



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CLC: BMcd100124

10 January 2024

The Director
Portfolio Committee No. 5 (Justice and Communities)
Parliament House
Macquarie Street
Sydney NSW 2000

By email: portfoliocommittee5@parliament.nsw.gov.au

Dear Director,

Inquiry into the Jury Amendment Bill 2023

Thank you inviting the Law Society to make a submission to the NSW Legislative Council's Inquiry into the Jury Amendment Bill 2023 (**Bill**). The Law Society is pleased to see steps being taken to progress improvements to jury trial processes in NSW and welcomes the close examination of the Bill to ensure that the proposed amendments will be appropriate, effective and strike the right balance between an individual's right to a fair trial and an efficient justice system.

The Law Society supports most of the amendments proposed in the Bill. We have prepared the following brief comments for your consideration in examining the implications of the proposed amendments.

Schedule 1, [1] Section 14A – What constitutes good cause for the purposes of an exemption from jury service

We query the need for this amendment, noting that section 14A of the *Jury Act 1977* already provides detail as to what constitutes "good cause", including a broad catch-all for potential jurors to be excused for "some other reason that would affect the person's ability to perform the functions of a juror".¹

We are concerned that the proposed drafting note does not necessarily serve to clarify the meaning of "good cause", as the terms "temporary disabilities" and "physical or mental conditions" are themselves broad and undefined.

If it is decided that clarification of the term "good cause" is required, we suggest consideration of other, non-legislative means to support understanding of what may constitute "good cause" for the purposes of section 14A, such as education or training for the relevant decision-makers.

¹ *Jury Act 1997* (NSW), s14A(d).

Schedule 1, [2] Section 19 – Numbers of jurors in criminal proceedings

We support amendments to expand the power for Courts to empanel up to three additional jurors in criminal proceedings. We note, however, that the proposed drafting creates a relatively high bar for additional jurors to be empanelled. Namely, that the Court must be “satisfied” that the likely duration or complexity of the trial, or another factor that may result in a juror being discharged, “necessitates” the selection of additional jurors.

Noting that each criminal case will have unique and broad-ranging characteristics, we instead suggest consideration of affording the Courts greater discretion to empanel additional jurors in appropriate circumstances.

One way to ensure that Courts have appropriate discretion to empanel additional jurors may be to amend the drafting of the Bill to more closely reflect the Victorian position prescribed by section 23 of the *Juries Act 2000* (Vic), which simply provides that Courts “may consider” a listed set of factors, rather than requiring Courts to be “satisfied” that the prescribed factors “necessitate” the empanelment of additional jurors.²

It may also be beneficial to consider amending the Bill to allow Courts to consider whether empanelling additional jurors is “in the interests of justice”, to account for other legitimate circumstances that justify the empanelment of a larger jury.

Schedule 1, [6] Section 53D – Discretion to continue trial or coronial inquest, discharge whole jury or order selection of replacement juror in special circumstances

We support amendments to enable a new juror to be empanelled from the existing jury pool where a juror is discharged before any substantive aspect of the trial has commenced, including opening remarks of the presiding Judicial Officer.

It may be beneficial to consider ways to ensure that the rationale and intent of the provision is understood by the profession. This may be achieved, for example, by including a description of the type of scenario this provision is intended to capture in explanatory memoranda to accompany the Bill.

Schedule 1, [8] Section 55F – Majority verdicts in criminal proceedings

We do not support reducing the minimum period for jury deliberations from the current eight-hour period. In our view, the *Jury Act 1977* should continue to prescribe an eight-hour minimum period for jury deliberation before a majority verdict can be returned, as the rationale for the 8-hour rule is compelling and a key safeguard introduced by the Government at the time.

We note that, at the time of introducing majority verdicts under the *Jury Amendment (Verdicts) Act 2006*, the then Attorney General Bob Debus said:

Eight hours of court time must elapse before a majority verdict can be considered, and still then a judge can advise the jury to further deliberate... The practical effect of having an eight-hour threshold instead of six hours is that a jury will be compelled to deliberate for more than one court day before it or a judicial officer can entertain a majority verdict. Until eight hours has elapsed, it must strive to reach a unanimous verdict.³

This is a logical rationale, and, given the complexity and length of trials in NSW, we consider eight hours as an appropriate minimum time for jury deliberations.

² *Juries Act 2000* (Vic), s 23.

³ Then Attorney General, Bob Debus, NSW Legislative Assembly Hansard, 5 April 2006.

If there is a view that the eight-hour period could negatively impact juror wellbeing, we suggest consideration of introducing other support mechanisms to assist jurors in dealing with stress arising from deliberations, and support juror wellbeing. We would consider appropriate alternative approaches a more effective and holistic response than reducing statutory protections, specifically the eight-hour minimum period for deliberations, to facilitate majority verdicts.

If you have any questions in relation to this letter, please contact Claudia Daly, Policy Lawyer on (02) 9926 0233 or by email: claudia.daly@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brett McGrath', with a large, sweeping flourish extending to the right.

Brett McGrath
President