



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEE NO. 5

Jury Amendment Bill 2023

Report 61

March 2024

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Portfolio Committee No. 5 - Justice and Communities

Jury Amendment Bill 2023

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Jury Amendment Bill 2023

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Chair: Hon Robert Borsak MLC



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Terms of reference

That:

- (a) the Jury Amendment Bill 2023 be referred to Portfolio Committee No. 5 – Justice and Communities for inquiry and report
- (b) the bill be referred to the committee at the conclusion of the mover's second reading speech in the Council
- (c) the committee report by 11 March 2024.

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 21 November 2023.¹

¹ *Minutes*, NSW Legislative Council, 21 November 2023, p 658.

Committee details

Committee members

Hon Robert Borsak MLC	Shooters, Fishers and Farmers Party	<i>Chair</i>
Ms Sue Higginson MLC	The Greens	<i>Deputy Chair</i>
Hon Susan Carter MLC*	Liberal Party	
Hon Greg Donnelly MLC	Australian Labor Party	
Hon Wes Fang MLC	The Nationals	
Hon Stephen Lawrence MLC	Australian Labor Party	
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- * The Hon Susan Carter MLC substituted for the Hon Natasha Maclaren-Jones MLC from 1 December 2023 for the duration of the inquiry.

Secretariat

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James Ryan, Administration Officer

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Chair's foreword

On 21 November 2023, the Legislative Council referred the Jury Amendment Bill 2023 to Portfolio Committee No. 5 – Justice and Communities for inquiry and report.

The bill seeks to make a number of miscellaneous amendments to the *Jury Act 1977*, including in response to the statutory review of amendments made to the Act by the *Jury Amendment (Verdicts) Act 2006* and a review of indictable processes in the NSW District and Supreme Courts.

The committee was tasked with examining the bill in-depth and considering its implications on jurors, the courts, and the New South Wales criminal justice system more broadly.

In particular, the committee examined the proposed amendment to reduce the minimum deliberation period before a majority verdict can be returned by a jury in criminal proceedings. Known as the eight-hour rule, the bill seeks to implement the statutory review's single recommendation to reduce the current minimum deliberation period from eight hours to four.

Through the evidence provided by a range of important stakeholders, a number of key issues were raised in relation to the reduction of the eight-hour rule. These include the principle of unanimous verdicts, potential cost savings and efficiencies, the impact of complex evidence on jury deliberations, juror wellbeing and the role of judicial discretion in the jury deliberation process.

The committee also heard evidence regarding other aspects of the bill, including the proposed provisions relating to the ability of jurors to separate without an order of the court, email notification of jury service, and the additional investigative powers of the Sheriff.

During the course of the inquiry, diverse views were presented by inquiry participants representing different facets of the justice system. These contributions were invaluable in informing the committee's consideration of the bill, and I thank those who engaged with the inquiry. I would also like to thank the secretariat for their assistance, and committee members for their considered involvement in examining this bill.

I present the report to the House and our recommendation that the Jury Amendment Bill 2023 proceed to be debated by the Legislative Council. In doing so, I call on members to contemplate the issues raised within the report in their consideration of the bill and the ensuing debate in the House.



Hon Robert Borsak MLC
Committee Chair

Recommendations

Recommendation 1

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That the Legislative Council proceed to debate the Jury Amendment Bill 2023, and that the issues identified by stakeholders as set out in this report be addressed during debate in the House.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 21 November 2023.

The committee received nine submissions.

The committee held one public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, the hearing transcript and answers to questions on notice.

Chapter 1 Background

This chapter provides a brief overview of the jury system in New South Wales and background to the Jury Amendment Bill 2023. In particular, the chapter outlines recent key reviews on which the bill is based, including the statutory review of the *Jury Amendments (Verdicts) Act 2006*. The chapter concludes with an overview of the bill, including its provisions and referral for inquiry and report.

Overview of the New South Wales jury system

- 1.1 Trial by jury is considered a fundamental element of the justice system in New South Wales, with juries providing an important opportunity for citizens to participate in the administration of justice. They ensure that legal verdicts are impartial and reflect community standards of behaviour.²
- 1.2 The jury system in New South Wales is administered in accordance with the *Jury Act 1977*, the principal legislation regulating the summoning, selection and discharge of juries in the state.³
- 1.3 Juries are used in the NSW District Court and NSW Supreme Court to hear and determine more serious criminal matters as well as civil matters involving large monetary claims. Juries are also used in coronial inquests in the NSW Coroners Court.⁴
- 1.4 In criminal trials, a jury hears the evidence presented and applies the law as directed by the judge. The jury must then deliberate and decide if the accused person is guilty or not guilty of a crime. In most criminal trials, 12 people are selected to be on the jury, however, up to 15 jurors can be selected or 'empanelled' if a trial is expected to last longer than three months.⁵
- 1.5 Most civil trials do not require a jury. Those that do are usually defamation proceedings. The trial judge will outline the issues the jury must consider in order to decide who is at fault. A civil trial jury is typically made up of only four jurors, however, in the NSW Supreme Court, 12 jurors may be empanelled.⁶

² Communities and Justice, General Information about Jury Service (28 November 2023) <https://courts.nsw.gov.au/for-jurors/jury-service.html>

³ Communities and Justice, General Information about Jury Service (28 November 2023) <https://courts.nsw.gov.au/for-jurors/jury-service.html>

⁴ Communities and Justice, General Information about Jury Service (28 November 2023) <https://courts.nsw.gov.au/for-jurors/jury-service.html>

⁵ Communities and Justice, General Information about Jury Service (28 November 2023) <https://courts.nsw.gov.au/for-jurors/jury-service.html>

⁶ Communities and Justice, General Information about Jury Service (28 November 2023) <https://courts.nsw.gov.au/for-jurors/jury-service.html>

Jury deliberation and verdict

- 1.6** Once a jury has been empanelled, each juror is required to act in accordance with the oath or affirmation they make at the start of a trial to give 'a true verdict in accordance with the evidence'.⁷
- 1.7** In deliberating on the evidence, jurors are prohibited from disclosing any information regarding the jury's discussions and considerations.⁸ Secrecy surrounding jury deliberations is considered a fundamental principle to the integrity of the administration of justice as jurors are able to discuss issues freely and come to a verdict without outside interference or pressure.⁹
- 1.8** In situations where a jury is having trouble reaching agreement on the verdict, the judge will recall the jury to the courtroom and give them further directions.¹⁰ The High Court of Australia has developed model directions for such circumstances, known as the *Black*¹¹ directions. Under these directions, a judge should encourage the jurors to deliberate further and consider the evidence and opinions of other jurors.¹² A jury will then return to their deliberations and potentially come to a verdict.

Background to the bill

- 1.9** Aspects of the state's jury system were recently reviewed, providing the basis for the Jury Amendment Bill 2023 (the bill). This includes the statutory review of the amendments made to the *Jury Act 1977* by the *Jury Amendment (Verdicts) Act 2006* and a review of indictable processes in the NSW District and Supreme Courts led by the Chief Judge of the NSW District Court, the Honourable Justice Derek Price AO.¹³ These reviews are discussed in turn.

Statutory review of amendments made to the *Jury Act 1977* by the *Jury Amendment (Verdicts) Act 2006*

- 1.10** In 2006, amendments were made to the *Jury Act 1977* (the Act) by the *Jury Amendment (Verdicts) Act 2006* (the Amending Act) introducing majority verdicts in criminal proceedings in New South Wales. The following section outlines the majority verdict amendments contained in the Amending Act before discussing the statutory review of these amendments and its outcome.

⁷ The Judicial Commission of New South Wales, *Criminal Trial Courts Bench Book* (2023), p 105.

⁸ The Judicial Commission of New South Wales, *Criminal Trial Courts Bench Book* (2023), p 107.

⁹ New South Wales Law Reform Commission, *Majority Verdicts* (August 2005), pp 5-6.

¹⁰ The Judicial Commission of New South Wales, *Criminal Trial Courts Bench Book* (2023), pp 1469-1470.

¹¹ *Black v The Queen* (1993) 179 CLR 44 at 51.

¹² The Judicial Commission of New South Wales, *Criminal Trial Courts Bench* (2023), pp 1469-1470.

¹³ The Hon Mark Buttigieg MLC, Statement of Public Interest, Jury Amendment Bill 2023, 19 October 2023, p 1.

Majority verdict amendments

- 1.11** Prior to the majority verdict amendments, all members of a jury in a criminal trial had to unanimously agree with the decision either to convict or acquit the accused person.¹⁴
- 1.12** In instances where a jury was unable to reach a unanimous decision, commonly referred to as a 'hung jury', the jury was discharged and no verdict was delivered. It would then be up to the prosecution to either seek to have the case retried before a different judge or jury, or depending on the circumstances, decide not to pursue the matter any further.¹⁵
- 1.13** Commencing 26 May 2006, the majority verdict amendments introduced section 55F of the Act which allows for the decision of 11 out of 12 jurors or 10 out of 11 jurors to be returned as a 'majority verdict'.¹⁶
- 1.14** A majority verdict may only be returned in criminal proceedings where:
- the jury consists of 11 or more jurors
 - only one juror disagrees with the majority verdict
 - a unanimous verdict has not been reached after the jurors have deliberated for a period of time that the Court considers reasonable, having regard to the nature and complexity of the criminal proceedings
 - the jury has deliberated for at least eight hours, and
 - the Court considers that it is unlikely that the jurors will reach a unanimous verdict after further deliberation.¹⁷
- 1.15** At the time of introducing majority verdicts under the Amending Act, the then Attorney-General Bob Debus made clear that the key policy objective of the amendments was to ensure criminal proceedings do not result in a hung jury due to a so-called 'rogue juror':¹⁸

The central aim of this bill is to reduce the number of hung juries in order to give certainty and finality to criminal proceedings; it is not necessarily aimed at achieving a greater number of convictions by majority verdict. It is to ensure that jury deliberations

¹⁴ Report of the Department of Communities and Justice, Statutory Review – Majority verdicts amendments: Report of the Statutory Review of the amendments made to the *Jury Act 1977* by the *Jury Amendment (Verdicts) Act 2006*, May 2023, p 5.

¹⁵ Report of the Department of Communities and Justice, Statutory Review – Majority verdicts amendments: Report of the Statutory Review of the amendments made to the *Jury Act 1977* by the *Jury Amendment (Verdicts) Act 2006*, May 2023, p 5.

¹⁶ *Jury Act 1977*, s55F(3)(a)(b).

¹⁷ Report of the Department of Communities and Justice, Statutory Review – Majority verdicts amendments: Report of the Statutory Review of the amendments made to the *Jury Act 1977* by the *Jury Amendment (Verdicts) Act 2006*, May 2023, p 3.

