Improving the efficiency and effectiveness of the Victorian Jury System

A report for the Winston Churchill Memorial Trust of Australia

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2011 Churchill Fellow
The Winston Churchill
Memorial Trust of Australia

Report by: Mr Rudy Monteleone
2011 Churchill Fellow

To investigate methods for improving the efficiency, effectiveness and integrity of the Victorian Jury System

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Signed: Rudy Monteleone
Dated: 3 February 2012
Improving the efficiency, effectiveness and integrity of the Victorian Jury System

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Acknowledgements

I would like to take the opportunity to thank and acknowledge The Winston Churchill Memorial Trust of Australia (the Trust) for awarding me with a 2011 Churchill Fellowship. The Fellowship provided me with an opportunity to continue my journey of personal and professional growth. The opportunity to travel abroad to expand my knowledge of international jury systems, reinforced my firm belief that we must protect and continue to improve the institution which provides ordinary citizens with the opportunity to actively participate within the justice system – Jury Service.

As well as thanking the Trust, I acknowledge and thank The Chief Justice of Victoria, The Honourable Marilyn Warren A.C. for her support and encouragement, Mr. John Griffin, Executive Director, Courts (recently retired), David Ware, Chief Executive Officer of the Supreme Court of Victoria for their guidance and sponsorship and, past Fellow Ms Johann Kirby, Executive Director, of the Victoria Law Foundation for her ongoing encouragement and assistance throughout the application process.

Thank you to all of the individuals and organisations who freely gave their time to accommodate me. In particular, I thank Judge Michael Pastor of the Superior Court of Los Angeles, Judge Robert C Rufo of the Superior Court of Massachusetts, and the Honourable Justice Ian Nordheimer of the Ontario Superior Court.

I acknowledge and thank Ms Paula Hannaford-Agor, Director at the Centre for Juries Studies, National Centre for State Courts (NCSC), for granting permission to access and adapt NCSC source material for use within our own jurisdiction.

Finally, I would like to thank my wife Terese and my daughters Rachael and Elana for sharing my passion.
Executive summary

“... democracy belongs to the people, and so does the responsibility for making it work properly and for ensuring that it maintains the strengths and safeguards to cope with the influences threatening its continuance in the changing conditions of today and tomorrow.”

The right to trial by jury is one of the most important parts of a democratic way of life – it exists to protect the individual’s rights and involve the community in the administration of justice, and it ensures that the application of the law is consistent with community conscience. However, pervasive problems of poor use of citizens’ time, inadequate facilities, and generally poor treatment continue to erode public support and, in some instances, judicial support of the jury system.

My Churchill Fellowship journey confirmed my growing fear that if we are not vigilant, this fundamental part of our criminal justice system, and of our democracy, will become a casualty of economic rationalization. It will, in part, be blamed for escalating the costs of proceedings, increasing the duration of trials and contributing to court delays.

My journey provided me with the opportunity to witness first hand that where there is a genuine commitment and resolve, fiscal efficiency and the administration of justice need not be mutually exclusive objectives.

Highlights

My journey provided many highlights, including the opportunity to meet with a number of inspirational and passionate members of the Judiciary who provided valuable insight into in-court jury management issues, and with jury administrators who shared my passion for continuous improvement, and citizen participation with the administration of justice.

It was my visit to Ellis Island however, that provided the most inspiring highlight. Ellis Island is a 27.5-acre site just off the southern tip of New York City. Between the years of 1892 and 1924, roughly 12 million immigrants passed through it.

Standing in the processing hall with my eyes shut I tried to imagine what it would have been like, arriving in a strange country that promised freedoms, liberties and opportunities beyond anything that many of them had imagined.

As I stood waiting for the ferry back to New York City, I had time to think about my journey and how visiting Ellis Island had just provided that crystallising moment – freedoms, liberties and opportunities and indeed democracy are not “free” per se, they come with obligations. One such obligation is the requirement to contribute to that democracy through one’s own willingness to undertake jury duty.

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3 <http://www.ellisisland.org/genealogy/ellis_island_history.asp>

Improving the efficiency, effectiveness and integrity of the Victorian Jury System
Recommendations

The key recommendations emerging from my Fellowship are:

1. To develop an adaptable *Jury Management and Best Practices Manual* that will provide consistency in jury management practices.

2. To propose the establishment of a *Victorian Jury Innovation Advisory Committee* (the Committee). The Committee members would include:

   - A Supreme and County Court Judge (Rotating Chair)
   - A Representative from the Victorian OPP and Commonwealth OPP
   - A Representative from the Victorian Criminal Bar and from Victoria Legal Aid
   - The Juries Commissioner.

3. To propose the establishment of a *National Jury Innovation Committee* for the purpose of coordinating jury related research and development initiatives and innovations.

4. To improve the efficiency of the jury empanelment process by empanelling jurors by number in all instances. This will:

   - Provide consistency in the empanelment process which protects the accused right to a presumption of innocence
   - Protect the right to privacy for jurors
   - Facilitate the introduction of technology to the empanelment process.

5. Propose the removal of peremptory challenges in order to facilitate the empanelment of a truly representative jury and as a consequence, streamline the empanelment process and increase juror utilisation numbers.

6. Enhance jury management reports by introducing a metrics based approach that is aimed at improving juror utilisation.

7. Enhance and upgrade of the Jury Information Management System with a view to enabling prospective jurors to complete their Jury Questionnaires “online”.

8. Explore the feasibility of introducing “same-day” call-in for regional courts.

9. Investigate the possibility of introducing “tablet” technology for use by all parties to proceedings, including the jury.

Implementation and dissemination

- Directly disseminate my report, findings and recommendations to:
  - Jury administrators
  - Departmental legal policy officers
  - Members of the Judiciary
  - Government
  - The legal profession.

- Present my findings at Jury Management and Judicial Conferences.
## Program

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<td>• Judge Pastor, Superior Court Judge</td>
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<td>• Gloria Gomez - Director, Juror Services</td>
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<td>• Frances Johnson - Deputy Director, Juror Services</td>
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<td>• Espie Van Beek - Administrator</td>
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<td>• Jim Matthews - Administrator</td>
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<td>• Don Yuan - IT Project Manager</td>
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<td><strong>Texas</strong></td>
<td>• Michelle Brinkman, Chief Deputy District Clerk</td>
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<tr>
<td>6 September</td>
<td>• Roy Wyn, Director, Special Operations Division</td>
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<td>• Suzanne Bailey, Jury Manager</td>
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<td><strong>Washington DC</strong></td>
<td>• Paula Hannaford-Agor, Director, Center for Juries Studies</td>
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<td>12 - 15 September</td>
<td>• Anthony Manisero, Jury Manager</td>
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<td>• Norman Goodman, County Court Clerk and Commissioner of Juries</td>
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<td>• James Rossetti, Chief Deputy County Clerk</td>
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<td><strong>New York</strong></td>
<td>• Judge, The Hon. Robert Rufo, Supreme Court, Mass.</td>
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<td>• Pamela Wood, Jury Commissioner</td>
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<td>• John Cavanaugh, Deputy Jury Commissioner</td>
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<td>• Dana Leavitt, Court Administrator</td>
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<td>• Clifford Allen, Executive director, Supreme Judicial Court</td>
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<td><strong>Boston</strong></td>
<td>• Marilyn Reed, Senior Policy Adviser, HMCTS Victim &amp; Witness and Juror Branch</td>
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<td>28 Sept. – 5 Oct.</td>
<td>• Pat McKinnon, Manager, Court Operations</td>
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<td>• Mike MacLean, Manager, Criminal and Juries</td>
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<td>• Katie Mackenzie-Ferley, A/Manager, Operations Support</td>
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<td>• Jackie Murphy, Counsel, Policy &amp; Programs Support</td>
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<td><strong>Toronto</strong></td>
<td>• David Thompson, Director Royal Courts of Justice</td>
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<td>• Sharon Whitfield, Head, Jury Central Summoning Bureau</td>
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<td>• Tamer Mustafa, Jury Summoning Officer</td>
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Improving the efficiency, effectiveness and integrity of the Victorian Jury System
1 Context

1.1 My role as the Juries Commissioner

I was appointed as Victoria’s first Juries Commissioner in July 2002. As the Juries Commissioner I am responsible for managing the administrative and financial operations of the Juries Commissioner’s Office (JCO) including the review, development and implementation of policies and procedures for the administration and management of the Victorian jury system. Within this context, I lead a team of 22 employees who are based in Melbourne and regional courts.

