional heads of Departments, sub-departments, Boards, Commissions, Agencies and Instrumentalities and the Fremantle Port Authority (formerly the Fremantle Harbour Trust).

Commissioner of Railways and heads of branches of the Western Australian Government Railways.

¹⁷ The relevant Commonwealth enactment is the *Jury Exemption Act 1965*, which exempts certain officers of the Commonwealth from jury service in a Federal or State or Territorial court: see paragraph 5.15 to 5.17 below.

Commissioner of Police and all persons under his direction and control.

Director of the Department of Corrections and all officers under his direction and control.

Members of the Parole Board.¹⁸

Officers under the jurisdiction of the Attorney General (excluding officers of the Electoral Department,¹⁹ Land Titles Office and Public Trust Office).

Staff of Mental Hospitals.

General staff of hospitals and homes for aged persons.

Inspectors of Mines.²⁰

Staff of the Derby Leprosarium.²¹

Doggers in the employ of the Agriculture Protection Board.²²

Employees of the Wyndham Freezing, Canning and Meat Export Works, employed at Wyndham.²³

Academic Staff and the Assistant Director (Administration and Finance) of the Western Australian Institute of Technology.²⁴

Officers of the Department for Community Welfare.²⁵

Officers and temporary employees employed in the Road Traffic Authority.²⁶

(c) Exemptions granted by the Sheriff

2.12 The Sheriff has power under s.14(9) of the *Juries Act* to grant a person a certificate of permanent exemption from serving on a jury on the ground -

¹⁸ The proclamation speaks of the Indeterminate Sentences Board, the predecessor of the Parole Board, but it applies to the Parole Board: see s.32 of the *Offenders Probation and Parole Act 1963*. A similar position exists in respect of the Director of the Department of Corrections: see s.4(2) of the *Prisons Act 1903*.

¹⁹ The Electoral Department is now under the Chief Secretary, not the Attorney General.

²⁰ All the above were exempted in 1960: see *Gazette*, (1960) pp.251 and 1609.

²¹ Exempted in 1962 (*Gazette* (1962) p.1133).

²² Exempted in 1965 (*Gazette* (1965) p.1041).

²³ Exempted in 1966 (*Gazette* (1966) p.921).

²⁴ Exempted in 1972 (*Gazette* (1972) p.915).

²⁵ Exempted in 1974 (*Gazette* (1974) p.2231).

²⁶ Exempted in 1975 (*Gazette* (1975) p.3758).

- " (a) that he is suffering from an infirmity which it appears to the Sheriff will permanently disable that person from so serving;
- (b) that he is permanently disqualified or exempt because of his age from so serving; or
- (c) that he has been convicted of a crime or misdemeanour and has not received a free pardon."

None of these classes in fact provide any additional ground of exemption. A person in class (a) would be exempt under the Second Schedule to the *Juries Act*. A person in class (b) would be one who was 65 years or more and would not be qualified to serve as a Juror in any case.²⁷ A person who has been convicted of a crime or misdemeanour (class (c)) is disqualified from serving on a jury under s.5(1) of the *Juries Act*. The provision is designed to enable the production of a certificate to take the place of proof of the relevant matters that may otherwise be required in a particular case.

RIGHT TO CANCEL LIABILITY FOR JURY SERVICE

2.13 There are special provisions in the *Juries Act* enabling a woman otherwise liable to serve as a juror to cancel her liability if she wishes to do so. Although the general qualifications for jury service are the same for women as for men, a woman who is otherwise qualified and liable to serve may cancel her liability by serving written notice to that effect on the Sheriff.²⁸ A woman who has cancelled her liability may, after the expiration of two years from the date of cancellation, render herself liable again by serving written notice to that effect on the Sheriff.²⁹

2.14 A woman also has a right to be excused from attendance as a juror at a particular trial on special grounds.³⁰

CIRCUMSTANCES IN WHICH A PERSON MAY BE EXCUSED FROM ATTENDANCE AS A JUROR IN A PARTICULAR CASE

2.15 The disqualifications and exemptions set out in paragraphs 2.5 to 2.11 above relate to the making up of the Jurors' Book³¹ for each Jury District. It is from the Jurors' Book that

²⁷ See paragraph 2.5 above.

²⁸ s.5(2). s.5(4) (a) is to the same effect. The repetition seems to be an error in drafting.

²⁹ s.5(3). s.5(4) (b) is to the same effect. The repetition seems to be an error in drafting.

³⁰ See paragraph 2.16 below.

³¹ See paragraph 3.5 below.

persons are chosen by lot to be members of a jurors' panel for a criminal or civil trial.³² The summoning officer may, "on such evidence as he deems sufficient", omit from a panel any name in the Jurors' Book, and may excuse from attendance at any criminal trial any person who has been summoned as a juror.³³ The section does not lay down any guidelines in accordance with which the summoning officer is to exercise his discretion. The Commission has been informed that in practice persons are excused on a wide variety of grounds, for example, pressure of business, family or medical reasons or because a planned holiday cannot easily be deferred. A court or judge also has power, in both civil or criminal trials, to excuse any person from attendance whose name is included in the panel.³⁴ In this case also, no grounds are specified as to the exercise of the discretion.

2.16 There is a special provision enabling a woman to be excused from attendance as a juror at a particular trial. A court or judge is required to excuse a woman if she applies for exemption because -

- (a) of the anticipated nature of the evidence or issues to be tried,
- (b) she is for medical reasons unfit to attend, or
- (c) attendance would seriously interfere with her domestic obligations,³⁵

³² See paragraphs 3.6 to 3.7 below.

³³ *Juries Act*, s.27(1).

³⁴ s.32.

³⁵ s.27(2). The provision applies both to civil and criminal trials.

3. PROCEDURE FOR COMPILING JURORS' BOOKS AND SELECTION OF JURY PANELS

3.1 In order to obtain a proper appreciation of the questions involved in devising appropriate criteria for ineligibility for, or right of excusal from, jury service, it is necessary to know in outline the procedure laid down in the *Juries Act* for compiling draft jury rolls and Jurors' Books and for selecting jury panels.

JURY ROLLS

3.2 On or about 1 November each year, the Sheriff notifies the Chief Electoral Officer of the number of jurors required for the draft jury roll for each Jury District.¹ The Chief Electoral Officer then selects by ballot the required number of names from the relevant Electoral Roll or Rolls and puts them in a list which he sends to the Sheriff before the end of the succeeding February. Before the Chief Electoral Officer conducts the ballot, he withdraws the names of those who appear not to be qualified for, or who appear to be exempted from, jury service.² These lists are the draft jury rolls for the respective Jury Districts.

