# NSW Legislative Council Hansard

## Jury Amendment (Verdicts) Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 9 May 2006.

**Second Reading**

**The Hon. MICHAEL COSTA** (Treasurer, Minister for Infrastructure, and Minister for the Hunter) [3.16 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.
**Leave granted.**

I am pleased to introduce the *Jury Amendment (Verdicts) Bill* 2006.

As the Attorney General said in the other place last year, the question of whether the unanimity requirement in criminal trials should be preserved or amended has occupied the minds of the legal community and the general public for a long time.

It is a debate in which both sides have compelling and reasonable arguments, and between the two sides there are people who are legitimately undecided.

It is a difficult issue for many who have sought to comprehend its dimensions.

The requirement that an accused person can only be convicted if 12 of his or her peers are each satisfied beyond reasonable doubt of his or her guilt or innocence is a longstanding principle of the law.

Majority verdicts are not new. Indeed, they are common to many Australian States and have been for a considerable time. Only the Commonwealth, Queensland, Australian Capital Territory and New South Wales do not presently have them. Majority verdicts were first introduced in South Australia in 1927. They were introduced to Tasmania in 1936, Western Australia in 1960, the Northern Territory in 1963 and to Victoria in 1994. That is, four States and one Territory.

Majority verdicts were also introduced in England and Wales in 1967. The introduction of majority verdicts has divided members of the judiciary and legal profession. For example, although I note the current President of the Bar Association is fervently against majority verdicts, a previous incumbent did not hold these views. They are both decent, professional people.

The New South Wales Law Reform Commission Report 111 recommended the retention of the unanimity requirement. It nonetheless canvassed in some detail the persuasive arguments for and against the introduction of a majority verdicts system.

The Government has been mindful of the Commission's advice on this matter. Changing such a feature of our criminal justice system requires a high degree of thought and care.

The arguments presented in the report were evenly balanced, although the Law Reform Commission favoured retaining the status quo.

The Government's view is that the problems surrounding hung juries are present and can no longer be ignored.

A study conducted by the Bureau of Crime and Statistics and Research in 2002 suggested that the incidence of hung juries in NSW is double that in other jurisdictions.

The Government has now been persuaded, that provided it is clear that a unanimous verdict is unlikely to be forthcoming, a majority verdict may be returned if the jury have had a reasonable time to consider their verdict.

Majority verdicts are not automatic. Eight hours of court time must elapse before a majority verdict can be considered and then still a judge can advise the jury to further deliberate.

This is an improvement on the six hours proposed by the Member for Epping in the other place and those before him. The practical effect of having an eight hour threshold instead of six hours is that it means a jury will be compelled to deliberate for more than one court day before they or a judicial officer can entertain a majority verdict.

Until eight hours has elapsed, they must strive to reach a unanimous verdict.

The system of majority verdicts is supported by the Director of Public Prosecutions, Mr Nicholas Cowdery QC AM, the Senior Crown Prosecutor Mark Tedeschi QC, the Chief Judge of the District Court, Reg Blanch and a number of retired Supreme Court Justices.

I would be surprised indeed if anyone were to characterise these individuals' views as being the result of anything other than careful, reasoned thought.

There has been a tendency in the five or six months this debate has occurred—that is, since the Government announced its support for majority verdicts in November last year—for certain groups and individuals to assert that there is no credible basis for introducing majority verdicts.

Some say the innocent will be convicted; some say the guilty will go free—as though an eleven to one jury verdict to acquit will cause a guilty person to go free. I would have thought that if eleven out of twelve citizens are satisfied that an individual should be acquitted, then that is a sign of innocence, not guilt.

I do not think such statements are correct or help the debate.

The Government is of the view that majority verdicts negate the effect of the so-called "rogue juror" who may refuse to rationally engage in the jury deliberations. Judicial officers and those involved in the criminal law more generally will readily tell you of instances when a terribly long or complex trial hangs because one person is determined to be irrational.

One such story is from a prosecutor who told me of a juror who simply refused to convict because he believed that Police received a "bounty" for every successful conviction.

It is accepted by judges who sit in criminal trials that from time to time one juror may be responsible for the jury failing to agree in circumstances where, having regard to the evidence, conviction would have been appropriate.

Indeed, where information surfaces that a jury was deadlocked 11:1 and unable to reach a verdict because of the irrational views of one juror, or that juror’s inability to scrutinise the evidence objectively, this can cause a high degree of distress for victims, their families, and other jurors who have sought to act in accordance with their oath and deliver a true verdict. Such revelations severely undermine public confidence in the jury system and criminal justice system as a whole.

One of the arguments against the introduction of majority verdicts is that they are they are contrary to the required standard of proof—that if a jury cannot come to a unanimous decision, reasonable doubt must be said to exist, and that majority verdicts therefore carry a greater risk of conviction of innocent people.

This argument is based on the premise that where a single juror’s refusal to join the majority turns out to be correct, majority verdicts may lead to the conviction of an innocent person.

The Bill does not change the standard of proof. A jury must still be convinced—beyond a reasonable doubt—of the guilt of an alleged offender.

The underlying rationale of the Bill is that a jury should still endeavour to reach a unanimous verdict, however, if after a reasonable time has passed for deliberations, and the court finds it is unlikely that a unanimous verdict will be forthcoming, a jury may return a majority verdict.

Moreover, it cannot be said that miscarriages of justices have arisen in other jurisdictions which have had majority verdicts for many years.