The Victorian jury system and its administration operate pursuant to the Juries Act 2000 (Vic) which provides for a system of trial by jury that:

- Equitably spreads the obligation of jury service amongst the community
- Makes juries more representative of the community
- Permits the timely adoption of new technologies for the selection of persons for jury service.

In short, I am responsible for ensuring that there is a sufficient number of citizens ready willing and able to serve as jurors in the State’s superior courts, and that those citizens are broadly representative of the community. Within this framework, the JCO comes into contact with approximately 200,000 Victorians, and oversees the empanelment of approximately 7,000 jurors, annually.

Within this role I have been privileged to work with some remarkable people, including Judges, Jury Administrators, and Academics. Many share the same view as I that citizen participation in the administration of justice is a fundamental component of our system of justice and democracy. It is for this reason that since being appointed as Juries Commissioner I have endeavored to continuously improve the way in which the jury system is managed. Within this context, I have primarily focused on system improvements. With the assistance of the judiciary, changes have also been introduced within the courtroom, which have assisted prospective and empanelled jurors with completing their task as well as making their in-court experience more meaningful and rewarding.
2 Summary of visits

2.1 Los Angeles, United States of America

State courts within the United States (US) conduct an estimated 148,558 jury trials per year. Within this context California has the largest number of jury trials with approximately 16,000 per year.\(^4\)

In 2010/11, over 10,000 people per day were required to attend for jury duty, with over 560,512 jurors serving on 4,792 trials.\(^5\) As in Australia, jury management is a complex operation, and getting the numbers right is the key to running an efficient jury system.

In Los Angeles County, the introduction of the one day one trial system significantly reduced the burden of service on residents. The Juror Services Division, headed by Ms Gloria Gomez, recently introduced a number of innovations that not only improved services to the public and the court, but also reduced the cost of managing the service. Many of the efficiencies gained from such innovations emanated from the creative use of technology and the re-engineering of business processes. This included automating the summoning process which allows jurors to alter their reporting date and complete the mandatory juror orientation on-line.

Other initiatives include:

- The ability for jurors to be summoned directly to a court room, eliminating waiting time in the assembly room.
- Metrics based planning, leading to an increase in juror utilisation. In the case of Los Angeles County, this initiative has resulted in reducing the number of people attending for jury service by 8,801, effectively decreasing the burden on the public and employers, as well as, achieving budgetary savings.
- Re-engineering of the summoning process has resulted in persons not responding to notification for jury service being managed more effectively. Jurors failing to respond to their summons are mailed a “postcard” advising that failure to respond may give rise to sanctions including possible court action.

Superior Court Judge Michael Pastor, provided some insight into the processes used for empanelling juries in high profile trials. One such insight was the provision of a “Jury Admonishment” which was used for the trial of Dr Conrad Murray. The “Admonishment” which was directed to prospective and empanelled jurors clearly outlined what they could not and should not do. The “Admonishment”, which was an easy to read yet detailed document was initially distributed to the pool of prospective jurors. In summary, it cautioned against speaking of the case, conducting one’s own research, reading, listening or watching any report, radio program, movie, book or newspaper or magazine article regarding any aspects of the case. It also cautioned against accessing websites or using “social-networking” sites to discuss any aspects of the case. The purpose of the “Admonishment” was to focus the minds of prospective and subsequently empanelled jurors of the importance to rely only on evidence presented in court and not be influenced by external distractions.

\(^5\)Interview with Gloria Gomez, Director, Juror Services, (Los Angeles September 2011)  
Improving the efficiency, effectiveness and integrity of the Victorian Jury System
2.2 National Centre for State Courts (NCSC)

The NCSC was established in 1977, and is an independent, non-profit organisation offering authoritative knowledge and information to the judiciary, courts, and court administrators. In the early 1990s, an international division was formed to offer a similar range of research, consulting, and information services. All of the services offered by the NCSC are "focussed on helping courts plan, make decisions, and implement improvements that save time and money, while ensuring judicial administration that supports fair and impartial decision-making".6

Ms Paula Hannaford-Agor, Director at the Center for Juries Studies, provided an opportunity to discuss jury management issues, challenges, and innovations from a national perspective. One of the most prevalent challenges for US Courts and court administrators within the last several years has been the operational impact of the continuing austerity measures.

Accordingly, juror utilisation is one area that has received a significant amount of attention from court administrators. Within this context, Ms Hannaford-Agor views the current economic situation as an opportunity for courts to improve juror utilisation which could subsequently aid in achieving significant budgetary savings in jury fees as well as, minimising the cost for employers and the community in general.7

Within this context the NCSC has recommended that courts do not summon more people than necessary. That is, that the courts only summon enough jurors to ensure that 90% of attendees are actually sent to a court room. As such, the rate of utilisation will be approximately 81%, ensuring enough “extra” jurors to accommodate most unanticipated circumstances, but not so many that significant numbers of jurors are “unused” and left waiting in the jury assembly room each day.8

During the course of our discussion Ms Hannaford-Agor stated that poor jury utilisation may be attributed to three factors: over summoning, excessive panel sizes and day of trial cancellations due to plea agreements, continuances and settlements. How to address each of these factors is the challenge facing jury administrators and courts alike.

A collection of jury management manuals and guidelines have been developed by the NCSC to assist US jury administrators and courts in meeting this challenge. Having observed the value of the materials available, I sought permission to access and adapt the source materials to fit Victoria’s needs.9

2.3 Washington DC, United States of America

The Jurors’ Office in Washington DC is responsible for the management of juror services for the Superior Court. Over 46,000 people report for jury service on a yearly basis. Of those, approximately 7,000 are selected for panels.

Although Washington DC’s operation is much smaller than that of Los Angeles, it was interesting to note that some common themes were beginning to emerge. These include effective juror utilisation, public education, juror support services and managing within a tight fiscal environment.

7 Paula Hannaford-Agor, ‘Saving money for everyone: The current economic crisis is an opportunity to get serious about improving juror utilisation’<http://www.ncsconline.org/D-Research/cjs/Hannaford.pdf>  
8 The NCSC define juror utilisation as the percentage of all jurors appearing for service who are used in an empanelment: either empanelled, excused, or challenged.  
Over the last several years a number of initiatives have been introduced in an effort to address some of the identified issues. These include:

- One day one trial system
- Introduction of standard panel sizes
- Introduction of enforcement process for prospective jurors who fail to respond to a jury service summons
- Introduction of an electronic juror payment system – via an ATM terminal
- E-juror on line-inquiry process
- An interactive IVR system allowing prospective jurors to change their date of attendance
- The provision of a free child care service for empanelled jurors (unfortunately, this service has currently been suspended as a result of continuing austerity measures).

### 2.4 New York, United States of America

The New York state-wide Jury Office (NY) oversees the jury system for the State of New York which is made up of 62 Counties, including 5 located within the New York city limits. Over 580,000 people attend for jury service within the State of New York on a yearly basis and 93,240 are selected to serve.

Within this context NY has, together with several other US jurisdictions, been at the forefront of jury innovations. A significant number of jury management initiatives have been introduced within the New York state-wide court system and have positively impacted upon the administration of the jury system, as well as improved jury related in-court processes and practices.