¹⁸ Report of the Department of Communities and Justice, Statutory Review – Majority verdicts amendments: Report of the Statutory Review of the amendments made to the *Jury Act 1977* by the *Jury Amendment (Verdicts) Act 2006*, May 2023, p 5.

are not thwarted by a single person who is unwilling to engage in a proper examination of the evidence.¹⁹

1.16 Mr Debus further explained the requirement for jurors to have deliberated for at least eight hours before considering a majority verdict. He noted that the minimum deliberation period of eight hours ensures that the jury would have to deliberate for more than one court day before a majority verdict can be considered:

...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.²⁰

1.17 This minimum deliberation period of eight hours is often referred to as the 'eight-hour rule' and was considered a safeguard to ensure that a majority verdict may only be returned once a jury had sufficient time to consider its verdict and a unanimous verdict was unlikely to be reached.²¹

1.18 The majority verdicts amendments also introduced:

- provisions allowing for the discharge of a jury (11 or 12 person) by the court if the court finds that the jurors are unlikely to reach a unanimous or majority verdict²²
- the requirement that a guilty verdict for a Commonwealth offence must be unanimous.²³

Statutory review of the majority verdict amendments

1.19 Section 80 of the *Jury Act 1977* requires the Amending Act to be reviewed to 'determine whether the policy objectives of those amendments remain valid and whether the terms of the amendments remain appropriate for securing those objectives'.²⁴

1.20 In 2021, a statutory review was commenced by the Department of Communities and Justice on behalf of the then Attorney-General. On 17 October 2023, the department tabled its report, after the Amending Act had been in operation for approximately 17 years.²⁵

¹⁹ The Hon Bob Debus, Second Reading Speech: Jury Amendment (Verdicts) Bill 2006, 5 April 2006.

²⁰ The Hon Bob Debus, Second Reading Speech: Jury Amendment (Verdicts) Bill 2006, 5 April 2006.

²¹ Report of the Department of Communities and Justice, Statutory Review – Majority verdicts amendments: Report of the Statutory Review of the amendments made to the Jury Act 1977 by the Jury Amendment (Verdicts) Act 2006, May 2023, pp 7-8.

²² *Jury Act 1977*, s56(1).

²³ *Jury Act 1977*, s55(f)(4).

²⁴ *Jury Act 1977*, s80(1).

²⁵ *Minutes*, NSW Legislative Council, 17 October 2023, p 601.

- 1.21** The statutory review found that the policy objectives of the Amending Act remain valid and that 'the terms of the amendments are largely appropriate for securing the policy objectives, with the exception of the eight-hour rule'.²⁶ A single recommendation was subsequently made by the statutory review to amend section 55F(2)(a) of the Act to reduce the minimum deliberation period before a majority verdict can be returned by a jury in criminal proceedings from eight hours to four hours.²⁷
- 1.22** In his second reading speech, the Hon. Mark Buttigieg MLC, on behalf of the Hon. Daniel Mookhey MLC, Treasurer, explained the statutory review's basis for its recommendation, citing that the eight-hour rule:
- is too long a minimum period of deliberation in many circumstances, according to the majority of stakeholders consulted during the statutory review
 - is inefficient, creates additional costs and contributes to trial backlogs
 - can cause issues related to juror safety and wellbeing stemming from disagreements and undue pressure being placed on jurors who do not agree.²⁸
- 1.23** Mr Buttigieg stated the statutory review concluded that reducing the minimum deliberation period to four hours 'strikes the appropriate balance between maintaining a statutory safeguard against a premature majority verdict while avoiding unnecessary expenditure and stress'.²⁹
- 1.24** The bill seeks to implement the statutory review's recommendation.

Review of indictable processes in the NSW District and Supreme Courts

- 1.25** In addition to the statutory review of the majority verdict amendments, a review of indictable processes in the NSW District Court and NSW Supreme Court has been conducted, resulting in the remaining amendments contained in the bill.³⁰ This review was led by the Chief Judge of the District Court, the Hon Justice Derek Price AO.
- 1.26** The indictable processes review found ways that jury processes could be streamlined to ensure that juries operate efficiently and effectively, and that jurors are provided with the best possible support while performing their duties.³¹
- 1.27** The bill seeks to implement recommendations made through the indictable processes review.

²⁶ Report of the Department of Communities and Justice, Statutory Review – Majority verdicts amendments: Report of the Statutory Review of the amendments made to the Jury Act 1977 by the Jury Amendment (Verdicts) Act 2006, May 2023, p 12.

²⁷ Report of the Department of Communities and Justice, Statutory Review – Majority verdicts amendments: Report of the Statutory Review of the amendments made to the Jury Act 1977 by the Jury Amendment (Verdicts) Act 2006, May 2023, p 1.

²⁸ The Hon Mark Buttigieg MLC, Second reading speech: Jury Amendment Bill 2023, 19 October 2023.

²⁹ The Hon Mark Buttigieg MLC, Second reading speech: Jury Amendment Bill 2023, 19 October 2023.

³⁰ The Hon Mark Buttigieg MLC, Second reading speech: Jury Amendment Bill 2023, 19 October 2023.

³¹ The Hon Mark Buttigieg MLC, Statement of Public Interest, Jury Amendment Bill 2023, 19 October 2023, p 1.

Referral of the bill

- 1.28** The Jury Amendment Bill 2023 was introduced in the Legislative Council on 19 October 2023 by the Hon. Mark Buttigieg MLC, on behalf of the Hon. Daniel Mookhey MLC, Treasurer.³²
- 1.29** On 21 November 2023, the Legislation Review Committee published its review of the bill. The Legislation Review Committee found the bill raises issues that potentially 'trespasses unduly on personal rights and liberties' and made the following observations for consideration by Parliament:
- the reduction of the minimum time for deliberation from eight hours to four hours may result in more convictions based on majority verdicts of guilt because juries are under less pressure to return a unanimous verdict
 - the change in deliberation requirements may in turn impact and undermine a person's right to procedural fairness and a fair trial
 - while saving court resources and time is important, the rights to a fair trial and to be presumed innocent unless proven guilty beyond a reasonable doubt are fundamental minimum guarantees to accused persons in criminal matters.³³
- 1.30** Following a review of the bill and recommendation by the Selection of Bills Committee, the Legislative Council resolved on 21 November 2023 to refer the bill to Portfolio Committee No. 5 – Justice and Communities for inquiry and report.³⁴

Overview of the bill

- 1.31** The Jury Amendment Bill 2023 seeks to make a number of miscellaneous amendments to the *Jury Act 1977*, including in response to the statutory review of amendments made to the Act by the *Jury Amendment (Verdicts) Act 2006*³⁵, outlined earlier in the chapter.
- 1.32** In his second reading speech, Mr Buttigieg explained that the bill aims to improve the operation of the jury system and support for jurors:

The bill makes a number of amendments 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.³⁶

³² *Hansard*, NSW Legislative Council, 19 October 2023, pp 8-9 (Mark Buttigieg).

³³ Legislation Review Committee, NSW Legislative Council, *Legislation Review Digest No. 7/58* (2023), p 15.

³⁴ *Minutes*, NSW Legislative Council, 21 November 2023, p 658.

³⁵ The Hon Mark Buttigieg MLC, Second reading speech: Jury Amendment Bill 2023, 19 October 2023.

³⁶ The Hon Mark Buttigieg MLC, Second reading speech: Jury Amendment Bill 2023, 19 October 2023.

1.33 In addition, the NSW Government stated that the amendments are intended to protect against the impacts of juror attrition, including wasted resources, delay, trauma for complainants and witnesses, and uncertainty for accused persons, as well as improve efficiency and support juror safety and wellbeing.³⁷

Provisions of the bill

1.34 As indicated previously, consequent to the recommendation of the statutory review of the majority verdict amendments, the bill seeks to decrease the minimum deliberation time before the jury may return a majority verdict from eight to four hours.³⁸

1.35 In addition, the bill proposes to:

- clarify what constitutes 'good cause' for the purposes of seeking an exemption or excusal from jury service to now include any circumstances that could affect a person's ability to perform the functions of a juror and extends to temporary disabilities or other physical or mental conditions³⁹
- expand the test for the selection of additional jurors in criminal proceedings in the Supreme Court or the District Court to allow a judge to empanel up to three additional jurors if satisfied it is necessary due to the nature, likely duration or complexity of the proceedings⁴⁰
- enable all requests to be excused from jury service to be made either verbally or in writing. Currently applications can only be made in writing if they relate to the person's health or may cause embarrassment or distress if made public⁴¹
- enable a court or coroner to order the selection of a replacement juror if a juror dies or is discharged before the judge or coroner commences their opening remarks⁴²
- remove 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. Currently, a jury can only separate during deliberations if allowed by a court order⁴³
- expand the definition of 'employee' to include part-time employees for the purposes of preventing employers from dismissing or prejudicing employees because they are summoned to serve as a juror. Currently, this protection does not currently cover part-time employees⁴⁴

³⁷ Submission 8, NSW Government, p 1.

³⁸ The Jury Amendment Bill 2023, Schedule 1[8].

³⁹ The Jury Amendment Bill 2023, Schedule 1[1].

⁴⁰ The Jury Amendment Bill 2023, Schedule 1[2].

⁴¹ The Jury Amendment Bill 2023, Schedule 1[3].

⁴² The Jury Amendment Bill 2023, Schedule 1[6].

⁴³ The Jury Amendment Bill 2023, Schedule 1[7].

⁴⁴ The Jury Amendment Bill 2023, Schedule 1[9].

- grants investigative powers to the Sheriff, with the consent or at the request of the court, if there is a reason to suspect that any part of the trial may have been affected by improper conduct. Currently, the Sheriff with the power to investigate only if there is a reason to suspect that the improper conduct may have affected the verdict itself. The provision also permits investigations into conduct committed by another person, rather than just the conduct of the juror themselves.⁴⁵
- authorises a summons, notice or other document related to jury service to be served on a person via email if that person has nominated their preference for email service.⁴⁶

⁴⁵ The Jury Amendment Bill 2023, Schedule 1[10], 1[11].

⁴⁶ The Jury Amendment Bill 2023, Schedule 1[12].

Chapter 2 Key issues

This chapter canvasses the key issues raised by stakeholders during the inquiry, with the majority of evidence relating to the proposed amendment to reduce the minimum deliberation period before a jury can return a majority verdict. The chapter explores the arguments presented by stakeholders in relation to the reduction of the eight-hour rule, including the impact on the principle of a unanimous verdict, evidence supporting efficiency savings and court resources, and the rationale for a four-hour rule. The chapter also discusses juror wellbeing, judicial discretion and the impact of complex evidence on jury deliberations. Finally, stakeholder feedback regarding other provisions of the bill are examined.

Reduction of the eight-hour rule

- 2.1** The majority of evidence received by the committee related to the proposed amendment to reduce the minimum period of deliberation before a jury can return a majority verdict. As explained in chapter 1, this minimum period is currently known as the eight-hour rule, which the bill seeks to amend to four hours.
- 2.2** Stakeholders discussed the impact of this proposed amendment, raising in particular unanimous verdicts, efficiency savings and court time, the duration of the deliberation period, juror wellbeing, judicial discretion, and complex evidence and cases. These issues are explored in detail below.

Unanimous verdicts

- 2.3** A basis of key issues raised by inquiry participants in relation to the reduction of the eight-hour rule is the principle of unanimous verdicts.
- 2.4** Inquiry participants explained that the integrity of a jury trial is vital to public confidence in the criminal justice system,⁴⁷ and that fundamental to the right to trial by jury is the requirement that the jury's verdict be unanimous.⁴⁸ The committee heard that the principle of unanimous verdicts upholds the standard of proof in criminal proceedings – that of an offence being established beyond reasonable doubt.⁴⁹
- 2.5** With the introduction of the majority verdicts amendments, the eight-hour rule was intended to be a safeguard to address concerns that majority verdicts may be inconsistent with the principle of proving guilt beyond reasonable doubt.⁵⁰ After all, with majority verdicts, a guilty

⁴⁷ Evidence, Ms Jane Sanders AM, Principal Solicitor, The Shopfront Youth Legal Centre and Member of The Law Society of New South Wales, 31 January 2024, p 3.

⁴⁸ Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 2.

