

### Agreement in Principle

**Mr BARRY COLLIER** (Miranda—Parliamentary Secretary) [5.04 p.m.], on behalf of Mr David Campbell, I move:

That this bill be now agreed to in principle.

This bill will allow up to three additional jurors to be appointed in lengthy criminal trials to reduce the risk of proceedings being abandoned because jurors die or are discharged. Long-running trials face a greater danger of jurors falling seriously ill or being discharged for other reasons.

The bill amends the Jury Act 1977 to enable the court to allow up to 15 jurors to be sworn in for trials expected to last for longer than three months. This will ensure the proceedings can continue even if several jurors are subsequently discharged. Under the Jury Act 1977, the court can already allow a criminal trial to continue with 10 or 11 jurors if members of the jury die or are discharged, or with even fewer jurors if both the defendant and the prosecution agree, or if the trial has run for at least two months. Nonetheless, it is still possible, particularly in long trials, that a trial will be abandoned if the number of jurors falls too low. This may be even more likely in trials for Commonwealth offences because comments made by the High Court suggest that section 80 of the Constitution may prevent Commonwealth trials proceeding with fewer than 10 jurors.

If a long trial has to be abandoned because a number of jurors are discharged and a retrial is held then the financial cost to the State, and the financial and emotional costs to the victims, witnesses and defendants will be substantial. The delay may reduce the likelihood of a successful prosecution, especially as witnesses may no longer be available: The retrial may even not proceed. While long-running trials are still relatively rare in New South Wales, these changes to the jury system will help ensure such cases can continue to be heard even if a number of jurors are discharged from the jury.

While the bill will allow up to three additional jurors to be appointed in lengthy criminal trials, not all of the jurors will be required to deliberate. All of the jurors will have equal standing throughout the trial, but once the judge has summed up the case, a random ballot will decide the 11 jurors who, along with the jury foreperson, will retire to consider their verdict. It is important to note that the foreperson, once selected, will remain the foreperson throughout the trial. The 12-member jury has a long history and is thought to be large enough to contain a cross-section of the community but small enough to enable the jury to come to a decision. These amendments retain the 12-member jury for the consideration of verdicts while at the same time reducing the possibility of abandoned trials.

I now turn to the detail of the bill. Section 19 of the Jury Act 1977 is amended to allow the courts to order that up to three additional jurors be selected for a jury in criminal proceedings if the court is satisfied of three things. Firstly, that the trial is of a kind prescribed by the regulations. Section 19 (3) provides that initially this will be that the trial is likely to last for more than three months. Secondly, additional jurors will have to be an appropriate means of ensuring there will be sufficient jurors remaining when the jury retires to consider its verdict. Thirdly, appropriate facilities to accommodate the additional jurors will need to be available. The number of additional jurors that can be appointed in other Australian jurisdictions varies from two additional jurors in Tasmania, to six additional jurors in Western Australia. However, most jurisdictions allow an additional three jurors to be appointed. This avoids the difficulties associated with a larger number of jurors while still providing adequate protection against trials being discharged because the number of jurors falls too low.

The court will need to be satisfied the trial is likely to last for at least three months before it can appoint additional jurors. Appointing additional jurors requires more citizens to perform jury service, involves additional expenses such as juror fees, and requires courtrooms that can accommodate the extra jurors. The bill initially limits the circumstances where additional jurors may be appointed to the longest trials where the risk of a trial being abandoned is the greatest. However, the bill also allows the kind of proceedings where additional jurors may be appointed to be prescribed by regulation so that this can be altered later if the experience with the new provisions suggests this is warranted. Various courts throughout New South Wales, including courts in the new Parramatta Justice Precinct, will be able to accommodate up to 15 jurors.

A peremptory challenge can occur when a jury is being selected. This involves an accused person or their counsel on their behalf or the Crown objecting to a person sitting as a juror without giving any reason for the objection. In New South Wales criminal trials each accused is currently entitled to three peremptory challenges and the Crown is entitled to three peremptory challenges for each accused. The bill amends the Jury Act 1977 to confer an additional peremptory challenge on both the Crown and each accused if the court has ordered that additional jurors be appointed. Three of the other States and Territories allow additional peremptory challenges where reserve or additional jurors are to be appointed and four States and Territories do not.

A new section 55G will be inserted in the Jury Act 1977 to provide that if there are more than 12 jurors remaining when the jury is due to retire and consider its verdict then a random ballot will be conducted to choose the 11 jurors that, along with the jury foreperson, will be the verdict jury. Jurors not selected to consider a verdict will be discharged except in certain limited circumstances. The first of these circumstances is where the court directs the jury to deliver a particular verdict in relation to some, but not all, of the accused or some, but not all, of the counts

in the indictment. The second is where the jury retires to consider whether to return a verdict without hearing further evidence and decides it does want to hear further evidence. In these circumstances the jurors not selected in the first ballot rejoin the jury for the continuation of the trial and another ballot will be conducted when the jury later retires to consider a verdict.

The provisions of the Jury Act 1977 that allow criminal trials to continue with fewer than 12 jurors will still apply. Allowing additional jurors to be selected in longer trials will simply be a further safeguard against trials being abandoned because a number of jurors are discharged. The new provisions will apply where the jury is empanelled after the commencement of the bill. The Commonwealth Director of Public Prosecutions, the New South Wales Senior Public Defender, the Chief Judge of the District Court and the New South Wales Bar Association all suggested amendments to the Jury Act 1977 to allow additional jurors to be appointed. These were consulted in the drafting of this bill, as were the Supreme Court, the New South Wales Director of Public Prosecutions, the Law Society of New South Wales and the Legal Aid Commission. I thank all these persons and organisations for their suggestions and assistance in the development of this bill. The Government greatly appreciates their contributions.

The resulting bill will reduce the risk of long criminal trials being aborted and so reduce the trauma felt by victims of crime and their families. Delays arising from aborted trials can cause considerable distress to victims and may reduce the likelihood of a successful prosecution, particularly in cases where witnesses become unavailable. The bill improves the criminal justice system and could result in substantial savings of taxpayers' dollars by avoiding aborted trials and the resulting retrials. I commend the bill to the House.