An example of one such initiative is the development of a pamphlet which sets out best practices for the New York State jury system operations. It was the result of a collaborated effort of the 62 Commissioners of Jurors and the Jury Support Office at the Office of Court Administration. The document codifies the practices already in effect across the state and specifically aims to increase consistency in the ways in which all the jury Commissioners approach qualification, summoning, and utilisation of jurors. The document also provides guidance on processing juror payments; informing jurors of their rights, roles, and responsibilities; and the importance of providing an environment for jurors that is both comfortable and respectful. The document includes 19 “Principles” which form the framework for the practices as well as 48 “Standards” to which Commissioners are expected to adhere. The “Principles” define operational goals and the “Standards” define specific measures for testing the achievement of those goals.10

### 2.5 Boston – Commonwealth of Massachusetts

The Office of the Jury Commissioner for the Commonwealth of Massachusetts (OJC) is responsible for the management of the jury system for the Commonwealth of Massachusetts. The OJC sources prospective jurors for the 14 Counties (65 Court buildings) which make up the

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Commonwealth. In 2010, 245,901 people presented for service of which 89.2% completed their service within one day.

The Commonwealth of Massachusetts Court system has a Jury Management Advisory Committee (JMAC) consisting of six members appointed by the Chief Justice of the Supreme Judicial Court.

The JMAC oversees the operation of the OJC and is authorised to encourage continuing study, research, and improvement of all aspects of the jury system to encourage:

- Increased public interest and education in this field
- Improved cooperation and efficiency between the state and federal courts in matters of juror selection and management
- Improved cooperation and efficiency between the judicial branch, other branches, and local units of government in the preparation and utilisation of population lists and other materials.11

Within this context The Hon. Robert C. Rufo, Chair, of the JMAC and Pamela J. Wood, Jury Commissioner, have (much like all the jurisdictions visited) focussed their efforts on improving juror utilisation.

Juror utilisation is considered to be an important measure of efficient court management, because it allows the court and the OJC to track how many jurors are needed to meet the requirements of the courts to effectively conduct jury trials.

"A related issue concerns the value of having jurors present at the courthouse as a necessary measure to resolve cases. Judges cite this "intrinsic juror value" as an important factor in enabling them to resolve cases with parties who will not move forward without the reality of an imminent jury trial. This practice is particularly prevalent in District and Municipal courts, where a continuance on a trial day due to the unavailability of jurors may result in dismissal of criminal charges on the next trial date when the witnesses fail to return. Balanced against this reality is the responsibility of the court system to ensure that only the number of jurors needed for the court to fulfil its mission to administer justice are brought to courthouses each day."

11 2006 Massachusetts Code Section 6 Jury Management Advisory Committee.

The information technology system utilised by the OJC to manage its operations was introduced in 2006. The system captures a comprehensive amount of data that permits the OJC to provide detailed reports on juror utilisation. For example, juror utilisation can now be measured by court, court location, case type, and judge. This level of detailed analyses subsequently assists both the OJC and courts in making data-driven decisions about juror allocation. Consequently, the OJC has been successful in reducing the number of people being summoned by 300,000.

The OJC has also improved the jury management process by enhancing the Juror Service Website. The most notable enhancement is the ability for prospective jurors to use the website to check the status of their service. As such, prospective jurors are no longer required to call the courthouse on the night before to learn if they are still required to appear. Furthermore,
prospective jurors can now receive e-mail notifications about the status of service, reminders of their requirement to appear, and a history of their prior service when they log onto the website.

These innovations have resulted in the OJC and the JMAC being awarded the 2011 G. Thomas Munsterman Award for Jury Innovation by the National Center for State Courts (NCSC). The Award acknowledged the sustained and committed effort of the OJC toward improving jury service. The achievements being acknowledged include the use of innovative interactive technologies which resulted in improved customer service to prospective jurors, and improvements in juror yield and utilisation, which delivered a saving of more than $1 million.

2.6 Toronto, Canada

The administration of the Jury System in Ontario is overseen by the Ministry of the Attorney General, Court Services Division. The division is organised into seven administrative regions, with Jury administration being one of several functions performed in each of the regions.

Approximately 435,599 citizens residing in Ontario are randomly selected for inclusion in a provincial jury roll, managed centrally from London, Ontario. There are three levels of Court in Ontario - the Ontario Court of Justice, the Superior Court of Justice, and the Ontario Court of Appeal. Jury trials, both civil and criminal, are only held at the Superior Court level, of which there are 52 located across the province. The Toronto Superior Court is one of the busiest in the province with many of the higher profile trials being heard at the Toronto based court.

As with other jurisdictions visited, many of the administrative processes are similar to the processes used within the Victorian jurisdiction. There are some differences however, which may have some bearing on jury utilisation, and representation.

For example, in Canada, juries are now permitted to be empanelled by number (i.e. identified by number not name), which increases the anonymity of prospective jurors, thus allaying real and/or perceived fears of being identified, harassed or intimidated.

However, both Crown and Defence counsel are entitled to 20 peremptory challenges where an accused is charged with high treason or first degree murder; 12 peremptory challenges, where the accused is charged with an offence other than high treason or first degree murder, for which the accused may be sentenced to imprisonment for a term exceeding five years; and, 4 peremptory challenges where an accused with offences other than those previously mentioned. In addition, challenges for cause are permitted where the accused establishes that there is a realistic potential for partiality.

The Court, jury administrators and Government are currently focussing on the representativeness of juries. This follows a relatively recent Ontario Court of Appeal decision relating to the representativeness of juries, specifically representation of First Nation people. Jury administrators have responded to the challenge by establishing an educational program that sought to inform First Nation communities, through their “band members”, of the importance of jury service and of the role that they could fulfil by participating in the justice process. Additionally, the Attorney General’s department has commissioned an independent review of the issue. Former Supreme Court of Canada, Justice Frank Iacobucci has (at the time of writing this report) been appointed to conduct the review that will report on legislation and processes that may assist in including First Nation people on to jury rolls.

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14 First Nation is essentially a political term, promoted from within the indigenous community as a substitute for band in referring to any of the numerous aboriginal groups formally recognized by the Canadian government under the federal Indian Act of 1876. <http://www.thefreedictionary.com/First+Nation>

Improving the efficiency, effectiveness and integrity of the Victorian Jury System
2.7 London, England

Contrary to the perception that juries are an anachronism, citizen participation in the administration of justice is generally considered to be an important component of the British Criminal Justice. Research undertaken in the United Kingdom\(^\text{15}\) which examined the views and attitudes of a sample of jurors who had recently completed jury service in six English courts found that participants, although concerned with the procedures adopted, did indicate that jury service had increased their confidence in the court process. The key findings of that study where:

- The majority of respondents had a more positive view of the jury trial system after completing their service than they did before. Furthermore, virtually all jurors interviewed considered jury trials to be an important part of the criminal justice system.

- Similar to US findings\(^\text{16}\), confidence in the jury system was closely associated with the perceived fairness and, adherence to due process, respect for the rights of defendants and, above all, the diversity (or representativeness) of the jury and its ability to consider evidence from different perspectives.

- Jurors were very impressed with the professionalism and helpfulness of court personnel. In particular, they praised the performance, commitment and competence of judges.

- Over half said that they would be happy to do jury service again, while 19% said that they would not mind doing it again. The most positive aspects of engaging in jury service were reported to be having a greater understanding of the criminal court trial, a feeling of having performed an important civic duty and finding the experience personally fulfilling.

- The main impediment to understanding proceedings was the use of legal terminology, although jurors also felt that evidence could sometimes be presented more clearly.

The Jury Central Summoning Bureau (the Bureau), which was created in 1999, is solely responsible for summoning approximately 400,000 jurors per year, for the whole of England and Wales. Prior to 1999, each court in England and Wales had its own arrangements for summoning jurors.

The Bureau was created to overcome the deficiencies of the former system. Through its newfound centralisation, it could focus on increasing the rate of juror utilisation. This is achieved by:

- Matching the number of jurors required, to the workload of each of the individual courts

- Provide a greater level of consistency in the treatment of applications for excusal or deferral

- Providing a central point of contact for prospective jurors

- Being better placed to accommodate juror needs.

