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Majority Jury Verdicts in Criminal Trials

Unanimous jury verdicts have been a part of the common law since the 14th century. Many jurisdictions have, however, introduced majority verdicts to overcome problems with “rogue” jurors, bribery and intimidation. Queensland continues to require unanimous verdicts in criminal cases. This Research Brief looks at the arguments in favour of unanimous verdicts and majority verdicts, and sets out the position with respect to jury verdicts in criminal cases in Australia and other common law jurisdictions.

Mary Westcott

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Research Publications and Resources Section

Ms Karen Sampford, Director	(07) 3406 7116
Mrs Nicolee Dixon, Senior Parliamentary Research Officer	(07) 3406 7409
Ms Renee Giskes, Parliamentary Research Officer	(07) 3406 7241

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Inquiries should be addressed to:

Director, Research Publications & Resources

Queensland Parliamentary Library

Parliament House

George Street, Brisbane QLD 4000

Ms Karen Sampford. (Tel: 07 3406 7116)

Email: Karen.Sampford@parliament.qld.gov.au

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EXECUTIVE SUMMARY

Unanimous jury decisions in criminal trials have been a part of the common law since the 14th century. In the past century, however, a number of Australian jurisdictions (not including Queensland) have allowed majority verdicts in criminal trials: **page 1**.

Proponents of unanimous verdicts have raised various arguments in support of unanimous verdicts including:

- there is less risk of convicting an innocent person than if majority verdicts were allowed;
- unanimity is a fundamental feature of a jury trial;
- the requirement of unanimity leads to better jury deliberation; and
- disagreement in a jury is not unreasonable: **pages 1 – 4**.

Proponents of majority verdicts have raised various arguments in support of majority verdicts including:

- a reduction in the number of hung juries;
- less problems created by “rogue” jurors;
- there is less chance of a juror being bribed or intimidated; and
- compromise verdicts may be avoided: **pages 4 – 5**.

While most Australian jurisdictions have allowed majority verdicts in most criminal trials, only the Northern Territory allows majority verdicts in all criminal trials. The number of jurors required to be in agreement to deliver a majority judgment differs between the jurisdictions, as does the number of hours that a jury must deliberate before a majority verdict will be accepted by a court: **pages 5 – 8**.

England, Wales and Scotland have allowed majority verdicts for a number of years. Legislation is currently passing through the New Zealand parliament which will remove the requirement for unanimity in jury verdicts in all criminal trials: **pages 9 – 10**.

If the New South Wales Parliament passes proposed legislation allowing majority verdicts in New South Wales, unanimous jury verdicts in all criminal trials will be required only in Queensland and the Australian Capital Territory, and for federal offences: **page 10**.

1 INTRODUCTION

Until the 20th century, unanimous jury verdicts in criminal trials were considered a cornerstone of the common law system. Since that date, however, a number of Australian jurisdictions - South Australia, Tasmania, Western Australia, the Northern Territory and Victoria – as well as other common law jurisdictions, have allowed majority verdicts. The announcement in late 2005 by the New South Wales Attorney-General, Bob Debus, that New South Wales will introduce legislation allowing majority jury judgments in criminal cases in 2006 restarted discussion in Queensland as to whether it too should allow majority verdicts.

This Research Brief looks at the history of unanimous verdicts, then sets out arguments supporting unanimous verdicts and majority verdicts. It discusses whether jury verdicts in criminal trials are required to be unanimous or by majority in each of the Australian jurisdictions. It also looks at the position with respect to jury verdicts in criminal trials in other common law jurisdictions.

2 UNANIMOUS VERDICTS IN CRIMINAL CASES

In criminal cases which are heard by a judge and jury, decisions about issues of fact are made by the jury. A unanimous jury verdict is one in which all members are in agreement.

2.1 HISTORY OF UNANIMOUS VERDICTS

The requirement that a jury's decision be unanimous can be traced back to 1367.¹ Prior to 1866, juries which could not reach agreement could be carried around "in a wagon"² with the court "without meat or drinke (sic), fire or candle"³ "until they were starved or frozen into agreement."⁴ In *Windsor v The Queen* (1866) LR 1 QB 289 it was held, however, that there must be "unanimity of conviction" rather than

¹ *Cheatle v The Queen* (1993) 177 CLR 541 at 550.

