

JURIES: ISSUES PAPER

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Preface

The criminal procedure reference

1 The Law Commission received its criminal procedure reference from the Minister of Justice in August 1989. The terms of reference ask the Commission to examine the law, structures and practices governing the procedure in criminal cases from the time an offence is suspected to have been committed until the offender is convicted. For a copy of the full terms of reference, see Appendix A.

2 The broad scope of the reference means that work has progressed in stages. One of those stages is an examination of trial by jury.

The juries subproject

3 An examination of juries before some of the other issues under the criminal procedure reference was prompted by the interest shown by the Chief Justice and the Courts Consultative Committee (administered by the Ministry of Justice).

4 The Law Commission prepared a paper for the Courts Consultative Committee in July 1993 which identified a number of issues discussed in the (mainly overseas) literature on juries. Early on, the Committee expressed concern at the under-representation of Maori on juries, which was itself partly prompted by Moana Jackson's report *The Maori and the Criminal Justice System: A New Perspective He Whaipanga Hou* (Parts 1 & 2, Study Series 18, Policy and Research Division, Department of Justice, February 1987).

5 That concern led to empirical research by the (then) Department of Justice on the composition of New Zealand juries. The results of that research are now published; *Trial by Peers? The Composition of New Zealand Juries* (Department of Justice, July 1995). The report contains much useful statistical information as well as illustrating areas that need further research.

6 The current interest in juries has also led the Commission to decide to 'fast-track' the juries project by concentrating, initially at least, on a small number of issues. This is to enable the publication of a discussion paper earlier than would otherwise have been possible.

Introduction

The issues the discussion paper will cover

7 The issues that the discussion paper will cover have been chosen because they are perceived by the Commission, in consultation with selected external people, to be the most pressing. Those issues are:

- the selection and composition of juries
- ways of facilitating the decision-making ability of the jury
- the length of jury deliberations and failure to agree
- majority verdicts
- jury secrecy and integrity of verdicts
- cost of jury trials and backlog (including some consideration of the availability of jury trial)

8 Each of those issues is discussed in greater depth in part 3 of this paper. A full list of the questions posed by each of the issues is in Appendix B.

The issues the discussion paper will not cover

9 The Commission recognises that the issues it will concentrate on initially are not the only important ones in this area. Other issues may be considered after the discussion paper is published. We are aware, for example, of interest in media influence on trials and contempt of court. However, we decided not to include those issues in the discussion paper as they are not the most urgent. It was also decided not to consider the fundamental question whether or not we should have trial by jury, as the existence of juries appears to enjoy the general support of the public.

10 The Commission is not intending to examine the facilities available to jurors, as this is more an administrative, rather than a legal, issue.

The process

11 The process leading to the publication of a discussion paper will involve three stages. Stage one is the setting up stage, involving initial liaison and consultation with interested groups and individuals, and preliminary research. Stage two, which is scheduled to commence in early

November 1995, is the consolidation stage in which research is completed, writing commences, and consultation continues. Stage three, scheduled to begin in April 1996, will comprise completing consultation and finishing the discussion paper which can then be published.

12 As part of stage one, this issues paper has been distributed to a wide range of interested parties for comment. Those parties are listed in Appendix C. We are also in the process of identifying a core group of expert advisers outside the Commission to comment on drafts of the discussion paper, and to contribute ideas. As well, the Commission (advised by its Maori Committee) is considering the appropriate way to consult with Maori.

13 Once published, the discussion paper will be distributed to a wide range of people, including all those who receive a copy of this issues paper.

The timeframe

14 The intention is to publish the discussion paper by September 1996. Publication requirements mean that a draft paper will need to be completed for approval for publication by the Commission by June 1996.

Existing research

15 There is a great deal of overseas research - both legal and psychological - which the Commission intends to draw on. Some of this research was referred to in the paper prepared by the Commission for the Courts Consultative Committee (referred to in para 4 above). Notable amongst the overseas research is the work that has been and is being done by law reform agencies in Australia and Canada, and the work of the United Kingdom Royal Commission on Criminal Justice. There has been little New Zealand research on juries. We have already referred to the work done by the Department of Justice and Moana Jackson.