3.3 The Sheriff then sends a prescribed notice to each person named in each draft jury roll stating that his or her name is on the roll. The notice also sets out the procedure by which a person may have his or her name removed from the roll on the grounds of disqualification or exemption. The notice lists the classes of persons disqualified or exempt from jury service and also contains a special notice to women advising them of their right to cancel their liability.³

3.4 A person who claims to be exempt or disqualified may send to the Sheriff before 31 March, a claim for removal of his or her name supported by a statutory declaration or a

¹ The number is that which the Sheriff estimates will be sufficient for the expected jury trials in the District, after deducting the names of those who are disqualified, or exempt, and those women who cancel their liability: s.14. In the case of those Jury Districts with a small number of people, e.g. Derby, the names of all the eligible persons in the District are included in the draft jury roll. Appendix I sets out the current Jury Districts. The Supreme Court Jury District of Perth is the Perth Metropolitan Area. In the case of towns where trials are held outside Perth, i.e. the circuit towns, the relevant Jury District is a prescribed area surrounding that town.

² This is done pursuant to s.14(2) of the *Juries Act*. A person who applies to be included in an electoral roll must give his or her age. This information is stored on the Electoral Office's computer, which is programmed to omit the names of persons 65 years or over from the list from which the ballot is conducted. The list is then culled by electoral office staff to remove the names of those who appear to be in exempt occupations, as given in the electoral roll. The name of a person whose occupation is listed as "lawyer" or "policeman" would be removed, even though he no longer was in that occupation.

³ See paragraph 2.13 above. A form for cancelling liability is included in the notice.

certificate of general exemption.⁴ The Sheriff also has power of his own motion to remove from the draft jury roll the name of a person who appears to him to be disqualified or exempt, is dead, no longer resides in the Jury District or whose address is unknown.⁵

JURORS' BOOKS

3.5 Before 1 July each year, the Sheriff sends to the jury officer of each Jury District a Jurors' Book containing the names appearing in the revised jury roll for that District. The persons whose names so appear are liable to serve on any jury empanelled for any civil or criminal trial within that Jury District until a fresh Jurors' Book is compiled the following year.⁶

JURY PANELS

3.6 At the beginning of each sitting of the Supreme and District Courts⁷ a direction is issued by a Supreme Court Judge or District Court Judge, as the case may be, to the appropriate summoning officer requiring him to summon a sufficient number of persons to attend as potential jurors for the sitting.⁸ The summoning officer chooses by lot sufficient names for a jury panel.⁹ The ratio of men to women chosen for the panel must, as far as practicable, correspond to the ratio of men and women in the Jurors' Book.¹⁰

3.7 The persons whose names appear on the panel are then summoned to attend at the appropriate time and place.¹¹

⁴ An appropriate form is included in the notice sent by the Sheriff.

⁵ s.14(8).

⁶ This is subject, of course, to any excusal from attendance in respect of a particular sitting or trial.

⁷ These take place each month in Perth, less often in circuit towns. See Appendix I for the circuit towns.

⁸ The direction is called "a precept". The maximum and minimum number of persons are usually stipulated in the precept. If not, the summoning officer must summon not less than twenty nor more than forty persons: s.23

⁹ See s.26 for the mode of conducting the ballot for a criminal sitting. Section 29 sets out the procedure for a civil trial where it is to be by a jury.

¹⁰ ss.26(2) and 29(2).

¹¹ A person summoned may be excused from attendance by the summoning officer for good reason: see paragraph 2.15 above. The court or judge may also excuse a person from attendance: *ibid*; see also paragraph 2.16 above. The Commission has been informed that if a trial is likely to be a lengthy one, it is the practice for the summoning officer to notify the persons summoned accordingly. This enables them to seek excusal if their affairs would be seriously disrupted by being chosen as a juror.

SELECTION OF A PARTICULAR JURY

3.8 To complete the picture, the actual jury is chosen by lot from those of the panel who appear at the time and place of the trial and who are not then excused from attendance. The parties have a right to challenge a certain number of persons before they take their place in the jury box.¹²

3.9 A juror is not required to attend for more than five days at the same sittings except for the purpose of finishing a part-heard case.¹³

GENERAL

3.10 Appendix II below sets out a list for 1977-1978 containing the number of persons on the draft jury roll for each Jury District and the total number of names removed by the Sheriff pursuant to claims for exemption or disqualification, or cancellations by women. The list also specifies the number on the Jurors' Books for each District, after subtracting the number of persons who have left the District and the cases where notices were unserved.

¹² If, for any reason, there is not a sufficient number of persons to make up a criminal jury, a party may "pray a tales" under which bystanders or such persons as may be found may be required to make up the number: s.52.

¹³ s.42.

4. DISCUSSION: GENERAL PRINCIPLES

GENERAL

4.1 The Commission regards it as axiomatic that the obligation to serve as a juror should be spread as widely and fairly as practicable throughout the community. A person should not be freed from the responsibility of jury service, or denied the right to serve, except for good reason. No one should be freed from jury service simply for the purpose of avoiding what might be seen as a tiresome duty, or to avoid some minor inconvenience to the person concerned or the public.

4.2 In the Commission's view, a person should be denied the right to serve on a jury, or freed from the responsibility of jury service, only if he or she -

- (a) is not a fit person to serve as a juror,
- (b) is involved in the administration of law and justice to such an extent as to make it inappropriate that he or she should serve as a juror,
- (c) performs duties of such a nature that interruption to them for jury service would cause serious inconvenience or undue personal hardship to any other person,
- (d) would suffer undue personal hardship if required to serve as a juror.

4.3 As pointed out above, the **Juries Act** draws a distinction between those **disqualified** for jury service and those who are **exempt** from jury service.¹

4.4 The class of disqualified persons consists of those who are not British subjects, or have been convicted of a crime or misdemeanour, or are undischarged bankrupts or who cannot understand English. Although one might not agree with the appropriateness of all these criteria, the principle seems clear. These persons are considered to be unable properly to

¹ See paragraph 2.6 to 2.12 above. The Act also empowers the summoning officer or judge to excuse a person from attendance at a particular sitting or trial: see paragraphs 2.15 and 2.16 above. The question of the right of a woman to cancel her liability to serve is discussed in paragraphs 6.1 to 6.8 below.

discharge the responsibilities of a juror, or at any rate not to be free from suspicion that they might not properly discharge them. They are therefore **disqualified** from serving on a jury. This corresponds to category (a) in paragraph 4.2 above.