² (1367) 41 Lib Ass 11 translated in Thayer, *A Preliminary Treatise on Evidence at the Common Law*, 1898 quoted in *Cheatle v The Queen* (1993) 177 CLR 541 at 551.

³ Coke, *Institutes*, 19th ed. (1832) vol 2 227 b (e) quoted in *Cheatle v The Queen* (1993) 177 CLR 541 at 551.

⁴ *Cheatle v The Queen* (1993) 177 CLR 541 at 551.

unanimity resulting from “the misery of men shut up without food, drink, or fire, so that the minority, or possibly the majority, may give way, and purchase ease to themselves by a sacrifice of their consciences”.⁵ The case established that a trial judge has the right to discharge a jury if it is unable to agree on a verdict.

2.2 ARGUMENTS IN SUPPORT OF UNANIMOUS VERDICTS

Proponents of unanimous verdicts have raised a number of arguments in support of unanimous jury verdicts. This section sets out some of the common arguments.

2.2.1 There is less risk of convicting an innocent person

In a criminal trial, the prosecution must prove its case beyond reasonable doubt for the accused to be found guilty. Unanimous verdicts require each jury member to be convinced of the guilt of the accused. In their reasons for judgment in *Cheatle v The Queen* (1993) 177 CLR 541, the full High Court stated:⁶

... assuming that all jurors are acting reasonably, a verdict returned by a majority of the 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.

Requiring unanimity may also provide the public with confidence in the legal system. The New South Wales Law Commission report on majority verdicts stated, “The fact that all twelve jurors considered the evidence, debated the issues and reached a consensus, conveys to the public the sense that the verdict is a safe one.”⁷

2.2.2 Unanimity is a fundamental feature of a jury trial

Unanimity in jury verdicts in criminal cases has been described as “one of those principles that lie at the foundation of our law”⁸ and “an essential feature of the

⁵ *Windsor v The Queen* (1866) LR 1 QB 289 at 305-306.

⁶ *Cheatle v The Queen* (1993) 177 CLR 541 at 553.

⁷ New South Wales Law Reform Commission, *Report 111: Majority Verdicts*, Sydney, August 2005, p 45 downloaded 1 February 2006 from website at www.lawlink.nsw.gov.au

⁸ *Windsor v The Queen* (1866) LR 1 QB 289 at 303.

institution of trial by jury.”⁹ It has also been stated that “the inestimable value” of a criminal jury verdict “is created only by its unanimity”.¹⁰ In *Newell v The King* (1936) 55 CLR 707, Evatt J stated, “... in common-law countries, trial by jury has been universally regarded as a fundamental right of the subject, and unanimity in criminal issues has been regarded as an essential and inseparable part of that right ...”

2.2.3 The requirement of unanimity leads to better deliberation

Requiring unanimity of a jury means that the views of jurors who dissent from the majority are heard and debated (which may not happen when a majority view is allowed), thus the deliberation process is more thorough. The New South Wales Law Reform Commission reported that minority dissent:¹¹

has been shown to widen the range of considerations in jury deliberations, stimulate divergent thinking along with the consideration of multiple perspectives, and aid the quality of decision-making and performance.

2.2.4 Disagreement in a jury is not unreasonable

In its 1986 report on juries in criminal trials, the New South Wales Law Reform Commission noted:¹²

... jury disagreement should not be regarded as an inappropriate result in every case. The existence of a disagreement may well reflect the difficulty of the case rather than the perversity of some jurors.

A study in 2002 by the Bureau of Crime Statistics and Research (NSW) found that the odds of a hung jury in a trial lasting 11 days or more was 3.9 times higher than in a trial lasting 1-3 days.¹³ The New South Wales Law Reform Commission notes

⁹ *Cheatle v The Queen* (1993) 177 CLR 541 at 560.

¹⁰ *R v Armstrong* [1922] 2 KB 555 at 568.