The Issues

SELECTION AND COMPOSITION OF JURIES

What are we aiming for?

16 What are we aiming for: a jury of peers, or a jury which is randomly selected or representative? The answer to this question will inform the answers to the other questions under this heading.

17 What we *do* at the moment might be called "compromised random selection". The first step is random selection from the electoral roll. The procedure is provided for in some detail in the Juries Act 1981 and the Jury Rules. A jury list for each jury district is prepared annually comprising a random sample of those persons on the General or Maori electoral roll who reside in that jury district. Unfortunately, the electoral roll does not contain the names of everyone and addresses may be out of date. However, there may be no better initial source, particularly given that there is a legal obligation to register as a voter. The initial randomness of the jury panel is compromised by the exercise of challenges (discussed in paras 32 to 42 below).

18 Random selection, as well as being administratively the most simple, is generally thought to ensure a representative and impartial jury (on the assumption that those are the aims of jury selection). Rather than an end in itself, random selection may therefore be more accurately categorised as a means to ends such as impartiality and representativeness.

19 There is a tendency for the words "random" and "representative" to be used interchangeably. However, a random sample is not necessarily a representative sample. It is statistically possible to have any number of random samples, none of which is representative of the population from which they are drawn.

20 Impartiality is generally thought to arise from the process of the prejudices of individual members of the jury being cancelled out by the other jurors. That this process is insufficient to ensure impartiality is recognised by the disqualifications in the Juries Act and the existence of challenges.

21 "Representative" means an accurate reflection of the composition of New Zealand society, in terms of ethnicity, culture, age, gender, occupation, socio-economic status (etc). Consideration needs to be given to whether representativeness should be an aim of juries taken as a whole, or an aim of the selection of each jury. The latter would be extremely difficult, if not impossible, to attain in each case, given that each jury comprises only twelve people. What then of juries taken as a whole?

22 This question is tied in with the issue as to what is meant by the term "peers". Use of the word "peers" dates back to the Magna Carta. In early times, "peer" meant neighbour, as jurors were chosen from the neighbourhood in which the offence was committed, and were

expected to use their local knowledge in reaching a verdict. At that time, there was no distinction between jurors and witnesses. Debate in more modern times often reflects increasing concern with the alienation from the criminal justice system felt by minorities.

23 The meaning of "peer" is relative; it depends on the identity of the person that the word is being used in reference to. Random selection can only result in trial by "peers", if "peer" means member of the group from which the selection is taken (ie, registered voter residing in the same district). If it is desirable that "peers" have some more narrow meaning, random selection alone will not enable that aim to be achieved.

24 As the competing aims of jury selection and composition are not necessarily mutually exclusive, it is helpful to frame them as a series of questions:

- Should juries as a whole be representative of New Zealand society? To what extent can the under-representation of any particular group, on a jury, be accepted as being a result of random selection?
- How should the desirable degree of representativeness be achieved?
- Should the ethnicity, culture, age, gender (etc) of the defendant, or the victim ever affect the composition of the jury?
- If so, how should this be achieved?
- Should the nature of the offence ever affect the composition of the jury?
- If so, how should this be achieved?

25 Impartiality is relevant to the last four questions. Is a jury, the composition of which has been altered according to the characteristics of the defendant or victim or offence, less or more likely to be impartial? Equally importantly, what about the appearance of the impartiality or otherwise of such a jury?

26 The report by the Department of Justice, *Trial by Peers?*, contains helpful information about the composition of juries currently, and indicates areas where further empirical research into the composition of juries would be useful.