⁴⁹ Evidence, Ms Rhiannon McMillan, Senior Legal Project Officer, Crime, Legal Aid NSW, 31 January 2023, p 18.

⁵⁰ Report of the Department of Communities and Justice, Statutory Review – Majority verdicts amendments: Report of the Statutory Review of the amendments made to the Jury Act 1977 by the Jury Amendment (Verdicts) Act 2006, May 2023, p 6.

verdict could be returned even if every juror was not convinced beyond reasonable doubt that the accused committed the crime.⁵¹

- 2.6** For some inquiry participants, majority verdicts in themselves represent a 'watering down' of this fundamental principle at common law that jury verdicts must be unanimous, a rule pointed out by the NSW Bar Association as one that 'has been recognised for over six and a half centuries'.⁵²
- 2.7** These stakeholders, including the Law Society of NSW, consistently referred to the unanimous decision of the High Court of Australia that 'a verdict returned by a majority of jurors, over the dissent of others, objectively suggests the existence of reasonable doubt and carries a greater risk of conviction of the innocent than does a unanimous verdict'.⁵³
- 2.8** The proposed reduction of the minimum deliberation period from eight hours to four therefore prompted strong concerns from some inquiry participants who argued that the change would further dilute the right to trial by jury, including the principle of a unanimous verdict.⁵⁴
- 2.9** For example, Mr Richard Wilson SC, Member, Criminal Law Committee, NSW Bar Association, asserted that, following the introduction of majority verdicts, to reduce the deliberation period further was 'incrementally undermining' civil and fundamental rights further 'for the sake of money'.⁵⁵
- 2.10** By contrast, the Hon. Justice Derek Price AO, Chief Judge of the District Court of New South Wales, insisted that judges will continue to direct the jury to seek a unanimous verdict and that the proposed amendments to reduce the deliberation period do not signal a move away from this 'fundamental first step':

Judges will not move to majority verdict until they are absolutely satisfied—and the evidence has to be taken on oath—that the jury cannot reach unanimous verdict' ...By looking at reducing the eight hours or leaving it as a matter of discretion, we are not moving away from the fundamental first step, which is a unanimous verdict.⁵⁶

⁵¹ Report of the Department of Communities and Justice, Statutory Review – Majority verdicts amendments: Report of the Statutory Review of the amendments made to the Jury Act 1977 by the Jury Amendment (Verdicts) Act 2006, May 2023, p 6.

⁵² Submission 2, The NSW Bar Association, p 2.

⁵³ *Cheatle v The Queen* (1993) 177 CLR 541, as cited by Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 2; Evidence, Ms Jane Sanders AM, Principal Solicitor, The Shopfront Youth Legal Centre and Member of The Law Society of New South Wales, 31 January 2024, p 3.

⁵⁴ See for example, Evidence, Ms Jane Sanders AM, Principal Solicitor, The Shopfront Youth Legal Centre and Member of The Law Society of New South Wales, 31 January 2024, p 3; Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 2; Submission 2, The NSW Bar Association, p 1.

⁵⁵ Evidence, Mr Richard Wilson SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 6.

⁵⁶ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 35.

Efficiency savings and court time

- 2.11** In considering the proposed reduction of the eight-hour rule, inquiry participants also discussed the efficiency savings and court time associated with a reduced deliberation period. In particular, hung juries were raised within the context of wasted resources and delays.
- 2.12** A key reason cited by the NSW Government for proposing that jurors be required to deliberate for four hours before being able to return a majority verdict instead of eight is that the statutory review on the majority verdict amendments found the eight-hour rule to be 'inefficient, creates unnecessary additional costs and contributes to trial backlogs'.⁵⁷
- 2.13** Numerous inquiry participants voiced strong opinions against this reasoning, arguing that there is no empirical data or evidence to demonstrate that a reduction to four hours would create any efficiencies, or that substantial savings would be gained.⁵⁸ For example:
- Legal Aid NSW highlighted that the statutory review on majority amendments found there is almost no public data available on the use of majority verdicts⁵⁹
 - The Aboriginal Legal Service (NSW/ACT) was unaware of any forecasting or analysis indicating that a reduced jury deliberation time would lead to increased efficiency of criminal trials⁶⁰
 - The NSW Bar Association asserted that the savings that could be gained by having a four-hour rule would be limited to the 0.51 per cent of matters in New South Wales that proceed to a defended trial in either the NSW Supreme Court or NSW District Court.⁶¹
- 2.14** Further, stakeholders contended that the cost savings argument presumes that while juries are considering their verdicts 'judges are doing nothing'.⁶² However, both the NSW Bar Association and New South Wales Council for Civil Liberties (NSWCCL) advised that judges often use jury deliberation time to preside over sentence and appeal hearings, bail applications and pre-trial argument in other unrelated trials.⁶³
- 2.15** Inquiry participants also drew attention to the balance of cost and efficiency savings with the integrity of the jury process. For example, the NSWCCL argued that jury deliberations are one of the most important phases of a criminal trial and should not be made 'shorter for the sake of an unknown and speculative reduction of expenditure on resources and hung juries'.⁶⁴

⁵⁷ Submission 8, NSW Government, p 1.

⁵⁸ Submission 3, Legal Aid NSW, pp 2-3; Submission 5, Aboriginal Legal Services (NSW/ACT) Limited, pp 1-2.

⁵⁹ Submission 3, Legal Aid NSW, pp 2-3.

⁶⁰ Submission 5, Aboriginal Legal Service (NSW/ACT) Limited, pp 1-2.

⁶¹ Submission 2, The NSW Bar Association, p 6.

⁶² Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 2.

⁶³ See for example, Submission 7, New South Wales Council for Civil Liberties, p 4; Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 2.

⁶⁴ Submission 7, New South Wales Council for Civil Liberties, p 4.

2.16 The NSW Bar Association expressed a similar view, claiming that the potential savings associated with a shorter minimum deliberation period would not be sufficiently large to justify the risks to the integrity of majority verdicts.⁶⁵ The Association concluded that it would be 'troubling' if the deliberation period was reduced 'in the pursuit of uncertain and likely minimal costs savings'.⁶⁶

Hung juries

2.17 Further to the evidence on efficiency savings and court time, stakeholders discussed hung juries in particular and the impact of the proposed reduction of the eight-hour rule.

2.18 As outlined in chapter 1, hung juries occur when a jury is unable to reach a unanimous decision and is discharged with no verdict delivered. The *Jury Amendment (Verdicts) Act 2006* (the Amending Act) was introduced principally to reduce the number of hung juries.⁶⁷

2.19 In expressing its support for the reduction of the eight-hour rule, the Office of the Director of Public Prosecutions (ODPP) cited the significant costs to the criminal justice system associated with hung juries, including the financial, psychological and emotional costs:

'...the financial cost of re-running the trial, the additional burden on courts to re-list the matter which adds to the trial back-log affecting all matters, and perhaps most importantly the psychological and emotional cost on all stakeholders, including complainants and accused persons'.⁶⁸

2.20 The ODPP therefore considered that 'there is an increased risk of a miscarriage of justice if juries are persistently directed to continue deliberating because the circumstances for a majority direction have not yet arisen, after clearly indicating that they are unable to reach a unanimous verdict'.⁶⁹

2.21 In contrast, some stakeholders questioned any positive impact reducing the eight-hour rule might have on hung juries. For example:

- The Aboriginal Legal Services (NSW/ACT) asserted that the proposed 4-hour rule could, contrary to its objectives, increase the incidence of hung juries where, given more time, they may have found consensus⁷⁰
- Mr John Stratton SC, Member, Criminal Law Committee, NSW Bar Association, emphasised that the rate of hung juries is only about 2 per cent and claimed that any savings of cost and time by making a reduction in that 'very extremely low figure' was 'illusory'⁷¹

⁶⁵ Submission 2, The NSW Bar Association, p 6.

⁶⁶ Submission 2, The NSW Bar Association, p 7.

⁶⁷ The Hon Bob Debus, Second Reading Speech: Jury Amendment (Verdicts) Bill 2006, 5 April 2006.

⁶⁸ Submission 6, Office of the Director of Public Prosecutions (NSW), p 2.

⁶⁹ Submission 6, Office of the Director of Public Prosecutions (NSW), pp 2-3.

⁷⁰ Submission 5, Aboriginal Legal Services (NSW/ACT) Limited, p 2.

⁷¹ Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 5.

- The NSWCCCL noted that where statistics were available, from 2007 an average of 1.9% of trials dealt within the NSW District Court resulted in a hung jury, which the NSWCCCL considered 'extremely small' and 'unlikely to make a substantive impact on the trial backlog or expenditure of resources'.⁷²

2.22 Further, according to Mr Shaun Mortimer, Principal Solicitor, Criminal Law Practice, Aboriginal Legal Service (NSW/ACT), the proposed four-hour period may subsequently result in more appeals and thus undermine the intended productivity benefits. Mr Mortimer claimed that the resources involved in having three Justices decide a matter before the Court of Criminal Appeal and then the risk of retrials could be 'vast' and is a 'major concern that needs to be looked at closely'.⁷³

2.23 Stakeholders also suggested that the emphasis on hung juries being a failure of the justice system may be misplaced. For example:

- The NSWCCCL stated that a hung jury trial should not be considered a failed trial 'but rather a by-product of a complex event where jurors have taken their duties seriously in the consideration of the evidence and directions'.⁷⁴
- Ms Jane Sanders AM, Principal Solicitor, Member of The Law Society of New South Wales, acknowledged hung juries reflect the complexities jurors must deal with in their deliberations and do so in earnest: '...it is not a failure. It's perhaps a cost, but it is a very important part of the system functioning'.⁷⁵
- Mr John Stratton SC, Member, NSW Bar Association believed that 'the fact that there are a small number of hung juries is ...a sign of system success. ... [I]t shows that juries are doing what they're directed to do, which is— ...each of them has to be individually satisfied beyond reasonable doubt before returning a verdict of guilty'.⁷⁶

2.24 When drawing its conclusions about hung juries, some inquiry participants highlighted how the statutory review found there to be significant limitations in terms of available data for both hung juries and majority verdicts, and relied upon the majority view of stakeholders when recommending a reduction in deliberation time.⁷⁷ For example, the NSWCCCL considered the reliance on stakeholder opinions 'without empirical or statistical evidence' to be 'problematic where the integrity of a verdict may be at stake'.⁷⁸

⁷² Submission 7, New South Wales Council for Civil Liberties, p 3.

⁷³ Evidence, Mr Shaun Mortimer, Principal Solicitor, Criminal Law Practice, Aboriginal Legal Service (NSW/ACT), 31 January 2024, p 15.

⁷⁴ Submission 7, New South Wales Council for Civil Liberties, pp 3-4.

⁷⁵ Evidence, Ms Jane Sanders AM, Principal Solicitor, The Shopfront Youth Legal Centre and Member of The Law Society of New South Wales, 31 January 2024, p 5.

⁷⁶ Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 6.

⁷⁷ Report of the Department of Communities and Justice, Statutory Review – Majority verdicts amendments: Report of the Statutory Review of the amendments made to the Jury Act 1977 by the Jury Amendment (Verdicts) Act 2006, May 2023, p 11.

⁷⁸ Submission 7, New South Wales Council for Civil Liberties, p 3.