The Bureau also has a computer system capable of selecting prospective jurors at random from the electoral roll and generating summonses and letters confirming dates of service. Requests for deferral of jury service are also managed centrally and are recorded on the system by

15 Roger Matthews, Lynn Hancock and Daniel Briggs, Jurors’ perceptions, understanding, confidence and satisfaction in the jury system: a study in six court’s, <http://www.homeoffice.gov.uk>
16 Trust and Confidence in the California Courts, September 2005; Public Trust and Confidence in the courts overview. <http://www.ncsconline.org>
dedicated officers. Furthermore, the system has the capability to automate the process of setting the desired numbers of prospective jurors for each court location on the basis of predetermined ratios.

In addition to the creation of a central body, a jury advisory group has been formed. Chaired by a Senior Policy Advisor from Her Majesty’s Courts and Tribunal Service, the advisory group comprises of representatives from each of the seven jury regions of England and Wales. The group meets on a quarterly basis to discuss jury management issues and propose strategies aimed at achieving operational efficiencies. It is through this advisory group that potential reforms are discussed, developed and, with judicial support introduced. It was through the work of this group that the process of measuring juror utilisation rates was established. Accordingly, each region now has juror utilisation targets that provide a basis for measuring performance.

3 Discussion

3.1 Benchmarking

The Business Dictionary defines benchmarking as the measurement of the quality of an organisation’s policies, products, programs and strategies, and their comparison with standard measurements of its peers. The objectives of benchmarking are to:

1. Determine what and where improvements are called for
2. Analyse how other organizations achieve their high performance levels
3. Improve performance.

Benchmarking the administration and management of the Victorian jury system and trial practices (relevant to juries) against jurisdictions which have similar practices and procedures such as England, the United States and Canada has provided some insight into identifying potential areas of improvement.

3.2 The Victorian Jury process

Victoria has a population of approximately 3.5 million electors from which prospective jurors are selected to serve on Supreme and County court criminal or civil trials. For the purpose of jury administration, Victoria has 13 regional (Diagram 1) locations with prospective jurors only required to serve within the jury district in which they reside.

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17 <http://www.businessdictionary.com/definition/benchmarking.html>
19 This is a general summary of the Victorian jury system. Detail regarding Victoria’s jury system may be obtained by contacting the Office of the Juries Commissioner

Improving the efficiency, effectiveness and integrity of the Victorian Jury System
The Victorian jury selection process which is centrally managed by the JCO, is a five-step process (Diagram 2):

1. Random selection from the Victorian electoral roll
2. Notice of Selection/Jury Questionnaire
3. Summons
4. Attendance
5. Empanelment.

**Step 1: Random Selection**

On the request of the Juries Commissioner, the Victorian Electoral Commission randomly selects prospective jurors from the designated jury roll districts using a computer generated random selection process. Jury Rolls, which contain details of prospective jurors are provided to the JCO. The JCO then makes arrangements for the mailing out of the Notice of Selection and Jury Questionnaires to prospective jurors.

**Step 2: Notice of Selection/Jury Questionnaire**

Completed Jury Questionnaires are returned to the JCO for assessment and processing by JCO staff. It is at this stage of the jury selection process that information relating to eligibility and availability of prospective jurors is entered into the Jury Information System (JiMs).

**Step 3: Summons**

Prospective jurors who have been processed as eligible to serve at Step 2 are issued with a Jury Summons using a computer generated selection process. Section 27(2)(c) of the Juries Act 2000 (Vic) provides that Summonses must be served no less than 10 days before the person is required to attend for jury service. In complying with the Juries Act, summonses are posted by surface mail between 17 and 21 days prior to the date of attendance.

Prospective jurors who have not applied for or been granted an excusal or deferral of jury service must confirm their requirement to attend for jury service in accordance with the instructions on their Summons by either telephoning the jury message line or visiting a web-based service the night before they have been summoned to attend.

**Steps 4 & 5: Attendance and Empanelment**

On attendance, and prior to empanelment, prospective jurors are provided with a comprehensive induction program which aims to inform them of the role of the jury and juror’s obligations. The orientation process consists of visual and audio material which has been specifically designed to comply with recommended best practices in juror orientation.20

Following the Jury Pool Supervisor’s speech, prospective jurors are shown a 20 minute short film about Jury Service.21 At the conclusion of the film, prospective jurors are provided with an opportunity to ask questions of the Jury Pool Supervisor or make an application to defer their jury service or to be excused from undertaking jury service.

At the request of trial judges prospective jurors are then balloted to form jury panels from which juries are subsequently empanelled.

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20 Elizabeth Najdovski-Terziovski, James Ogloff, Jonathan Clough, Rudy Monteleone, ‘What are we doing here? An analysis of juror orientation programs’ (September-October 2008) 92 2 Judicature
21 We the Jury (Directed by Fiona Cochrane, DA Films, 2006).
3.3 Benchmark results

In benchmarking our operations against the jurisdictions visited I was able to assess what we are doing well and where there is room for improvement.

I am pleased to report that in many areas of jury administration, Victoria is performing extremely well when compared with our international colleagues. We have introduced a number of administrative improvements and initiatives which target juror utilisation, operational efficiency and juror well-being. These include:

- A purpose built Jury Information Management System which is currently being enhanced to facilitate e-returns of jury questionnaires
- A State-wide web-based and telephone jury messaging service that assists prospective jurors to learn of their need to attend
- A one-day-one trial system
- A “best practice” Comprehensive Juror Orientation Program which includes:
  - An oral presentation
  - A Juror’s Handbook
  - Jury DVD - which provide persons attending for service with a comprehensive overview of their role and the role of juries.

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22 Ibid.
24 We the Jury (Directed by Fiona Cochrane DA Films, 2006) Improving the efficiency, effectiveness and integrity of the Victorian Jury System
• A targeted public outreach program including:
  o Community information forums
  o Juror feedback surveys
  o School education forums directed at intermediate to senior secondary school level students.

• Deferral system – provides prospective jurors with the ability to defer jury service to a more convenient time.

• Introduction and utilisation of statistical data and reports that inform practice, procedure and policy development.

• Juror utilisation initiatives such as:
  o Formula based summons process
  o Semi-standard panel sizes
  o Statutory power to exclude persons from serving on long trials.25

• Juror debriefing service which is accessible by all serving jurors, post discharge.

• Assisting with and practically supporting academic research that focuses on improving the jury system.

3.4 Opportunities for improvement

“Do not bother to be better than your contemporaries or predecessors. Try to be better than yourself.”

William Faulkner, Author

What was particularly noticeable from my visits was the fact that all of the jurisdictions were operating within fiscally challenging environments. In each jurisdiction, jury administrators, court administrators and the judiciary have worked collectively to focus on improving the systems, policies and legislation that support the efficient management of their respective jury systems within some tough financial constraints. The focus and subsequent changes have not been restricted solely to administrative processes, but have also been extended to other areas of the trial process that affect prospective jurors and empanelled jurors.

The consequence of these innovations has been that the justice system and those who come in contact with it have reaped the benefits. In some jurisdictions, such as New York, Jury Trial Innovations26 where adopted. Such innovations have resulted in the streamlining of jury trial processes, benefiting the court, prospective jurors, empanelled jurors, and counsel and their clients. Additionally, these changes successfully deliver “real and often substantial fiscal savings [for court administrators], individual jurors, their employers, and their communities”27.

At present, a wide range of reviews and research into Victorian jury trials is being undertaken by academics, statutory and judicial bodies. As such, I have evaluated areas that are not subject to these reviews but which also offer opportunities for improvement.

25 Juries Act 2000 (Vic), S29 4(b)
27 Paula Hannaford-Agor, 'Saving money for everyone: The current economic crisis is an opportunity to get serious about improving juror utilisation' <http:www.ncsconline.org/D-Research/cjs/Hannaford.pdf>
These include:

- Juror utilisation
- Representativeness
  - Peremptory Challenges
  - Anonymity
  - Compliance
- Advisory Committees

### 3.4.1 Juror utilisation

“Citizens will not accept the dominant influence of the law and will not have confidence in their democracy which gives it that influence, unless they have confidence in the law. They will only have that confidence if they have confidence in the courts and judges who apply and enforce the law. Confidence in the courts and judges depends on the community seeing that the judges decide their cases fairly and impartially. Laws require judges to act fairly, such as hearing both sides. Because their impartiality would otherwise be open to doubt, judges must work in a setting where they are obviously independent, in the sense of being free of pressures which could influence them to reach a decision in a case ...”  

