



New South Wales

Jury Amendment Bill 2008

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Jury Act 1977* (*the Principal Act*) to implement (with some modifications) certain recommendations of the NSW Law Reform Commission in Chapter 11 of its Report 117: Jury selection, and
- (b) to amend the *Criminal Appeal Act 1912* to enable appeals to be made, with the leave of the Court of Criminal Appeal, about decisions concerning the discharge of a jury.

The Bill amends the *Jury Act 1977*:

- (a) to clarify the power of a court or coroner to discharge a juror by expressly setting out the circumstances in which a court or coroner must, or may, discharge a member of a jury during a trial or coronial inquest, and
- (b) to set out the circumstances in which a court or coroner that discharges a juror must discharge the remaining jurors or may instead continue the trial or coronial inquest with the remaining jurors, and
- (c) to give a court or coroner the express power to order that a trial or coronial inquest continue if a juror dies, and

- (d) to ensure that the verdict of a jury is not invalidated if a juror who was summonsed for jury service is empanelled irregularly or by mistake or becomes disqualified from serving, or ineligible to serve, as a juror during a trial or coronial inquest, and
- (e) to expressly enable jurors and former jurors to report misconduct and other irregularities in the conduct of other jurors and former jurors, respectively.

The Bill also makes amendments of a savings and transitional nature and to enable the making of savings and transitional regulations.

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 or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Jury Act 1977* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Criminal Appeal Act 1912* set out in Schedule 2.

Clause 5 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 Amendment of Jury Act 1977

Schedule 1 [7] inserts a new Part 7A (sections 53A–53C) into the Principal Act.

Section 53A requires a court or coroner to discharge a juror if, in the course of a trial or coronial inquest, it is found that the juror was mistakenly or irregularly empanelled (whether because the juror was disqualified or ineligible to serve as a juror or was otherwise not returned and selected in accordance with the Principal Act), or if the juror becomes disqualified from serving, or ineligible to serve, as a juror or has engaged in misconduct in relation to the trial or coronial inquest. **Misconduct** is defined for the purposes of the section as conduct that constitutes an offence against the Principal Act or other conduct that, in the opinion of the court or coroner, gives rise to the risk of a substantial miscarriage of justice in the trial or coronial inquest.

Section 53B gives a court or coroner discretion to discharge an individual juror in the course of a trial or coronial inquest on certain specified grounds. These include the juror (though not ineligible to serve as a juror) becoming so ill or infirm as to be likely to become ineligible to serve as a juror before the jury delivers their verdict or becoming so ill as to be a health risk to other jurors or persons present at the trial or coronial inquest, appearing to be unable to give impartial consideration to the case or refusing to take part in the jury's deliberations.

Section 53C requires a court or coroner to discharge the jury if a juror dies, or if the the court or coroner discharges a juror, in the course of a trial or coronial inquest if of the opinion that to continue the trial or coronial inquest with the remaining jurors would give rise to the risk of a substantial miscarriage of justice or, alternatively, to continue the trial or coronial inquest with a reduced number of jurors if of the opinion that there is no such risk. The power to continue the trial or coronial inquest is subject to section 22 of the Act, which enables a trial or coronial inquest to continue with specified reduced numbers of jurors.

Schedule 1 [5] and [6] make consequential amendments to section 22 of the Principal Act.

Schedules 1 [1]–[4] amend sections 19, 20 and 21 of the Principal Act to make it clear that a jury will be treated as consisting of persons selected and returned in accordance with the Act if the court or coroner orders that a trial or coronial inquest continue with a reduced number of jurors following the death or discharge under proposed Part 7A of a juror and the number of members of the jury is not reduced below the numbers specified in section 22 of the Principal Act.

Schedule 1 [8] and [10] amend section 73 of the Principal Act to ensure that the verdict of a jury is not invalidated if a juror who was summonsed for jury service is empanelled irregularly or by mistake, or becomes disqualified from serving, or ineligible to serve, as a juror during a trial or coronial inquest. The amendments are made in response to the decisions in *R v Brown & Tran* [2004] NSWCCA 324 and *Petroulias v R* [2007] NSWCCA 134. **Schedule 1 [9]** makes a consequential amendment to section 73 (b).

Schedule 1 [12] inserts new section 75C into the Principal Act to enable jurors and former jurors to report irregularities in relation to another juror's or former juror's membership of a jury, or in relation to the performance of the other juror's or former juror's functions as juror, to the court or coroner or sheriff, respectively. **Schedule 1 [11]** makes a consequential amendment to section 73A of the Principal Act to enable the sheriff, with the consent or at the request of the Supreme Court or District Court, to investigate the matter.

Schedule 1 [13] and [14] amend Schedule 8 to the Principal Act to enable the making of savings and transitional regulations and to include a transitional provision limiting the amendments to juries empanelled after the commencement of the amendments.

