



The central role of the jury as a means of community participation in the justice system

By Attorney General Hatzistergos

The principle of jury trial in common law countries can be traced back to 1215 and the right to be tried by one's peers in the Magna Carta. Despite their ancient character, juries remain particularly relevant to contemporary law, politics and society in New South Wales.

In the past decade there have been growing calls for real and meaningful community participation in the way that criminal justice is delivered. Courts have had to change to meet new demands by keeping the public informed of the cases before them and the judgments being delivered. The principles of open justice have taken on a renewed importance in this environment.

Nevertheless juries are an essential structural component of community participation. They give legitimacy to verdicts and sentences in the eyes of the public which a system restricted to judge-alone decisions could never do. The relationship between courts, the media and community expectations about the sentencing of offenders is often controversial. The central role of juries weighs against the arguments that the courts are ivory towers, disconnected from contemporary social and political values, and helps ease the tension between these competing claims.

It is surprising, then, that the institution of the jury in criminal trials should come under attack in the media itself. Writing in the *Sydney Morning Herald* on 25 May Richard Ackland suggested that the time had come to abolish juries. He pointed out the risks that go with jury trials, including the disqualification of a juror mid-trial (because of undisclosed driving convictions in the *Petroulias* case) or the overturning of a conviction because the juror has made their own investigations on the Internet.

The New South Wales Government places a high value on participation in juries. That's why it recognises the 10,000 citizens who serve as jurors each year by paying them a higher allowance than most other states. The government is also actively engaged in reviewing and reforming the jury system to ensure that it continues to be effective and relevant, and provides a direct means for ordinary members of the community to have a role in the decisions of our courts.

There is no doubt that there are challenges associated with the use of juries in criminal trials. Juries have always placed their own particular demands on the administration of justice and special arrangements are needed for the participation of lay people in judicial decision-making. The advent of the Internet poses particular challenges to the way that juries are managed. But so have other technological developments, such as the reporting of cases in the broadcast media, which have all been successfully accommodated.

The government has taken a number of steps to reduce the potential for prejudice in jury trials. The *Criminal Trial Courts Bench Book* has been updated to include the additional directions for juries that were recommended by the Court of Criminal Appeal in *R v Skaf and Skaf*.

Judges direct jurors not to use, during the course of the trial, any material or research tool, such as the Internet, to access legal databases, earlier decisions, or other material of any kind relating to any matter arising in the trial.

The government has also amended the *Jury Act 1977* to make it an offence for jurors to conduct their own investigations about a case. In addition the sheriff has been given powers to investigate alleged breaches of this prohibition.

Rather than wind back or abolish the institution of the jury in the face of technological and social change, the government is committed to modernising and adapting juries to meet these challenges and to keeping them as an important and influential part of the criminal justice system.

One way that we are doing this is by ensuring that juror participation is expanded to include more and more sections of the community.

Recently I tabled the report of the NSW Law Reform Commission on the participation of deaf or blind people on juries.

The report recommends a number of changes to the *Jury Act* and Sheriff's Office procedures that would enable people who are deaf or blind to serve on a jury, and notes positively the use of blind or deaf

jurors in jurisdictions in the USA and New Zealand. The report also notes the concerns of some in the legal profession about the need to weigh the rights of deaf or blind people against an accused person's right to a fair trial.

Technologies such as real time transcripts and assisted hearing devices, as well as interpreter services, give blind or deaf people the capacity to participate at a greater level than ever before. The commission recommends making the blind or deaf eligible for jury service and ensuring that they are provided with all necessary 'reasonable adjustments' to allow them to do so. Where these will still not ensure adequate participation of the deaf or blind jury member, the courts should retain the ability to exclude them from the case.

An important suggestion recently raised by the chief justice is for jury involvement in sentencing. The NSW Law Reform Commission is now investigating whether the trial judge might consult with the jury on aspects of sentencing.

Several other references concerning juries have been made to the commission which, considered together, will equip the government with a range of reform options to continue modernising juries in this state.

They include a reference for the commission to review the number and complexity of the directions, warnings and comments required to be given by a judge to a jury at a criminal trial, the summing up and the ability of jurors to comprehend and apply these instructions.

Further, the commission is undertaking a review of the provisions governing eligibility for jury service. This has been stimulated by concern that the numbers of people who are either disqualified, ineligible or have a right not to serve on a jury may mean that the make-up of jurors is unrepresentative of the community.

These are important and valuable investigations that will help to ensure that juries retain their relevance to contemporary society. By reforming and adapting the institution of the jury to changing conditions the government is maintaining them as an effective means of community involvement in the justice system.