4.5 The rationale behind the category of **exempted** persons is, however, not so clear. Some members seem to have been included because their work is too important to be interrupted for jury service. Indeed, the ground on which the Governor can exempt the holders of certain State offices is that the "interruption of the discharge of those duties would result in serious inconvenience to the public or any section of the public".² This is also no doubt the reason why practising doctors, dentists and nurses are exempt under the Second Schedule of the *Juries Act*.

4.6 However, not all the exemptions under the Second Schedule can be explained in this way. For example, the Schedule exempts all legal practitioners enrolled in the Roll of Practitioners under the *Legal Practitioners Act 1893*. There is no condition that they must be actually practising, so that the reason could not have been that of the undesirability of interrupting their work for jury service. It is also clear that the wives of legal practitioners, who are also exempt under the Second Schedule, cannot have been included for that reason. The same consideration applies to the wives of clergymen and of Judges and Magistrates and court officials, who have also been granted exemption.³

4.7 The present list appears to include both those involved in the administration of law and justice (category (b) in paragraph 4.2 above), and those whose occupation is such as would cause inconvenience or hardship to others if they were called for jury service (category (c) in paragraph 4.2 above). The Commission considers that it is confusing, to deal with these two categories in the one list. Different considerations apply to each, which require them to be treated separately.⁴

² *Juries Act*, s.6(2). See paragraph 2.11 above.

³ See paragraph 2.10 above. The Second Schedule also exempts persons incapacitated by mental or body infirmity from discharging the duty of jurors. Clearly this is a separate reason from either involvement in the administration of law and justice or importance of occupation.

⁴ Persons in category (d) in paragraph 4.2 above would be provided for by the continuation of the power of the summoning officer and the judge to grant excusal from attendance as a juror in a particular case: see paragraph 6.9 below.

4.8 The two categories have been separated in the legislation on juries in England, New South Wales and Victoria.⁵ The legislation in these jurisdictions appears in this respect to have been based on recommendations of an English Departmental Committee on Jury Service under the chairmanship of the Rt. Hon. Lord Morris of Borth-y-Gest, which reported in 1965.⁶

MORRIS COMMITTEE'S RECOMMENDATIONS

4.9 The Morris Committee recommended that the concept of disqualification should remain in the English legislation dealing with juries, but that the use of the term "exemption" should be discontinued and that in its place the following categories should be statutorily established -⁷

- (a) Persons who should be **ineligible** for jury service, either because of their connection with the administration of law and justice, or for other reasons.
- (b) Persons who should have an absolute right **to be excused** from jury service if they choose to exercise it.

4.10 The Committee also recommended that courts and summoning officers should continue to be empowered to excuse persons from attendance in the case of particular sittings where good reason is shown.⁸

4.11 The following paragraphs set out the Morris Committee's views as to ineligibility and the right to be excused.

Ineligibility

(a) Connection with the administration of law and justice

4.12 The Morris Committee stated -⁹

⁵ *Juries Act 1974* (Eng); *Jury Act 1977* (NSW); *Juries Act 1967* (Vic). Appendix IV sets out the classes of person included in each category in those jurisdictions.

⁶ Cmnd. 2627. This Committee is hereinafter called "the Morris Committee".

⁷ Morris Committee Report, paragraphs 101 to 152

⁸ *Ibid.*, paragraphs 102, 245 to 247.

⁹ *Ibid.*, paragraph 103.

"If juries are to continue to command public confidence it is essential that they should manifestly represent an impartial and lay element in the workings of the courts. It follows that all those whose work is connected with the detection of crime and the enforcement of law and order must be excluded, as must those who professionally practise the law, or whose work is concerned with the functioning of the courts".

Following this principle, the Committee recommended that all those connected with the courts (judges, magistrates, court staff, lawyers) or with law enforcement (police, prison or probation officers) should be ineligible.¹⁰

Ineligibility after retirement

4.13 A view had been expressed to the Morris Committee that such persons should continue to be ineligible even after retirement, on the ground that the capacity to influence a jury unduly by the possession of legal knowledge or experience did not cease on retirement. However, the Committee considered that a recommendation of permanent ineligibility would be unnecessarily wide in its scope, for it would mean, for example, that someone would be excluded merely because he had thirty years before been employed for a short period as a constable.¹¹

4.14 The Committee, while acknowledging that any recommendation on this subject was bound to be arbitrary, recommended that the ineligibility of members of the prescribed occupations should continue for ten years after ceasing to follow the occupation.

Should ineligibility extend to spouses?

4.15 It was suggested to the Morris Committee that the attitude of mind of persons who were themselves ineligible was likely to be shared by their spouses, who should therefore also be ineligible.

4.16 However, the Committee was reluctant to recommend that ineligibility should extend so far. It acknowledged that any person whose spouse was connected with the case should bring that fact to the attention of the court and that, equally, it would be undesirable for the spouse of a member of the legal profession to serve on a jury if he or she knew the judge

¹⁰ Ibid., paragraph 105.

¹¹ Ibid., paragraph 113.

trying the case or any of the barristers or solicitors connected with it. This, however, should be a ground for excusal in a particular case, rather than for general ineligibility.

(b) Others who should be ineligible

Ministers of religion

4.17 The Morris Committee considered that there were certain attributes of the position of ministers of religion which made it appropriate that they should be ineligible.¹²

4.18 The Committee said -¹³

"Various considerations have been mentioned to us. A clergyman on a jury might be in a relation of pastoral responsibility, perhaps even as a confessor, towards a parishioner who was involved in the case. There is also the consideration that it would be embarrassing for the clergy to be arbiters in criminal cases, since their calling would incline them to compassion and they might feel it difficult to consider the claims of justice alone. Monks and nuns, particularly those in enclosed orders, would almost certainly lack the necessary experience for service on a jury, and it would be wrong to require them to come out into the world for that purpose".

4.19 The Committee said that, without expressing a view on every aspect of the matter, it was satisfied that it was desirable to recommend that ministers of religion, whether or not they had charge of a congregation, should be ineligible for service.

The physically and mentally handicapped

4.20 The Morris Committee considered that there was one other group which should be ineligible, namely those with physical or mental handicaps of such a nature as to make them incapable of carrying out the duties of jurors.¹⁴

Excusal as of right

4.21 The Morris Committee's general approach was that entitlement to excusal as of right should be restricted as much as possible. It said:¹⁵

¹² The *Juries Act* of Western Australia exempts such persons: see paragraph 2.10 above.