¹¹ New South Wales Law Reform Commission, *Report 111: Majority Verdicts*, Sydney, August 2005, p 43 downloaded 1 February 2006 from website at www.lawlink.nsw.gov.au

¹² New South Wales Law Reform Commission, *Report 48: Criminal Procedure: The Jury in a Criminal Trial*, Sydney, 1986, paragraph 9.17 downloaded 9 February 2006 from website at <http://www.lawlink.nsw.gov.au>

¹³ J Baker, A Allen and D Weatherburn, ‘Hung juries and aborted trials: an analysis of their prevalence, predictors and effects’, *Crime and Justice Bulletin*, No 66, March 2002, p 8.

that this is most likely the result of complex evidentiary issues which result in juror disagreement over their interpretation.¹⁴

3 MAJORITY VERDICTS

Majority verdicts are defined differently in each of the states. A minimum number of jurors (9, 10 or 11 jurors depending on the jurisdiction) are required to be in agreement after deliberating for a certain length of time (at least 2 hours, but longer in some jurisdictions).

3.1 ARGUMENTS IN SUPPORT OF MAJORITY VERDICTS

Proponents of majority verdicts have raised a number of arguments in support of majority jury verdicts. This section sets out some of the common arguments.

3.1.1 A reduction in the number of hung juries

A hung jury is one which is unable to agree on a verdict. Reaching a verdict in the initial trial means that the matter does not have to be retried, thus saving court time and money, and it also means that witnesses do not have to go through the process again.

3.1.2 Less problems created by “rogue” jurors

The main argument raised in favour of introducing majority verdicts is that of the “rogue” juror. A “rogue” juror was defined by the New South Wales Law Reform Commission as “someone who enters the jury room having prejudged the verdict, and stubbornly refuses to participate in the debate or listen to the evidence or the views of the other jurors.”¹⁵ There have been some very high profile cases involving “rogue” jurors, including the Queensland case of former Queensland Premier, Sir Joh Bjelke-Petersen who was tried for perjury in 1991.

In the Bjelke-Petersen case, the jury deliberated for four days then informed the judge that they were unlikely to agree on a verdict, and hence they were

¹⁴ New South Wales Law Reform Commission, *Report 111: Majority Verdicts*, Sydney, August 2005, p 20 downloaded 1 February 2006 from website at www.lawlink.nsw.gov.au

¹⁵ New South Wales Law Reform Commission, *Report 111: Majority Verdicts*, Sydney, August 2005, p 9 downloaded 1 February 2006 from website at www.lawlink.nsw.gov.au

discharged. The prosecution decided against instituting a new trial, “due to the age and infirmity of the defendant, the difficulty of recalling witnesses from overseas, and the fact that the defendant was no longer in power in Queensland.”¹⁶ Later media reports revealed that the foreman of the jury, Luke Shaw, “was an official of the Young National Party and an alleged member of the Friends of Joh organisation.”¹⁷ He was reported to be the only juror¹⁸, or one of two jurors¹⁹, causing the hung jury.

3.1.3 There is less chance of a juror being bribed or intimidated

Majority verdicts reduce the chances of jurors being bribed or intimidated because it would be necessary to bribe or intimidate more than one juror to affect the jury’s verdict. This would be more difficult and increase the risk of detection.

3.1.4 Compromise verdicts may be avoided

If a unanimous verdict is required, it is possible that some jurors may acquiesce to the majority position but not be convinced of its correctness. A majority judgment can avoid this situation.

4 AUSTRALIA

There is not a consistent position in Australia with respect to the number of jurors who need to agree in order to deliver a verdict in criminal cases. This section of the Research Brief examines which Australian jurisdictions allow majority verdicts and what offences they apply to, and which jurisdictions require unanimous verdicts. The position in New South Wales is discussed separately because it currently requires unanimous verdicts in criminal cases, but the New South Wales government has stated that it will introduce majority verdicts in 2006.

¹⁶ New South Wales Law Reform Commission, *Report 111: Majority Verdicts*, Sydney, August 2005, p 7 downloaded 1 February 2006 from website at www.lawlink.nsw.gov.au

¹⁷ Lawrie Kavanagh, ‘Jurors should be free to speak out’, *Courier-Mail*, 10 June 1995, p 35.

¹⁸ New South Wales Law Reform Commission, *Report 111: Majority Verdicts*, Sydney, August 2005, p 7 downloaded 1 February 2006 from website at www.lawlink.nsw.gov.au

¹⁹ Lawrie Kavanagh, ‘Jurors should be free to speak out’, *Courier-Mail*, 10 June 1995, p 35.

4.1 UNANIMOUS VERDICTS

Unanimous verdicts are required for all offences heard by a jury in Queensland, New South Wales and the Australian Capital Territory. Such verdicts are also required for Commonwealth offences and certain offences in the other states, such as murder in all other Australian jurisdictions except Northern Territory, some serious drug offences in Victoria, and treason in South Australia, Tasmania and Victoria.

