**Submission No 5**

# INQUIRY INTO JURY AMENDMENT BILL 2023

**Organisation:** Aboriginal Legal Service (NSW/ACT) Limited

**Date Received:** 17 January 2024

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The Hon Robert Borsak MLC
Committee Chair
Portfolio Committee No.5 – Justice and Communities
*Via email: portfoliocommittee5@parliament.nsw.gov.au*

Dear Chairperson,

**Re: Inquiry into Jury Amendment Bill 2023**

Thank you for the opportunity to provide a submission to NSW Legislative Council Portfolio Committee No. 5 on the Jury Amendment Bill 2023 ('the Bill').

The Aboriginal Legal Service NSW/ACT Limited ('ALS') is a proud Aboriginal community-controlled organisation and the peak legal services provider to Aboriginal and Torres Strait Islander communities in NSW and the ACT. More than 280 ALS staff members based at 27 offices across NSW and the ACT support Aboriginal and Torres Strait Islander adults and young people through the provision of legal advice, information and assistance, as well as court representation in criminal law, children's care and protection law, and family law. Increasingly, we represent Aboriginal and Torres Strait Islander families in the NSW Coroner's Court, and provide a variety of discrete civil law services including tenants advocacy, employment and discrimination law, and assistance with fines and fine-related debt. We represent the interests of the communities we service through our policy work and advocacy for reform of systems which disproportionately impact Aboriginal and Torres Strait Islander people.

This submission is based on the experience of ALS solicitors and trial advocates who represent Aboriginal and Torres Strait Islander people in criminal court proceedings across NSW.

***Schedule 1[8] of the Bill***

Schedule 1[8] amends s 55F of the *Jury Act 1977* to reduce the requirement for juries to deliberate from eight hours to four hours before a majority verdict may be accepted. The ALS opposes this amendment

While the ALS is supportive of evidence-based law and policy reform directed at promoting efficiency in the operation of the court system to the potential benefit of all stakeholders, including vulnerable defendants and witnesses represented by the ALS, we do not consider that there is a strong evidentiary basis for this amendment. The DCJ Statutory Review found that there 'is almost no data available on the use of majority verdicts',[1] and the ALS is unaware of any forecasting or analysis

[1] Department of Communities and Justice, *Legislative Statutory Review – Majority Verdicts Amendments* (Report, May 2023) 11.

indicating that a reduction in the minimum jury deliberation time will, in fact, lead to increased efficiency in the administration of criminal trials.

The common law requirement for unanimous jury verdicts is an expression of the fundamental principles of criminal law which recognise the rights of accused individuals – facing the comparatively unlimited resources of the State in its conduct of criminal prosecutions – to be presumed innocent until proven guilty, and the requirement for guilt to be proven beyond reasonable doubt.

These protections are of paramount importance for ALS clients, who experience numerous, complex and intersecting forms of structural discrimination and exclusion uniquely impacting Aboriginal and Torres Strait Islander peoples, and are grossly overrepresented at all stages of the criminal process in NSW. Law reform which has the potential to weaken protections for the right to a fair trial in NSW must take into account the obligations of the NSW Government under the National Agreement on Closing the Gap to achieving the socio-economic outcomes that Aboriginal and Torres Strait Islander adults and young people are not overrepresented in the criminal justice system.

The Legislation Review Committee considered that a reduction in the minimum time for deliberation may result in a greater number of convictions based on majority verdicts because juries are not required to continue to strive for unanimity.[2] We oppose any reform which has the potential to increase the risk of convictions arrived at through the erosion of the minimum protections for the rights of accused persons facing trial.

We agree with submissions recognised by the Statutory Review that jury deliberation 'is the most crucial stage of the trial'.[3] The courts have long recognised that additional deliberation time can lead to consensus, even when consensus appears unlikely.[4] The potential for increased administrative efficiency must not be prioritised over safeguards which ensure that a majority verdict is only available once a jury has been provided adequate opportunity to thoroughly and diligently consider all of the evidence presented and directions given in a trial in striving to arrive at a unanimous verdict. We observe that the amendment may, contrary to its objectives, increase the incidence of 'hung' juries discharged in circumstances where, with more time, they may have found consensus.