¹³ Morris Committee Report, paragraph 120.

¹⁴ Report, paragraphs 122 to 128.

"We recognise that our recommendations will disappoint many who think that their duties and responsibilities are of such importance that they should not be required to serve. But it seems to us that since jury service is in general a responsibility of citizenship, it would be unfair to those who are not given special treatment to lengthen more than is clearly necessary the list of those who are.

In a community as highly organised as ours it is extremely difficult to draw a line between those whose work is so crucial that it would be against the public interest to compel them to serve as jurors, and those whose work does not fall into this category. Persuasive arguments can be advanced for granting entitlement to excusal as of right to a large number of occupations. It must be remembered, however, that in most occupations arrangements are made to deal with the unavoidable and temporary absence of individuals. Furthermore, the fact that the members of an occupation are not in general entitled to be excused as of right need not prevent an individual member of that occupation from making out a convincing argument on a particular occasion why the summoning officer should exercise his discretionary power to grant excusal for good reason.

....

Entitlement to excusal as of right should be granted to an occupation only where it is in the public interest on one of two grounds: first, because of the special and personal duties to the state of the individual members of the occupation; second, because of the special and personal responsibilities of individual members of the occupation for the immediate relief of pain or suffering".

4.22 In the result, the Committee recommended¹⁶ that only the following should be entitled to excusal as of right -

Members and officers of Parliament.

Members of the regular armed forces.

Practising members of the medical and associated professions or occupations (doctors, dentists, nurses, midwives, veterinarians, chemists).

CONCLUSION

4.23 The Commission's provisional view is that the Morris Committee's approach is essentially correct, and should be applied in this State. There may, of course, be differences of opinion as to the precise application of that approach in the Western Australian context. In the following chapters the Commission makes suggestions as to how the principles set out by the Morris Committee should be applied in this State, with a view to promoting comment.

¹⁵ Ibid., paragraphs 146 and 147.

¹⁶ Ibid., paragraphs 149 and 150.

5. DISCUSSION: APPLICATION OF PRINCIPLES

GENERAL

5.1 Although the Select Committee of the Legislative Council referred to in paragraph 2.1 above made recommendations which resulted in a reduction in the number of persons exempt from jury service, it does not appear to have paid specific attention to the question of the appropriate criteria for deciding whether a person should be freed from jury service or denied the right to serve. Discussion in Parliament of the Second Schedule to the Juries Bill focused on occupations which were considered to be too important to be disrupted for jury service.¹ The question of ineligibility on the ground that an occupation was connected with the administration of law and justice does not appear to have been raised.

5.2 As foreshadowed above, the Commission's provisional view is that the distinction drawn by the Morris Committee in England between those who should be **ineligible** for jury service, and those who should have a **right to be excused**, should be adopted and applied in the *Juries Act* of this State.

5.3 The Commission also considers that more emphasis should be placed upon the power of the summoning officer and the court or judge to grant excusal from attendance in the case of a particular sitting or trial, and that the legislation should lay down guidelines for the exercise of this power.² Such guidelines have been laid down in the *Juries Act 1967* of Victoria, though not necessarily in a form appropriate for adoption in this State. The Victorian Act provides that the Sheriff may excuse a person on proof that:

"...by reason of any illness or incapacity or any other matter of special urgency or importance..."

he or she ought to be excused.³ A similar power is given to the court or judge.⁴

¹ W.A. *Parl. Deb.* (1957), 784-786 (Assembly); 1009, 1998-2000, 2586 (Council).

² The only guidelines laid down at present are those in relation to an application for excusal by a woman in the case of a particular trial: see paragraph 2.16 above.

³ *Juries Act 1967* (Vic), s.13(1).

⁴ *Ibid.*, s.13(2)

5.4 Appropriate guidelines for the summoning officer or court to follow would enable the list of those entitled to excusal as of right to be reduced to an absolute minimum. A person could be reasonably sure that, although he could not insist on his name being omitted from the Jurors' Book for the ensuing year, he would in fact be excused from jury service at a particular sitting if he was in an important occupation and a replacement could not be obtained or other arrangements made.

5.5 The Commission has studied the existing exemptions⁵ from jury service in this State and in what follows makes certain suggestions for change. The Commission emphasises that the suggestions are tentative only and will be reviewed in the light of the comments received.

INELIGIBILITY

Suggested list of ineligible persons

5.6 The Commission suggests that the following should be **ineligible** for jury service -

Parliament

Members and officers of the Legislative Assembly.

Members and officers of the Legislative Council.

The Parliamentary Commissioner for Administrative Investigations.

Law

Judges, Stipendiary Magistrates, Judges' Associates and ushers.

Justices of the Peace.

Sheriff's officers and court bailiffs.

Legal practitioners, enrolled in the Roll of Practitioners pursuant to the *Legal Practitioners Act 1893*.

Government

The Commissioner of Police and all persons under his direction and control.

⁵ See paragraphs 2.7 to 2.12 above.

The Director of the Department of Corrections and all officers under his direction and control.

Members of the Parole Board.

Officers under the jurisdiction of the Attorney General (excluding officers of the Land Titles Office and Public Trust Office).

Officers of the Department for Community Welfare.⁶

Officers and temporary employees employed in the Road Traffic Authority.

5.7 All these are at present exempt either under the Second Schedule of the *Juries Act* or under a proclamation of the Governor pursuant to s.6(2) of the *Juries Act*. The ground of their proposed **ineligibility** is that they are involved in the administration of law and justice to such an extent as to make it inappropriate that they should serve on a jury, even if they wished to do so. Members of Parliament enact laws that are considered by the courts, and the other classes are involved in one way or another in the administration of those laws, particularly in the criminal sphere. As the Morris Committee said:⁷

"If juries are to continue to command public confidence it is essential that they should manifestly represent an impartial and lay element in the workings of the courts".

5.8 The occupations listed under "Government" in paragraph 5.6 above appear at present in those exempted under s.6(2) of the *Juries Act*.⁸ However, under that provision the Governor has power to exempt only if he considers that interruption of the discharge of the officer's duties for jury service would result in serious public inconvenience. It is most unlikely that interruption of the duties of a particular temporary employee of the Road Traffic Authority or junior officer of the Crown Law Department, for example, would result in serious public inconvenience. The reason these persons should not serve on a jury is because of their connection with the administration of law and justice.