4.2 MAJORITY VERDICTS

The Northern Territory, South Australia, Tasmania, Victoria and Western Australia allow majority verdicts in certain criminal trials. There are, however, a number of differences between the jurisdictions with respect to:

- the type of offences for which a majority verdict can be given;
- the number of hours a jury must deliberate before being allowed to deliver a majority verdict; and
- the number of jurors that are required to form a majority.

The table below sets out the relevant legislation for each Australian jurisdiction which allows majority verdicts, the number of jurors required to form a majority, the number of hours for which a jury must deliberate before the court will accept a majority verdict, and it identifies the matters which require a unanimous verdict.

Australian jurisdictions which permit majority verdicts in criminal trials

Jurisdiction	Year Introduced	Legislation	Details
South Australia	1927	<i>Juries Act 1927 s 57</i>	If a jury has deliberated for at least 4 hours and the jurors have not reached a unanimous verdict, a majority verdict may be given (except in relation to a verdict of guilty of murder or treason). A majority verdict is one in which: <ul style="list-style-type: none"> • 10 or 11 jurors out of 12 jurors concur; or • 10 jurors out of 11 jurors concur; or • 9 jurors out of 10 concur.
Tasmania	1936	<i>Juries Act 2003 s 43</i>	If a jury deliberates for at least 2 hours and has not reached a unanimous

Jurisdiction	Year Introduced	Legislation	Details
			verdict, the court is to take a majority verdict as the verdict of the jury (except in relation to treason or murder). A majority verdict is one on which 10 jurors agree. If a jury deliberates for at least 6 hours in a trial relating to treason or murder and has not reached a unanimous verdict, the court is to take a majority verdict of not guilty as the verdict of the jury. A verdict that the accused is guilty of murder or treason must be unanimous.
Western Australia	1960	<i>Criminal Procedure Act 2004</i> s114	The decision of 10 or more jurors is taken as the verdict (except in relation to a charge of wilful murder or murder) if the jury has deliberated for at least 3 hours and has not arrived at a unanimous verdict.
Northern Territory	1963	<i>Criminal Code Act</i> s 368	Provided at least 6 hours has elapsed since the jury retired and the jurors are not unanimously agreed upon their verdict, the court shall take and enter the verdict of 10 jurors out of a jury consisting of 11 or 12 jurors, or 9 jurors out of a jury consisting of 10 jurors as the verdict of the jury.
Victoria	1994	<i>Juries Act 2000</i> s 46	Majority verdicts may be accepted (except in relation to murder or treason or trafficking a large commercial quantity of a drug or drugs of dependence or cultivating a large commercial quantity of narcotic plants or an offence against a law of the commonwealth) if the jury has deliberated for at least 6 hours and it is unable to agree on its verdict. All but one of the jurors must agree for there to be a majority verdict.

4.3 NEW SOUTH WALES

In late 2005, against the recommendations of the New South Wales Law Reform Commission, the New South Wales Labor government announced that it will introduce legislation in 2006 allowing majority verdicts by juries in criminal trials. The announcement was made in the wake of the dismissal of the jury in the high-profile case of Bruce Burrell on charges of kidnapping and murdering Sydney woman Kerry Whelan. After the trial, various reports about the jury were published in the media – for example, that one juror had refused to consider a guilty verdict²⁰ and that there were at the most two dissenting jurors.²¹ While the proposed legislation will not affect the retrial of that case,²² it is expected that allowing majority verdicts will reduce the instances in which juries cannot agree on a verdict.²³

The proposed legislation will require the jury in a criminal trial (including a murder trial) to try to reach a unanimous verdict. In the NSW Legislative Assembly, the Attorney-General Bob Debus stated that under the proposed changes, “A majority verdict will not be permitted unless juries have first employed considerable effort to come to unanimous agreement.”²⁴

While the NSW Opposition supports the introduction of majority verdicts in criminal cases,²⁵ there has been criticism of the proposal. Writing in *The Sydney Morning Herald*, Law Professor David Brown of the University of NSW stated:²⁶ “the decision ... to move to majority verdicts in jury trials constitutes a capitulation to political and media pressure rather than a considered response to the issues.”

