



New South Wales

Jury Amendment Bill 2023

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Jury Act 1977* (*the Act*), including in response to a statutory review of amendments made to the Act by the *Jury Amendment (Verdicts) Act 2006*.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Jury Act 1977 No 18

Schedule 1[1] inserts a note in relation to the requirement for a person to have good cause to be exempted or excused from jury service.

Schedule 1[2] expands the test for the selection of additional jurors in criminal proceedings in the Supreme Court and District Court. In addition to the existing power to order the selection of additional jurors in proceedings of a kind prescribed by the regulations, the Court may order the selection of no more than 3 additional jurors if the Court is satisfied the nature, likely duration or complexity of the proceedings, or any other factor that may result in a juror being discharged during the trial of the proceedings, necessitates the selection of additional jurors.

Schedule 1[3] provides that a person may, in response to a summons, make a verbal or written request to be excused from jury service to the relevant court or coroner. The proposed amendment

removes the requirement that a written request may be made only if the circumstances of the request relate to the person's health or may cause embarrassment or distress if made public. **Schedule 1[4]** corrects an incorrect cross-reference.

Schedule 1[6] enables a court or coroner to order the selection of a replacement juror if, before the judge or coroner gives oral directions to the jury in a trial or coronial inquest, a juror dies or the court or coroner discharges a juror. The court or coroner may, subject to the minimum number of jurors required to constitute a jury specified in the Act, section 22, order that the trial or coronial inquest continue with a reduced number of jurors or order the selection of a replacement juror. The court or coroner must discharge the jury if, in the opinion of the court or coroner, continuing with the reduced number of jurors or the remaining jurors and a replacement juror would give rise to the risk of a substantial miscarriage of justice.

The proposed section provides for the way in which a court or coroner may order the selection of a replacement juror.

If the court orders the selection of a replacement juror and the number of allowed peremptory challenges has already been exhausted, one additional peremptory challenge without restriction may be made by each person prosecuted and the Crown or, for civil proceedings, each party to the proceedings.

The Supreme Court or District Court may order the selection of a replacement juror in criminal proceedings even if the Court ordered the selection of an additional juror before the jury was selected.

The court or coroner may order the selection of a replacement juror even if the court or coroner has previously ordered the continuation of the trial or coronial inquest with a reduced number of jurors or the remaining jurors and a replacement juror. **Schedule 1[5]** makes a consequential amendment.

Schedule 1[7] removes the requirement for a court to make an order permitting the jury in criminal proceedings to separate at any time after the jury retires to consider its verdict. The jury is, subject to a contrary order of the court, permitted to separate at any time either before or after the jury retires to consider its verdict.

Schedule 1[8] decreases, from 8 to 4 hours, the minimum period of time certain juries in criminal proceedings must deliberate before the jury may return a majority verdict if—

- (a) the jury has not reached a unanimous verdict, and
- (b) the court is satisfied, after examination on oath of one or more of the jurors, that it is unlikely the jurors will reach a unanimous verdict after further deliberation.

Schedule 1[9] extends the definition of *employee* to part-time employees for offences relating to the unlawful dismissal of, prejudice to and the employment conditions of employees summoned to serve as jurors.

Schedule 1[10] provides that the sheriff may, with the consent or at the request of the Supreme Court or District Court, investigate if there is reason to suspect that the trial of criminal proceedings, rather than the verdict of the jury, may be, or may have been, affected because of improper conduct.

Schedule 1[11] extends the circumstances in which the sheriff may investigate improper conduct that may affect, or may have affected, the trial of criminal proceedings to improper conduct by another person in relation to a juror.

Schedule 1[12] provides that a summons, notice or other document required or authorised by or under the Act to be sent, served or given to a person is deemed to have been sent, served or given if the sheriff emails the document to the person to an email address specified by the person for that purpose.

Schedule 1[13] makes an amendment of a transitional nature.

Schedule 2 Amendment of Jury Regulation 2022

Schedule 2 is consequential on the amendment made by Schedule 1[2].



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New South Wales

Jury Amendment Bill 2023

No. , 2023

A Bill for

An Act to make miscellaneous amendments to the *Jury Act 1977*, including in response to a statutory review of amendments made to the Act by the *Jury Amendment (Verdicts) Act 2006*; and for related purposes.

The Legislature of New South Wales enacts—

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1 Name of Act

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This Act is the *Jury Amendment Act 2023*.

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2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

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Schedule 1	Amendment of Jury Act 1977 No 18	1
[1] Section 14A	What constitutes good cause for the purposes of an exemption from jury service	2
	Insert after section 14A(d)—	3
	Note— Other reasons that would affect a person’s ability to perform the functions of a juror may include temporary disabilities or other physical or mental conditions.	4
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[2] Section 19	Numbers of jurors in criminal proceedings	7
	Omit section 19(2) and (3). Insert instead—	8
	(2) Before a jury is selected in criminal proceedings in the Supreme Court or the District Court, the Court may order the selection of no more than 3 additional jurors if—	9
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		11
	(a) the Court is satisfied the nature, likely duration or complexity of the proceedings, or any other factor that may result in a juror being discharged during the trial of the proceedings, necessitates the selection of additional jurors, or	12
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	Example— A trial that involves distressing or sensitive material may necessitate the selection of additional jurors.	16
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	(b) the trial of the proceedings is of a kind prescribed by the regulations for this subsection.	18
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	(3) The Court may make an order under subsection (2) only if the Court is also satisfied—	20
		21
	(a) the selection of the additional jurors is an appropriate means of ensuring there will be sufficient jurors remaining on the jury when the jury is required to consider the jury’s verdict, and	22
		23
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	(b) appropriate facilities to accommodate the additional jurors are available.	25
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[3] Section 38	Person summoned for jury service may be excused at trial or inquest	27
	Omit section 38(3). Insert instead—	28
	(3) A person who makes a request to be excused under subsection (2)(a) may make the request to the court or coroner verbally or in writing.	29
		30
[4] Section 38(5)		31
	Omit “subsection (1)”. Insert instead “subsection (2)(a)”.	32
[5] Section 53C	Discretion to continue trial or coronial inquest or discharge whole jury	33
	Insert after section 53C(3)—	34
	(4) This section does not apply if section 53D applies.	35
[6] Section 53D		36
	Insert after section 53C—	37
53D	Discretion to continue trial or coronial inquest, discharge whole jury or order selection of replacement juror in special circumstances	38
		39
	(1) This section applies if either of the following occurs before the judge or coroner gives oral directions to the jury in a trial or coronial inquest—	40
		41
	(a) a juror dies,	42

