

INQUIRY INTO JURY AMENDMENT BILL 2023

Organisation: NSW Government

Date Received: 23 January 2024

Legislative Council – Portfolio Committee No. 5 – Justice and Communities
Parliament House
Macquarie St, Sydney 2000

Re: Inquiry into the Jury Amendment Bill 2023 – NSW Government Submission

The NSW Government welcomes the opportunity to assist the Justice and Communities Committee (**Committee**) with its inquiry into the Jury Amendment Bill 2023 (**the Bill**).

Background to the Bill

As stated in the Second Reading Speech given by the Honourable Mark Buttigieg on 19 October 2023, the Bill makes a number of amendments to the *Jury Act 1997* (**Jury Act**) that will 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, where possible. The amendments are also intended to guard against the impacts of juror attrition, including wasted resources, delay, trauma for complainants and witnesses, and uncertainty for accused persons.

The Bill also implements the single recommendation of the Statutory Review of the amendments made to the Jury Act by the *Jury Amendment (Verdicts) Act 2006*, which introduced majority verdicts in criminal proceedings in NSW. This amendment is principally intended to improve efficiency and support juror safety and wellbeing.

Statutory Review of the majority verdicts amendments

The [Report of the Statutory Review](#) (**the Review**) was tabled in Parliament on 13 October 2023. The Report details the background of the majority verdict amendments, how the Review was conducted, and its findings.

The Review concluded that the policy objectives of the majority verdicts amendments remain valid and that the terms of the amendments are largely appropriate for securing the policy objectives. The Review made one recommendation: that the minimum period of deliberation for a majority verdict to be returned be reduced from eight hours to four hours. Item 8 of the Bill implements this recommendation.

The Review determined that requiring jurors to deliberate for eight hours before being able to return a majority verdict was inefficient, creates unnecessary additional costs, contributes to trial backlogs, and may impact juror safety and wellbeing.

Reducing the minimum period will also bring NSW in line with the majority of other Australian jurisdictions. NSW and Queensland currently have the longest minimum deliberation periods, with both jurisdictions requiring eight hours of deliberation. The remaining jurisdictions' minimum periods range from six hours in the Northern Territory to no minimum period in Victoria.

After considering these comparable frameworks and the submissions received from interested stakeholders, the Review recommended reducing the minimum deliberation period to four hours. In short, this means that the court is able to consider whether the

jury has undertaken sufficient deliberations to deliver a majority verdict after four hours has elapsed, rather than requiring further deliberations until at least eight hours has elapsed. This recommendation was intended to strike the appropriate balance between maintaining a statutory safeguard against a premature majority verdict, while avoiding inefficiency, unnecessary expenditure, and potential juror stress caused by being required to deliberate after firm disagreement.

Importantly, a majority verdict may not be returned unless jurors have deliberated for a period of time that the court considers reasonable having regard to the nature and complexity of the criminal proceedings (see section 55F of the Jury Act). The Bill amends the minimum requirement for the period of deliberation from “not less than 8 hours” to “not less than 4 hours”. It does not remove the overall requirement that the court must consider the period reasonable in the context of the proceedings, or introduce an ability or requirement for the court to inform the jury that a majority verdict *may* be able to be returned after four hours.

In practice, this means that a majority verdict may only be returned after four hours of deliberation where the court considers that the jurors have deliberated for a reasonable period of time. For some matters, the court may be satisfied that four hours deliberation is sufficient and that requiring the jury to deliberate for additional time would be inefficient and unhelpful. In a more complex matter, the court may determine that four hours deliberation is insufficient and not accept a majority verdict at that point. The NSW Government considers that the presiding judicial officer is well placed to assess the appropriate minimum length of jury deliberations in particular proceedings.

Additionally, the Jury Act contains a number of other statutory safeguards on majority verdicts being returned to protect the integrity of majority verdicts and to ensure procedural fairness, including:

- Requiring that the jury consists of at least 11 people.
- Requiring that at least 11 out of 12 or 10 out of 11 jurors agree on the verdict.
- Requiring the court to examine one or more of the jurors, under oath, to confirm that a unanimous verdict is unlikely to be reached after further deliberation.

The Statutory Review did not recommend any changes to these safeguards.

Indictable Process Review

The remaining amendments in the Bill arose following a review of indictable processes in the District and Supreme Courts led by the Chief Judge of the District Court, the Honourable Justice Derek Price, supported by the Department of Communities and Justice.

The Indictable Process Review identified ways to streamline jury processes and ensure that juries in NSW operate, and are managed, in the most efficient and effective way. It also sought to ensure that jurors are provided with the best possible support to make their significant contribution to the justice system.

Consultation

The Department of Communities and Justice consulted extensively with NSW Government and non-government stakeholders during the Statutory Review, the Indictable Process Review, and the Bill drafting process. This included close engagement with the stakeholders responsible for overseeing and managing the

selection and operation of juries, including the NSW Sheriff's Office, the District Court, and the Supreme Court.

Targeted consultation was undertaken with legal stakeholders, including other Heads of Jurisdiction, Legal Aid NSW, the Public Defenders, the Aboriginal Legal Service, the NSW Police Force, the Office of the Director of Public Prosecutions, the Law Society of NSW, and the NSW Bar Association. Members of the community were also invited to make submissions to the Statutory Review.

In relation to the proposed amendment relating to the minimum period of deliberation for a majority verdict to be returned, as the Statutory Review Report notes, most stakeholders agreed that juries should not be required to deliberate for at least eight hours before being able to deliver a majority verdict, noting that this was inappropriate and unnecessary, may impede the amendments achieving the stated policy objectives, and may not be in the interests of justice. The most commonly suggested reduced period was four hours.