Surveys of jurors, including the 2011 Victorian Juror Feedback Survey have generally indicated broad support for trial by judge and jury. However, studies in Australia, the United States, and the United Kingdom have identified that delays in administrative processes and proceedings leading to empanelment cause a level of stress and frustration for prospective jurors. The same studies have also revealed a direct correlation between the level of citizen involvement and the level of confidence in the justice system.  

Prior to examining improvement initiatives with regard to juror utilisation, it is important to note that in the United States juror utilisation is defined as the percentage of all jurors appearing for service who are used in an empanelment: inclusive of empanelled, excused, and challenged jurors. In Canada, England, and Australia, juror utilisation is defined as the percentage of all jurors appearing for service who are empanelled. Although there is a difference in definition the principle remains the same. That is the efficient use of citizens attending for jury service.

There are several areas of the jury administration process which have an influence on rates of juror utilisation. All of the jurisdictions visited had in some part introduced a system of managing the daily attendance of prospective jurors to co-relate with demand. The most successful jurisdictions in this regard were supported by the judiciary in accepting standard panel sizes and introducing in-court processes that created a level of certainty regarding the need for a jury.

In the case of Boston, the Hon. Robert C. Rufo and Ms. Pamela J. Wood, Jury Commissioner, developed and implemented a “best practice” policy designed to improve juror utilisation by reducing the number of prospective jurors appearing at courthouses, and by reducing the number of prospective jurors attending assembly rooms by cancelling the requirement to attend.
Several recommendations for increasing juror utilisation within Victoria’s jurisdiction include:

- Customisation of JCO reports using historical data to assist metropolitan and regional jury offices to schedule summons runs on the basis of patterns of demand

- Avoid “reserving jury panels” – as in the case of Boston, historical data shows that “reserving” jury panels (i.e. panels that are held for a particular case) are rarely used, and holding them back prevents other trials from empanelling

- Establish a committee that may assist with the development of policies and practices that address jury utilisation and other jury management issues

- Explore the possibility of introducing “same-day” call-in i.e. instruct prospective jurors to utilise the jury message line and web facility mid-to-late morning on the day that they are scheduled to attend, with an update that they are to attend for the afternoon session. Whilst such a process may not be feasible for the larger courts, it could be used to good effect in regional courts

- Reinforce effective lines of communication between the JCO, court officers or judges, and the parties to practically assess the need for jurors at least the day before the case is scheduled for trial

- Requesting that parties comply with Section 248 of the *Criminal Procedure Act 2009* (Vic), i.e.

  **248. Parties must inform Juries Commissioner of certain events**

  If a party to a criminal proceeding listed for trial before a jury becomes aware of any event that affects:

  (a) whether or not a jury will be required for the trial; or

  (b) when a jury will be required for the trial; or

  (c) the dates on which persons will be required to attend for jury service—

  the party must inform the Juries Commissioner as soon as practicable after the party becomes aware of the event.

### 3.4.2 Representativeness

#### 3.4.2.1 The Victorian journey – an overview

Meeting the demand for juries, providing juries which are representative of our changing community, and ensuring that juries are administered and managed appropriately has fuelled the need for continuous reform.

As such, juries and the jury system have been, and will continue to be, of interest to legal reformers and academic researchers wherever juries are used. Victoria is no exception, with several reviews of the jury system having been undertaken over recent years.

A major review of the Victorian jury system occurred in 1967. This review relied heavily on the findings and recommendations of Lord Morris, who had conducted a review of all aspects of jury service in England and Wales in 1965.32

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The structure adopted in the *Juries Act 1967* (Vic) ultimately mirrored the recommendations made by the Morris committee which had recommended that categories for exemption be abolished and be replaced with categories of:

- Ineligibility
- Disqualification
- Excusal as of absolute right.

It was contended that these categories would be introduced to allow people to decline to serve on juries where they performed a function which was particularly important to the community. The thinking of the Morris Committee was that such persons could and would opt in, or out, of performing jury service.

The 1967 Victorian review which had adopted the same line of thought as the Morris Committee incorporated and retained the extensive categories of disqualification, ineligibility and excusal as of right in the *Juries Act 1967* (Vic).

Since 1967 the Victorian jury system continued to receive attention from law reformers and Governments, leading to two reports being tabled by the Legal and Constitutional Committee of the Victorian Parliament in 1984.

Between 1994 and 1996 a Parliamentary Law Reform Committee (the Committee) was commissioned to undertake a review of the *Juries Act 1967* (Vic) and make recommendations concerning the categories of exemption as well as other matters relating to the administration of the jury system in Victoria. The Committee contended that contemporary standards and perceptions in respect of many of the categories of disqualification, ineligibility and excusal had changed since the enactment of the *Juries Act 1967* (Vic).

In response to this view the Committee made 81 Recommendations, many of which were aimed at making juries more broadly representative of the Victorian community.

The Committee also identified the following five factors as effectively operating to reduce representativeness:

1. The extensive categories of people disqualified, ineligible or entitled to be excused as of right from jury service
2. The manner in which jury districts were determined
3. The right of peremptory challenge
4. The conditions of jury service which may discourage people (eg. a lack of adequate remuneration and lack of juror support services)
5. A public perception that jury duty is onerous and to be avoided at all cost.

The Committee’s findings and recommendations led to the drafting and subsequent enactment of the *Juries Act 2000* (Vic).

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3.4.2.2 Eliminating peremptory challenges

The peremptory challenge is a challenge made to a prospective juror during the courtroom empanelment process. Each peremptory challenge must be made after a potential juror is called to take their seat in the jury box, and before they take it. The effect of this is to automatically exclude the challenged individual from sitting as a juror in that case. Peremptory challenges are intended to be used to eliminate extremes of partiality and prejudice. In Victoria, peremptory challenges are usually based on the name or, in some cases the allotted number of the prospective juror, occupation, and/or his or her appearance, gender, age, and race.

The peremptory challenge process, has been considered a fundamental part of trial by judge and jury. Every jurisdiction in Australia has the right to peremptory challenge with the number of challenges permitted varying from one jurisdiction to the next (see Table 1: Peremptory Challenges in Criminal proceedings: Current Practices in Australia).

Melbourne Jury Pool Room
Table 1: Peremptory Challenges in Criminal Proceedings: Current Practices in Australia

