



# JURIES R US

## **GRAND JURIES:**

The grand jury is a type of jury, in the common law system, that had its origins in England in 1166 A.D. as a screening device to weed out baseless cases before they went to trial. This panel of knights and freemen became known as the “grand” jury (the trial jury, by contrast, is the small or ordinary “petit” jury). The grand jury looks at the prosecutor’s evidence presented to them in the form of an indictment and they determine if there is a probable cause for that indictment. A grand jury is a common law referendum where a majority of grand jurors must concur to find for a “true bill”. The grand jury is also charged with discovering what crimes have been committed in the country - an investigatory function which extends into the country’s administration.

A quorum is the minimum number of jurors that need be present for the grand jury to be able to conduct the business of considering whether charges should be brought against someone or investigating criminal activities or the conduct of public business in the community. Normally, twenty-three jurors are a quorum.

### **GRAND JURY OFFICERS**

Common law grand juries have a foreman (“foreperson”), who administers the oath to witnesses before the grand jury, see that it receives other kinds of evidence and generally runs the grand jury’s sessions. As its presiding officer, the foreman acts on the grand jury’s behalf and is its spokesman, directing witnesses to answer questions, to provide physical evidence and to return for another appearance, if necessary. Witnesses communicate with the grand jury through the foreman.

After the grand jury has heard all the evidence on the proposed indictment, it retires to deliberate. The foreman is in charge of deliberations, submitting the indictment to the jurors, ensuring that each has an opportunity to express his or her opinion on the charge and, finally, having the jurors vote on them. The foreman must then record the number of jurors who voted to return an indictment.

### **SECRECY OF GRAND JURY PROCEEDINGS**

A juror who does not honour this obligation could be held in contempt. “If grand jury proceedings were made public, many prospective witnesses would be hesitant to come forward .. knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appear .. would be less likely to testify fully and frankly, as they would be open to retribution as well as to inducements. There also would be the risk that those about to be indicted would flee, or would try to influence .. grand jurors to vote against indictment. Finally, .. secrecy .. assures that persons who are accused but exonerated .. will not be held up to public ridicule.”

### **HOW CAN CASES GET TO THE GRAND JURY**

Cases can be brought before the grand jury by a law enforcement agency following an investigation and the issuing of a warrant for the arrest of the person believed to have committed the crime. In other cases, a private individual will have obtained an arrest

warrant from a magistrate accusing a person of a crime. The district attorney's office may also bring an indictment or special presentment to a grand jury where the accused has not been arrested. Finally, from the grand jury, from their own knowledge or observation. Such a presentment is an accusation, initiated by the grand jury itself, and in effect an instruction that an indictment be drawn.

### **ACTIONS TAKEN IF THE INDICTMENT IS "TRUE BILLED"**

If a "true bill" is found, the indictment must be returned in open court, either by the entire grand jury or by a sworn grand jury bailiff, clerk or process server. After a "true bill" has been returned, the accused has the opportunity to have a fair and impartial jury determine if he or she is guilty of the crime(s) charged in the indictment.

### **WHAT IS AN INDICTMENT?**

Section 4A of the Crimes Act 1914 (Cth): - "*indictment*" *includes an information and a presentment*". An "indictment" (also called a "bill of indictment") is "a formal document accusing one or more persons of committing a specific indictable (tried by jury) offence or offences". An "information" is "a document made by an informant setting out the details of an alleged offence...used in conjunction with a summons or a warrant for arrest of the defendant and to commence criminal proceedings". A "presentment" is a "report to a court by a Grand Jury, made on its own initiative without a request or presentation of evidence by the local prosecutor, that a "public" crime (illegal act by public officials or affecting the public good) has been committed".

### **GRAND JUROR'S OATH**

*"You, as a member of this grand jury, do solemnly swear, that you will diligently inquire into and true presentment make, of all public offences against the People of Australia, committed or triable within the Commonwealth of Australia of which you shall have or can obtain legal evidence. You will keep your own counsel and that of your fellow grand jurors, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness before you, nor anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You shall present no person through malice, hatred or ill will, nor leave any unpresented through fear, favour or affection, or for any reward or the promise or hope thereof; but in all your presentments or indictments, you shall present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding. So Help You God."*

### **WITNESS OATH**

Each witness who appears before the grand jury in a criminal case must be administered the following oath by the foreperson:

*"Do you solemnly swear or affirm that the evidence you shall give the grand jury on this bill of indictment or presentment shall be the truth, the whole truth, and nothing but the truth. So help you God"*.