



New South Wales

Jury Amendment Bill 2007

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Jury Act 1977* (the **Principal Act**):

- (a) to enable up to 3 additional jurors to be selected for certain criminal trials in the Supreme Court or District Court, and
- (b) to ensure that only 12 members of a jury that is expanded with additional jurors may retire to consider the jury's verdict.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced, the

proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Selection of additional jurors for lengthy criminal trials

Schedule 1 [1] substitutes section 19 of the Principal Act to provide for the Supreme Court or District Court to order that up to 3 jurors in addition to the usual 12 jurors be selected for a jury in criminal proceedings before it if the Court is satisfied that:

- (a) the trial of the proceedings is of a kind prescribed by the regulations, and
- (b) the selection of the additional jurors is an appropriate means of ensuring that there will be sufficient jurors remaining on the jury when the jury is required to consider its verdict, and
- (c) appropriate facilities to accommodate the additional jurors are available.

Until the regulations provide otherwise, a trial of proceedings the duration of which is likely to be more than 3 months will be taken to be a kind of trial of proceedings prescribed by the regulations.

Schedule 1 [2] amends section 42 of the Principal Act to confer an additional peremptory challenge on both the Crown and each defendant in criminal proceedings where the court has ordered that the jury include additional jurors.

Schedule 1 [8] inserts a new section 55G in the Principal Act to ensure that if the jury in criminal proceedings consists of more than 12 persons immediately before the jury is required to retire to consider its verdict, the jury for the purpose of considering and returning the verdict is to be constituted by only 12 of those persons as follows:

- (a) if the expanded jury has chosen one of its members to speak on behalf of the jury as a whole (a *foreperson*)—the foreperson and 11 other persons selected by ballot,
- (b) if there is no foreperson—12 persons selected by ballot.

Schedule 1 [3]–[7] make amendments to sections 48 and 55F of the Principal Act that are consequential on the substitution of section 19 and the insertion of proposed section 55G.

Savings and transitional provisions

Schedule 1 [9] amends clause 1A of Schedule 8 to the Principal Act to enable the Governor to make regulations of a transitional or savings nature consequent on the enactment of the proposed Act.

Schedule 1 [10] inserts a new Part in Schedule 8 to the Principal Act containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act. The new Part provides that the amendments made to the Principal Act by the proposed Act apply to criminal proceedings only if the jury is empanelled after the commencement of those amendments.

First print



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New South Wales

Jury Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Jury Act 1977* to enable additional jurors to be selected for juries in criminal trials.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Jury Amendment Act 2007</i> .	3
2 Commencement	4
This Act commences on a day to be appointed by proclamation.	5
3 Amendment of Jury Act 1977 No 18	6
The <i>Jury Act 1977</i> is amended as set out in Schedule 1.	7
4 Repeal of Act	8
(1) This Act is repealed on the day following the day on which this Act commences.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 19	3
	Omit the section. Insert instead:	4
	19 Numbers of jurors in criminal proceedings	5
	(1) In any criminal proceedings in the Supreme Court or the District Court that are to be tried by jury, the jury is to consist of:	6
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	(a) 12 persons, or	8
	(b) if the Court makes an order under subsection (2) for the selection of additional jurors—12 persons together with the number of additional jurors ordered by the Court,	9
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	returned and selected in accordance with this Act.	12
	Note. If a jury is constituted by more than 12 jurors immediately before it retires to consider its verdict, section 55G provides that only 12 of those jurors may retire to consider the jury's verdict in the proceedings.	13
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	(2) Before a jury is selected in criminal proceedings in the Supreme Court or the District Court, the Court may order that up to 3 additional jurors be selected for the jury if the Court is satisfied that:	16
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	(a) the trial of the proceedings is of a kind prescribed by the regulations for the purposes of this subsection, and	20
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	(b) the selection of the additional jurors is an appropriate means of ensuring that there will be sufficient jurors remaining on the jury when the jury is required to consider its verdict, and	22
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	(c) appropriate facilities to accommodate the additional jurors are available.	26
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	(3) Until regulations for the purposes of subsection (2) provide otherwise, a trial of proceedings the duration of which is likely to be more than 3 months is taken to be a trial of proceedings of a kind prescribed by the regulations for the purposes of that subsection.	28
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[2]	Section 42 Peremptory challenges in criminal proceedings	33
	Insert after section 42 (1):	34
	(1A) If the jury in criminal proceedings is to consist of more than 12 jurors, each person prosecuted and the Crown have one peremptory challenge without restriction, respectively, in	35
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	addition to the peremptory challenges conferred on them by subsection (1).	1 2
[3]	Section 48 Balloting for jury in criminal proceedings	3
	Omit “12 persons appear” from section 48 (2) (b).	4
	Insert instead “the number of persons required for the jury appear (the <i>drawn persons</i>)”.	5 6
[4]	Section 48 (2) (c) and (3)	7
	Omit “those 12” wherever occurring. Insert instead “the drawn”.	8
[5]	Section 48 (4)	9
	Omit “12 persons”.	10
	Insert instead “the number of persons required for the jury”.	11
[6]	Section 48 (5)	12
	Omit “The 12 persons”.	13
	Insert instead “Subject to section 55G, the persons sworn as”.	14
[7]	Section 55F Majority verdicts in criminal proceedings	15
	Insert at the end of section 55F (1):	16
	Note. Lengthy criminal proceedings may be tried by a jury of up to 15 persons if the court makes an order for additional jurors under section 19 (2). However, section 55G provides that only 12 members of such an expanded jury may retire to consider the jury’s verdict in the proceedings.	17 18 19 20 21
[8]	Section 55G	22
	Insert after section 55F:	23
55G	Ballot where additional jurors on jury in criminal proceedings	24
	(1) If the jury in criminal proceedings consists of more than 12 persons (the <i>expanded jury</i>) immediately before the jury is required to retire to consider its verdict, the jury for the purposes of considering and returning the verdict (a <i>verdict jury</i>) is to be constituted by only 12 members of the expanded jury.	25 26 27 28 29
	(2) A verdict jury is to be constituted by:	30
	(a) if the expanded jury has chosen one of its members to speak on behalf of the jury as a whole (a <i>foreperson</i>)—the foreperson and 11 other members of the expanded jury selected by ballot, or	31 32 33 34