Qualification

27 The Juries Act provides that everyone who is between 20 and 65 years, and who is currently registered as an elector, is qualified to serve as a juror (s.6). However, the following people are disqualified (ss 7, 8):

- Anyone who has been sentenced to prison for 3 years or more, or for life or to preventive detention;
- Anyone who, at any time within the preceding 5 years, has been sentenced to prison for 3 months or more, or to "borstal training";
- Members of the Executive Council (ie, the Governor-General and Cabinet ministers);

- Members of the House of Representatives;
- Judges of the High Court, Judges and members of the Arbitration Court, Judges and Commissioners of the Maori Land Court, and District Court Judges;
- Certain Justices of the Peace;
- Barristers and solicitors;
- Members of the Police;
- Certain employees in the justice system;
- Mentally disordered persons; and
- Persons who are incapable of serving because of blindness, deafness, or any other permanent physical infirmity.

28 It should be noted that blind, deaf, or other disabled people are not automatically disqualified from serving as jurors. A disabled person is only disqualified if the disability means that that particular person is not capable of serving as a juror.

29 In addition, a person who is summoned for jury service may be excused on a number of grounds. Those grounds mostly concern hardship or inconvenience to, or the beliefs of a potential juror. The Department of Justice report, *Trial by Peers?*, indicates that large numbers of people who are summoned for jury service are excused or simply do not attend. An extreme example of this problem occurred recently in Auckland when a trial for drugs charges had to be postponed as not enough potential jurors attended.

30 The disqualifications reflect two ideas;

- the principle that justice must be seen to be done requires that persons who are closely connected with the justice system not serve on juries; and
- the concern that jurors must have the capacity, both physical and psychological, to serve on a jury.

31 Are all the disqualifications justified?

Challenges

32 After his or her name is called, a potential juror may be "challenged". This prevents that person from serving on the jury. There are four types of challenges:

- Challenges for want of qualification (see para 27 above);
- Challenges for cause (where a juror is not impartial);
- Challenges without cause (for which a reason does not have to be given, see paras 36 to 42 below);

- Directions to stand by (where the person's name is placed at the end of the list of potential jurors).

33 The four types of challenges are provided for in the Juries Act 1981 (ss 23-27). Every challenge must be made before the juror takes a seat in the jury box. The only challenge which has a numerical limit is the challenge without cause, which is limited to six each for the defence and the prosecution.

34 A challenge for want of qualification is uncontroversial. If a juror who is not qualified is not challenged and is sworn as a juror, s 374 of the Crimes Act 1961 provides for the discharge of that juror or the jury as a whole, provided that the disqualification is discovered before the verdict is given. Disqualification which is only discovered after the verdict is given may result in a successful appeal.

35 Challenges for cause appear to be similarly uncontroversial, possibly because they are rarely used. They reflect the natural justice requirement that a decision-making tribunal be unbiased.

36 The major area of concern is challenges without cause, also known as peremptory challenges. The relationship between the aim of selection and the way in which challenges without cause are exercised needs to be considered. If it is concluded that juries should be more representative (of certain groups), then the exercise of challenges without cause in their current form may compromise representativeness.

37 The NSW Law Reform Commission described the challenge without cause as:

... a mechanism designed to ensure the existence of an impartial jury in the particular trial ... [and they] are intended to be used to eliminate extremes of partiality and prejudice. (*The Jury in a Criminal Trial*, DP 12, September 1985, paras 4.8 and 4.9)

38 It is fundamental that a jury should be impartial. However, it is unclear whether the challenge is effective to ensure that juries are impartial. Central to this is the secrecy that attaches to what happens in the jury room. This secrecy not only ensures that the impartiality (or otherwise) of juries is untestable, but that the use of challenges without cause is based on assumptions about bias, which may in turn be based on stereotypes and "popular myths". An example of the former, identified in *Trial by Peers?*, is that the prosecution tend to challenge the unemployed as they are thought to be sympathetic to defendants. An example of the latter, also identified in *Trial by Peers?*, is that defence counsel tend to challenge school teachers who are seen as judgmental.

39 There is a considerable amount of psychological literature on the accuracy and durability of stereotypes. That literature suggests that stereotypes are remarkably durable even in the face of contradictory evidence.