²⁰ Marcus Priest, ‘Government verdict shakes up NSW jury system’, *The Australian Financial Review*, 10 November 2005, p 10.

²¹ ‘Stalemate prompts rethink on majority verdicts’, *The Sydney Morning Herald*, 7 November 2005, p 1.

²² Hon Carl Scully MP, Minister for Police and Minister for Utilities, *NSW Parliamentary Debates*, 9 November 2005, p 19348.

²³ Hon Bob Debus MP, Attorney General, ‘Majority Verdicts’, *NSW Parliamentary Debates*, 9 November 2005, p 19356.

²⁴ Hon Bob Debus MP, Attorney General, ‘Majority Verdicts’, *NSW Parliamentary Debates*, 9 November 2005, p 19356.

²⁵ Andrew Tink MP, Shadow Attorney-General, introduced a Private Member’s Bill in 2004 to amend the *Jury Act 1977* (NSW) to provide for majority verdicts by juries in criminal trials.

²⁶ David Brown, ‘Majority verdict: a poor judgment’, *The Sydney Morning Herald*, 15 November 2005, p 1.

5 OTHER JURISDICTIONS

5.1 NEW ZEALAND

Unanimous verdicts in criminal trials are required in New Zealand. However, in June 2005, the New Zealand government introduced the Criminal Procedures Bill 2005 into parliament. The Bill proposes to remove the requirement for unanimity, allowing majority judgments of 11-1. Justice Minister Phil Goff stated that the proposed change “will reduce the growing number of hung juries and stop organised crime and gangs intimidating jurors.”²⁷ The Bill followed a recommendation by the New Zealand Law Commission that majority judgments should be introduced to reduce the impact of “rogue” jurors.²⁸

5.2 ENGLAND AND WALES

Majority verdicts were introduced in England and Wales in 1967 to prevent the intimidation or bribing of jurors.²⁹ A majority verdict of 10 to 2 or 11 to 1 jurors is allowed in all criminal cases after the jury has deliberated for at least 2 hours.

5.3 SCOTLAND

Scotland is anomalous in the common law countries. In Scotland, a bare majority is all that is required. Therefore in a jury comprising 15 jurors, the agreement of 8 jurors is sufficient.³⁰ The New South Wales Law Reform Commission notes that majority verdicts appear to have been always been part of the Scottish legal system and the system also has “other unique features to help ensure proof of guilt, such as

²⁷ Helen Tunnah, ‘Majority rules in jury law change’, *The New Zealand Herald*, 22 January 2004, downloaded 24 January 2006 from website at www.nzherald.co.nz.

²⁸ New Zealand Law Commission, *Report 69: Juries in Criminal Trials*, 2001, p 167 downloaded 9 February 2006 from website at www.lawcom.govt.nz

²⁹ New Zealand Law Commission, *Report 69: Juries in Criminal Trials*, 2001, p 159 downloaded 9 February 2006 from website at www.lawcom.govt.nz

³⁰ New South Wales Law Reform Commission, *Report 111: Majority Verdicts*, Sydney, August 2005, p 24 downloaded 1 February 2006 from website at www.lawlink.nsw.gov.au

the requirement that the Crown case be corroborated, and the availability of an additional verdict of ‘not proven’.”³¹

6 CONCLUSION

Queensland currently requires unanimous jury verdicts in criminal trials. If New South Wales legislation introducing majority judgments is successfully passed, only Queensland and the Australian Capital Territory will require jury unanimity for all criminal trials, and it will be required for federal offences. While some, such as the Queensland Law Society support retaining unanimous verdicts,³² others such as Queensland Chief Justice, the Honourable Paul de Jersey AC, have expressed support for majority verdicts because of the waste of resources in long trials and the anguish to victims in having to face a retrial if there is a hung jury.³³ The Chief Justice has, however, recommended that a survey be undertaken to determine how often trials have had to be aborted because of a “rogue” juror.³⁴

At this time, there are no plans for Queensland to introduce majority verdicts. Queensland Attorney-General and Justice Minister, Linda Lavarch, is quoted as saying:

*While I will keep an eye on the introduction of majority verdicts in New South Wales, I do not have any immediate plans to examine a possible change to the situation in Queensland. ... there will be no move to change the unanimous jury system in Queensland without full consultation with the community.*³⁵

³¹ New South Wales Law Reform Commission, *Report 111: Majority Verdicts*, Sydney, August 2005, p 24 downloaded 1 February 2006 from website at www.lawlink.nsw.gov.au

³² Rob Davis, ‘Double jeopardy and majority verdicts’, *Proctor*, 25(10), November 2005, p 3.

