

Juries (Age of Excusal) Amendment Bill

Submission of the New Zealand Law Society Te Kāhui
Ture o Aotearoa

21 May 2025

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Juries (Age of Excusal) Amendment Bill (**Bill**).
- 1.2 This submission has been prepared with input from the Law Society's Criminal Law Committee.¹
- 1.3 The Law Society **does not wish to be heard** on this submission.

2 General comments

- 2.1 The explanatory note to the Bill notes that the social dynamics of New Zealand society have changed, that people are working and engaging in society later into life, and that there is an increasing difficulty in meeting the required numbers for jury duty. These social changes are heralded as the reason it is appropriate to increase the age of automatic excusal from jury duty.
- 2.2 The Law Society supports the Bill's intention to address difficulties in fulfilling jury duty numbers. However, it is important that changes to the jury trial process include an assessment of any potential effect on public trust and confidence. This is particularly important where proposed changes relate to the jury's composition. Maintaining public trust and confidence is essential to a functioning and efficient justice system, and, in the Law Society's view, efficiency concerns alone are insufficient to displace this priority.
- 2.3 Currently, there is insufficient research available on juries in New Zealand (for example, their composition, factors impacting the level of public trust,² and decision-making). Even demographic information about those serving on juries is not captured. This makes it challenging to assess the desirability and likely impact of an uplift in the age of excusal to 72.

3 The 'Age of Excusal' ground

Background

- 3.1 The 'age of excusal' on a specific occasion ground as set out in section 15(2)(aa) Juries Act 1981 (**the Act**) was originally inserted into the Act in 2000, in part in recognition of the right not to be discriminated against on the basis of age. It reflected that there were members of society who were willing and capable to serve on a jury, as well as recognising that those over 65 should have the choice about whether serving on a jury was appropriate for them given that they have already contributed to the community in a range of ways throughout their working life.³

¹ More information about the Law Society's Criminal Law Committee is available on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/criminal-law-committee/>.

² Noting that the recent Public Perception Module key results report indicates that 57.3% of New Zealanders have high trust in Judges and 59.5% of New Zealanders have high trust in Juries.

³ Juries Amendment Act 2000, section 9.

3.2 Prior to the implementation of the age of excusal ground, a maximum age at which a person may be summoned to serve as a juror was prescribed by the legislation. That age was set at 60 in the first instance, then raised to 65 in 1945.⁴

3.3 The ability to be permanently excused from jury service was added to the Act in 2012.⁵

Current state

3.4 The issue of the age of excusal has been raised numerous times throughout the years and leads to debate about whether and how a determined age should be set. As mentioned at 2.3 above, there is limited evidence available about the composition of juries, the level of trust the public has in juries, and the public trust implications of raising the age of excusal (and, thereby, the jury pool average age). This information is essential to making an informed recommendation about the chosen age of 72.

3.5 It is also important not to lose sight of the original intention in setting an age whereby permanent excusal can be requested. This recognises the varied and numerous other contributions to society those over that age have already provided to the wider New Zealand society, and respect for that contribution by allowing them the grace to step out of civic duty requirements once retirement age is reached.⁶

Application

3.6 Availability of an excusal ground raises a risk of discrepancies in the way it is applied, particularly around who seeks to be excused and what this means for the spread of experience and demographics in the juror pool. We note that such discrepancies may currently exist, but the data to analyse this is not available.

3.7 We note further that if raising the age of excusal, it is also appropriate to review the suitability of any existing processes for persons other than the potential juror to identify and raise concerns about that potential juror's ability to act effectively as a juror. Such processes are necessary to safeguard the jury trial process by identifying potential jurors (of any age) who may not be aware of, or able to deliver, what is required of jury service (for example, the ability to recall oral evidence or concentrate on complex arguments for a long period of time) and therefore may not have applied for an excusal on their own initiative. The use of these processes, along with the use of other excusal grounds, may increase with an increase in the age of excusal. It may be worthwhile considering whether this may negate the perceived efficiency gains of lifting the age of excusal to 72.

3.8 An alternative approach could be to consider setting the age of excusal for a particular occasion under section 15 of the Act at a different age to that of permanent excusal under section 15A. For example, setting the age for a particular occasion at 68, or even 70

⁴ Michèle Powles "A legal history of the New Zealand Jury Service – introductions, evolution, and equality?" (1999) 29 VUWLR 283 at 313; Statutes Amendment Act 1945; Bruce James Cameron "Juries" (22 April 2009) Te Ara – Encyclopaedia of New Zealand <<https://teara.govt.nz/en/1966/23523/print>>

⁵ Juries (Jury Service and Protection of Particulars of Jury List Information) Amendment Act 2012, section 11 inserting sections 15A and 16.

⁶ Ministry of Justice "Departmental Report for the Law and Order Committee: Juries (Jury Service and Protection of Particulars of jury list information) Amendment Bill" (June 2011) at 45 – 46; (12 September 2012) 683 NZPD 5206.

whilst keeping permanent excusal at 72. This would still achieve the objective of expanding the pool of potential jurors and address the concern about the percentage of applications for excusal on the basis of age, whilst reducing the impact on other juror selection processes and excusal grounds.

- 3.9 Overall, the Law Society supports the intention to raise the age of excusal from 65, given we are now living healthier lives for longer. However, we urge fuller consideration of the potential impact on public trust in the jury process; whether the proposed change will increase the jury pool to an extent that is worth removing the choice of those aged 65 to 72; and the views of older people who will be more immediately affected by this change.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Jesse Savage', written in a cursive style.

Jesse Savage
Vice President