- 2.25** In his evidence, Mr Mark Follett, NSW Department of Communities and Justice highlighted that the nature of jury deliberations made it challenging to collect such data, explaining: '...[W]e don't have scientific evidence because, as you will appreciate, the deliberations of jurors are sacrosanct'.⁷⁹
- 2.26** On this point, the NSWCCCL suggested that research should be done into the impact of the proposed amendments on the reduction of expenditure of resources on trials and hung juries, including reviews into the type and nature of criminal offences that end in hung juries, the duration of criminal trials that result in hung juries, and the average time of a jury to return a verdict in New South Wales.⁸⁰

Duration of the deliberation period

- 2.27** There was a lot of discussion about the rationale for the eight-hour rule and the specific duration of jury deliberations, including the need for juries to deliberate for more than one day. Stakeholders also discussed the inclusion of lunchtime in calculating the deliberation period and the proposed reduced deliberation period as compared with other jurisdictions.
- 2.28** Inquiry participants expressed strongly opposing views on whether reducing the rule to four hours would mean that a jury could commence deliberations and return a majority verdict within one court sitting day.⁸¹
- 2.29** As outlined in chapter 1, the original rationale for making the minimum deliberation period eight hours was to ensure that the jury would have to deliberate for more than one court day before a majority verdict can be considered.⁸²
- 2.30** Mr John Stratton SC, NSW Bar Association, highlighted the need for jury deliberations to run overnight so that jurors could have time to rest and reflect before continuing deliberations. He asserted that the rationale behind the eight-hour rule remains sound and therefore concluded that '...if it ain't broke, don't fix it'.⁸³
- 2.31** Similarly, Ms Rhiannon McMillian, Senior Legal Project Officer, Crime, Legal Aid NSW, expressed concerns about the proposed four-hour rule, asserting it would make it entirely possible that a jury could reach a majority verdict on the same day they are sent out for deliberations.⁸⁴ Ms McMillian reiterated Legal Aid's position that the eight-hour rule be

⁷⁹ Evidence, Mr Mark Follett, Executive Director, Policy Reform and Legislation, NSW Department of Communities and Justice, 31 January 2024, p 43.

⁸⁰ Submission 7, New South Wales Council for Civil Liberties, p 8.

⁸¹ See for example, Evidence, Ms Rhiannon McMillian, Senior Legal Project Officer, Crime, Legal Aid NSW, 31 January 2024, p 22; Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 40.

⁸² The Hon Bob Debus, Second Reading Speech: Jury Amendment (Verdicts) Bill 2006, 5 April 2006.

⁸³ Evidence, Mr Shaun Mortimer, Principal Solicitor, Criminal Law Practice, Aboriginal Legal Service (NSW/ACT), 31 January 2024, pp 17-18.

⁸⁴ Evidence, Ms Rhiannon McMillian, Senior Legal Project Officer, Crime, Legal Aid NSW, 31 January 2024, p 22.

maintained but conceded that if it was inevitable there would be a reduction, then six hours would be a more appropriate 'middle ground' than four because of the 'overnight test'.⁸⁵

- 2.32** Ms Harriet Skinner, Aboriginal Legal Service (NSW/ACT), disagreed, however, arguing that there is still a risk with a potential six-hour rule. Ms Skinner gave the example of a judge finishing summing at 4.00 pm the day before and does not send the jury out until the following morning – '[d]epending on time keeping, it could mean that a jury could come back on the same day with six hours.'⁸⁶ Ms Skinner maintained her support for the eight-hour rule, saying that it was a safeguard that allowed for juries having a think overnight and '...sleeping on it, coming back with a fresh mind'.⁸⁷
- 2.33** Supporting the proposed reduction of the eight-hour rule to four by asserting that 'in a significant number of trials [eight hours is] just too long,'⁸⁸ Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, argued that there are sufficient safeguards to address concerns that a majority verdict could be returned on the same day. Ms Rigg SC argued that whilst it would be possible for a jury to return a verdict on the same day, there would be reasons for counsel to oppose it, including what would be reasonable in the circumstances.⁸⁹ She explained that counsel could argue that in those circumstances, the jury should come back for further deliberations the next day.⁹⁰
- 2.34** The Hon. Justice Derek Price AO, Chief Judge of the NSW District Court, also disagreed that a jury could commence deliberations and return a majority verdict all on the same day based on the proposed reduction in the minimum deliberation time.⁹¹ He argued that just because eight or four hours of deliberations have passed does not mean that the jury would be called in for a verdict, rather the jury would be left to deliberate for as long as they wish to.⁹² Justice Price AO stated that irrespective of time, only when a jury has reached a deadlock would they be called back in.
- 2.35** Separately, consideration was given to situations where jurors may have very strong views in relation to certain types of cases and a deadlock is reached early on which would not otherwise be resolved from a Black direction or further deliberation time. Ms Rigg SC provided an example of a rogue juror who will not acquit someone who is charged with a child sexual assault offence,

⁸⁵ Evidence, Ms Rhiannon McMillian, Senior Legal Project Officer, Crime, Legal Aid NSW, 31 January 2024, p 22.

⁸⁶ Evidence, Ms Harriet Skinner, Trial Advocate, Aboriginal Legal Service (NSW/ACT), 31 January 2024, p 23.

⁸⁷ Evidence, Ms Harriet Skinner, Trial Advocate, Aboriginal Legal Service (NSW/ACT), 31 January 2024, p 23.

⁸⁸ Evidence, Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, 31 January 2024, p 16.

⁸⁹ Evidence, Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, 31 January 2024, p 23.

⁹⁰ Evidence, Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, 31 January 2024, p 23.

⁹¹ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 40.

⁹² Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 40.

and is not open to considering others' views and the evidence in light of the directions from the judge.⁹³ She advised that such a situation would affect the quality of the deliberation, but noted that while it can occur, it is often not the case and rather comes down to just differences of opinion.⁹⁴

The inclusion of lunchtime in calculating the deliberation period

- 2.36** Separately, the committee received conflicting evidence about whether lunchtime is taken into account when calculating deliberation time.⁹⁵
- 2.37** On the one hand, Justice Price AO told the committee that lunchtime was not counted towards the deliberation period and gave an example of the timeframes for a court day.⁹⁶ On the other, Mr John Stratton SC, NSW Bar Association, reported that there are situations where lunchtime has been counted towards the deliberation period and noted that in other jurisdictions there are specific legislative carve-outs for lunchtime.⁹⁷
- 2.38** To this end, the NSW Bar Association advocated for amendments to the *Jury Act 1977* that make clear what periods of time should be taken into account in determining the length of time that a jury has been deliberating, noting that there is currently no consistency about whether or not the jury lunchtime can be taken into account.⁹⁸ In particular, it was suggested that a statutory list outlining events to be excluded from the deliberation period be inserted into section 55F of the Act.⁹⁹

Deliberation periods in other jurisdictions

- 2.39** Further to stakeholder consideration of the deliberation period, the NSW Government provided evidence that reducing the minimum deliberation period will bring the state in line with the majority of other Australian jurisdictions.¹⁰⁰ Noting the discussions around jurisdictional analysis, the committee received evidence that:

⁹³ Evidence, Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, 31 January 2024, p 21.

⁹⁴ Evidence, Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, 31 January 2024, p 21.

⁹⁵ See for example, Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 2; Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 38.

⁹⁶ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 38.

⁹⁷ Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 9.

⁹⁸ Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 2.

⁹⁹ Submission 2, The NSW Bar Association, p 2.

¹⁰⁰ Submission 8, NSW Government, p 1.

- New South Wales and Queensland currently have the longest minimum deliberation period of eight hours¹⁰¹, and
- the remaining jurisdictions range from six hours in the Northern Territory to no minimum period in Victoria.¹⁰²

2.40 The NSW Bar Association asserted that comparisons with other jurisdictions should be treated with caution,¹⁰³ with Mr John Stratton SC, Member, Criminal Law Committee, NSW Bar Association, highlighting that there is no uniformity amongst the jurisdictions.¹⁰⁴ The NSW Bar Association explained that out of jurisdictions that allow a majority verdict, only New South Wales and the Northern Territory allow majority verdicts for all offences, with the other jurisdictions excluding particular offences.¹⁰⁵

2.41 Moreover, Mr Stratton SC advised that in New South Wales, the same court may deal with state criminal offences and Commonwealth criminal offences, which do not allow majority verdicts. Therefore, as he stated: '...[T]he same courts, for some trials, there's a unanimous verdict requirement; for some trials, there's a majority verdict allowable'.¹⁰⁶

Judicial discretion

2.42 Relevant to the reduction of the eight-hour rule is the issue of judicial discretion to discharge a jury when appropriate. Many stakeholders highlighted the importance of judicial discretion in presiding over a trial.¹⁰⁷ However, the committee heard that there is some contention about whether a trial judge has discretion to discharge a jury which cannot reach a unanimous verdict, before the end of the eight-hour period and before a majority verdict can be taken.¹⁰⁸

2.43 For example, Justice Price AO, Chief Judge of the District Court of NSW, advocated that the decision when to discharge a jury should be left to the discretion of the trial judge.¹⁰⁹ He argued that, while he supported the proposed four hour rule as a compromise, he preferred the Victorian position, 'where you leave it to the discretion of the trial judge'.¹¹⁰ Mr Mark Follett,

¹⁰¹ Submission 8, NSW Government, p 1.

¹⁰² Submission 8, NSW Government, p 1.

¹⁰³ Submission 2, The NSW Bar Association, p 5.

¹⁰⁴ Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 7.

¹⁰⁵ Submission 2, The NSW Bar Association, p 5.

¹⁰⁶ Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 7.

¹⁰⁷ See for example, Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 2; Evidence, Mr Brett Hatfield, SC, Acting Deputy Director, Office of the Director of Public Prosecutions, 31 January 2023, p 24; Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 33.

¹⁰⁸ Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 2.

¹⁰⁹ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 33.

¹¹⁰ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 33.

Executive Director, Policy Reform and Legislation, NSW Department of Communities and Justice, explained juror directions are 'codified or given statutory effect' in the Victorian system so that it solely up to judicial discretion.¹¹¹

2.44 Justice Price AO outlined the challenges judges face when a jury is unable to reach a unanimous verdict but still has a significant period of time until it reaches eight hours of deliberations.¹¹² He argued in favour of judicial discretion as 'it's a trial judge who knows' the jury and circumstances of each particular trial,¹¹³ asserting that 'rather than having an artificial time limit of eight hours or four hours, it should be left to the trial judge's discretion and understanding'.¹¹⁴

2.45 Another challenge faced by judges was outlined by Mr John Stratton SC, Member, Criminal Law Committee, NSW Bar Association, who explained the impact of the decision of *Villis v R* [2014]¹¹⁵ in which the NSW Court of Criminal Appeal determined 'that there was no power to discharge the jury until it had been deliberating for eight hours, even if there was evidence that the jurors would remain unable to reach a unanimous or even a majority verdict'.¹¹⁶

2.46 According to Mr Stratton SC, some judges have been prepared to discharge the jury earlier in such circumstances, on the basis that to do otherwise would risk a miscarriage of justice¹¹⁷ and referred to the decision of *Regina v BC* [2018].¹¹⁸ He concluded that amending the *Jury Act 1977* would be of benefit 'to make it clear that judges have the power to discharge juries in these circumstances' as otherwise the jury has to wait until the eight-hour period has passed.¹¹⁹ Mr Stratton SC added that by allowing a judge to discharge a jury in such circumstances would be more efficient for both the court and the parties.¹²⁰

¹¹¹ Evidence, Mr Mark Follett, Executive Director, Policy Reform and Legislation, NSW Department of Communities and Justice, 31 January 2024, p 46.

¹¹² Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 33.

¹¹³ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 35.

¹¹⁴ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 39.

¹¹⁵ *Villis v R* [2014] NSWCCA 74.

¹¹⁶ Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 2.