5.9 The English Morris Committee recommended that ineligibility on the ground of occupation should extend for a certain period after the person concerned had ceased to be

⁶ Because the Children's Court is administered in that Department.

⁷ See paragraph 4.12 above. The Morris Committee considered that members of Parliament should not be ineligible, but entitled to excusal as of right. As far as Western Australian members of Parliament are concerned, if it is considered undesirable that they be rendered ineligible for jury service, the Commission suggests that they should be entitled to excusal as of right: see paragraph 5.18 below.

⁸ See paragraph 2.11 above.

employed in that occupation.⁹ However, under the present *Juries Act*, exemption does not extend beyond a person's present employment, and the Commission is unaware that any difficulties have arisen because of it. Comment is welcomed.

Ministers of religion

5.10 At present, the Second Schedule of the *Juries Act* exempts:

"Clergymen in holy orders, and persons who preach or teach in any religious congregation, but only if they follow no secular occupation except that of a schoolmaster...".

5.11 The English Morris Committee recommended that ministers of religion should be ineligible for jury service.¹⁰ The Commission is, however, not convinced that those who follow a religious vocation should be ineligible. It shares the view of a member of the Western Australian Legislative Assembly who, when the Juries Bill was being debated in 1957, said that he could not imagine a better person serving on a jury than a clergyman with his understanding of human problems.¹¹

5.12 The Commission suggests accordingly that the occupation of minister of religion (however defined) should not render a person ineligible for jury service. However, because of the circumstances in which the relevant duties are normally performed, it would seem desirable that such persons should be entitled to excusal as of right.¹² The Commission welcomes comment.

Should ineligibility also extend to spouse?

5.13 At present, the wives of ministers of religion, judges, magistrates, judges' associates, ushers and legal practitioners are exempt under the Second Schedule of the *Juries Act*. The Juries Bill as originally introduced into Parliament in 1957 did not contain an exemption for wives of any of these persons except ministers of religion. The Second Schedule was

⁹ See paragraph 4.13 above. This was given effect to in the *Juries Act 1974* (Eng). Ineligibility for judges and court officials is lifelong. For others, such as police, it is ten years after ceasing to be in the relevant occupation: see Schedule I.

¹⁰ See paragraphs 4.17 to 4.19 above.

¹¹ W.A. *Parl. Deb.* (1957) 785. The member was Mr C.W.M. Court, as he then was.

¹² See paragraph 5.18 below.

amended in the Legislative Council to include wives in the other cases. There was little discussion in the Council as to the reason for exempting them, except that some members felt that it was incongruous to call upon the wives of judges, magistrates and court officials for jury service.¹³ However, it is not clear that it would have been incongruous to have made them liable for jury service, particularly since exemption was not extended to wives of members of Parliament or justices of the peace, who could be seen as having an equally good claim. The Commission is inclined to consider that the view put forward by the Morris Committee¹⁴ is the correct one, and that ineligibility of a person should not extend to his or her spouse. If nevertheless the marriage partners of certain persons are to be made ineligible for jury service, ineligibility should extend to husbands as well as wives.

Other classes

Mentally or bodily incapacitated persons

5.14 At present, the *Juries Act* exempts "persons incapacitated by disease or by infirmity, of mind or body, from discharging the duty of jurors".¹⁵ Clearly such persons should not serve on a jury and this also should be a ground of ineligibility.

Commonwealth officers

5.15 Part II of the Second Schedule of the *Juries Act* exempts "such persons as are at any time exempted by or under any Act of the Parliament of the Commonwealth". The relevant Commonwealth legislation is the *Jury Exemption Act 1965*, which replaced earlier legislation enacted in 1905. It exempts two classes of persons holding office under the Commonwealth from jury service in Federal and State Courts.¹⁶

5.16 The first class consists of the holders of offices listed in a Schedule to the Act, and includes the Governor General, members of the Commonwealth Parliament, Commonwealth Judges, Commonwealth Police Officers and members of the Defence Forces. The second class consists of the holders of offices listed in regulations made under that Act.¹⁷ In addition

¹³ W.A. *Parl. Deb.* (1957) at 1998.

¹⁴ See paragraph 4.16 above. The *Juries Act 1974* (Eng) does not extend ineligibility to spouses.

¹⁵ Second Schedule, Part I.

¹⁶ The Act provides that a person in the list "shall not be summoned to serve as a juror".

¹⁷ SR 1970/131; 1971/73 and 1972/61.

to listing a number of specific offices, the regulations exempt from jury service all persons in the First or Second Division of the Commonwealth Public Service.¹⁸ Some exemptions seem to have been made because of the importance of the duties concerned, others on the basis of involvement in the administration of law and justice.

5.17 If the *Jury Exemption Act 1965* (Cwth) is within the power¹⁹ of the Commonwealth Parliament to enact, there would seem to be no legal reason for the *Juries Act* of this State also to exempt the holders of these Commonwealth offices. Legislation of the other States varies on this point. The *Juries Act 1967* of Victoria contains no reference to persons exempted under Commonwealth legislation. On the other hand, the *Jury Act 1977* of New South Wales expressly renders them ineligible for jury service.²⁰ The Commission suggests that the course adopted in New South Wales is to be preferred, since the Commonwealth officers concerned would then continue to be ineligible for jury service, regardless of the validity of the Commonwealth Act. Specific reference to them would also be of practical assistance to the Sheriff and summoning officers.

EXCUSAL AS OF RIGHT

5.18 The basis for excusal as of right is whether the duties of the person concerned are such that interruption to them would unduly inconvenience other persons. The Commission has studied the classes of person who are at present exempt,²¹ and suggests that the following should be entitled to be excused from jury service -

Emergency Services

Persons actually engaged on Civil Emergency Services.

Officers and members of permanent fire brigades.

¹⁸ The Regulations distinguish between liability for jury service in different States. In New South Wales all officers of the Third and Fourth Division of the Commonwealth Public Service are also exempt. In Western Australia, exemption is given only to certain officers in those divisions.

¹⁹ The most relevant head of power would seem to be that in s.51(xxxix) of the Constitution, which empowers the Commonwealth Parliament to make laws with respect to "Matters incidental to the execution of any power vested by this Constitution in the Parliament...or in the Government of the Commonwealth ... or in any department or officer of the Commonwealth".

²⁰ The Commission has been informed by the Parliamentary Counsel's office of New South Wales that specific reference was made to them both because of possible doubt as to the constitutional validity of the Commonwealth Act, and to ensure that the category was not overlooked by those called on to administer the New South Wales Act.