40 There is also a tension between the idea that, for example, Maori defendants should be tried by juries with Maori members, and the perceived potential bias of jurors who share similarities with the defendant.

41 It is possible therefore that challenges without cause compromise representativeness without achieving impartiality. Is this correct? If it is, should challenges without cause continue? England has recently abolished them. The United States Supreme Court response to these issues appears to be a rather unsatisfactory "half-way house" position, where the

challenges exist but the Supreme Court has prohibited the prosecution using them to discriminate against racial minorities or on gender grounds.

42 It is sometimes said that challenges without cause are useful to prevent potential jurors with criminal convictions from being empanelled. However, it is not difficult to ascertain whether potential jurors have criminal convictions, and s 7 of the Juries Act disqualifies anyone who has been sentenced to imprisonment for more than 3 years, or who has been sentenced to imprisonment for more than 3 months in the preceding 5 years. If it is thought that s 7 should disqualify either more or fewer people with criminal convictions, then this could be achieved by amending s 7 rather than by using the challenge without cause.

43 If there are good reasons for retaining challenges without cause, then what information should be provided to defence and prosecution counsel about the jury panel? (The jury panel is the list of people summoned for jury service for a particular week.) At the moment, both parties can obtain the name, address and occupation of the members of the jury panel five days before the week for which the panel is summoned (s 14 of the Juries Act, which expressly prohibits disclosing the date of birth of those on the jury panel). In the United States, both parties are given the opportunity to question potential jurors before deciding whether to challenge them. This questioning, called the voir dire, is time-consuming and expensive.

44 While s 14 provides that both the defence and prosecution have access to the same information about the jury panel, the position is, in reality, somewhat different. The prosecution, by virtue of its connection with the police, has access to police records (particularly the Wanganui computer). The prosecution is therefore able to "vet" the panel and discover whether any member of the panel is known to the police or has been arrested or convicted, or is connected with any such person. It has also been argued that the greater resources of the prosecution mean that the prosecution is in a better position to "vet" the jury panel, in general terms. However, the extent to which the prosecution and the defence actually "vet" the panel for each trial needs investigating.

45 Does this imbalance of access require remedying, and if so, how? If the answer to the first question is yes, one option might be compulsory disclosure of any information gathered (ie, a type of "discovery" process).

46 There is a more fundamental debate as to whether investigation of the jury panel is appropriate. Some argue that any investigation, beyond obtaining a copy of the jury panel, is inappropriate. Against this is the difficulty of controlling investigations when a copy of the jury panel is available before the start of the trial. The only effective way to control investigation may be to prevent it altogether by not releasing the jury panel.

Number of jurors/replacement jurors

47 What is the optimal number of jurors? In New Zealand, juries comprise 12 people. In Scotland, they comprise 15. In other jurisdictions, there may be as few as 6 jurors. There is empirical research on the optimal size for group decision-making. It is not clear whether there is a conclusive answer to this question. If there is no conclusive answer, then perhaps other considerations might influence the size of juries. Consideration might be given, for example, to having fewer jurors but paying them more.

48 Where a juror becomes incapable of serving as a juror (eg, through disqualification, family illness or bereavement), that juror or the jury as a whole may be discharged (s 374,

Crimes Act). The only power to replace a juror is contained in s 22 of the Juries Act. That section is limited to the situation where after the jury is constituted but before the case commences, it becomes known that a juror has some personal connection with the case. Should s 22 be extended to cover all disqualifications? Should there be greater power to replace jurors? (Cf, the US situation where jurors may be replaced during the trial - witness the O.J Simpson case).

FACILITATING THE DECISION-MAKING ABILITY OF THE JURY

49 In relation to facilitating the decision-making ability of the jury, the focus is on ways in which the evidence can be presented and the trial structured so as to maximise the jury's understanding and retention of the evidence. There is a considerable amount of empirical evidence, particularly from the United States, as to how well jurors understand the trial process and the evidence that is presented. There is also a considerable amount of research, particularly using mock juries, on how often juries reach the correct decision. This latter research will be discussed, although not in any great depth, as this would involve going back to first principles (eg, whether we should have juries).

