

### Role of juries

- Decide questions on fact.
- Listen to and consider the evidence.
- Criminal: a jury of twelve will decide if the defendant is guilty or not guilty. Only guilty if beyond reasonable doubt.
- Civil: optional jury of six rules on the balance of probabilities and can decide amount of damages.

### Factors influencing jury composition

Questionnaire: determines whether eligible or ineligible

- Ineligible: connection to the law e.g. lawyer.
- Disqualified: connection to crime.
- Excused: personal circumstances e.g. advanced age.
- Temporarily excused e.g. pre booked holiday.

Jury Panel – Parties can challenge potential jurors

- Peremptory challenges (6 without reason)
- Challenges for cause (unlimited with reason)

### Strengths and weaknesses of the jury system

#### Strengths

1. Represents a cross section of the community, encompassing the views of a broad range of people.
2. Reflects community values – decisions accepted by community.
3. Spreads decision-making responsibility.

#### Weaknesses

1. Sometimes unrepresentative of the community – due to jury ineligibility excluding members of society.
2. No reason given – leaving potential for inaccuracy and confusion.
3. Biased jurors – influenced by personal prejudices or media.

### Reforms to the jury system

- **Reduce exemptions**
  - Pros: allowing a jury to be a more representative cross section of society more truly reflecting community values.
  - Cons: limiting exemption may be unsuitable/create bias.
- **Reasons for decisions**
  - Pros: less likely to agree on dubious grounds, instilling confidence in the legal system.
  - Cons: may create confusion as jurors come to same decision for different reasons.

### Alternatives to the jury system

- Judge alone
  - Pros: use their expertise to decide on evidence and reach a verdict.
  - Cons: won't reflect community values and ensure decision-making responsibility is spread.
- Professional jury
  - Pros: permanent role ensures jurors understand legal system.

- Cons: distances community from legal system

### Problems faced by individuals using the legal system

1. **Costs:** infringing on accessibility to the legal system
  - Increase in overall costs with decrease in legal aid funding thus fewer people eligible for funding.
  - Parties pay for court costs, solicitors and possibly opposing parties' costs if they lose a civil case.
2. **Social and cultural differences:** fair/access
  - Australian legal system is based on British system, therefore may not be fair or acceptable to foreigners.
  - Adversary system and its win/lose nature can be confronting to those non English-speaking parties.
    - e.g. Some Aboriginal people see direct questioning as discourteous, however courts may vie this with suspicion.

### Recommendations and recent changes in the law

| Recommendation  | Benefit   | Element addressed                           |
|---|---|---|
| Loosen rules of evidence and procedure.                             | Greater use of written evidence could reduce the time of a trial and a lesser adversarial nature allows comfortability.                       | Effective access, timely resolution.        |
| Education programs for Aboriginal and Torres Strait Islander people | Greater provision of information about the law could help to ensure that all people in Australia understood the legal system they were under. | Effective access, fair and unbiased hearing |

| Recent change   | Benefit   | Element addressed                    |
|---|---|--------------------------------------|
| Judges urge parties to use mediation and attempt an out of court settlement (civil) | Removes timely delays in court system as less disputes reach trial and encourages low cost avenues, which promotes accessibility.   | Timely resolution, effective access. |
| Introduction of the County Koori Court for Aboriginal offenders (indictable)        | Includes the Aboriginal community in the legal system, and aims to rehabilitate offenders by removing jargon and consulting elders. | Fair and unbiased, effective access. |