Schedule 2 Amendment of Criminal Appeal Act 1912

Schedule 2 makes the amendments to the Act described in the Overview.



New South Wales

Jury Amendment Bill 2008

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New South Wales

Jury Amendment Bill 2008

No. , 2008

A Bill for

An Act to amend the *Jury Act 1977* with respect to the death and discharge of jurors and to make related amendments to the *Criminal Appeal Act 1912*; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Jury Amendment Act 2008</i> .	3
2 Commencement	4
This Act commences on a day or days 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 Amendment of Criminal Appeal Act 1912 No 16	8
The <i>Criminal Appeal Act 1912</i> is amended as set out in Schedule 2.	9
5 Repeal of Act	10
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	11 12
(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.	13 14

Schedule 1	Amendment of Jury Act 1977	1
	(Section 3)	2
[1]	Section 19 Number of jurors in criminal proceedings	3
	Omit “In” from section 19 (1).	4
	Insert instead “Except as provided by section 22, in”.	5
[2]	Section 20 Number of jurors in civil proceedings	6
	Omit “Subject” from section 20 (1).	7
	Insert instead “Except as provided by section 22 and subject”.	8
[3]	Section 20 (2)	9
	Insert “, except as provided by section 22,” after “shall”.	10
[4]	Section 21 Number of jurors in coronial inquests	11
	Omit “The”. Insert instead “Except as provided by section 22, the”.	12
[5]	Section 22 Continuation of trial or inquest on death or discharge of juror	13
	Omit “whether as being through illness incapable of continuing to act or for any other reason”.	14
	Insert instead “under Part 7A”.	15
[6]	Section 22	17
	Omit “so orders”.	18
	Insert instead “orders that the trial or coronial inquest continue with a reduced number of jurors under Part 7A”.	19
[7]	Part 7A	21
	Insert after Part 7:	22
	Part 7A Discharge of jurors	23
53A	Mandatory discharge of individual juror	24
	(1) The court or coroner must discharge a juror if, in the course of any trial or coronial inquest:	25
	(a) it is found that the juror was mistakenly or irregularly empanelled, whether because the juror was disqualified or ineligible to serve as a juror or was otherwise not returned and selected in accordance with this Act, or	26
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- (b) the juror becomes disqualified from serving, or ineligible to serve, as a juror, or 1
 - (c) the juror has engaged in misconduct in relation to the trial or coronial inquest. 2
- (2) In this section: 3
- misconduct**, in relation to a trial or coronial inquest, means: 4
- (a) conduct that constitutes an offence against this Act, or 5
- Note.** For example, under section 68C it is an offence for a juror to make certain inquiries except in the proper exercise of his or her functions as a juror. 6
- (b) any other conduct that, in the opinion of the court or coroner, gives rise to the risk of a substantial miscarriage of justice in the trial or inquest. 7

53B Discretionary discharge of individual juror 14

The court or coroner may, in the course of any trial or coronial inquest, discharge a juror if: 15

- (a) the juror (though able to discharge the duties of a juror) has, in the judge's or coroner's opinion, become so ill or infirm as to be likely to become ineligible to serve as a juror before the jury delivers their verdict or has become so ill as to be a health risk to other jurors or persons present at the trial or coronial inquest, or 16
- Note.** Under clause 12 of Schedule 2, a juror who because of sickness or infirmity is unable to discharge the duties of a juror is ineligible to serve as a juror. 17
- (b) it appears to the court or coroner (from the juror's own statements or from evidence before the court or coroner) that the juror may not be able to give impartial consideration to the case because of the juror's familiarity with the witnesses, parties or legal representatives in the trial or coronial inquest, any reasonable apprehension of bias or conflict of interest on the part of the juror or any similar reason, or 18
- (c) a juror refuses to take part in the jury's deliberations, or 19
 - (d) it appears to the court or coroner that, for any other reason affecting the juror's ability to perform the functions of a juror, the juror should not continue to act as a juror. 20

Note. Section 22 provides for the continuation of a trial or inquest on the death or discharge of a juror. 21