³³ Russell Grenning, ‘The reluctant student who fell in love: A conversation with the Chief Justice of Queensland, the Honourable Paul de Jersey AC’, *Proctor*, February 2006, p 20.

³⁴ Russell Grenning, ‘The reluctant student who fell in love: A conversation with the Chief Justice of Queensland, the Honourable Paul de Jersey AC’, *Proctor*, February 2006, p 20.

³⁵ Phillip Hammond, ‘In search of a fair trial without error’, *The Courier-Mail*, 21-22 January 2006, p 28.

APPENDIX A – NEWSPAPER ARTICLES

Title **Trial without error**
Author **Philip Hammond**
Source **The Courier-Mail**
Date Issue **21 January 2006**
Page **p 25**

IT TAKES only one - in the world of justice and the law, it takes just "one eccentric or perverse juror" to dig in their heels and obstinately, perhaps irrationally, disagree with everyone else about the innocence or guilt of the person on trial.

Retired District Court judge Manus Boyce recalls a classic example: "On one occasion in recent times in Queensland, a jury was unable to reach agreement in a rape trial after a lengthy retirement. After the jury was discharged there was reliable anecdotal evidence that the jury was 11-1 in favour of guilty. There was an eccentric, elderly gentleman on the jury.

"Before hearing any evidence he said to other jurors that there was no such thing as rape and that he did not believe in rape. He refused to engage in rational discussion with the other jury members."

The outcome was that no unanimous verdict could be returned, so a retrial had to be ordered. The second time around, the accused was found guilty and jailed.

Two trials. Repeated open court ordeals for rape victims giving evidence. Double doses of hefty legal expenses.

Boyce says in some instances after a hung jury, justice is not served when victims of sexual abuse and assault cannot face repeating the process - and the accused walks free.

Juries have been unable to reach a verdict in more than one in 10 jury trials in the Brisbane Supreme and District courts in recent years.

Justice Department figures show that "hung" verdicts were highest last financial year. In 2004 to late February 2005, 23 out of 129 jury trials resulted in hung verdicts - a rate of 17.8 per cent.

In 2003-04 the rate was 10.2 per cent with 22 out of 216 jury trials not producing a unanimous verdict. In 2002-03, 31 out of 257 trials (12.1 per cent) proved inconclusive.

How many cases resulted in a retrial is not known. In NSW, it has been reported that in the past 20 years, the number of trials hijacked by individual "rogue" jurors now represents 8 per cent of criminal cases.

It seems no coincidence that NSW Attorney-General Bob Debus's announcement last November that his state would introduce 11-1 majority verdicts in all trials came closely on the heels of an aborted murder trial.

On November 2, a NSW Supreme Court jury was discharged after a fortnight's deliberation on the guilt or innocence of Bruce Burrell, who had pleaded not guilty to kidnapping and murdering Sydney woman Kerry Whelan in 1997.

The jury heard 10 weeks of evidence before announcing it could not reach a unanimous verdict. The court immediately was told there would be a retrial.

But in making his decision, Debus ignored the state's Law Reform Commission's recommendation, made four months earlier, that unanimous verdicts be retained.

President of the Australian Council of Civil Liberties, Terry O'Gorman, says the NSW Law Reform Commission is an impressively constituted commission headed by a Supreme Court judge, which carefully reached its conclusions, compared with Debus's "political measure".

The council opposes majority verdicts.

"How can a verdict be beyond reasonable doubt if one of the jurors doesn't agree?" O'Gorman asks. "In Australia, including Queensland, we have to get practical and allow full and thorough research of jury verdicts, conducted with actual jurors. What sort of system is it that makes rules about how a jury operates but never goes to jurors to find out what they think about the system?"

By opting for majority verdicts, NSW follows Britain, which introduced 10-2 majority verdicts in 1967, and Western Australia, South Australia, Tasmania, the ACT and the Northern Territory.

In Victoria, majority verdicts are acceptable in criminal cases other than murder, treason or major drugs offences. And in those, if a jury deliberates for more than six hours, the judge has the discretion to take a majority verdict.