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Statute</th>
<th>Practice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Capital Territory</td>
<td><em>Juries Act 1967 (ACT)</em></td>
<td>8 peremptory challenges per party: s 34 (1)(2)</td>
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<tr>
<td>New South Wales</td>
<td><em>Jury Act 1977 (NSW)</em></td>
<td>- 3 peremptory challenges per party: s 42</td>
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<td>- Trial judge may discharge the jury if they believe the exercise of the right to peremptorily challenge a juror has resulted in a jury whose composition is such that the trial might be, or appear to be, unfair: s 47A</td>
</tr>
<tr>
<td>Northern Territory</td>
<td><em>Juries Act (NT)</em></td>
<td>- In the case of a capital offence, 12 peremptory challenges per party;</td>
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<td></td>
<td>- In any other case, 6 peremptory challenges per party: s 44(1)</td>
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<tr>
<td>Queensland</td>
<td><em>Jury Act 1995 (QLD)</em></td>
<td>- 8 peremptory challenges per party: s 42(3), (5)</td>
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<td></td>
<td></td>
<td>- Where there are 1 or 2 reserve jurors, there is 1 additional peremptory challenge per party: s 42(4)(a)</td>
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<tr>
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<td></td>
<td>- Where there are 3 reserve jurors, there are 2 additional peremptory challenges per party: s 42(4)(b)</td>
</tr>
<tr>
<td>South Australia</td>
<td><em>Juries Act 1927 (SA)</em></td>
<td>3 peremptory challenges per party: s 61(1), 65</td>
</tr>
<tr>
<td>Tasmania</td>
<td><em>Juries Act 2003 (TAS)</em></td>
<td>Each person arraigned is allowed:</td>
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<td></td>
<td></td>
<td>- 6 peremptory challenges: s 35(1)</td>
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<tr>
<td></td>
<td></td>
<td>- Additionally challenge peremptorily one reserve juror: s 35(3)(a)</td>
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<td>- If fewer than 6 potential jurors have been peremptorily challenged, that person may challenge a number of reserve jurors that is equal to 6, minus those already challenged under s 35(1), plus one additional potential juror: s 35(3)(b)</td>
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<tr>
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<td></td>
<td>The number of potential jurors that the Crown may stand aside is unlimited: s 34(1)</td>
</tr>
<tr>
<td>Victoria</td>
<td><em>Juries Act 2000 (Vic)</em></td>
<td>Each person arraigned is allowed:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- 6 peremptory challenges where there is 1 defendant;</td>
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<td></td>
<td></td>
<td>- 5 peremptory challenges where there are 2 defendants;</td>
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<tr>
<td></td>
<td></td>
<td>- 4 peremptory challenges where there are 3 or more defendants: s 39(1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Crown right to stand aside:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- 6 peremptory challenges where there is 1 defendant;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- 10 peremptory challenges where there are 2 defendants;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- 4 peremptory challenges for each defendant where there are 3 or more defendants: s 38(1)</td>
</tr>
<tr>
<td>Western Australia</td>
<td><em>Juries Act 1957 (WA); Criminal Procedure Act 2004 (WA)</em></td>
<td>Note: The law in the case of criminal trials respecting notice to an accused person of their rights of challenge is that set out in the Criminal Procedure Act 2004: Juries Act 1957 (WA) s 40 Each person arraigned is allowed: s 104(4)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- 3 peremptory challenges</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Crown right to stand aside:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- 3 peremptory challenges where there is 1 defendant;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Where there are 2 or more defendants, a number equal to 3 times the number of defendants.</td>
</tr>
</tbody>
</table>
The United States Supreme Court has held that the purpose of the peremptory challenge is "to assure the parties that the jurors before whom they try the case will decide on the basis of the evidence placed before them, and not otherwise." 36 It is often argued, however, and acknowledged by trial lawyers, that lawyers do not use peremptory challenges to achieve an impartial jury.37 Rather, their goal is to select jurors who will be favourable to their side of the case - conduct that may be described as an exercise of "jury profiling".

In Australia, "jury profiling" is not a major concern as we do not have the level of enquiry of prospective jurors that most United States jurisdictions have by virtue of their voir dire process. In Australia, supporters of the peremptory challenge process argue that it provides the accused with the opportunity to reject a number of prospective jurors that they perceive may be prejudiced against them. The peremptory challenge is the only effective tool with which an accused person can eliminate suspected bias from the jury.

Where challenges are “blind”, as in New South Wales and Western Australia, lawyers on either side are driven to rely almost entirely on assessments of the appearance of potential jurors and/or on preconceived notions of whether jurors of a particular race, age, or gender would, or would not, be sympathetic to their cause. As has been noted by Professor Findlay in his research for Jury Management in New South Wales,38 even in situations where peremptory challenges have been employed with an ‘identifiable motive’, it is “an extremely imprecise tool, relying upon questionable and crude social stereotypes”39 and “devoid of much logical ‘substance’”.40

The question of representativeness still remains; academics and researchers have noted that “an important element to ensure the representative nature of the jury is random selection.”41 It could therefore be argued that the peremptory challenge process conflicts with the concept of randomness and therefore representativeness. In fact, in the 2010/11 financial year within my own jurisdiction of Victoria, of 6,857 jurors empanelled, 2,734 (40%) were peremptorily challenged. Further analysis of the data shows a bias towards females, who represented 66% of the number challenged; and occupation, with 72% of professional and clerical/administrative workers being challenged.42

My visit to London revealed that with an amendment to the Criminal Justice Act 1988 (UK),43 the right of peremptory challenge had been abolished altogether 24 years ago. The basis for its abolishment being that it was viewed as an erosion of the principle of random selection and, in its general use, as an abuse that held the potential to bring the whole jury system into public disrepute.44

Abolishing peremptory challenges has not eliminated the process of challenges altogether. Challenges for cause are still available to the accused, that is, a potential juror may be challenged for good reason, such as if there is a belief that the person cannot be fair, unbiased or capable of serving as a juror. A challenge may also be made with respect to the panel or part

37 Ibid.
38 Mark Findlay, Jury Management in New South Wales, (Australian Institute of Judicial Administration Incorporated, 1994).
39 Ibid 50-51.
40 Ibid 52.
42 Juries Commissioner’s Office, Victoria
43 Criminal Justice Act 1988 (UK), s 118(1)
44 The Fraud Trials Committee Report

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Improving the efficiency, effectiveness and integrity of the Victorian Jury System

I have been unable to discover any evidence to suggest that there has been any detrimental effect to the rights of the accused or to the English justice system following the abandonment of the right of peremptory challenge. On the contrary, the elimination of the process has arguably lead to greater representation, a reduction in the time taken to empanel a jury, and significant reductions in the number of people being summoned to attend for jury service.46

Thus, the proposal to eliminate peremptory challenges (while retaining the right to challenge for cause) within our jurisdiction deserves serious consideration, as it would:

- Enhance the representativeness of juries by allowing for the first 12 prospective jurors to be empanelled (unless there is a challenge for cause) regardless of age, gender or occupation
- Increase the efficiency of the empanelment process – the empanelment process would become streamlined, effectively resulting in a reduction in the time taken to empanel a jury
- Make more efficient use of individuals summoned for jury service increasing juror satisfaction
- Reducing the administrative costs associated with summoning additional people.

3.4.2.3 Anonymity

The question of juror anonymity is one that arouses polarised views from jury administrators and trial judges locally and internationally. Empanelling juries without making reference to names is becoming more common place even in the United States where the empanelment process involves a comprehensive Voir Dire procedure.

In Australia, jury selection processes and procedures vary across jurisdictions (see Table 2: Current Practices in Australia). In Victoria, prospective and empanelled jurors are identified by name or number and occupation. The court has the power to direct that a jury panel be identified by number, but it is left to the discretion of individual judges.

3.4.2.4 The rationale for anonymity

An accused person does not have a right to the names of jurors:

Historically, at least since the beginning of the 19th Century, an accused person has not had a right to the names of jurors in England or Australia.47

It has also been held that an accused person does not have a constitutional right to the names of jurors.48 In Ng v The Queen,49 the High Court acknowledged the existence of essential and inessential characteristics of a jury. Only those characteristics and incidents that are regarded

46 Interview with Sharon Whitfield, Head, Jury Central Summoning Bureau, October 2011
47 See Hill v Yates (1810) 12 East 229; The Case of a Juryman (1810) 12 East 231; R v Dowling (1849) 7 St Tr (NS) 381 at 385; R v Cuffey (1848) 7 St Tr (NS) 467 at 469; R v Mellor (1858) 1 Dearsley & Bell 468; R v Baum (1927) 27 SR (NSW) 401 at 402-403.
as fundamental and inherent in the institution of trial by jury are beyond the reach of the legislature. The question of whether a requirement is essential or inessential is a question of degree and of substance that “should be approached in a spirit of open mindedness, of readiness to accept any changes which did not impair the fundamentals of trial by jury”. As such, the essential features of trial by jury are to be discerned with regard to the purpose of which s 80 of the Australian Constitution was intended to serve, and to the constant evolution of the characteristics of juries.