²¹ See paragraphs 2.10 to 2.11 and note 16, ch. 2 above.

Health

Medical practitioners, dentists, veterinarians, psychologists, nurses and chiropractors registered as such according to law, if actually practising.

Pharmaceutical chemists registered as such according to law, if actually engaged in business.

Staff of the Derby Leprosarium.

Staff of mental hospitals.

General staff of hospitals and homes for aged persons.

Commerce and Industry

Harbour and marine pilots.

Masters, officers and members of crews of vessels actually trading.

Inspectors of Mines.

Mining managers and engine-drivers on mines in which not less than ten men are engaged in mining operations.

Pilots, navigators and radio operators of commercial aircraft.

Family

Pregnant women.

Persons who have the full-time care of children under the age of 14 years or of persons who are aged or in ill-health.

Religion

Ministers of religion.²² (This is intended as a general description only. Comments are invited on how precisely the class should be defined).

5.19 Although the Commission has compiled this list broadly in accordance with the principles set out by the English Morris Committee,²³ it has included a wider range of persons than that suggested by the Morris Committee in the English context. In particular, the Commission has not followed the Morris Committee in including the persons listed under the subheading "Family". No doubt it was considered in England that the discretion given a summoning officer to excuse from attendance for good cause in a particular case was

²² See paragraphs 5.10 to 5.12 above.

²³ See paragraph 4.21 above.

sufficient protection for those persons. However, the Commission is provisionally of the view that it would be preferable to give them an absolute right to be excused. This view is in accordance with the approach taken in the New South Wales and Victorian legislation.²⁴ The Commission suggests below²⁵ that the present right given to women to cancel their liability should be abolished. If this were to be done, it would seem desirable to enact appropriate provisions to take its place.

5.20 The list suggested in paragraph 5.18 above does not include the following who are presently exempt -

Professors, lecturers and the Registrar of the University of Western Australia, the academic staff and Secretary of Murdoch University and the academic staff and the Assistant Director (Administration and Finance) of the Western Australian Institute of Technology.

School masters and school teachers.

Shire clerks and Town clerks.

Administrative and professional heads of departments, sub-departments, Boards, Commissions, Agencies and Instrumentalities and the Fremantle Port Authority.

The Commissioner of Railways and heads of branches of Westrail.

Doggers in the employ of the Agriculture Protection Board.

Employees of the Wyndham Freezing, Canning and Meat Export Works, employed at Wyndham.

5.21 In most of these cases, the jury system would be enhanced if the persons concerned served on juries. One possible criticism of the present system is that a number of persons of education and experience are exempt from jury service. This is unavoidable where the relevant occupation is so connected with the administration of law and justice as to make it improper for those in that occupation to serve. However, in other cases the only ground of exemption is the importance of the duties being performed by that person.

5.22 The Commission suggests that whatever difficulties may exist in these cases could be overcome by enacting a provision ensuring that summoning officers exercised their power

²⁴ *Jury Act 1977* (NSW), Schedule 3, *Juries Act 1967* (Vic), Schedule 4.

²⁵ See paragraph 6.6 below.

liberally to excuse from attendance as a juror in a particular case. A person in an important occupation may nevertheless be able to serve on a jury without causing serious inconvenience to the public. He, or his employer, may be able to make satisfactory arrangements for someone else to fulfil those duties temporarily, or he may be on leave and therefore available.

5.23 The chances of actually being called for jury service are not great. There are about 440,000 electors on the General Assembly rolls for the Perth Metropolitan area. As Appendix II shows, there were 5,346 names in the Jurors' Book for the Perth Supreme Court District in 1977-78, so that the chances of an elector's name being included in the Perth Jurors' Book is about 1 in 82. Not all those whose names appear in a Jurors' Book are summoned for jury service. The Sheriff has informed the Commission that 4,266 persons were summoned for jury service in respect of the 150 jury trials held in Perth in 1977 (see Appendix III). Accordingly, the chances of a person whose name appears on a Perth electoral roll actually being summoned to serve on a jury is about 1 in 100.

5.24 It is true that in remote circuit towns, the chances of being included in the Jurors' Book for the corresponding Jury District are higher than in Perth.²⁶ However, as against this, the number of jury trials in those towns is much smaller.²⁷ Nevertheless, difficulties have sometimes been caused when an unduly high proportion of persons in the one occupation are summoned for jury service at the same time. Such a difficulty occurred in Wyndham when a number of men engaged in slaughter operations at the Wyndham Freezing, Canning and Meat Export Works were called for jury service there. The company's operations were affected during the period they were absent. It was for this reason that employees of the Wyndham Freezing Works were exempted from jury service.²⁸ Wyndham ceased to be a circuit town in May 1977,²⁹ trials in the area being now held at Kununurra. However, employees of the Wyndham Freezing Works may still be summoned for jury service, since Wyndham is just within the Kununurra Jury District.³⁰

5.25 The Commission suggests that, instead of giving members of certain occupations residing in remote circuit towns an absolute right to be excused, it would be preferable to

²⁶ In these circuit towns, e.g. Kununurra, the draft jurors' roll is made up of all the electors residing in that Jury District. This is authorised under s.14(1a) of the *Juries Act 1957*.

²⁷ See Appendix III below.

²⁸ See paragraph 2.11 above.

²⁹ Proclamation in *Gazette* (1977), 1634.

³⁰ Depending on where they live, whether they are on the relevant electoral roll and are otherwise qualified.

ensure that the summoning officer had sufficiently wide powers to excuse from attendance in the case of particular sittings. If the ballot for the jury panel brought up a number of persons in the one occupation, this could be advanced as a ground for the summoning officer to excuse at least some of them from attendance.

5.26 An administrative disadvantage of reducing the number of persons who can claim excusal as of right is that the summoning officer would be required to send out more summonses for a jury panel than he does now, to take account of the greater number of people who would be able to apply successfully to be excused from jury service. It would also require him to spend more time in considering applications for excusal. The Commission considers, however, that the increased administrative inconvenience would be more than balanced by the availability for jury service of some of those at present exempt. The obligation to serve would not only be spread more fairly throughout the community, but the average educational standard of jurors would also be raised, because those at present exempt are generally better educated than the average.³¹

³¹ See paragraphs 2.10 to 2.11 above.