¹¹⁷ Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 2.

¹¹⁸ *Regina v BC* [2018] NSWDC 124.

¹¹⁹ Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 8.

¹²⁰ Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 10.

2.47 Other stakeholders were also supportive of amending the Act to include a clear provision for trial judges to discharge a jury prior to eight-hours:

- Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders advocated that clarifying the discharge of juries 'rather than making them go around in circles of being mandated to keep discussing the matter with one another if they've already firmly formed a view and they are not able to reach a verdict'¹²¹
- Ms Rhiannon McMillian, Senior Legal Project Officer, Crime, Legal Aid NSW, argued that such an amendment would more directly address 'the perceived issue ...[of]... potential pressure for jurors to come to a verdict that may not be a true verdict according to their own assessment of the evidence because of the requirement to wait for eight hours.'¹²²

2.48 In support of the reduction to four hours, Ms Rigg SC argued that it was 'problematic' and 'counterproductive' for a jury to be repeatedly told they need to keep going back out to reach a unanimous verdict.¹²³ Ms Rigg SC stated that there '...needs to be something there well short of the eight hours for those types of trials, keeping the protection there for the more complex trials. But there just needs to be that ability there to alleviate that pressure and that risk of miscarriage of justice in those trials...'¹²⁴

2.49 Further, the committee received evidence that, under the current legislation, there is a requirement that notwithstanding the eight-hour rule, the court must be satisfied that the time for which the jury has deliberated is reasonable having regard to the nature and complexity of the issues in the trial.¹²⁵

2.50 Mr Brett Hatfield, SC, Acting Deputy Director, Office of the Director of Public Prosecutions, explained that this requirement is retained under the bill, describing it as an 'important safeguard which allays any concern about the impacts on the quality of justice on longer or more complex trials'.¹²⁶ He stated:

... there is the safeguard that the period is reasonable having regard to the length, complexity and the nature of the issues in the trial. In my view, that's the appropriate safeguard and that's the measure that's of reasonableness and that both parties can have input into. In my experience, that's not the sort of issue that prosecutors and defence lawyers are likely to disagree about.¹²⁷

¹²¹ Evidence, Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, 31 January 2024, p 18.

¹²² Evidence, Ms Rhiannon McMillian, Senior Legal Project Officer, Crime, Legal Aid NSW, 31 January 2024, p 18.

¹²³ Evidence, Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, 31 January 2024, pp 16-17.

¹²⁴ Evidence, Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, 31 January 2024, p 16.

¹²⁵ Evidence, Mr Brett Hatfield, SC, Acting Deputy Director, Office of the Director of Public Prosecutions, 31 January 2023, p 24.

¹²⁶ Evidence, Mr Brett Hatfield, SC, Acting Deputy Director, Office of the Director of Public Prosecutions, 31 January 2023, p 24.

¹²⁷ Evidence, Mr Brett Hatfield, SC, Acting Deputy Director, Office of the Director of Public Prosecutions, 31 January 2023, p 28.

2.51 In discussing judicial discretion, Mr Follett, Department of Communities and Justice, advised that the proposed four-hour deliberation period was a compromise position for stakeholders who argued for no minimum deliberation time and those who advocated for only judicial discretion.¹²⁸ Moreover, Mr Follett maintained that the bill only reduces the eight-hour rule to four, and that there is no change to the current judicial discretion component, stating: 'That still is an absolutely integral part'.¹²⁹

Increase in complex evidence and cases

2.52 In addition to the issues raised in relation to reducing the eight-hour rule, the committee heard various views on the growing complexity of evidence in cases, with some inquiry participants asserting it as a justification for longer minimum deliberation periods for juries.

2.53 Legal Aid NSW indicated that with the increase in digital and electronic evidence, trials are becoming more complex and sophisticated, and thus the eight-hour rule is reasonable.¹³⁰ In particular, it was argued that 'there is an important distinction between evidence for a short one-on-one assault trial and a lengthier, multiple co-accused trial which can take months'.¹³¹ Legal Aid NSW observed that a 'blanket'¹³² reduction in the minimum deliberation time without express consideration of the length of the trial and the volume of evidence, would risk 'jeopardising the fair trial process by compressing the minimum standards for proper deliberation in those complex cases'.¹³³

2.54 Other stakeholders echoed similar sentiments.¹³⁴ For example:

- The Law Society of NSW argued that there has been an increasing amount of electronic evidence including CCTV and electronic surveillance of telecommunications making trials longer and more complex.¹³⁵ This complex evidence can then take hours to be played in the courtroom, which jurors can then re-review and adds to the deliberation time¹³⁶

¹²⁸ Evidence, Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, The Department of Communities and Justice, 31 January 2024, p 44.

¹²⁹ Evidence, Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, The Department of Communities and Justice, 31 January 2024, p 51.

¹³⁰ Submission 3, Legal Aid NSW, p 3.

¹³¹ Submission 3, Legal Aid NSW, p 3.

¹³² Submission 3, Legal Aid NSW, p 3.

¹³³ Submission 3, Legal Aid NSW, p 3.

¹³⁴ See for example, Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 5; Evidence, Ms Jane Sanders AM, Principal Solicitor, The Shopfront Youth Legal Centre and Member of The Law Society of New South Wales, 31 January 2024, p 3; Submission 5, Aboriginal Legal Services (NSW/ACT) Limited, p 2.

¹³⁵ Evidence, Ms Jane Sanders AM, Principal Solicitor, The Shopfront Youth Legal Centre and Member of The Law Society of New South Wales, 31 January 2024, p 3.

¹³⁶ Evidence, Ms Diane Elston, Senior Solicitor, Indictable Crime Team 1, Legal Aid NSW and Member of The Law Society of New South Wales, 31 January 2024, p 5.

- The Bar Association of NSW explained that the increase in electronic evidence is in favour of leaving the current minimum time for deliberation, rather than reducing it¹³⁷
- The NSW Council for Civil Liberties (NSWCCL) noted that jury directions in sexual assault criminal trials and the reforms in consent laws are more complex and will likely increase the deliberation time for juries.¹³⁸ NSWCCL argued that if a four-hour rule was introduced, it may promote 'undesired verdict-driven' deliberations and risk the integrity of a verdict.¹³⁹

2.55 Legal Aid NSW also pointed to complexities in cases in other ways, arguing that even where the issue at hand is straightforward, the nature of the evidence to be considered may not be. Legal Aid explained:

... [E]ven where it is a case where say, for example, the issue in dispute is actually quite narrow and quite confined—for example, the identification of who the offender is as opposed to whether or not an offence took place—the jury's consideration of that narrow issue may actually involve consideration of a range of different types of evidence— competing views of different witnesses, weighing up alibi—in addition to evidence like telecommunications or cell tower records that would tend to suggest where a person was. So even though the issue itself may be quite straightforward at a cursory glance, that does not necessarily mean that the evidence the jury is required to consider to determine that issue will itself be simple as well'.¹⁴⁰

2.56 The Aboriginal Legal Service (NSW/ACT) (ALS) observed that in trials for aggravated break and enter cases, which involve issues of complicity, often complicated jury directions are provided.¹⁴¹ Mr Mortimer, Principal Solicitor, Criminal Law Practice, ALS, reflected on the expectations on juries to understand these directions and come to a decision:

'Jury directions—they are the types of topic areas that lawyers go to law school to learn about, but we expect jurors to be able to absorb that information very quickly in the judge's summing up at the end of the trial and then properly think about that and arrive at a decision as to whether they think that person is guilty beyond reasonable doubt'.¹⁴²

2.57 The ALS expressed concern that reducing the eight-hour rule may lead to more convictions if juries are not given appropriate time to properly consider complex directions.¹⁴³ The ALS also indicated that the eight-hour rule is explained to clients as a safeguard, and is critically important to reassure Aboriginal people that there will be fairness in the system, noting that many

¹³⁷ Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 5.

¹³⁸ Submission 7, New South Wales Council for Civil Liberties, p 6.

¹³⁹ Submission 7, New South Wales Council for Civil Liberties, p 6.

¹⁴⁰ Evidence, Ms Rhiannon McMillian, Senior Legal Project Officer, Crime, Legal Aid NSW, 31 January 2024, p 15.

¹⁴¹ Evidence, Mr Shaun Mortimer, Principal Solicitor, Criminal Law Practice, Aboriginal Legal Service (NSW/ACT), 31 January 2024, pp 14-15.

¹⁴² Evidence, Mr Shaun Mortimer, Principal Solicitor, Criminal Law Practice, Aboriginal Legal Service (NSW/ACT), 31 January 2024, p 15.

¹⁴³ Evidence, Ms Harriet Skinner, Trial Advocate, Aboriginal Legal Service (NSW/ACT), 31 January 2024, p 15.

Aboriginal people charged with criminal offences have an 'inherent distrust of the criminal justice system'.¹⁴⁴

- 2.58** On the other hand, Ms Rigg SC, The Public Defenders, advised that in her experience with complex cases she does not see jurors usually indicating an inability to agree in less than eight hours.¹⁴⁵ However, for more streamlined trials where it is a very limited issue, she has seen jurors come to quick views and often acquit quickly in such matters.¹⁴⁶ Ms Rigg SC noted that in such streamlined cases, 'it is common—or it's not uncommon, in any event—for jurors to indicate far earlier than eight hours in those types of cases that they can't reach agreement with one another.'¹⁴⁷ On the issue of the risk of increased convictions, Ms Rigg SC reported that majority verdicts frequently result in acquittals.¹⁴⁸
- 2.59** Similarly, the Hon. Justice Derek Price AO, Chief Judge of the District Court of NSW observed that it would be very unusual to get a jury saying they are deadlocked after two hours or so in murder of major drug offences cases.¹⁴⁹ He remarked that it is 'the lesser trials where you tend to get deadlock, on very rare occasions, at earlier times'.¹⁵⁰
- 2.60** In terms of understanding the length of deliberations, the Aboriginal Legal Service asserted that for an accused person, the concept of a 'streamlined or mainline' case does not explain very much. Rather it is their appreciation of the consequences and the outcome which is significant to them – 'whether they will go to jail, how long that will be for'.¹⁵¹
- 2.61** In contrast, Ms Rigg SC, The Public Defenders, argued that if it was explained to an accused person by the judge or by their own representative that the minimum deliberation time was what is considered reasonable in the circumstances of the case, then 'that is the framework from which they should be encouraged to view it, rather than some dichotomy between this being a streamlined or not a streamlined case'.¹⁵²

¹⁴⁴ See for example, Evidence, Ms Harriet Skinner, Trial Advocate, Aboriginal Legal Service (NSW/ACT), 31 January 2024, p 16; Evidence, Mr Shaun Mortimer, Principal Solicitor, Criminal Law Practice, Aboriginal Legal Service (NSW/ACT), 31 January 2024, p 16.

¹⁴⁵ Evidence, Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, 31 January 2024, p 17.

¹⁴⁶ Evidence, Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, 31 January 2024, p 17.

¹⁴⁷ Evidence, Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, 31 January 2024, p 17.

¹⁴⁸ Evidence, Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, 31 January 2024, p 21.

¹⁴⁹ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 35.

¹⁵⁰ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 35.

¹⁵¹ Evidence, Mr Shaun Mortimer, Principal Solicitor, Criminal Law Practice, Aboriginal Legal Service (NSW/ACT), 31 January 2024, p 22.

¹⁵² Evidence, Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders, 31 January 2024, p 22.