53C	Discretion to continue trial or coronial inquest or discharge whole jury	1
		2
(1)	If a juror dies, or the court or coroner discharges a juror in the course of a trial or coronial inquest, the court or coroner must:	3
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(a)	discharge the jury if the court or coroner is of the opinion that to continue the trial or coronial inquest with the remaining jurors would give rise to the risk of a substantial miscarriage of justice, or	5
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(b)	if of the opinion that there is no such risk and subject to section 22, order that the trial or coronial inquest continue with a reduced number of jurors.	9
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(2)	A court or coroner that discharges a jury under subsection (1) (a) may stay the proceedings on such terms as the court or coroner thinks fit if a party gives notice of an intention to lodge an application for leave to appeal for review of the decision under section 5G of the <i>Criminal Appeal Act 1912</i> .	12
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(3)	Where a jury in civil proceedings is discharged under this section, the proceedings may, without any new process for that purpose, be set down for trial either at the same or any subsequent sittings, as the court may order.	17
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[8]	Section 73 Verdict not invalidated in certain cases	21
	Omit section 73 (a). Insert instead:	22
(a)	that any juror was, after being required by summons to attend for jury service, mistakenly or irregularly empanelled, whether because the juror was disqualified from serving, or was ineligible to serve, as a juror or was otherwise not returned and selected in accordance with this Act, or	23
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	Note. For example, this paragraph prevents the verdict of a jury from being invalid if, as in <i>R v Brown & Tran</i> [2004] NSWCCA 324, a juror who received a jury summons reported for service a day early and was mistakenly empanelled.	29
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(a1)	that any juror became disqualified from serving or ineligible to serve as a juror in the course of the trial or coronial inquest, or	33
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		35
[9]	Section 73 (b)	36
	Insert “or” after “Act,”.	37

[10] Section 73 (2)	1
Insert at the end of section 73:	2
(2) Subsection (1) does not apply:	3
(a) in respect of a juror if the juror impersonated, or is suspected of impersonating, another person, or	4
(b) if there is evidence of any other attempt to deliberately manipulate the composition of the jury.	5
[11] Section 73A Investigation by sheriff of jury irregularities	6
Insert “(including a report under section 75C)” after “reason” in section 73A (1).	7
[12] Section 75C	8
Insert after section 75B:	9
75C Juror may report misconduct and other irregularities	10
(1) A juror who in the course of the trial or coronial inquest has reasonable grounds to suspect any irregularity in relation to another juror’s membership of the jury, or in relation to the performance of the other juror’s functions as a juror, may disclose the suspicion and the grounds on which it is held to the court or coroner.	11
(2) A former juror who has reasonable grounds to suspect any irregularity in relation to another former juror’s membership of the jury on which they served or in relation to the performance of the other former juror’s functions as a juror on that jury, may disclose the suspicion and the grounds on which it is held to the sheriff.	12
(3) Section 68B (1) does not prohibit a juror from making a disclosure under this section.	13
(4) In this section:	14
<i>irregularity</i> , in relation to a juror’s membership of a jury, or the performance of the juror’s functions as a juror, means the following:	15
(a) the commission by the juror of an offence under this Act or any other misconduct,	16
(b) a juror becoming disqualified from serving, or ineligible to serve, as a juror,	17
(c) the refusal of the juror to take part in the jury’s deliberations,	18

(d)	the juror's lack of capacity to take part in the trial or coronial inquest (including an inability to speak or comprehend English),	1 2 3
(e)	the juror's inability to be impartial because of the juror's familiarity with the witnesses, parties or legal representatives in the trial or coronial inquest, any reasonable apprehension of bias or conflict of interest on the part of the juror, or any similar reason.	4 5 6 7 8
[13]	Schedule 8 Transitional and savings provisions	9
	Insert at the end of clause 1A (1):	10
	<i>Jury Amendment Act 2008</i>	11
[14]	Schedule 8, Part 11	12
	Insert after Part 10:	13
	Part 11 Transitional and savings provisions consequent on enactment of Jury Amendment Act 2008	14 15 16
20	Pending trials and inquests	17
	An amendment made by the <i>Jury Amendment Act 2008</i> applies to and in respect of any jury empanelled in a trial or coronial inquest after the commencement of the amendment.	18 19 20

Schedule 2	Amendment of Criminal Appeal Act 1912	1
	(Section 4)	2
[1] Section 5G		3
Insert after section 5F:		4
5G Appeal against discharge of whole jury		5
(1) The Attorney General, Director of Public Prosecutions or any other party to a trial of criminal proceedings before a jury may appeal to the Court of Criminal Appeal for review of any decision by the court to discharge the jury, but only with the leave of the Court of Criminal Appeal.		6 7 8 9 10
(2) The Court of Criminal Appeal is to deal with an appeal as soon as possible after the application for leave to appeal is lodged.		11 12
(3) The Court of Criminal Appeal:		13
(a) may affirm or vacate the decision appealed against, and		14
(b) if it vacates the decision, may make some other decision instead of the decision appealed against.		15 16
(4) If leave to appeal under this section is refused by the Court of Criminal Appeal, the refusal does not preclude any other appeal following a conviction on the matter to which the refused application for leave to appeal related.		17 18 19 20
(5) This section does not apply to the discharge of a jury under section 51, 55E, 56 or 58 of the <i>Jury Act 1977</i> .		21 22
[2] Schedule 1 Savings and transitional provisions		23
Insert at the end of the Schedule:		24
13 Jury Amendment Act 2008		25
Section 5G, as inserted by the <i>Jury Amendment Act 2008</i> , applies to and in respect of a decision of a court concerning a jury empanelled after the commencement of the section.		26 27 28