6. OTHER IMPORTANT MATTERS

RIGHT TO CANCEL LIABILITY FOR JURY SERVICE

6.1 Unlike a man, a woman has an absolute right to cancel her liability for jury service by serving on the Sheriff a notice to that effect. If she does so, she becomes ineligible for jury service but may, after two years, re-establish her liability by serving on the Sheriff a notice to that effect.

6.2 The Select Committee of the Legislative Council in 1956,¹ after having heard evidence from women's organisations and individual women, recommended not only that women should be able to serve as jurors, but should be obliged to do so in the same way as men, having regard to whatever maternal duties they may have.

6.3 The Committee accordingly recommended that:

" ..any amending legislation should provide that any woman should be excused from attendance upon being summoned as a juror if she has a child under the age of fourteen years and desires to be excused for that reason or for any other valid reason whatsoever which she might advance to the summoning officer, the court or judge, such reason being in the opinion of the summoning officer, the court or judge, a reasonable one for applying for exclusion".

6.4 However, the Bill as introduced into Parliament contained the provision granting women an absolute right to cancel liability for jury service. The Hon. A.F. Griffith (as he then was), who had been the Chairman of the Select Committee, endeavoured unsuccessfully to obtain an amendment to the Bill along the lines of the Select Committee's recommendations.

6.5 The Commission suggests that it may be appropriate to re-examine the existing rights and liabilities of women in regard to jury service.²

6.6 The Commission considers that the law as to jury service should neither discriminate against women nor favour them, and is provisionally of the view that the section which permits a woman to cancel her liability for jury service should be repealed.

¹ See paragraph 2.1 above.

² There is at present a Juries Act Amendment Bill before Parliament which was introduced into the Legislative Council by the Hon. G.S. Vaughan, a member of the Opposition. The Bill seeks to remove from the *Juries Act* all provisions which give special concessions to women.

6.7 The Commission does not consider, however, that it would be satisfactory to enact instead a provision along the lines of that proposed by the Select Committee of the Legislative Council. That proposal would be applicable only at the stage when a woman is summoned for jury service in a particular case. It would not enable her to be excused at the time the relevant Jurors' Book was being made up for the ensuing year. The proposal would also continue to discriminate in that it would permit a woman to apply for excusal specifically on the ground that she was caring for a child under 14 years, but would not enable a man to do so, even though he might be living apart from his wife, or divorced, and have the custody of the children.³

6.8 The Commission suggests it would be preferable to include persons who have the full-time care of children in the list of those who are entitled to be excused from jury service. This would enable a person, whether a man or woman, who fell within that class to require his or her name to be excluded from the Jurors' Book for the ensuing year. Such a provision would not cover the case of a pregnant woman, or that of a person who has the full-time care of a person who is aged or in ill-health. These categories would require separate provision. The Commission has already suggested that this be done.⁴

POWER TO EXCUSE PERSONS FROM ATTENDANCE IN A PARTICULAR CASE

6.9 Although summoning officers and judges have a discretion to excuse persons from attendance as jurors in particular cases, the *Juries Act* does not provide any guidelines for the exercise of this discretion.⁵ As has already been foreshadowed, the Commission suggests that suitable statutory guidelines be enacted. This would assist the summoning officer or judge in determining the matter and also help the applicant in framing his or her case for excusal. The Victorian provision referred to in paragraph 5.3 may be suitable, possibly with an addition expressly enabling excusal to be granted because of the nature of the applicant's duties.

³ A man would, of course, be able to apply to the summoning officer for excusal from attendance at a particular sitting under the general discretion given that officer to excuse a person for good reason.

⁴ See paragraph 5.18 above under the subheading, "Family".

⁵ An exception exists in the case of a woman called for jury service: see paragraph 2.16 above. The Commission suggests that this provision be repealed if its suggestions in paragraphs 6.6 and 68 are adopted.

ORDERS IN COUNCIL

6.10 At present, the *Juries Act* empowers the Governor to exempt the holders of State offices from jury service.⁶ However, this power is exercisable only in respect of an office which is so important that serious disruption would be caused if a holder of it were required to serve as a juror.

6.11 There is at present no power to exempt the holder of an office because of his involvement in the administration of law and justice. The Commission is provisionally of the view that, if its suggestion that a separate category of ineligibility be established is adopted, the Governor should also be empowered to add or to subtract from that category. This would enable him to include a newly created office and so avoid the necessity of an amending Act.

CORONERS' JURIES

6.12 The *Coroners Act* also makes provision for juries in certain cases. A coroner is to have an inquest taken by a jury (consisting of three persons⁷) if -

- (a) the inquest is on the body of a person whose death has been caused by an explosion or accident -
 - (i) in or about a mine to which the *Mines Regulation Act 1946*, or the *Coal Mines Regulation Act 1946*, applies; or
 - (ii) in or about a factory to which the *Factories and Shops Act 1963* applies;
- (b) the coroner considers it desirable to have a jury;
or
- (c) in any special case the Attorney General so directs.

In practice it is unusual for a jury to be summoned in cases other than those involving deaths in mines or factories.

⁶ See paragraph 2.11 above.

⁷ *Coroners Act*, s.30. There are from three to six coroners' juries empanelled every year.

6.13 A coroner's jury is summoned by a member of the police force on the instructions of the coroner.⁸ This is done by the police officer choosing persons who have had experience in the class of mining or factory work concerned. Section 34 of the *Coroners Act* provides that the following are not liable to be summoned -

- (a) Persons who under the provisions of the *Juries Act 1957* are exempt from serving as jurors.
- (b) Persons who are exempt from serving as jurors under Commonwealth law.

6.14 The Commission considers that, since a coroner's jury could return a verdict upon which the coroner could found an order that a person be committed for trial, the classes of person who should be ineligible for jury service in respect of criminal and civil trials should also be ineligible in respect of coroners' juries.⁹ There also seems no reason why the classes of person who should have a right of excusal in respect of criminal and civil trials should not also be entitled to be excused from service on a coroner's jury.

⁸ Ibid., s.28.

⁹ This would be in addition to any other reason for ineligibility laid down in the *Coroners Act*: see, for example, s.32.

7. QUESTIONS AT ISSUE

7.1 The Commission would welcome comment on the following questions, or any other questions arising out of the terms of reference -

- (1) (a) Should the concept of exemption from jury service be replaced by the concepts of ineligibility and excusal as of right?
(paragraphs 4.9, 4.23 and 5.3)
- (b) If so, what should be the grounds of ineligibility and excusal as of right, and what classes of person should be ineligible or be entitled to excusal as of right?
(paragraphs 4.12, 4.21, 5.6 to 5.17, 5.18 to 5.26)
- (c) If the present concept of exemption is to remain, what should be the ground or grounds of exemption and what classes of person should be exempt?