Impact on juror wellbeing

- 2.62** Juror safety and wellbeing is cited as another reason for the reduction of the eight-hour rule.¹⁵³ As outlined in chapter 1, the statutory review on the majority verdict amendments found that requiring a jury to continue deliberations until eight hours, when firm disagreement between jurors has occurred well beforehand, may risk causing jurors to feel under pressure and compromise their position in the interests of reaching a verdict.¹⁵⁴
- 2.63** At the outset, the Hon. Justice Derek Price AO, Chief Judge of the District Court of NSW, indicated that his support for the reduction to the eight-hour rule had nothing to do with court or cost savings, but rather with concern for the wellbeing of jurors and the integrity of juries' verdicts.¹⁵⁵
- 2.64** Justice Price AO highlighted the pressure that jurors are put under when they are told they must keep deliberating when they have indicated they cannot reach an agreement, and described it being 'unfair' to jurors to place such a burden on them:
- 'It's not only the risk to the administration of justice, it's respect for your jurors. You're putting them under very great pressure. When they've told you, 'We just can't reach agreement,' and they get told to go back and keep thinking about it, it puts a real burden on them. I think it's very unfair to the citizens in our community, who have been good enough to be jurors in a particular trial, that despite the fact of telling the judge, 'We can't agree,' the judge keeps saying, 'Go back. Think about it again.' It is unfair to them'.¹⁵⁶
- 2.65** In contrast, the NSW Bar Association declared that there is no clear evidence indicating that the eight-hour rule causes jurors to feel under pressure and that instead the eight-hour rule ensures that 'juries are given sufficient time to arrive at a unanimous verdict and are not rushed prematurely into a majority verdict'.¹⁵⁷
- 2.66** Rather than reduce the eight-hour rule, stakeholders maintained that concerns regarding juror wellbeing could be addressed by introducing other support mechanisms to support juror wellbeing.¹⁵⁸ For example:

¹⁵³ Submission 8, NSW Government, p 1.

¹⁵⁴ Report of the Department of Communities and Justice, Statutory Review – Majority verdicts amendments: Report of the Statutory Review of the amendments made to the Jury Act 1977 by the Jury Amendment (Verdicts) Act 2006, May 2023, p 8.

¹⁵⁵ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 33.

¹⁵⁶ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 39.

¹⁵⁷ Submission 2, The NSW Bar Association, p 5.

¹⁵⁸ See for example, Submission 4, The Law Society of New South Wales, p 3, Evidence, Ms Rhiannon McMillian, Senior Legal Project Officer, Crime, Legal Aid NSW, 31 January 2024, p 18.

- Legal Aid NSW suggested providing jurors with better education and support to prepare them for jury deliberations¹⁵⁹
- The Law Society of NSW recommended providing jurors with more opportunities to communicate with the Sheriff if there are issues¹⁶⁰
- The NSWCCCL proposed improved jury induction processes and education to prevent and deter harassment of jurors by other jurors. It was also suggested that jurors should have more autonomy over the process of selecting a foreperson and supported the introduction of new jury directions or warnings.¹⁶¹

2.67 Inquiry participants reflected on the difficulty of collecting any data to inform how best to support jurors, noting the confidential nature of jury deliberations. For example, Mr Stratton SC, NSW Bar Association, believed that there are a lot of assumptions about what goes into the jury room 'but the truth is that we really don't know. There's no evidence'.¹⁶²

2.68 Indeed, stakeholders recommended that empirical studies should be conducted into possible improvement strategies to assist juror comprehension and deliberation.¹⁶³ In particular, Legal Aid NSW maintained that, before the eight-hour rule is reduced, further research is needed to understand jury deliberations and distil empirical evidence around unanimous and majority verdicts:

"The issue is that there's no data to indicate how frequently that arises and what the outcomes are in those cases where Black direction has been given. How many juries do, following that, somehow manage to come to a unanimous verdict? How many result in discharges immediately after the eight hours? We don't have that evidence. I think before a policy decision is made to make that reduction, there would need to be further investigation about what is actually happening with juries and to try and quantify that".¹⁶⁴

2.69 In response to questions regarding juror wellbeing, the Sheriff of NSW, Ms Tracey Hall, PSM, detailed the Juror Welfare Program, noting that:

- the welfare of the jury is monitored by the court officer throughout the trial,¹⁶⁵
- if any issues arise, the jury can refer a note directly to the trial judge,¹⁶⁶

¹⁵⁹ Evidence, Ms Rhiannon McMillian, Senior Legal Project Officer, Crime, Legal Aid NSW, 31 January 2024, p 18.

¹⁶⁰ Evidence, Ms Diane Elston, Senior Solicitor, Indictable Crime Team 1, Legal Aid NSW and Member of The Law Society of New South Wales, 31 January 2024, p 9.

¹⁶¹ Submission 7, New South Wales Council for Civil Liberties, p 5.

¹⁶² Evidence, Mr John Stratton SC, Member, Criminal Law Committee, New South Wales Bar Association, 31 January 2024, p 5.

¹⁶³ See for example, Submission 2, The NSW Bar Association, p 8, Evidence, Ms Rhiannon McMillian, Senior Legal Project Officer, Crime, Legal Aid NSW, 31 January 2024, p 19.

¹⁶⁴ Evidence, Ms Rhiannon McMillian, Senior Legal Project Officer, Crime, Legal Aid NSW, 31 January 2024, p 19.

¹⁶⁵ Evidence, Ms Tracey Hall, PSM, Sheriff of NSW, NSW Sheriff's Office, 31 January 2024, p 45.

¹⁶⁶ Evidence, Ms Tracey Hall, PSM, Sheriff of NSW, NSW Sheriff's Office, 31 January 2024, p 45.

- counselling can be provided to jurors in cases involving graphic or disturbing evidence,¹⁶⁷
- upon discharge, all jurors are provided with information on the Juror Support Program which provides a free counselling service.¹⁶⁸

2.70 The Sheriff advised that in 2023, there were two reported cases where the jurors could not continue due to their wellbeing. These cases were referred to the trial judge and in those two cases, all jurors were discharged and the trials were relisted.¹⁶⁹ The Sheriff also specified that in 2023, 'there were 76 referrals out of 9,174 empanelled jurors of people who accessed our jury support system, which equated to 0.8 per cent of all empanelled jurors who sought support from the counselling services'.¹⁷⁰

Other proposed amendments

2.71 In addition to the reduction of the eight-hour rule, inquiry participants presented evidence on other proposed amendments contained within the provisions of the Jury Amendment Bill 2023 (the bill). This section outlines these provisions and relevant stakeholder comments, as well as other proposed amendments to the Act.

Capacity of the jury to separate without an order of the court

2.72 As outlined in chapter 1, the bill proposes removing 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.¹⁷¹ It does still provide the court the ability to order that a jury do not separate if deemed necessary in the circumstances of a particular proceeding.¹⁷²

2.73 Legal Aid NSW strongly opposed this amendment and was concerned about its potential unintended consequences, in particular that it could create a statutory right for a juror to 'separate' or remove themselves from the rest of the jury.¹⁷³ Further, given that jurors are only allowed to deliberate when they are all together, Legal Aid NSW argued that this could have 'significant implications for jury deliberations'.¹⁷⁴ Other concerns include:

- Incorrectly recording the length of jury deliberations in situations where one or more jurors decide to separate. This in turn could cause issues including possible appeals about whether jury deliberations had reached a threshold where it was open to the jury to return a majority verdict.¹⁷⁵

¹⁶⁷ Evidence, Ms Tracey Hall, PSM, Sheriff of NSW, NSW Sheriff's Office, 31 January 2024, p 45.

¹⁶⁸ Evidence, Ms Tracey Hall, PSM, Sheriff of NSW, NSW Sheriff's Office, 31 January 2024, p 45.

¹⁶⁹ Evidence, Ms Tracey Hall, PSM, Sheriff of NSW, NSW Sheriff's Office, 31 January 2024, p 45.

¹⁷⁰ Evidence, Ms Tracey Hall, PSM, Sheriff of NSW, NSW Sheriff's Office, 31 January 2024, p 45.

¹⁷¹ The Jury Amendment Bill 2023, Schedule 1[7].

¹⁷² The Hon Mark Buttigieg MLC, Second reading speech: Jury Amendment Bill 2023, 19 October 2023.

¹⁷³ Submission 3, Legal Aid NSW, p 2.

¹⁷⁴ Submission 3, Legal Aid NSW, p 2.

¹⁷⁵ Submission 3, Legal Aid NSW, p 2.

- Legal representatives not being aware of when the jury is out deliberating and when they are not.¹⁷⁶
- Concerns that the NSW Sheriff's role of monitoring jurors for the purposes of keeping track of jury deliberations may also be made more difficult.¹⁷⁷

2.74 In response to the concerns regarding the amendment potentially creating a statutory right for jurors to separate, Mr Mark Follett, Department of Communities and Justice, contended that the judge would still have the ability to order that a jury not separate in certain circumstances. He added: 'I would hope that that is a situation that the judicial officer could control and make a direction contrary to that'.¹⁷⁸

2.75 Similarly, the Hon. Justice Derek Price AO, Chief Judge of the District Court of New South Wales, argued that the amendment would still be subject to any order made by a judge but would allow for the jury to deliberate without disruptions.¹⁷⁹

2.76 In respect to the concerns raised by Legal Aid NSW that the amendment is not sufficiently clear that it is subject to orders made by the trial judge, Justice Price AO remarked: 'That could well be a valid criticism and that could be tidied up, but I'm behind the spirit of that particular piece of legislation'.¹⁸⁰

Notification of jury service notice via email

2.77 As outlined in chapter 1, the bill proposes authorising a summons, notice or other documents related to jury service to be served on a person via email if that person has nominated their preference for email service.

2.78 The Aboriginal Legal Service (NSW/ACT) (ALS) voiced strong opinion against the use of email to notify an individual of jury service and were concerned that the amendment will inadvertently disadvantage socially and economically marginalised people, including many ALS clients.¹⁸¹ The ALS had three main concerns:

- that many disadvantaged people, and Aboriginal people in particular, in rural and regional areas do not have access to smartphone technology,¹⁸²

¹⁷⁶ Evidence, Ms Rhiannon McMillian, Senior Legal Project Officer, Crime, Legal Aid NSW, 31 January 2024, p 14.

¹⁷⁷ Submission 3, Legal Aid NSW, p 2.

¹⁷⁸ Evidence, Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, The Department of Communities and Justice, 31 January 2024, p 46.

¹⁷⁹ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 33.

¹⁸⁰ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 33.

¹⁸¹ Submission 5, Aboriginal Legal Services (NSW/ACT) Limited, p 3.

¹⁸² Evidence, Mr Shaun Mortimer, Principal Solicitor, Criminal Law Practice, Aboriginal Legal Service (NSW/ACT), 31 January 2024, p 14.

- poor access to internet and reliable internet connection in remote and regional areas,¹⁸³
- difficulties for people with lower levels of literacy in navigating the system, particularly for Aboriginal people and those who live in regional and remote areas.¹⁸⁴

2.79 The ALS were also deeply concerned by the risk for individuals to be fined for failing to attend jury service and the impact this may have on vulnerable communities, including 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).¹⁸⁵ The ALS asserted that such impacts may be particularly grave for regional and remote Aboriginal and Torres Strait Islander communities with low levels of driver licensing.¹⁸⁶

2.80 In addition, the ALS noted that often an ALS internal email address is linked to a client's record if they used ALS support, and as a consequence future jury duty summonses or fine notices are sometimes served on the ALS instead of the individual named.¹⁸⁷ Another concern was that, with the use of centralised systems such as Service NSW, an individual's email address may be automatically assigned as their preferred communication method for jury duty.