We consider that the current statutory minimum deliberation time of eight hours is appropriate. Even short trials involving a limited number of issues may involve complex evidence from a variety of sources, including large volumes of electronic evidence. In a context where jury trials frequently take 18 months or longer to come to realisation and even short trials result in significant expenditure of time and public resources, the eight-hour minimum deliberation period is an appropriate investment of time and resources which mitigates against unsafe convictions and the potential need for re-trials.

If, contrary to our submission, the Committee considers that there is justification to reduce the minimum deliberation period from eight hours, consideration should be given to a reduction to six hours, which is the equivalent of one court sitting day.

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[2] Legislation Review Committee, Legislation Review Digest Digest No 7/58 (21 November 2023) 15.
[3] Department of Communities and Justice, *Legislative Statutory Review – Majority Verdicts Amendments* (Report, May 2023) 10.
[4] *Black v The Queen* (1993) 179 CLR 44.

***Schedule 1[12] of the Bill***

The ALS reiterates our previously expressed concerns that this amendment will inadvertently disadvantage socially and economically marginalised people, including many of our clients.

The ALS assists hundreds of Aboriginal and Torres Strait Islander people each year with fines and fine-related debt, including fines issued by the Office of the Sheriff for failure to attend for jury service. Many of our clients experience extreme financial and structural disadvantage. Many of our clients do not have consistent access to the internet or 'smart phone' technology, limiting their ability to successfully receive official communications by email.

We also frequently observe the inadvertent impact of the centralisation of government services and technologies on vulnerable clients who are not afforded the agency to navigate complex systems and processes, such as registering and updating their details with Service NSW or other platforms. For example, we often encounter the phenomenon of government systems automatically linking an ALS internal email address to a client's record where our service has provided the client with advocacy support. This has the consequence that future jury duty summonses or fine notices are sometimes served on the ALS instead of the individual named. This is appears to be a systems flaw which has been acknowledged but, to our knowledge, has not been addressed.

We note that the proposed amendment does not specify the manner in which a person may "specify" an email address for the "purpose" of receiving a jury summons, and we are concerned that reliance on centralised systems and processes, such as those of Service NSW and Revenue NSW, may lead to an individual's email address being automatically assigned as their preferred communication method for the purposes of being summoned for jury duty when they do not in fact wish for this to occur.

Failure to attend for jury duty may attract a fine of up to $2,200. Although there exist avenues to seek review, the same barriers to successfully navigating complex systems and processes may inhibit a vulnerable person's ability to exercise their right to provide an explanation, and lead to jury duty fines being referred to Revenue NSW for enforcement. The well-documented harmful impacts of fines on vulnerable communities include the accumulation of debt, the compounding of poverty, and secondary criminalisation (such as further fines or charges for driving whilst a licence is suspended due to fine default). These impacts may be particularly grave for regional and remote Aboriginal and Torres Strait Islander communities with low levels of driver licensing.

Although service by post is not guaranteed to successfully reach a given individual, especially those who experience housing instability, we oppose this amendment because of its potential to create a 'net-widening' effect and lead to exacerbation of fine debt, poverty, driver licensing inequality and criminalisation of marginalised people.

If the amendment is passed, the ALS recommends the enactment of accompanying Regulations clarifying the procedure by which a person is to provide a "specified email address" for the purposes of receiving a summons or other notice, and that any such procedure requires a person to "opt in" with full and informed consent to substituted service by way of email.

Thank you for the opportunity to make a submission to the Inquiry. If you would like to discuss this submission further, please contact the ALS Policy Unit

Sincerely,

**Nadine Miles**
**Principal Legal Officer**
Aboriginal Legal Service (NSW/ACT) Limited