Table 2: Current Practices in Australia

<table>
<thead>
<tr>
<th>Jurisdiction</th>
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<tbody>
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<td>Australian Capital Territory</td>
<td>Juries Act 1967 (ACT)</td>
<td>Jurors identified by name and occupation: s 31</td>
</tr>
<tr>
<td>New South Wales</td>
<td>Jury Act 1977 (NSW)</td>
<td>Jurors identified by number: s 29</td>
</tr>
<tr>
<td></td>
<td></td>
<td>A person who attends a trial in accordance with a jury summons is not required to disclose their name or any other matter that identifies or is likely to lead to the identification of the person. However, such information must be provided to the Sherriff: s 37</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>Juries Act (NT)</td>
<td>Jurors identified by name and description: s 37</td>
</tr>
<tr>
<td>Queensland</td>
<td>Jury Act 1995 (QLD)</td>
<td>Jurors identified by name: s 41</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Court holds power to direct a jury panel be identified by number: s 41(2)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Use of numbers to identify jurors is a practice agreed to by the Chief Justice and Chief Judge: s 89(2)(b)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Jurors’ full name, suburb and occupation available to counsel but is not read out in open court. Such information is retrieved by the Sheriff’s Office after empanelling.</td>
</tr>
<tr>
<td>Tasmania</td>
<td>Juries Act 2003 (Tas)</td>
<td>Jurors identified by name: s 29</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Court holds power to direct a jury panel be identified by number only: s 7</td>
</tr>
<tr>
<td>Victoria</td>
<td>Juries Act 2000 (Vic)</td>
<td>Jurors identified by name or number and occupation: s 36</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Court holds power to direct a jury panel be identified by number: s 31(3)</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Juries Act 1957 (WA)</td>
<td>Jurors identified by number: s 36A</td>
</tr>
</tbody>
</table>

Arguably, empanelling an anonymous jury in some cases but not in others may threaten the accused persons’ right to the presumption of innocence. This is particularly so in instances where prospective jurors are balloted to attend numerous empanelment’s featuring similar charges on the same day, but one trial is empanelled by number and the remainder by name. This may lead prospective jurors to believe that withholding their names in court is an extraordinary practice, inadvertently suggesting that the accused is considered particularly dangerous and increased measures of security and anonymity are being taken to protect both potential and empanelled jurors.


51 In Australia, the origin of the presumption of innocence is in common law. The presumption has been reaffirmed in Victoria under s 25(1) of the Charter of Human Rights and Responsibilities Act 2006 (Vic).
Empanelling by number in every case as opposed to seemingly singling particular defendants out would eliminate the stigma that may be caused by the empanelment of nameless juries in some cases but not in others. Furthermore, In Director of Public Prosecutions (Vic) v Ivanovic, Cummins J in respect of s 31(3) of the Juries Act 2000 (Vic), that:

…general use of juror number rather than name for reason of good management is in my view consonant with the provision of s 31(3). That indeed is the modern (and interstate) way. It underpins the fundamental of trial by jury.

The digital age and social networking pose new challenges to the protection and management of modern juries:

In Australia, jurors are reasonably well protected from forms of interference that may either prevent them from carrying out their duties impartially and to the best of their capacity, or deter them from being willing to serve on a jury in the future. However, it should be noted that the shield provided by the law is not impenetrable and the advent of the internet and other technological advancements pose new challenges to the ways in which modern jurors are both protected and managed.

The modern juror enters the courthouse from an environment of unprecedented internet dependence. The “participative web”, encompassing social networking and user-generated content, continues to be a major driving force in the steadily increasing commonality and intensity of online participation and engagement in Australia. During the month of June 2010, 8.7 million Australians accessed mainstream social networking and user generated content sites such as Facebook and YouTube from home, spending in excess of 41.5 million hours on these sites, with Facebook accounting for 81% of time spent on social networking sites and 82% of web pages viewed.

Furthermore, the majority of Australians now have access to the internet from a wide range of locations including home, work, mobile devices (iPads, Tablets, mobile phones etc), internet cafes and libraries. Between June 2005 and June 2010, the frequency of internet use in Australia (accessing the internet at least once a week) increased across all age groups with the proportion of heavy internet users (more than 15 hours a week), increasing by 100%.

Social and professional networking sites such as Facebook, MySpace, Linkedin and Twitter, which are created with the intention of communicating information and news about oneself to others, contain a wide array of personal information. Such information ranges from the individual’s name, occupation(s), birthday, current city and home town, sexual orientation and relationship status, to religious and political views, ethnicity, and other personal interests. A selection of photographs and videos are also commonly featured on such profiles. Furthermore, geolocation services such as Foursquare, Check-In, and Facebook Places, which pinpoint and publish an individuals’ whereabouts on social networking sites are growing in popularity amongst the online community.

Jury service is an important but onerous civil responsibility. For the duration of jury service, the court is the jurors’ workplace – “a workplace over which jurors can exert very little control”. Deciding another’s fate is a trying ordeal, and the financial and emotional burdens of jury service can be significant even in the most simple cases. Whilst the availability of personal information online will differ according to the privacy settings of the individual, it is undeniable that the ability to contact, harass, intimidate, or influence jurors has been made much easier by the participative web. Once the names and occupations of jurors have been shared in open court, a juror’s fear of unsolicited contact can no longer be viewed as unreasonable or fanciful.

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52 (2003) VSC 388 [8]-[7].
54 Ibid 14.
56 The content of a users’ profile may be wholly available to “everyone” – including Google searches, to “friends only”, or customised accordingly.

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In a state wide Juror Feedback Survey conducted by the Office of the Juries Commissioner over a period of six weeks in 2011, concerns respecting privacy and anonymity were evident with 80% of respondents indicating a preference to be empanelled by number as opposed to name.

The High Court of Australia has expressly recognised the requirement of the jury system to adapt and respond to the circumstances of the time with regard to the security of jurors in the case of Brownlee v The Queen:

One of the most significant aspects of the history of trial by jury before, and up to, the time of Federation is that it shows that the incidents of the procedure never have been immutable; they are constantly changing.

The reason for this, as noted by Gleeson CH and McHugh J (at 302, [66]), “is because the danger [of improper outside influence] itself changes with varying social conditions and methods of communication”. In order for the jury to remain the “community’s guarantee of sound administration of criminal justice”, it must be able to exercise its function without fear or favour, and without outside intimidatory influences so far as the law allows.

As such, every measure should be taken to assist jurors in performing their task as efficiently and comfortably as possible. It is therefore suggested that the identification of potential jurors and empanelled jurors by number as opposed to name would more adequately protect their anonymity and safeguard them against undue influence, thereby allowing the jury to complete its task free of any extraneous concerns over personal security produced by the participative web.

**Empanelment by number would accord with the principles underlying the right to privacy guaranteed by international and domestic human rights instruments**

With its fundamental convictions of individual liberty and a commitment to the protection and tolerance of the conception of social diversity and the securing of personal liberty, liberalism remains the dominant ideology of the 21st Century. Features of the liberal state are consequently centred entirely around the rights and freedoms of the individual, preaching for political democracy, freedom of speech, the rule of law, capitalism and both legal and political equality. Within Western liberal democracies such as Australia, particular emphasis is placed on the law and criminal justice system as the ultimate expression of truth, rationality, logic, objectivity and neutrality to uphold the fundamental components of liberalism in the name of individual rights and freedoms.

The contemporary concept of human rights is perhaps best articulated in the preamble to the United Nations Universal Declaration of Human Rights in its introduction of the first international instrument, enunciating a global commitment to the preservation and “recognition of the inherent dignity and of the equal and inalienable rights of the human family”. Human rights are not “the rights and freedoms which a person has under a particular legal system, they are the rights and freedoms which every legal system ought to recognize and observe”, rights that impose both negative and positive duties on States and citizens that are necessary to lead a life of dignity which are acquired simply by virtue of one’s own humanity, applying equally to all human beings, regardless of their age, race, creed, social or political status and sex. The preservation of human rights has been further articulated in subsequent international human rights instruments, including nine core human rights treaties and an extensive list of non-binding declarations, principles, guidelines, standard rules and recommendations.
The right to privacy has been enshrined in Article 12 of the *Universal Declaration of Human Rights* which states:

No one should be subjected to arbitrary interference with his privacy, family, home or correspondence, nor attacks on his honour or reputation. Everyone has the right to protection of the law against such interferences or attacks.

