

Mr Peter Matthews
Legal Policy Division
The Department of Justice
By Facsimile: 9651-0577

Our Ref: eh
Contact: emma hunt

December 2, 1999

Dear Mr. Matthews,

Re: Juries Bill 1999

We write on behalf of the Federation of Community Legal Centres in response to the request for submissions regarding the Juries Bill, 1999 which is being considered at present. Please note that this submission has yet to be endorsed by a Federation General Meeting.

The Federation of Community Legal Centres (Vic.) Inc. is the peak body for over 40 generalist and specialist Centres throughout Victoria. Centre staff range from lawyers, financial counsellors, youth workers, social workers, community workers and administrative staff and are also assisted by dedicated volunteers from both legal and non-legal backgrounds. Centres are also linked to many other organizations who both refer and are referred clients.

The philosophy behind Community Legal Centres is not merely to provide legal advice, but to empower people so that they can also find ways of resolving their own problems in the future. Centres are dedicated to a preventative approach in solving clients problems and are actively involved in community development, education and law reform activities.

In relation to the Juries Bill, 1999, we make the following comments:

Making juries more representative in the community

The Federation supports the proposal to widen the pool of people available for jury service by both increasing the distance of residence from the court as a reason for exclusion from the jury roll and abolishing the right of many classes of persons who are excluded from jury service. It is important that juries be as representative of the whole community as possible. We do support

the provisions of excusal on the basis of hardship and disability/incapacity.

Modernisation of procedures

The Federation supports the overhaul of procedures relating to the administration of the jury system, however the Federation questions the fairness of s.31 (3) and (4) for an accused person. It may be appropriate to refer to jurors by number and not name in certain circumstances however, it is possible that this will create problems. What if an accused person is tried in a small town where the jury pool comes from the local area. It is possible that they would wish to challenge someone on the panel if they heard their name for reasons that they have had some sort of contact with that person in the past. If they are called by number, they may not recognise the person and only realise later who that person is and that they would have challenged them if they had known. It is also unfair to the defence that the list of names and occupations of the jurors are only provided to the Director of Public Prosecutions. A defence lawyer is not in a position to properly advise their client about who they may wish to challenge if the same information which is provided to the prosecution is not provided to the defence representative.

Majority Verdicts

The Federation strongly supports the retention of unanimous verdicts in cases of murder, treason and Commonwealth offences. We do not believe that there should be a watering down of these provisions to allow majority verdicts under any circumstances. These offences have the potential for sentencing terms of life imprisonment and therefore the decision by a jury as to their guilt should be unanimous.

Jury vetting by the Crown and the disqualification of persons with criminal convictions from jury service

The Federation strongly supports the discontinuance of Procedure B because it limits the powers of the police and prosecution to control the process of exclusion of jurors especially where the convictions list is not provided to the defence lawyer representing the accused. Procedure B is a highly unfair situation where the prosecution again has information which is not equally available to the defence about potential jurors. The defence should have exactly the same access to information about potential jurors as the prosecution.

In relation to the regime of disqualification from jury service which is proposed in Schedule 1, the Federation points out that the defence should be given a list of the jurors who are disqualified if the Crown will be receiving this information.

We also submit that disqualification of people from jury service for five years if they have received a community based order ("CBO") seems excessive. Some clients that members of the Federation represent, receive CBO's for relatively minor offences which we do not think would impact on their capability to serve on juries for such an extended time. Some people will also receive good behaviour bonds (undertakings), fines and CBO's without conviction. It is not clarified in the Bill whether there is a distinction made between potential jurors who have with or without conviction penalties. It is also submitted that a person who receives an undertaking in the Magistrates' Court should not be excluded.

We do not agree that all people who are undischarged bankrupts should be disqualified from jury service. The large majority of clients that we see who have been made bankrupt have been made so because they are poor and cannot pay a debt/s. In almost all cases there is no fraud or dishonesty involved. (Examples might be where a person has a car accident and they are uninsured. An insurance company may sue them for damage to the other vehicle and then pursue bankruptcy, against the party who had the accident but cannot pay. Another situation may be the commonly called "sexually transmitted debt" scenario where a woman goes guarantor for her partner without realizing the implications and is made bankrupt when her partner defaults on the loan).

We note that "court" is defined to mean only County or Supreme Court. It is pointed out that it does make a considerable difference which court hands down a sentence. Generally, sentences such as bonds in the County Court can be made for much more serious offences than tends to be the case in the Magistrates' Court (eg. Indecent assault charges). To reiterate, it should be made explicit which court and whether a non-conviction penalty is different from a with conviction penalty.

Replacement of the Crown's right to challenge with a right to stand aside

The Federation does not support the proposed changes to the Crown's right to peremptory challenge potential jurors with a right to stand aside. Specifically, it is not appropriate that the Crown will have the right to do this where the same right is not provided to the defence. This effectively gives the right to the Crown to be more choosy for no particular reason with jurors where the defence does not get this chance.

If this provision is implemented, at the very least, the Crown should show cause to challenge a juror when the pool is exhausted and that person is called again and also the Crown's right to stand aside should be limited to the number of peremptory challenges allowed to the defence.

However, if the "stand aside" provision does seem to give the Crown more choice as to who they want from the pool by simply asking them to stand aside and then if they want to, they can call them later once they have seen who is in the pool. The Federation believes that in fact, there is no justifiable reason why the prosecution should be in any different position regarding juror challenges to the defence.

Offences

The Federation is concerned that the Bill's inclusion of several new offences may put some people at risk of an offence simply because they do not understand their obligations properly. In particular, we are concerned about the offence of "failing to inform the Juries Commissioner of disqualification or ineligibility" for jury service. It would be appropriate to incorporate a provision which allows someone exclusion from prosecution for this offence in certain reasonable circumstances. For example, a person may not realise that they are supposed to advise if they are bankrupt or are disqualified for another reason (prior convictions). This is particularly the case if the person is from a non-English speaking background or is illiterate. It is difficult therefore for these people to "know" that they are disqualified or ineligible and should advise the Commissioner.

We hope that you find these comments on the draft Bill useful. Please do not hesitate to contact Emma Hunt if you have any queries.

Yours sincerely,

Solicitor

Emma Hunt

North Melbourne Legal Service