

## Jury Amendment Bill 2008

### Explanatory note

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

#### Overview of Bill

The objects of this Bill are:

(a) to amend the *Jury Act 1977* (***the Principal Act***) to implement (with some modifications) certain recommendations of the NSW Law Reform Commission in Chapter 11 of its Report 117: Jury selection, and

(b) to amend the *Criminal Appeal Act 1912* to enable appeals to be made, with the leave of the Court of Criminal Appeal, about decisions concerning the discharge of a jury.

The Bill amends the *Jury Act 1977*:

(a) to clarify the power of a court or coroner to discharge a juror by expressly setting out the circumstances in which a court or coroner must, or may, discharge a member of a jury during a trial or coronial inquest, and

(b) to set out the circumstances in which a court or coroner that discharges a juror must discharge the remaining jurors or may instead continue the trial or coronial inquest with the remaining jurors, and

(c) to give a court or coroner the express power to order that a trial or coronial inquest continue if a juror dies, and

(d) to ensure that the verdict of a jury is not invalidated if a juror who was summonsed for jury service is empanelled irregularly or by mistake or becomes disqualified from serving, or ineligible to serve, as a juror during a trial or coronial inquest, and

(e) to expressly enable jurors and former jurors to report misconduct and other irregularities in the conduct of other jurors and former jurors, respectively.

The Bill also makes amendments of a savings and transitional nature and to enable the making of savings and transitional regulations.

#### 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.

**Clause 3** is a formal provision that gives effect to the amendments to the *Jury Act 1977* set out in Schedule 1

**Clause 4** is a formal provision that gives effect to the amendments to the *Criminal Appeal Act 1912* set out in Schedule 2.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. 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 Amendment of Jury Act 1977

**Schedule 1 [7]** inserts a new Part 7A (sections 53A–53C) into the Principal Act.

**Section 53A** requires a court or coroner to discharge a juror if, in the course of a trial or coronial inquest, it is found that the juror was mistakenly or irregularly empanelled (whether because the juror was disqualified or ineligible to serve as a juror or was otherwise not returned and selected in accordance with the Principal Act), or if the juror becomes disqualified from serving, or ineligible to serve, as a juror or has engaged in misconduct in relation to the trial or coronial inquest. **Misconduct** is defined for the purposes of the section as conduct that constitutes an offence against the Principal Act or other conduct that, in the opinion of the court or coroner, gives rise to the risk of a substantial miscarriage of justice in the trial or coronial inquest.

**Section 53B** gives a court or coroner discretion to discharge an individual juror in the course of a trial or coronial inquest on certain specified grounds. These include the juror (though not ineligible to serve as a juror) becoming so ill or infirm as to be likely to become ineligible to serve as a juror before the jury delivers their verdict or becoming so ill as to be a health risk to other jurors or persons present at the trial or coronial inquest, appearing to be unable to give impartial consideration to the case or refusing to take part in the jury's deliberations.

**Section 53C** requires a court or coroner to discharge the jury if a juror dies, or if the court or coroner discharges a juror, in the course of a trial or coronial inquest if of the opinion that to continue the trial or coronial inquest with the remaining jurors would give rise to the risk of a substantial miscarriage of justice or, alternatively, to continue the trial or coronial inquest with a reduced number of jurors if of the opinion that there is no such risk. The power to continue the trial or coronial inquest is subject to section 22 of the Act, which enables a trial or coronial inquest to continue with specified reduced numbers of jurors.

**Schedule 1 [5] and [6]** make consequential amendments to section 22 of the Principal Act.

**Schedules 1 [1]–[4]** amend sections 19, 20 and 21 of the Principal Act to make it clear that a jury will be treated as consisting of persons selected and returned in accordance with the Act if the court or coroner orders that a trial or coronial inquest continue with a reduced number of jurors following the death or discharge under proposed Part 7A of a juror and the number of members of the jury is not reduced below the numbers specified in section 22 of the Principal Act.

**Schedule 1 [8] and [10]** amend section 73 of the Principal Act to ensure that the verdict of a jury is not invalidated if a juror who was summonsed for jury service is empanelled irregularly or by mistake, or becomes disqualified from serving, or ineligible to serve, as a juror during a trial or coronial inquest. The amendments are made in response to the decisions in *R v Brown & Tran* [2004] NSWCCA 324 and *Petroulias v R* [2007] NSWCCA 134. **Schedule 1 [9]** makes a consequential amendment to section 73 (b).

**Schedule 1 [12]** inserts new section 75C into the Principal Act to enable jurors and former jurors to report irregularities in relation to another juror's or former juror's membership of a jury, or in relation to the performance of the other juror's or former juror's functions as juror, to the court or coroner or sheriff, respectively.

**Schedule 1 [11]** makes a consequential amendment to section 73A of the Principal Act to enable the sheriff, with the consent or at the request of the Supreme Court or District Court, to investigate the matter.

**Schedule 1 [13] and [14]** amend Schedule 8 to the Principal Act to enable the making of savings and transitional regulations and to include a transitional provision limiting the amendments to juries empanelled after the commencement of the amendments.

## **Schedule 2 Amendment of Criminal Appeal Act 1912**

**Schedule 2** makes the amendments to the Act described in the Overview.