2.81 The ALS recommended that if the amendment is passed, a person be permitted to 'opt in' with full and informed consent to substituted service by way of email.¹⁸⁸ When asked about this issue, Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, Department of Communities and Justice, confirmed that email notification for jurors as proposed in the bill was 'opt in'.¹⁸⁹

Power of NSW Sheriff to conduct investigations into improper conduct

2.82 As outlined in chapter 1, the bill proposes granting investigative powers to the Sheriff of New South Wales to investigate improper conduct that may affect the verdict of a cases, including conduct committed by another person other than a juror.

2.83 Various views were expressed by inquiry participants,¹⁹⁰ including Justice Price AO, who supported the amendment and commented that the Sheriff is the most appropriate body to deal with matters relating to juries.¹⁹¹ He argued that it is not fitting for the NSW Police Force to

¹⁸³ Evidence, Mr Shaun Mortimer, Principal Solicitor, Criminal Law Practice, Aboriginal Legal Service (NSW/ACT), 31 January 2024, p 14.

¹⁸⁴ Evidence, Mr Shaun Mortimer, Principal Solicitor, Criminal Law Practice, Aboriginal Legal Service (NSW/ACT), 31 January 2024, p 14.

¹⁸⁵ Submission 5, Aboriginal Legal Services (NSW/ACT) Limited, p 3.

¹⁸⁶ Submission 5, Aboriginal Legal Services (NSW/ACT) Limited, p 3.

¹⁸⁷ Submission 5, Aboriginal Legal Services (NSW/ACT) Limited, p 3.

¹⁸⁸ Submission 5, Aboriginal Legal Services (NSW/ACT) Limited, p 3.

¹⁸⁹ Evidence, Mr Mark Follett, Executive Director, Policy Reform and Legislation, NSW Department of Communities and Justice, 31 January 2024, p 46.

¹⁹⁰ See for example, Submission 7, New South Wales Council for Civil Liberties, pp 7-8; Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 41.

¹⁹¹ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 41.

investigate such matters in the first instance as very often the matter before the court relates to a police offence.¹⁹²

2.84 Justice Price AO informed the committee that the request to investigate comes from the District or Supreme Court, and the courts already deal very closely with the Sheriff.¹⁹³ He commented that the extension of the Sheriff's powers to investigate matters outside the verdicts is important before a verdict is delivered due to the type of interferences with juries, particularly artificial intelligence.¹⁹⁴

2.85 The Sheriff of NSW, Ms Tracey Hall PSM, also asserted that the Sheriff's Office is best placed to undertake such investigations as Sheriff Officers are not parties to the proceedings.¹⁹⁵ She also advised that there would be several safeguards in relation to the expanded powers built in to the legislation, including:

- based on the Sheriff's report, the presiding judge will decide whether to continue to prosecution or not
- if the matter is to be considered for prosecution, the Crown Solicitor's Office then reviews the matter with advice from the Crown Advocate and will proceed for prosecution
- if required, assistance would be sought from the NSW Police, particularly if the matter involved serious crime gangs.

2.86 By comparison, the NSW Council for Civil Liberties (NSWCCL) expressed concern over the amendment, and argued that the broadening of the investigative power is significant and not safeguarded or constrained by current legislation.¹⁹⁶ In particular, the NSWCCL argued that:

- the Sheriff may investigate ordinary persons of the community, including persons who may be unrelated to the trial, such as family members of jurors, associates of an accused person, or journalists¹⁹⁷
- there is potential for the proposed amendment to 'erode civil liberties'¹⁹⁸ and that innocent persons, perhaps wrongly accused by disgruntled stakeholders, may be the target of misguided investigations by the Sheriff¹⁹⁹
- the Sheriff is not subject to or constrained by the *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)* or overseen by the Law Enforcement Conduct Commission.²⁰⁰

¹⁹² Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 41.

¹⁹³ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 41.

¹⁹⁴ Evidence, the Hon. Justice D Price AO, Chief Judge of the District Court of New South Wales, 31 January 2024, p 41.

¹⁹⁵ Evidence, Ms Tracey Hall PSM, Sheriff of NSW, 31 January 2024, pp 54-55.

¹⁹⁶ Submission 7, New South Wales Council for Civil Liberties, p 7.

¹⁹⁷ Submission 7, New South Wales Council for Civil Liberties, p 7.

¹⁹⁸ Submission 7, New South Wales Council for Civil Liberties, p 7.

¹⁹⁹ Submission 7, New South Wales Council for Civil Liberties, p 7.

²⁰⁰ Submission 7, New South Wales Council for Civil Liberties, p 8.

2.87 The NSWCCCL also contended that the Act already allows law enforcement bodies such as NSW Police to investigate criminal conduct relating to a juror and that the proposed amendment is unnecessary and potentially problematic for criminal investigations conducted by the police.²⁰¹

Additional feedback on miscellaneous provisions

2.88 A number of stakeholders put forward views on other provisions of the bill, namely:

- The Law Society of NSW queried the need to clarify what constitutes 'good cause'²⁰² for the purposes of seeking an exemption or excusal from jury service noting that section 14A of the Act 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'.²⁰³ Instead, the Law Society suggested other, non-legislative means to support an understanding of what may constitute 'good cause', such as education or training for the relevant decision-makers.²⁰⁴
- The Law Society of NSW supported the amendment to expand the power for the Courts to empanel up to three additional jurors in criminal proceedings.²⁰⁵ However, it was asserted that the proposed drafting creates a relatively high bar for additional jurors to be empanelled.
- Both the District Court of NSW and the Law Society of NSW supported the 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.²⁰⁶
- Legal Aid NSW supported increased protections for jurors from unlawful actions by employers irrespective of their employment status.²⁰⁷
- The District Court of NSW and Legal Aid NSW both supported the expanded test for the selection of additional jurors in criminal proceedings in the Supreme Court and District Court.²⁰⁸

²⁰¹ Submission 7, New South Wales Council for Civil Liberties, p 8.

²⁰² Submission 4, The Law Society of New South Wales, p 1.

²⁰³ Submission 4, The Law Society of New South Wales, p 1.

²⁰⁴ Submission 4, The Law Society of New South Wales, p 1.

²⁰⁵ Submission 4, The Law Society of New South Wales, p 2.

²⁰⁶ Submission 1, District Court of NSW, p 1; Submission 4, The Law Society of New South Wales, p 2.

²⁰⁷ Submission 3, Legal Aid NSW, p 4.

²⁰⁸ Submission 1, District Court of NSW, p 1; Submission 3, Legal Aid NSW, p 4.

Persons exempt from jury service

- 2.89** As part of the inquiry, the committee received evidence from the Clerk of the Parliaments, Mr David Blunt AM. The Clerk sought the committee's consideration of a further amendment to the *Jury Act 1977* not included in the current bill to allow parliamentary staff to be excluded from eligibility for jury service.²⁰⁹
- 2.90** The Clerk advised that parliamentary staff were previously exempt from jury service under the Act prior to 2010, and that since then, frequent requests have been made to the Sheriff that particular staff be excused from jury service. Noting that the 'first duty of parliamentary staff is to the House and its Committees', the Clerk drew particular attention to the highly specialised nature of parliamentary work, limited staffing budget and parliamentary workforce, which make it difficult to replace parliamentary staff called up for jury service at short notice.²¹⁰
- 2.91** The Clerk of Parliaments requested that the committee recommend a provision be reintroduced in the Act to clarify that parliamentary staff should not be considered eligible for jury service. The Clerk suggested that either Schedule 1 of the Act be amended to exclude parliamentary staff from jury service or a regulation be proposed to 'allow the exemption of specified listed parliamentary staff where work is closely connected to the House or Committees, as per the Commonwealth regulation'.²¹¹

Committee comment

- 2.92** The Jury Amendment Bill 2023 seeks to make a number of miscellaneous amendments to the *Jury Act 1977*, including in response to the statutory review of amendments made to the Act by the *Jury Amendment (Verdicts) Act 2006*.
- 2.93** Key amongst these amendments – and implementing the statutory review's single recommendation – is the proposal to halve the minimum jury deliberation period before a majority verdict can be returned. Known as the eight-hour rule, the committee acknowledges the breadth of evidence presented by various stakeholders on its proposed reduction, including evidence from the NSW District Court, representatives from the legal profession, the Office of the Director of Public Prosecutions, the NSW Council for Civil Liberties, the NSW Government and the Sheriff of NSW.
- 2.94** In particular, the committee notes the discussion on unanimous verdicts as a basis for arguments that the proposed amendment to reduce deliberation time would further 'water down' this fundamental principle. However, the committee also acknowledges the view that reducing the minimum deliberation period to four hours would not stop judges from directing the jury to continue to seek a unanimous verdict. The committee recognises that for these stakeholders, appropriate safeguards are considered to be maintained. Further, the committee acknowledges the diverse views on the proposition that reducing the eight-hour rule would bring New South Wales in line with other jurisdictions, including the argument that there is in fact no consistency amongst the states and territories.

²⁰⁹ Submission 9, The Clerk of the Parliaments, p 1.

²¹⁰ Submission 9, The Clerk of the Parliaments, p 2.

²¹¹ Submission 9, The Clerk of the Parliaments, p 2.

- 2.95** The committee also recognises the evidence presented by inquiry participants on the reported cost savings and efficiencies to be gained by the proposed amendment. The committee notes that most stakeholders believe that the need to reduce the existing eight-hour rule has not been adequately demonstrated by empirical or qualitative research and evidence. Whilst the committee accepts that this may be in part due to the confidential nature of jury deliberations which make it challenging to collect data, evidence from a cost analysis would assist with understanding the financial benefits of the proposed amendment.
- 2.96** With regard to juror wellbeing, the committee recognises the important role of juries in the criminal trial process and the significant service undertaken by the citizens of New South Wales to uphold the administration of justice. The committee heard that the duty a juror faces can cause significant stress or pressure, and notes that stakeholders suggested that reducing the eight-hour rule, amongst other reforms, would go some way to address this. Acknowledging this and the benefit of greater clarity around efficiency savings, the committee encourages further research into the jury system and juror deliberations, particularly into potential reforms that may address juror wellbeing and hung juries.
- 2.97** With consideration of the evidence regarding judicial discretion, the committee notes the challenges judges face when a jury is deadlocked and unable to reach a unanimous verdict well under the eight-hour rule. The committee acknowledges stakeholder suggestions that the *Jury Act 1977* be amended to include an express provision for a trial judge to discharge a jury prior to eight hours in cases where it is clear to the judge that the jury will not come to a verdict. The committee endorses further consideration of such an amendment.
- 2.98** Noting the general support for other provisions of the bill, the committee recognises the views presented by inquiry participants on specific aspects of the bill, including the proposed provisions relating to the ability of jurors to separate without an order of the court, email notification of jury service, and the additional investigative powers of the Sheriff. The committee recognises the concerns raised by particular stakeholders regarding some of these provisions, including risks to civil liberties and impacts on regional, rural, remote and vulnerable communities.
- 2.99** The committee also acknowledges the evidence regarding jury service by parliamentary staff. The committee notes the call to consider a further amendment to the legislation not included in the current bill to allow parliamentary staff to be excluded from eligibility for jury service. Recognising the valuable work of parliamentary staff, the committee defers this consideration to the House.
- 2.100** Having concluded its inquiry, the committee refers the Jury Amendment Bill 2023 back to the Legislative Council and recommends that the House proceed to debate the bill, and that the issues identified by stakeholders as set out in the report be addressed during debate in the House.