50 In no other comparable context would a decision as important as that of a jury be expected to be made on the basis of largely oral information and the decision-makers' memories of the information. The absence of aids to decision-making is exacerbated by the strangeness of the situation to the decision-maker, and the fact that some of the rules of the decision-making are not explained until after the information is presented. It is likely that the effect of these problems has been shielded by the secrecy that attaches to jury deliberations. This has been explicitly acknowledged by commentators (ie, perhaps we don't look inside the jury room because we are too apprehensive about what we might find).

51 There are a number of aspects to facilitating the decision-making ability of the jury.

- Presenting the evidence so as to maximise comprehension and retention
 - This might include written opening addresses, greater use of flow charts, summaries during long trials (etc).
- The "active" jury
 - This reflects the idea that an active learner is a better learner. The most obvious ways in which a jury can be active is by taking notes and asking questions. What are other options?
- Judge's instructions
 - Should some of the material normally covered in the judge's instructions to the jury at the end of the trial, come at the beginning of the trial or even with the juror's summons? Examples of such material might be the burden and standard of proof.
 - Do jurors understand them?

- Are instructions to disregard inadmissible evidence that has been heard by the jury effective? (If not, what can be done to prevent this situation arising? What is the solution when it does arise?)
- Should the judge's instructions be written?
- What may be taken into the jury room during deliberations? and
- Access to transcripts and exhibits
- At the moment, the jury may take exhibits but not the transcript of the trial into the jury room. If the jury has any questions about the evidence, they must return to the court and ask the judge who may read extracts from the transcript to the jury.
- Should the jury have unfettered access to the transcript of the trial?

THE LENGTH OF JURY DELIBERATIONS AND FAILURE TO AGREE

52 The length of jury deliberations and failure to agree, and the issue of majority verdicts (see paras 56 to 59), have received some publicity recently. Section 374 of the Crimes Act provides that a jury may be discharged once it has been deliberating for more than 4 hours and has not reached a verdict. A judge will normally ask the jury if it is likely that it will reach a verdict before making a decision to discharge.

53 Where a jury has been deliberating for some time, the judge may give a *Papadopoulos* direction. Such a direction is to the effect that although each juror should make up his or her own mind, it is perfectly acceptable for a juror to be persuaded by the views of other jurors.

54 Very lengthy deliberations are undesirable in that they may create an impression that jurors have been worn down. Hung juries are undesirable in terms of cost, delay and the effect on the parties. The first task however, is one of fact-finding. What is the average length of a jury's deliberations? How many juries deliberate for significantly longer than this? How many hung juries are there? Secondly, what is the effect of lengthy deliberations? What can be done to minimise the length of deliberations and the number of hung juries?

55 There is a large amount of empirical research on the dynamics of group decision-making which is relevant to this issue.

MAJORITY VERDICTS

56 The issue of majority verdicts is closely linked with the issue of the length of jury deliberations and hung juries. There have been periodic calls for the introduction of majority verdicts. Jury verdicts in criminal cases must be unanimous but in civil cases a verdict of a 3/4 majority is acceptable, if the jury has deliberated for more than 4 hours and there is no probability of the jury being unanimous.

57 There are overseas precedents for majority verdicts in criminal cases, notably in England. The term "majority" in this context usually means a three-quarter or greater majority.

58 It is commonly assumed that provision for majority verdicts will lead to fewer hung juries. Is there any evidence to support this?

59 There is also thought to be a conflict between majority verdicts and the standard of proof of beyond a reasonable doubt. The argument is that the fact that some jurors wish to acquit the defendant indicates that there is a reasonable doubt.

