

**Submission
No 3**

INQUIRY INTO JURY AMENDMENT BILL 2023

Organisation: Legal Aid New South Wales

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Hon Robert Borsak MLC
Chair, Portfolio Committee No. 5 – Justice and Communities
Parliament House, Macquarie Street, Sydney NSW 2000.
By email: portfoliocommittee5@parliament.nsw.gov.au

Dear Mr Borsak MLC

Inquiry into the Jury Amendment Bill 2023

Thank you for the opportunity to provide a submission to the Portfolio Committee No. 5 on the Jury Amendment Bill 2023.

The Bill contains several amendments which seek to improve the efficiency of jury empanelment, provide enhanced support for jurors to perform their role and reduce the expenditure of resources on trials that are ultimately aborted or result in hung juries. Legal Aid NSW generally supports these objectives.

Legal Aid NSW appreciates that for a number of reasons it is becoming increasingly difficult to enlist members of the public to serve on juries and for juries to be truly representative of the community. Once empanelled, it is becoming even harder to keep juries immune from information published on social or mainstream media about the individuals involved in the trial on which they serve. Legal Aid NSW therefore supports efforts designed to support jurors and avoid aborted or hung juries. The delay of a jury trial has direct implications on vulnerable clients, who are often bail refused, victims, witnesses and the wider justice employees working within the system.

However, Legal Aid NSW believes that any changes must balance the desire for increased efficiency, against the need to ensure the allegations against the accused, and the evidence of often vulnerable victims, are properly considered by jurors discharging their roles in an informed and diligent manner.

Jury trials are a fundamental right for accused persons facing criminal charges before the District and Supreme Court. Most trials occur in the District Court. Most jury trials will deal with matters involving allegations of sexual assault, often against children, and unlawful deaths. Therefore, any proposed changes to our jury system need to be carefully considered.

We now turn to the particular Schedules of the Bill:

Schedule 1[2] Expands the test for the selection of additional jurors in criminal proceedings in the Supreme Court and District Court.

As discussed above, Legal Aid NSW supports the proposed amendment noting that it will likely reduce the number of aborted trials.

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.

Legal Aid NSW opposes this amendment. Currently, unless ordered by the court that they can separate, juries must remain together and can only discuss the case when they are all together. Legal Aid NSW is very concerned about potential unintended consequences of this proposed amendment. We note that if passed, a juror would have a statutory right to separate, or remove themselves from the rest of the jury. This could have significant implications for jury deliberations given they are only permitted to deliberate when they are together.

If no order to the contrary is made, one or more jurors could decide to separate from the rest of the jury, preventing deliberations from taking place. If their absence is not promptly noted, the recorded length of jury deliberations would be incorrect, causing further issues, and possible appeals, about whether jury deliberations had reached a threshold where it was open to the jury to return a majority verdict. The NSW Sheriff's role of monitoring jurors for the purposes of keeping track of jury deliberations may also be made more difficult, should this amendment pass. Legal Aid NSW considers that the current provisions help regularise the jury deliberation process ensuring the sanctity of the trial and should not be changed.

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.*

Legal Aid NSW opposes this amendment. Legal Aid NSW has not seen any data or evidence which supports the need for reduction in the minimum deliberation time

from 8 to 4 hours. Indeed, the Statutory Review found there is almost no public data available on the use of majority verdicts.¹

As outlined in the Report of the Statutory Review of the amendments made to the *Jury Act 1977* by the *Jury Amendment (Verdicts) Act 2006*:

*The rationale for the eight hour rule is compelling. It appears this rule was seen as a key safeguard of the majority verdicts amendments because it guaranteed that a majority verdict may be returned only where it was clear that a unanimous verdict was unlikely to be forthcoming after the jury had sufficient time to consider its verdict.*²

Such a significant reduction in a fundamental part of the trial process should not be implemented on the basis of potential administrative efficiencies. With increases in digital and electronic evidence, trials are generally becoming more complex and sophisticated, and in those circumstances the current 8-hour minimum is reasonable.

There is an important distinction between the evidence involved in a short one-on-one assault trial and lengthier, multiple co-accused trials which can take months. A blanket reduction in the minimum time applicable, without express consideration of the length of the trial and volume of evidence involved, risks jeopardising the fair trial process by compressing the minimum standards for proper deliberation in those complex cases.

Legal Aid NSW maintains that the Black direction³ issued to juries that are experiencing difficulty reaching agreement, coupled with the 8-hour rule, is sufficient and effective. Together, they act as important safeguards to ensure that a majority verdict is only available once the jury has had reasonable time to consider its verdict and is unlikely to reach a unanimous verdict. Decreasing or removing the 8-hour rule would undermine the purpose of the Black direction.

Although Legal Aid NSW maintains that 8 hours is an appropriate minimum amount of time for jury deliberations, should the Committee disagree, consideration should be given to reducing the time to no less than 6 hours, being the equivalent to one day of court hours.

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.

¹ NSW Parliament, *Statutory Review – Majority verdicts amendments*, (Statutory Review of the amendments made to the *Jury Act 1977* by the *Jury Amendment (Verdicts) Act 2006*, May 2023) 11.

² *Ibid*, 8.

³ *Black v The Queen* (1993) 179 CLR 44 at 50.

Legal Aid NSW support increased protections for jurors from unlawful actions by employers irrespective of their employment status.

Thank you for the opportunity to make a submission to the Inquiry. Please contact Tijana Jovanovic, Acting Manager, Strategic Law Reform Unit if you would like to discuss our submission further.

Yours sincerely

Monique Hitter
Chief Executive Officer