Recommendation 1

That the Legislative Council proceed to debate the Jury Amendment Bill 2023, and that the issues identified by stakeholders as set out in this report be addressed during debate in the House.

Appendix 1 Submissions

No.	Author
1	District Court of NSW
2	NSW Bar Association
3	Legal Aid New South Wales
4	The Law Society of New South Wales
5	Aboriginal Legal Service (NSW/ACT) Limited
6	Office of the Director of Public Prosecutions (NSW)
7	New South Wales Council for Civil Liberties
8	NSW Government
9	Clerk of the Parliaments

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Wednesday 31 January 2024 Macquarie Room Parliament House, Sydney	Ms Diane Elston	Senior Solicitor, Indictable Crime Team 1, Legal Aid NSW, The Law Society of NSW
	Ms Jane Sanders AM	Principal Solicitor, The Shopfront Youth Legal Centre, The Law Society of NSW
	Mr Richard Wilson SC	Member, Criminal Law Committee, The New South Wales Bar Association
	Mr John Stratton SC	Member, Criminal Law Committee, The New South Wales Bar Association
	Ms Belinda Rigg SC	Senior Public Defender, The Public Defenders
	Ms Rhiannon McMillan	Senior Legal Project Officer, Crime, Legal Aid NSW
	Mr Shaun Mortimer	Principal Solicitor, Criminal Law Practice, Aboriginal Legal Service (NSW/ACT)
	Ms Harriet Skinner	Trial Advocate, Aboriginal Legal Service (NSW/ACT)
	Assistant Commissioner Scott Cook	Commander, State Intelligence Command, New South Wales Police Force
	Mr Brett Hatfield SC	Acting Deputy Director, The Office of the Director of Public Prosecutions
	The Hon. Justice D Price AO	The Chief Judge of the District Court of New South Wales
	Ms Tracey Hall PSM	Sheriff of NSW, NSW Sheriff's Office
	Mr Daniel Gordon	Deputy Sheriff, Director Operational Capability and Performance, NSW Sheriff's Office
Mr Mark Follett	Executive Director, Policy Reform and Legislation Branch, The Department of Communities and Justice	

Appendix 3 Minutes

Minutes no. 7

Wednesday 29 November 2023

Portfolio Committee No. 5 – Justice and Communities

Room 1254, Parliament House, Sydney at 12.55 pm

1. Members present

Mr Borsak, *Chair*

Ms Higginson, *Deputy Chair* (from 12.58 pm)

Mr Donnelly

Mr Fang

Mr Lawrence

Mrs Maclaren-Jones

Mr Murphy

2. Previous minutes

Resolved, on the motion of Mrs Maclaren-Jones: That draft nos. 4, 5 and 6 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 10 November 2023 – Email from an individual to committee, regarding the handling of domestic violence coercive control incidents raised during the inquiry into Budget Estimates 2023-24.

Resolved, on the motion of Mr Fang: That the committee:

- keep the correspondence from an individual to the committee, regarding the handling of domestic violence coercive control incidents raised during the inquiry into Budget Estimates 2023-24, dated 10 November 2023, confidential, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information and potential adverse mention
- redact all references to an individual from minutes no. 7.

4. Inquiry into Jury Amendment Bill 2023

4.1 Terms of reference

Committee to note the following terms of reference referred by the House on 21 November 2023:

That:

- the Jury Amendment Bill 2023 be referred to Portfolio Committee No. 5 – Justice and Communities for inquiry and report
- the committee report by 11 March 2024.

4.2 Closing date for submissions

Resolved, on the motion of Mr Donnelly: That the closing date for submissions be Wednesday 17 January 2024.

4.3 Stakeholder list

Resolved, on the motion of Mr Donnelly: That:

- the secretariat circulate to members the Chair's proposed list of stakeholders to be invited to make a submission
- members have two days from when the Chair's proposed list is circulated to make amendments or nominate additional stakeholders

- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

4.4 Hearing dates

Resolved, on the motion of Mr Donnelly: That the committee hold one hearing in late January 2024, the date of which is to be determined by the Chair after consultation with members regarding their availability.

5. Adjournment

The committee adjourned at 1.00 pm *sine die*.

Holly Rivas

Committee Clerk

Minutes no. 8

Wednesday 31 January 2024

Portfolio Committee No. 5 – Justice and Communities

Macquarie Room, Parliament House, Sydney at 8.47 am

1. Members present

Mr Borsak, *Chair*

Ms Higginson, *Deputy Chair*

Mr Donnelly, until 8.52 am

Mr Fang

Mr Lawrence, from 8.59 am

Mrs Carter (substituting for Mrs Maclaren-Jones for the duration of the inquiry into the Jury Amendment Bill 2023)

Mr Murphy

2. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 7 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 1 December 2023 - Email from Ms Deyi Wu, Opposition Whip's Adviser, advising that the Hon. Susan Carter MLC will be substituting for the Hon. Natasha Maclaren Jones MLC for the duration of the inquiry into the Jury Amendment Bill 2023
- 13 December 2023 - Email from Ms Camilla Pandolfini, CEO, Redfern Legal Centre, to the committee, declining an invitation to appear at a hearing for the Inquiry into the Jury Amendment Bill 2023 on 31 January 2024
- 14 December 2023 - Email from Ms Una Doyle, Chief Executive, Judicial Commission, to the committee declining an invitation to appear at a hearing for the Inquiry into the Jury Amendment Bill 2023 on 31 January 2024
- 15 December 2023 - Email from Ms Una Doyle, Chief Executive, Judicial Commission, to the committee regarding an invitation to appear at a hearing for the Inquiry into the Jury Amendment Bill 2023 on 31 January 2024
- 15 December 2023 - Email from The NSW Law Reform Commission with a letter from The Hon Tom Bathurst AC KC, Chairperson, declining an invitation to appear at a hearing for the inquiry into the Jury Amendment Bill 2023 on 31 January 2024
- 15 December 2023 - Email from Ms Una Doyle, Chief Executive, Judicial Commission, providing a document entitled 'Jury Act 2023 Feedback - Judicial Commission of NSW' as part of the Inquiry into the Jury Amendment Bill 2023

- 20 December 2023 - Email from Ms Patricia Wild, NSW Police Force (NSWPF), regarding NSWPF's invitation to appear at a hearing for the inquiry into the Jury Amendment Bill on 31 January 2024
- 23 January 2024 – Letter from the Hon. Michael Daley MP, Attorney General, to the committee regarding the NSW Government's submission to the Inquiry into the Jury Amendment Bill 2023
- 30 January 2024 - Email from the NSW Council for Civil Liberties, advising that Ms Lydia Shelly will be unable to attend the hearing on 31 January 2024 for the Inquiry into the Jury Amendment Bill.

4. Inquiry into Jury Amendment Bill 2023

4.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-8.

4.2 Public hearing

Sequence of questions

Resolved, on the motion of Mr Fang: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

4.3 Return of post-hearing responses

Resolved, on the motion of Mr Fang: That:

- supplementary questions be lodged with the Committee Clerk within one business day, following the receipt of the hearing transcript
- witnesses be requested to return post hearing responses within 7 calendar days of the date on which questions are forwarded to them.

4.4 Public hearing

Witnesses, the public and the media were admitted at 9.00 am.

The Chair made an opening statement regarding the broadcasting of the proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Diane Elston, Senior Solicitor, Indictable Crime Team 1, Legal Aid NSW, The Law Society of NSW
- Ms Jane Sanders AM, Principal Solicitor, The Shopfront Youth Legal Centre, The Law Society of NSW
- Mr Richard Wilson SC, Member, Criminal Law Committee, The New South Wales Bar Association
- Mr John Stratton SC, Member, Criminal Law Committee, The New South Wales Bar Association

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Belinda Rigg SC, Senior Public Defender, The Public Defenders
- Ms Rhiannon McMillan, Senior Legal Project Officer, Crime, Legal Aid NSW
- Mr Shaun Mortimer, Principal Solicitor, Criminal Law Practice, Aboriginal Legal Service (NSW/ACT)
- Ms Harriet Skinner, Trial Advocate, Aboriginal Legal Service (NSW/ACT)

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Assistant Commissioner Scott Cook, Commander, State Intelligence Command, New South Wales Police Force
- Mr Brett Hatfield SC, Acting Deputy Director, The Office of the Director of Public Prosecutions

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- The Hon. Justice D Price AO, The Chief Judge of the District Court of New South Wales

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Tracey Hall PSM, Sheriff of NSW, NSW Sheriff's Office
- Mr Daniel Gordon, Deputy Sheriff, Director Operational Capability and Performance, NSW Sheriff's Office
- Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, The Department of Communities and Justice

The evidence concluded and the witnesses withdrew.

5. Post-hearing deliberative

Resolved, on the motion of Mr Lawrence: That the committee authorise the publication of submission no. 9.

6. Adjournment

The committee adjourned at 3.21 pm until Friday 23 February 2024 – Budget Estimates 2023-2024 hearing – Police and Counter-Terrorism, the Hunter (Catley).

Holly Rivas

Committee Clerk

Draft minutes no. 13

Tuesday 5 March 2024

Portfolio Committee No. 5 – Justice and Communities

Room 1136, Parliament House, Sydney at 5.38 pm

1. Members present

Mr Borsak, *Chair*

Ms Higginson, *Deputy Chair*

Mr Donnelly

Mr Fang

Mr Lawrence (*via videoconference*)

Mrs Carter

Mr Nanva (substituting for Mr Murphy) (*via videoconference*)

2. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 8 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 29 January 2024 - Email from Ms Rebel Kenna, A/Executive Director and Principal Registrar Supreme Court of NSW advising that the Supreme Court were unable to find representatives to attend the Jury Amendment hearing on 31 January 2023
- 30 January 2024 - Email from the NSW Council for Civil Liberties, advising that Ms Lydia Shelly will be unable to attend the hearing on 31 January 2024 for the Inquiry into the Jury Amendment Bill.

4. Inquiry into Jury Amendment Bill 2023

4.1 Answers to questions on notice and supplementary questions

The committee noted the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Mr Mark Follett, Executive Director, Policy Reform and Legislation Branch, The Department of Communities and Justice, received 9 February 2024

- answers to questions on notice from Mr Brett Hatfield SC, Acting Deputy Director, The Office of the Director of Public Prosecutions, received 9 February 2024.

4.2 Answers to questions on notice– confidential

Resolved, on the motion of Mr Fang: That the committee keep the 2021 Office of the Director of Public Prosecution submission in relation to the Jury Act reforms confidential, as per the request of the witness.

4.3 Consideration of Chair's draft report (previously circulated)

The Chair submitted his draft report entitled '*Jury Amendment Bill 2023*', which, having been previously circulated, was taken as being read.

Ms Higginson moved: That paragraph 2.93 be amended by inserting at the end: 'The Committee notes the submissions from legal profession including the Aboriginal Legal Service, the Law Society of NSW, Legal Aid NSW, NSW Bar Association and the NSW Council for Civil Liberties all opposed the reduction of the eight-hour rule.'

Question put.

The committee divided.

Ayes: Mrs Carter, Mr Fang, Ms Higginson

Noes: Mr Borsak, Mr Donnelly, Mr Lawrence, Mr Nanva

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That:

The draft report be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, answers to questions on notice and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, answers to questions on notice, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The secretariat is tabling the report on Monday 11 March 2024;

The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

5. Adjournment

The committee adjourned at 5.43 pm, *sine die*.

Holly Rivas
Committee Clerk