JURY SECRECY AND INTEGRITY OF VERDICTS

60 This issue concerns the secrecy with which a jury's deliberations are cloaked. A court will not receive evidence of what occurred during a jury's deliberations. This rule does not cover all matters relating to the jury and there are some exceptions. An appeal court may receive evidence that a juror was not qualified to serve as a juror. A court may also receive evidence about what are usually termed "matters extrinsic to the deliberations". Examples of such matters include situations where members of the jury have undertaken their own investigations outside the courtroom, and evidence that one of the jurors was biased.

61 The traditional view is that, apart from these limits, no evidence of jury deliberations may be received. However, there have been recent suggestions by the Court of Appeal that, in an extreme case, the Court might receive evidence of what occurred during deliberations (see, for example, *R v Taka* (1992) 2 NZLR 129, 131). An example that has been given is where one juror threatens the others with a gun.

62 Three reasons are given for the secrecy of a jury's deliberations:

- To protect the integrity of verdicts - if jury deliberations were open to disclosure, verdicts would not be final because of the possibility of relitigation.
- To enable free and frank discussion amongst jurors - it is feared that discussion might be stifled if jurors knew that what was said in the course of deliberations might be disclosed.
- To protect jurors from the importuning of defeated litigants; if a verdict could be overturned by a juror saying that he or she did not agree with the verdict, jurors would be open to improper pressure from "losing" parties.

63 Some work has been done on the secrecy of jury deliberations has been done under the auspices of the Law Commission's evidence project. This is an area where there is overlap between the substantive law and the law of evidence. Section 385(1) of the Crimes Act provides that a ground of appeal from conviction is that there was a miscarriage of justice. This ground is potentially limited by the evidential rule that a court will not receive evidence of what transpired while a jury was deliberating.

THE COST OF JURY TRIALS AND BACKLOG ISSUES

64 The cost of jury trials and backlogs have received some publicity recently. There is a jurisdictional point here - namely, if jury trials cost more because of the procedures and their length, should the right of election be removed for certain offences? Are there other ways to reduce delays and expense in jury trials?

65 Retrials are also relevant to the cost of jury trials and backlogs. Examples of where there might be a retrial include where there has been a successful appeal, a hung jury, and where a trial is aborted part-way through (eg, because inadmissible evidence has been heard by the jury). How do retrials contribute to the cost of jury trials and delays, and how common are they?

66 It may be that not much can be said about the cost and backlogs of jury trials as distinct from cost and backlog issues in the rest of the (criminal) justice system.

APPENDICES

67 The intention is to cover the following material in appendices to the discussion paper.

Comparison of overseas systems of trial by jury

68 This appendix will be a largely descriptive summary of the main aspects of overseas systems.

Issues which may be considered in future Law Commission papers

69 This will be an outline of the issues that are not considered in the discussion paper:

- the availability of jury trial
- civil trials
- the multi-media and other influences on the jury
- polling (this might be mentioned under the length of deliberations and failure to agree)
- jury recommendations and sentencing
- perverse verdicts
- should trial by jury continue?

70 We would be interested in receiving expressions of interest in the juries project and specific comments on the issues and the process discussed in this paper, no later than 22 December 1995. Such expressions of interest and comments should be made to Penny Webb-Smart at the Commission's offices:

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APPENDIX A

Criminal Procedure Terms of Reference

The Law Commission's reference on criminal procedure has the following purposes:

- (1) To ensure that the law relating to criminal investigations and procedures conforms to the obligations of New Zealand under the International Covenant on Civil and Political Rights and to the principles of the Treaty of Waitangi.
- (2) To devise a system of criminal procedure for New Zealand that will ensure the fair trial of persons accused of offences, protect the rights and freedoms of all persons suspected or accused of offences, and provide effective and efficient procedures for the investigation and prosecution of offences and the hearing of criminal cases.

With these purposes in mind the Law Commission is asked to examine the law, structures and practices governing the procedure in criminal cases from the time an offence is suspected to have been committed until the offender is convicted, including but not limited to

- powers of entry, search and arrest,
- diversion - principles and procedures,
- decisions to prosecute and by whom they should be made,
- the rights of suspects and police powers in relation to suspects,
- the division of offences into summary and indictable offences,
- preliminary hearings and criminal discovery,
- onus of proof,
- evidence in sexual and child abuse and other special cases,
- payment of costs to acquitted persons,

and to make recommendations accordingly.

