

8 May 2014

The Hon. Brad Hazzard, MP
Attorney General, and Minister for Justice
Level 31 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney,

I refer to the letter from the former Attorney General dated 26 March 2014 about possible amendments to the *Jury Act 1977* (the Act). Specifically, the former Attorney General sought comments in relation to three key questions which are addressed below.

After seeking clarification from Ms Ruthchild of Justice Policy about the scope of this inquiry, our responses are limited to consideration of the possible amendments in the context of criminal trials only.

Legal Aid NSW is generally supportive of measures that enhance the efficient administration of justice. However, we consider that it is imperative that every juror is present from the Crown's opening address onwards in a criminal trial. Given this, we consider that the amendments under consideration would have limited, if any, practical effect and that the existing provisions of the Act are sufficient to ameliorate the impact of a reduced number of jurors and prevent any miscarriage of justice.

Do you consider that a trial could continue with a jury of 11 from a preliminary stage and if so, do you consider that this could give rise to a perceived miscarriage of justice?

The answer to the question of whether a trial should continue with a jury of 11 from a preliminary stage will depend upon the circumstances of the case. Section 53C(a) of the Act already provides sufficient discretion for the court to discharge the jury 'if the court is of the opinion that to continue the trial...with the remaining jurors would give rise to the risk of a substantial miscarriage of justice'. This is an appropriate provision.

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What would be your view in relation to amending the *Jury Act 1977* to provide for the replacement of a single juror at a preliminary stage of a trial?

We do not support such an amendment. It is imperative that every member of the jury hears the opening address by the Crown and defence as well as everything in the trial from this point onwards.

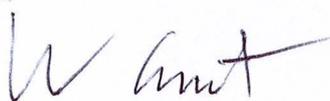
We also note that section 19(2) of the Act enables the court to order, in certain circumstances, that up to 3 additional jurors be selected for the jury 'before a jury is selected in criminal proceedings in the Supreme Court or the District Court'. Where a lengthy trial is anticipated, this provision should be invoked to reduce the possibility of a trial miscarriage because of an insufficient number of jurors.

If you are in favour of an amendment, what would you consider to be an appropriate cut off point in the trial for a single juror's replacement?

As we indicate above, we are not in favour of an amendment.

Thank you for the opportunity to provide these comments. If you wish to discuss any aspect of this submission, please contact Annmarie Lumsden, Executive Director Strategic Policy and Planning on (02) 9219 6324 or at annmarie.lumsden@legalaid.nsw.gov.au

Yours sincerely



Bill Grant
Chief Executive Officer