- (2) What should be the position of a woman's liability for jury service?
(paragraphs 6.1 to 6.8)

- (3) Should the *Juries Act* be amended to provide guidelines for the summoning officer and the judge to exercise their power to excuse from attendance in the case of a particular sitting or trial?
(paragraph 6.9)

- (4) Should the Governor have a general power to proclaim a class of person to be ineligible from jury service or entitled to excusal as of right?
(paragraphs 6.10 to 6.11)

- (5) Should the proposed grounds of ineligibility and excusal as of right also apply to coroners' juries?
(paragraphs 6.12 to 6.14)

APPENDIX I

JURY DISTRICTS*

Location of Court	Jury District
Perth	The whole of the Assembly Districts comprised within the Metropolitan Area described in the Schedule to the <i>Electoral Districts Act, 1947-1975</i> pursuant to section 4 of that Act.
Albany	The whole of the Assembly District of Albany and that part of the Assembly District of Stirling within a radius of 35 kilometres from the Albany Court House.
Broome	That part of the Kimberley Assembly District within a radius of 80 kilometres from the Broome Court House.
Bunbury	The whole of the Assembly District of Bunbury and those parts of the Assembly Districts of Collie, Vasse and Wellington within a radius of 35 kilometres from the Bunbury Court House.
Carnarvon	That part of the Gascoyne Assembly District within a radius of 80 kilometres from the Carnarvon Court House.
Derby	That part of the Kimberley Assembly District within a radius of 80 kilometres from the Derby Court House.
Geraldton	Those parts of the Assembly Districts of Geraldton and Greenough within a radius of 35 kilometres from the Geraldton Court House.
Kalgoorlie	Those parts of the Assembly Districts of Kalgoorlie and Yilgarn-Dundas within a radius of 35 kilometres from the Kalgoorlie Court House.
Kununurra	That part of the Kimberley Assembly District within a radius of 80 kilometres from the Kununurra Court House.
Port Hedland	That part of the Pilbara Assembly District within a radius of 80 kilometres from the Port Hedland Court House.

* see *Gazette* (1976) at 3956; (1977) at 185, 1634.

APPENDIX II
JURIES ACT 1957
STATISTICS – YEAR 1977-1978 (As at 30/6/77)

DRAFT ROLLS					JURORS' BOOKS			
Location	No. of Jurors	Disqualifications and Exemptions	C.P.E. ¹	Cancellation by Women	Left District	Unservd Notices	Total Removals	Effective Total
PERTH	8497	497	136	1704	149	665	3151	5346
BUNBURY	1252	48	11	172	32	77	340	912
ALBANY	1250	44	12	192	33	81	362	888
KALGOORLIE	1249	73	16	202	54	118	463	786
GERALDTON	1250	51	6	168	48	119	392	858
WYNDHAM ²	746	40	4	58	25	87	214	532
DERBY	514	13	-	24	20	52	109	405
BROOME	505	41	-	55	18	32	146	359
PORT HEDLAND	1290	53	2	146	47	262	510	780
CARNARVON	1251	42	4	114	48	126	334	917
KUNUNURRA	809	28	1	42	9	62	142	666

¹ C.P.E. stands for “certificate of permanent exemption”; see paragraph 2.12 above.

² Wyndham is no longer a circuit town; see *Gazette* (1977) 1634.

APPENDIX III
NUMBER OF JURY TRIALS IN WESTERN AUSTRALIA
IN 1976 AND 1977

LOCATION	SUPREME COURT TRIALS	DISTRICT COURT TRIALS
Perth- 1976	56	107
1977	32	118
Bunbury- 1976	6	13
1977	1	6
Broome -1976	-	2
1977	5	4
Port Hedland - 1976	6	3
1977	5	10
Geraldton- 1976	1	5
1977	-	3
Albany- 1976	2	7
1977	-	9
Wyndham- 1976	1	3
1977	-	-
Kalgoorlie -1976	3	17
1977	12	25
Carnarvon- 1976	-	1
1977	1	3
Kununurra- 1976	3	-
1977	2	1
TOTAL	<u>136</u>	TOTAL <u>337</u>

APPENDIX IV**PERSONS INELIGIBLE OR ENTITLED TO EXCUSAL AS OF RIGHT
IN ENGLAND, NEW SOUTH WALES AND VICTORIA****TABLE I**

Persons ineligible	England	N.S.W.	Vic.
Parliament Members of Parliament and officers	No	Yes (+ spouses)	No
Law Judges and magistrates	Yes	Yes (+ spouses)	Yes
Court staff	Yes	Yes	Yes
Justices of the Peace	Yes	No	Yes
Legal practitioners	Yes (+ legal executives)	Yes	Yes (+ legal executives)
Government Public servants under the control of the Attorney General or equivalent	Yes	Yes	Yes
Persons engaged in police work	Yes	Yes (+ spouses)	Yes
Persons employed in department of corrective services or equivalent (including probation work)	Yes	Yes	Yes
Permanent Heads	No	Yes	No
Persons engaged in emergency services	No	Yes	No
Ministers of religion	Yes	No	Yes
Other Ill or infirm persons	Yes	Yes	Yes

1. *Juries Act 1974* (Eng); *Jury Act 1977* (NSW) and *Juries Act 1967* (Vic) and relevant Commonwealth legislation. The relevant provisions of the other jurisdictions studied by the Commission have not been included in this Appendix because they are based on the single concept of exemption, rather than the dual concepts of ineligibility and excusal as of right.

TABLE II

Persons entitled as of right to be excused	England	N.S.W.	Vic.
Parliament Members of Parliament * and officers	Yes	No*	Yes
Government Members of the Defence Forces Permanent Heads or equivalent Members of statutory corporations	Yes No No	Yes No* Yes	Yes Yes Yes
Health Doctors, dentists, chemists	Yes (+ nurses & vets)	Yes	Yes
Education School teachers	No	No	Yes
Commerce & Industry Crews of trading vessels Marine pilots Crews of aircraft	No No No	No No No	Yes Yes Yes Yes
Mining managers	No	Yes	(international flights only) No
Local bodies Mayors and councillors, Town or Shire clerks	No	No	Yes
The handicapped	No	No	Yes
Ministers of religion	No*	Yes	No*
Family Pregnant women Persons caring for children	No No	Yes Yes	Yes Yes