But the Commission is not asked in this reference to consider questions of sentencing or to reconsider questions of what courts or other judicial bodies should exercise criminal jurisdiction, or of appeals.

APPENDIX B

The questions posed in the issues paper

1 Selection and composition

- 1.1 What are we aiming for; a jury of peers, random selection or representative?
- 1.2 Should juries as a whole be representative of New Zealand society?
- 1.3 To what extent can the under-representation of any particular group, on an individual jury be accepted as being a result of random selection?
- 1.4 How should the desirable degree of representativeness be achieved?
- 1.5 Should the ethnicity, culture, age, gender (etc) of the defendant/victim ever dictate the composition of the jury?
- 1.6 If so, how should this be achieved?
- 1.7 Should the nature of the offence ever dictate the composition of the jury?
- 1.8 If so, how should this be achieved?
- 1.9 Is a jury, the (ethnic, cultural, age, gender, etc) composition of which has been altered according to the characteristics of the defendant/victim/offence, less or more likely to be impartial? What about the appearance of the impartiality or otherwise of such a jury?
- 1.10 Are all the disqualifications justified?
- 1.11 What, if anything, should be done to remedy the large number of people who are excused or who do not turn up?
- 1.12 Do challenges without cause compromise representativeness without achieving impartiality?
- 1.13 If they do, should challenges without cause continue?
- 1.14 If there are good reasons for having challenges without cause, then what information should be provided to defence and prosecution counsel about the jury panel?
- 1.15 Does the imbalance between access to information by the defence and the prosecution require remedying? If so, how?
- 1.16 What investigation of the jury panel is appropriate?
- 1.17 What is the optimal number of jurors?

1.18 Should s 22 (power to replace a juror who is connected with the case) be extended to cover all disqualifications?

1.19 Should there be greater power to replace jurors?

2 Ways of facilitating the decision-making ability of the jury

2.1 How can the decision-making ability of the jury be maximised?

2.2 How can the evidence be presented so as to maximise comprehension and retention?

2.3 In what ways should the jury be "active"?

2.4 Should some of the material normally covered in the judge's instructions to the jury at the end of the trial, come at the beginning of the trial or even with the juror's summons?

2.5 Do jurors understand judges' instructions?

2.6 Are instructions to disregard inadmissible evidence that has been heard by the jury effective? (And if not, what can be done to prevent this situation arising? What is the solution when it does arise?)

2.7 Should instructions be written?

2.8 What may be taken into the jury room during deliberations?

2.9 Should the jury have unfettered access to the transcript of the trial?

3 The length of jury deliberations and failure to agree

3.1 What is the average length of a jury's deliberations?

3.2 How many juries deliberate for significantly longer than this?

3.3 How many hung juries are there?

3.4 What is the effect of lengthy deliberations?

3.5 What can be done to minimise the length of deliberations and the number of hung juries?

4 Majority verdicts

4.1 Is there any evidence to support the assumption that provision for majority verdicts will lead to fewer hung juries?

4.2 Should there be provision for majority verdicts? If so, in what circumstances?

5 Jury secrecy and integrity of verdicts

5.1 What degree of secrecy should surround jury deliberations?

6 The cost of jury trials and backlog issues

6.1 If jury trials cost more because of the procedures and their length, should the right of election be removed for certain offences?

6.2 Are there other ways to reduce delays and expense in jury trials?

6.3 How do retrials contribute to the cost of jury trials and delays, and how common are they?

APPENDIX C

Distribution list

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Barrister

Andrew Becroft
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Chief Justice

His Honour, Chief Judge Young
Chief District Court Judge

His Hon Judge M H W Lance

His Hon Judge L E Laing

His Hon Judge G A Rea

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Helen Clark MP
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