(b)	the court or coroner discharges a juror.	1
(2)	The court or coroner may—	2
(a)	subject to section 22, order that the trial or coronial inquest continue with a reduced number of jurors, or	3
(b)	order the selection of a replacement juror.	4
(3)	However, the court or coroner must discharge the jury if, in the opinion of the court or coroner, an order under subsection (2) would give rise to the risk of a substantial miscarriage of justice.	5
(4)	For subsection (2)(b), the court or coroner may order the selection of a replacement juror—	6
(a)	for a trial—from among the persons specified in section 53, in accordance with section 48 or 49, as the case may require, or	7
(b)	for a coronial inquest—in accordance with section 50.	8
(5)	If the court orders the selection of a replacement juror and the number of peremptory challenges allowed under section 42(1) or (1A) or 42A has been exhausted—	9
(a)	for criminal proceedings—each person prosecuted and the Crown have one additional peremptory challenge without restriction, or	10
(b)	for civil proceedings—each party to the proceedings has one additional peremptory challenge without restriction.	11
(6)	The Supreme Court or District Court may order the selection of a replacement juror in criminal proceedings even if the Court ordered the selection of an additional juror in accordance with section 19(2).	12
(7)	To avoid doubt, this section applies even if the court or coroner has previously ordered the continuation of the trial or coronial inquest with—	13
(a)	a reduced number of jurors, or	14
(b)	the remaining jurors and a replacement juror.	15
[7] Section 54		16
	Omit the section. Insert instead—	17
54 Jury permitted to separate in criminal trials		18
	The jury in criminal proceedings is, subject to a contrary order of the court, permitted to separate at any time either before or after the jury retires to consider its verdict.	19
[8] Section 55F Majority verdicts in criminal proceedings		20
	Omit “8 hours” from section 55F(2)(a). Insert instead “4 hours”.	21
[9] Sections 69(10), definition of “employee” and 69A(5), definition of “employee”		22
	Insert after paragraph (a) wherever occurring—	23
(a1)	a part-time employee, or	24
[10] Section 73A Investigation by sheriff of jury irregularities		25
	Omit “verdict of a jury in a” from section 73A(1).	26

[11] Section 73A(1)	1
Omit “by a member or members of the jury”.	2
Insert instead “by a juror, or improper conduct by another person in relation to a juror”.	3
[12] Section 75 Service of summons etc	4
Insert at the end of section 75(1)(b)—	5
, or	6
(c) if emailed to the person to an email address specified by the person for that purpose.	7 8
[13] Schedule 8 Transitional and savings provisions	9
Insert at the end of the schedule, with appropriate part and clause numbering—	10
 Part Transitional and savings provision consequent on enactment of Jury Amendment Act 2023	 11 12
Application of amendments	13
(1) An amendment made to section 14A or 38 by the amendment Act only applies to a request for exemption from jury service made after the commencement of the amendment.	14 15 16
(2) An amendment made to section 19, 54, 55F or 73A by the amendment Act only applies to a trial or coronial inquest if the jury is empanelled after the commencement of the amendment.	17 18 19
(3) Despite subclause (2), the amendment made to section 55F does not apply in criminal proceedings where the jury is empanelled after the commencement of the amendment (<i>current offence proceedings</i>) if—	20 21 22
(a) in earlier criminal proceedings against the accused in relation to the same offence, or another offence that occurred on the same occasion as the occasion to which the current offence proceedings relate—	23 24 25
(i) the jury was discharged because the jurors could not reach a verdict, or	26 27
(ii) a decision in the proceedings was set aside on appeal and a retrial ordered, or	28 29
(iii) the trial was aborted, and	30
(b) the jury was empanelled in the earlier proceedings before the commencement of the amendment.	31 32
(4) Section 53D, as inserted by the amendment Act, only applies to a trial or coronial inquest if the jury is empanelled after the commencement of the amendment.	33 34 35
(5) An amendment made to section 69 or 69A by the amendment Act only applies in relation to a person summoned to serve as a juror after the commencement of the amendment.	36 37 38
(6) In this clause—	39
<i>amendment Act</i> means the <i>Jury Amendment Act 2023</i> .	40

Schedule 2 Amendment of Jury Regulation 2022

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Section 5 Additional jurors in criminal proceedings—the Act, s 19

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Omit “section 19(2)(a), a trial estimated” from the section.

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Insert instead “section 19(2)(b), a trial that the court estimates”.

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