The advice the Government has received strongly indicates that the systems in those other States operate fairly and are regarded as an unexceptional part of the legal system in those places

The central aim of this Bill is to reduce the number of hung juries in order to give certainty and finality to criminal proceedings; it is not necessarily aimed at achieving a greater number of convictions by majority verdict. It is to ensure that jury deliberations are not thwarted by a single person who is unwilling to engage in a proper examination of the evidence.

The proposed majority verdict amendments will also apply to offences carrying life imprisonment, such as murder. This is not the same in other States of Australia. In Australia, only the Northern Territory has implemented majority verdicts for murder offences, however, this development is not without precedent.

In England majority verdicts of 10:2 are allowed for the offence of murder. More importantly, if majority verdicts

are to be implemented in NSW, then clearly as a matter of principle and consistency they should apply to all offences. To exclude offences that carry life imprisonment from the scheme would create a tiered system of justice for NSW offences.

I turn now to the specifics of the Bill.

The Bill inserts section 55F into the *Jury Act 1977*, to provide that a majority verdict may be returned in a criminal trial for offences under NSW law if a unanimous verdict cannot be reached after the jurors have deliberated for a reasonable time, having regard to the nature and complexity of the case, being not less than 8 hours, and the court is satisfied, after examination on oath of one or more jurors, that it is unlikely the jury will reach a unanimous verdict. The Bill confers an entitlement on the jury to return a majority verdict provided the conditions set out in section 55F of the Bill are met.

A majority verdict means a verdict agreed to by 11 jurors where the jury consists of 12 people at the time the verdict is returned or a verdict agreed to by 10 jurors where the jury consists of 11 people at the time the verdict is returned. Majority verdicts will not be permitted where a jury consists of only 10 people.

Under the proposed legislation, the jury will be required to strive for a unanimous verdict for a reasonable time. This means that for this period the jury will be engaged in a process of reasoning, debate and deliberation based on reaching a unanimous verdict. They will be required to take into account the views of all jurors and listen to their arguments just as they do now. In this way, the introduction of majority verdicts will not have the effect that dissenters may be marginalised or ignored from the commencement of jury deliberations.

Judges' directions to juries will continue to tell the jury that they must reason towards a unanimous verdict. It is only after a reasonable time has passed and the court is satisfied that there is no likelihood that a unanimous verdict can be reached that a majority verdict may be returned.

And as I indicated earlier, the 8 hours is not an automatic trigger that immediately allows the jury to return a majority verdict. The Court must still be satisfied that the jury has had a reasonable time for deliberations depending on the nature and complexity of the case. This means that for long and complex trials, such as murder, or large drug matters, a court may give the jury three or four days to reach a unanimous verdict.

The Bill provides that the Court may satisfy itself that no such verdict will be forthcoming by asking one or more jurors on oath about the likelihood of reaching a unanimous verdict. It will therefore be clear to the court whether, if given further time, the jury may be able to reach a unanimous verdict or if this course is hopeless. It will eliminate the guesswork on behalf of judges, and they will have a clear basis on which to proceed to the next stage.

The Bill amends section 56 of the *Jury Act 1977*, to provide that a judge may not discharge a jury unless he or she is satisfied, after examination on oath of one or more jurors, that the jury is unlikely to reach either a unanimous or a majority verdict. This makes it clear that the judge must proceed along this line of inquiry. There is no discretion to discharge a jury of 11 or 12 people simply because they have not agreed on a unanimous verdict.

The Bill places an obligation on the trial judge to first inquire as to whether a unanimous verdict is possible. If it is not; then the trial judge should give directions to the jury about majority verdicts. It is only once it becomes clear that a majority verdict cannot be reached, that the jury can be discharged.
The Bill inserts Part 9 into Schedule 8 of the *Jury Act* to provide that the majority verdict amendments do not apply where a person has previously been put on trial before a jury for an offence arising out of the same allegations, and in the previous proceedings the jury were unable to agree on a verdict; there has been successful appeal against conviction from the previous proceedings and a retrial ordered; or the trial aborted before a verdict could be entered.

It would be unacceptable for an accused, who has previously been entitled to and has actually received a trial by jury for an offence where the verdict had to be unanimous, to find they are no longer afforded that entitlement.

The Bill inserts section 80 into the *Jury Act 1977* to provide for a statutory review of the amendments within 5 years of the commencement of the Bill.

In creating the Bill the Government has been able to learn from the experience of other jurisdictions that allow for majority verdicts.

There is a clear body of case law that has developed in other jurisdictions about acceptable directions to give to the jury about unanimous and majority verdicts. The directions set out what a judge should say to the jury from the outset about the possibility of majority verdicts.

The precise form of the direction and procedure to be adopted in NSW is a matter the Attorney General will refer to the Bench Book Committee, which is co-ordinated by the Judicial Commission. In order for the provisions of the Bill to be implemented consistently across the State, it is necessary that standard jury directions about majority verdicts be formulated prior to the commencement of the Bill and the Bill will therefore commence on a date to be proclaimed.

This Bill has been the subject of extensive consultation with the judiciary and legal practitioners.

Majority verdicts are not a panacea for all hung juries. However, they will reduce the instances in which juries cannot agree on an outcome, and of course, in consequence, they will reduce the level of anguish faced by some victims of serious crime and persons who fall one juror short of securing an acquittal. The system will fairly benefit victims and accused persons.

I commend the bill to the House.