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- (b) if there is no foreperson—12 members of the expanded jury selected by ballot. 1
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 - (3) The ballot for a verdict jury must be conducted by the presiding judge or an officer of the court by: 3
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 - (a) placing in a box provided for that purpose the cards provided under section 28 (3) for all of the members of the expanded jury (other than the foreperson, if any), and 5
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 - (b) drawing out of that box those cards, one after another, and calling out the identification numbers on those cards, until 11 or 12 persons (as the case requires) are selected. 8
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 - (4) A verdict jury continues to constitute the jury for the trial until the trial concludes unless the court has given a direction under subsection (5). 11
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Note. Under this section, the same verdict jury will remain in place in trials where a verdict jury is required to consider some counts in an indictment first and then the other counts at a later stage in the trial (unless subsection (5) applies). As a result, the court will be able to reconvene for any further summoning up or directions in relation to counts that remain to be determined without the need for a new verdict jury to be constituted. 14
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 - (5) If one or more jurors on the expanded jury are excluded from a verdict jury by a ballot, the court must: 21
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 - (a) if the verdict of the verdict jury is a directed verdict in respect of some (but not all) of the accused persons or some (but not all) of the counts in the indictment—direct that the excluded jurors rejoin the jury for the continuation of the trial in respect of the accused persons or counts (as the case may be) that have not yet been the subject of a verdict in the trial, or 23
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 - (b) if the verdict jury retires to consider whether or not to return a verdict without hearing further evidence—direct that the excluded jurors rejoin the jury for the continuation of the trial in the event that the verdict jury decides that it wishes to hear further evidence before returning a verdict. 30
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 - (6) The court may not give a direction under subsection (5) if a verdict jury has previously returned a verdict (other than a directed verdict) in the trial. 35
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 - (7) If the court gives a direction under subsection (5), a fresh ballot for a verdict jury must be conducted if there is still an expanded jury when the jury is next required to retire to consider its verdict. 38
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 - (8) The court must discharge any jurors on the expanded jury who are excluded from a verdict jury by ballot if the jurors will not be 41
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	required to rejoin the jury because of a direction under subsection (5).	1 2
	(9) Nothing in this section affects the operation of section 22.	3
[9]	Schedule 8 Transitional and savings provisions	4
	Insert at the end of clause 1A (1):	5
	<i>Jury Amendment Act 2007</i>	6
[10]	Schedule 8, Part 10	7
	Insert after Part 9:	8
	Part 10 Transitional and savings provisions consequent on enactment of Jury Amendment Act 2007	9 10 11
	19 Application of additional jurors amendments	12
	The amendments made to this Act by the <i>Jury Amendment Act 2007</i> apply to criminal proceedings only if the jury is empanelled after the commencement of those amendments.	13 14 15