

New South Wales

Jury Amendment (Verdicts) Bill 2006

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Jury Act 1977* (the ***Principal Act***) to allow for majority jury verdicts in criminal proceedings.

The Bill inserts proposed section 55F to allow the decision of 11 out of 12 jurors or 10 out of 11 jurors to be returned as a majority verdict if all of the jurors are unable to agree on a verdict after deliberating for a reasonable time (being not less than 8 hours) and the court is satisfied that it is unlikely that the jurors will reach a unanimous verdict after further deliberation.

The Bill also makes provision for the discharge of an 11 or 12 person jury by the court if the court finds that the jurors are unlikely to agree on a unanimous or majority verdict.

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 to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act on the day following the day on which the proposed Act commences. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] inserts proposed section 55F into the Principal Act to allow the decision of 11 out of 12 jurors or 10 out of 11 jurors to be returned as a majority verdict in criminal proceedings if:

- (a) all of the jurors are unable to agree on a verdict after deliberating for a period of time (being not less than 8 hours) that the court considers reasonable having regard to the nature and complexity of the criminal proceedings, and
- (b) the court is satisfied, after examination on oath of one or more of the jurors, that it is unlikely that all of the jurors will reach a unanimous verdict after further deliberation.

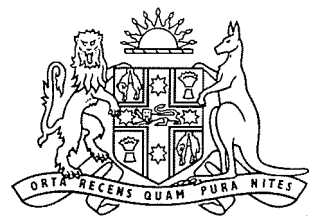
Proposed section 55F also ensures that a verdict that an accused is guilty of an offence against a law of the Commonwealth must be unanimous (the High Court in *Cheatle and Another v The Queen* [1993] HCA 44 decided that section 80 of the Constitution of the Commonwealth precluded a majority verdict in such circumstances).

Schedule 1 [1] also substitutes section 56 of the Principal Act to allow the court to discharge a jury consisting of 11 or 12 persons if it finds that it is unlikely that the jurors will reach a unanimous or majority verdict. Proposed section 56 also makes it clear that a jury cannot be discharged by the court if the court finds that it is likely that the jurors will reach a majority verdict. The provisions relating to the discharge of juries in existing section 56 are re-enacted in relation to juries consisting of 10 persons or less.

Schedule 1 [2] provides for a review of the amendments made by the proposed Act after 5 years from the commencement of those amendments.

Schedule 1 [3] allows regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [4] provides that the amendments made by the proposed Act apply only if the jury is empanelled in relation to the criminal proceedings after the commencement of those amendments (except if a jury was empanelled in certain earlier related proceedings before the commencement of those amendments).



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New South Wales

Jury Amendment (Verdicts) Bill 2006

No. , 2006

A Bill for

An Act to amend the *Jury Act 1977* to permit majority jury verdicts in criminal proceedings.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Jury Amendment (Verdicts) Act 2006*.

2 Commencement

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

3 Amendment of Jury Act 1977 No 18

The *Jury Act 1977* is amended as set out in Schedule 1.

4 Repeal of Act

(1) This Act is repealed on the day following the day on which this Act commences.

(2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Sections 55F and 56

Omit section 56. Insert instead:

55F Majority verdicts in criminal proceedings

- (1) This section applies in respect of a verdict in criminal proceedings where the jury consists of not less than 11 persons.
- (2) A majority verdict may be returned by a jury in criminal proceedings if:
 - (a) a unanimous verdict has not been reached after the jurors have deliberated for a period of time (being not less than 8 hours) that the court considers reasonable having regard to the nature and complexity of the criminal proceedings, and
 - (b) the court is satisfied, after examination on oath of one or more of the jurors, that it is unlikely that the jurors will reach a unanimous verdict after further deliberation.
- (3) In this section:

majority verdict means:

 - (a) a verdict agreed to by 11 jurors where the jury consists of 12 persons at the time the verdict is returned, or
 - (b) a verdict agreed to by 10 jurors where the jury consists of 11 persons at the time the verdict is returned.

unanimous verdict means a verdict agreed to by all members of the jury.
- (4) A verdict that the accused is guilty of an offence against a law of the Commonwealth must be unanimous.
- (5) This section extends to any alternative verdict that is available to a jury at law.

56 Discharge of jury that disagree in criminal proceedings

- (1) Where a jury in criminal proceedings has retired, and the jury consists of 11 or 12 persons, the court in which the proceedings are being tried may discharge the jury if it finds, after examination on oath of one or more of the jurors, that it is unlikely that the jurors will reach a unanimous verdict or a majority verdict under section 55F.

(2)	Where a jury in criminal proceedings has retired, and the jury consists of 11 or 12 persons, the court in which the proceedings are being tried may not discharge the jury under this section if it finds, after examination on oath of one or more of the jurors, that it is likely that the jurors will reach a majority verdict under section 55F.	1 2 3 4 5 6
(3)	Where a jury in criminal proceedings has retired, and the jury consists of 10 persons or less, the court in which the proceedings are being tried may discharge the jury if it finds, after examination on oath of one or more of the jurors, that it is unlikely that the jurors will reach a unanimous verdict.	7 8 9 10 11
[2]	Section 80	12
	Insert after section 79:	13
80	Review of majority verdict amendments	14
(1)	The Minister is to review the operation of the amendments made to this Act by the <i>Jury Amendment (Verdicts) Act 2006</i> to determine whether the policy objectives of those amendments remain valid and whether the terms of the amendments remain appropriate for securing those objectives.	15 16 17 18 19
(2)	The review is to be undertaken as soon as possible after the period of 5 years from the commencement of the <i>Jury Amendment (Verdicts) Act 2006</i> .	20 21 22
(3)	A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	23 24 25
[3]	Schedule 8 Transitional and savings provisions	26
	Insert at the end of clause 1A (1):	27
	<i>Jury Amendment (Verdicts) Act 2006</i>	28

[4] Schedule 8, Part 9	1
Insert after Part 8:	2
 Part 9 Transitional and savings provisions consequent on enactment of Jury Amendment (Verdicts) Act 2006	3 4 5
 18 Application of majority verdict amendments	6
(1) The amendments made to this Act by the <i>Jury Amendment (Verdicts) Act 2006</i> apply to criminal proceedings only if the jury is empanelled after the commencement of those amendments.	7 8 9
(2) Despite subclause (1), those amendments do not apply in criminal proceedings where the jury is empanelled after the commencement of those amendments (<i>current offence proceedings</i>) if:	10 11 12 13
(a) in earlier criminal proceedings against the accused, in relation to an offence or conduct that occurred on the same occasion as the occasion to which the current offence proceedings relate:	14 15 16 17
(i) the jury was discharged because the jurors could not reach a verdict, or	18 19
(ii) a decision in those proceedings was set aside on appeal and a retrial ordered, or	20 21
(iii) the trial was aborted, and	22
(b) the jury was empanelled in those earlier proceedings before the commencement of those amendments.	23 24