The human rights of Victorians have been articulated by the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter). The Charter, which came into effect on 1 January 2008, aims to protect and promote 20 fundamental human rights of Victorians, including the right to privacy.\(^{62}\) Drawing from Article 17 of the *International Covenant on Civil and Political Rights*\(^{63}\) (a mirror provision of Article 12 of the *Universal Declaration of Human Rights*), s 13 of the Charter expressly grants the right of a person “not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with”\(^{64}\).

The Charter does not provide any new avenue of redress for individuals who believe their privacy has been breached. The Charter imposes an obligation on all public authorities to act in a way that is compatible with human rights, requiring statements of compatibility to accompany all Bills introduced into Parliament and perhaps most significantly, that all statutory provisions enacted either before or after the Charter, be interpreted so far as possible in a way that is compatible with human rights.\(^{65}\)

Thus, the proposal to introduce the practice of empanelling juries by number in every instance within our jurisdiction deserves serious consideration as it would:

- Increase prospective jurors' willingness to make themselves available for selection as jurors
- Relieve jurors' fears of retaliation for potentially “unpopular” verdicts, thus improving the quality of jury deliberations and the fairness of verdicts
- Be a powerful tool to protect jurors from intimidation during trials
- Accord with the principles underlying the right to privacy guaranteed by international and domestic human rights instruments.

### 3.4.3 Compliance

All jurisdictions visited have introduced “juror delinquency” programs in an effort to increase the representativeness of juries. However, Los Angeles, California and Boston, Massachusetts have the most comprehensive and effective programs.

In fact, Massachusetts has been credited with creating the first state-wide “Delinquent Juror Prosecution Program” in 1996, when the Supreme Judicial Court ordered the Office of the Juries Commissioner to enforce jury duty laws in order to make juries more diverse and representative of the community.\(^{66}\) Juries Commissioner, Ms Wood, indicated that approximately 85% of delinquent jurors annually agree to complete jury duty, rather than face criminal charges.

Similar, results have been noted for the Los Angeles Superior Court, where delinquent jurors responded positively to the Sanctions Program (i.e. monetary penalty program) and the


\(^{64}\) *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 13 (a).

\(^{65}\) *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 1 (2)(b)-(d).

\(^{66}\) <www.mass.gov/courts/jury/introduc.htm>
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Juror delinquency in Victoria may be defined as:

- Not responding to the Notice of Selection for Jury
- Failing to attend for jury service as summoned
- Failing to attend as a supplementary juror
- A person who has been empanelled and fails to attend until discharged by the court.

Non-response rates to “Notice of Selection” in Victoria have steadily increased to 14%, and a daily non-attendance (absentee) rate of 10%. Absentees are assertively followed-up by the JCO and as a consequence, 85% of those followed-up subsequently attend for jury service. Accordingly, strengthening the follow-up program within the Victorian jurisdiction deserves serious consideration as:

- It may result in more representative jury pools by reducing the impact of disproportionate non response/attendance rates. Doing so will spread the obligation of jury service more equitably throughout the community
- More citizens will understand the importance of jury duty as a consequence of participation
- The JCO establishes greater legitimacy by asserting its authority.

3.4.4 Advisory Committee’s

All jurisdictions that have been successful in progressing innovations which have improved their respective jury systems had the benefit of established “advisory committees”. Although Committee membership varied from one jurisdiction to the next, the common denominator was that the members were keen to advance the improvement of their respective jury systems.

For example, In the state of New York, the former Chief Judge, Judith S Kaye formed a Jury Project, consisting of a panel of 30 judges, lawyers, jury commissioners, academics, business people. The aim of the project was to examine every facet of New York State’s jury system. The project was successful in introducing many of the initiatives that have led New York to being at the forefront of jury management innovations.

Whereas the Commonwealth of Massachusetts Court system has a Jury Management Advisory Committee (JMAC) consisting of six members appointed by the Chief Justice of the Supreme Judicial Court. The JMAC, oversees the operation of the OJC and is authorised to encourage the continuing study, research, and improvement of all aspects of the jury system. As in the case of New York many of the improvement initiatives may be attributed to the work and guidance of this committee.

If Victoria is to continue improving its jury system administratively and practically within the court room, serious consideration ought to be given to establishing national and state Jury Advisory Committees.

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67 The program was instituted in 2006 and is quite separate from the Sanctions Program
69 Juries Act 2000 (Vic) s67, s70, s71(1) & (3), s72
4 Conclusion

Trial by Judge and Jury

Historically, the common law has regarded the jury system as an important institution and a valuable means of enabling direct public participation in the administration of justice, serving as “the community’s guarantee of sound administration of criminal justice”. Juries act as the voice of the community, ensuring that the criminal justice system is kept in harmony with the commonly accepted standards and values of the wider community. The tasks of judge and jury are demarcated along traditional lines in Australian criminal trials. It is not the role of the jury to act as an “amateur detective” by conducting their own independent investigation, research, or otherwise into the dispute or alleged offence – it is “fundamental to trial by jury that the law is for the judge and the facts are for the jury”. Thus, the role of the jury is to determine the facts, apply relevant principles of law to those facts as directed by the judge, and return a verdict.

Democracy and citizen participation

What appears to be typical in every country that has a jury system is the principle that the right to trial by jury is one of the most important parts of a democratic way of life – it exists to protect the individual’s rights and involve the community in the administration of justice. The jury system and therefore juries, which are made up of ordinary citizens, provide a formal mechanism that links the community to the justice system.

In a democracy it is essential that every opportunity is provided for the public to participate in the administration of justice. As a consequence of serving as jurors members of the public become part of the court itself. This in turn has served to increase the level of confidence in the courts and the general administration of justice as was recently highlighted in a 2011 Victorian Juror Feedback Survey, where 43% of respondents indicated that their level of confidence in the criminal justice system was higher as a result of their participation.

Our responsibility

“Without change there is no innovation, creativity, or incentive for improvement. Those who initiate change will have a better opportunity to manage the change that is inevitable.”

William Pollard, English Clergyman

Jury service is a gateway into the courts. It is our responsibility as court administrators to actively support a system that ensures the efficient use of jurors and their time if they are to continue to have trust and confidence in the justice system. The Fellowship experience has provided me with the opportunity to continue my endeavour to improve the administration of the jury system and as a consequence, strengthen the portal that provides citizens with the opportunity to administer justice in partnership with judges.

If we believe that “trial by jury ever has been, and ... ever will be, looked upon as the glory” of our legal system, it is important that we continue to develop the system relative to the environment within which it is expected to operate. Our willingness to improve and evolve the system is the spirit within which the following recommendations are proposed.

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74 R v Prasad (1979) 23 SASR 161, 162-163 (King, CJ).
76 Murray Gleeson, Juries and Public Confidence in the courts, Reform Issue 90 2007

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5 Recommendations

The key recommendations emerging from my Fellowship are:

1. To develop an adaptable Jury Management and Best Practices Manual that will provide consistency in jury management practices.

2. To propose the establishment of a Victorian Jury Innovation Advisory Committee (the Committee). The Committee members would include:
   - A Supreme and County Court Judge (Rotating Chair)
   - A Representative from the Victorian OPP and Commonwealth OPP
   - A Representative from the Victorian Criminal Bar and from Victoria Legal Aid
   - The Juries Commissioner

3. To propose the establishment of a National Jury Innovation Committee for the purpose of coordinating jury-related research and development initiatives and innovations.

4. To improve the efficiency of the jury empanelment process by empanelling jurors by number in all instances. This will:
   - Provide consistency to the empanelment process which protects the accused right to a presumption of innocence
   - Protect the right to privacy for jurors
   - Facilitate the introduction of technology to the empanelment process.

5. Propose the removal of peremptory challenges in order to facilitate the empanelment of a truly representative jury and as a consequence, streamline the empanelment process and increase juror utilisation numbers.

6. Enhance jury management reports by introducing a metrics-based approach that is aimed at improving juror utilisation.

7. Enhance and upgrade Jury Information Management System with a view to enabling prospective jurors to complete their Jury Questionnaires online.

8. Explore the feasibility of introducing “same-day” call-in for regional courts.

9. Investigate the possibility of introducing “tablet” technology for use by all parties to proceedings, including the jury.
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