In Queensland, Chief Justice Paul de Jersey recently declared his openness to change, noting there was "no particular magic in the number 12" and verdicts of 11-1 should be allowed.

Boyce, who retired from the bench in 2004, goes further, arguing: "There is an urgent need in Queensland for majority verdicts in criminal trials. That may be either a majority verdict of 11 to 1 or 10 to 2.

A majority of 11 to 1 will eliminate the one eccentric or perverse juror."

But is the rogue juror common? The Queensland Bar Association's Tony Glynn, SC, thinks not.

Like the Queensland Law Society, the Bar Association sees no need for the state to replace the unanimous verdict requirement with a majority verdict system.

"Being the odd state out doesn't make us wrong," he said. "We have been the state that has hung out against the others in many cases over the years. There certainly has not been any outcry (for change)."

Glynn calls Boyce "a solitary voice for change": "The trouble with this is people get a bee in their bonnet and want to stir it up but, in fact, have very little to offer except to say you may get a rogue juror."

He suggests Boyce's assertions that a juror did not believe rape was a crime "sounds like rumour".

"The suggestion there is a group of rogue jurors hanging around in juries is really quite offensive to the population as a whole. I tend to think the people who come along for jury duty take their jobs very seriously.

"If you look at lost days of court time, as the result of hung juries, you would say you are not going to greatly improve efficiency but you may end up with some miscarriage of justice, one way or another, because a perfectly valid opinion is ignored by the majority."

Glynn explains: "When a jury has difficulty in reaching a verdict, they are given the Black direction (a reference to a High Court case) where the judge impresses upon them the desirability of achieving a result, and that it is important each of them exercise their own judgment.

"In my experience, almost every case where the Black direction is given has resulted in a verdict.

"I have had one hung jury in the past three or four years and that jury was hung twice in separate trials, which suggests they each had a very difficult problem with the evidence - not a case of a rogue in each jury."

Glynn also considers the 8 per cent statistic on rogue jurors to be misleading, "very dubious" and not acceptable.

"The NSW Law Reform Commission had a fairly close look at this ... and the real figure seemed closer to 3 per cent," he says.

Boyce says he believes the jury system works very well and his views are not to be taken as criticising the jury system.

"Juries very seldom convict an innocent person," he says. "Even in a system that works well there is always room for improvement.

It would be a significant improvement if majority verdicts were introduced in this state, even if only 11 to 1."

The system of majority verdicts has worked well in every part of Australia where it has been introduced, he says.

"The standard of proof is proof beyond reasonable doubt - a very high standard. It needs to be remembered that a majority verdict may be not guilty as well as guilty. If an accused person has a majority verdict of not guilty, he will never face another trial."

But Glynn argues that in many cases, juries "generally come to different views about the evidence and (with a majority verdict) you end up with the real risk that the verdict will be the wrong verdict because of a lack of unanimity".

"One consequence of a majority verdict is if you get a strong-minded person on the jury who sways the rest of the jury. Another view might be ignored even though it is a relevant view.

"Majority verdicts have the disadvantage that jurors can ignore the views of the minority. If they have to return a unanimous verdict, it means there is general discussion to attempt to reach a verdict.

"Unanimous verdicts give the community more confidence in the verdict, and give jurors more confidence."

Boyce says, from anecdotal evidence, it is known that sometimes the one juror not agreeing with the others "says he or she hold conscientious beliefs that say that one should not sit in judgment of a fellow citizen".

"Persons who hold conscientious beliefs of this nature ought to seek excusal from serving on a jury, but there are occasions when such a juror has accepted jury service, with an almost inevitable failure of the jury to agree."

Glynn notes that in the jury selection process, candidates are asked if there is any reason they cannot bring in a verdict: "I have seen people who believe you cannot sit in judgment on another person and they have been discharged.

I think you will find that the people who hold those views tend to be pretty honest and will say so before the trial starts."

Boyce says that in Australia, as in Britain in the past 30 years, lengthy trials have become commonplace.

"In broad terms it costs the community about \$7000 each day to assemble the criminal court. In the vast majority of cases the accused person is on Legal Aid so the legal costs of the defence are being met by the community.

"Recently the Snowtown 'Bodies in Barrels' murder trial in the Supreme Court of South Australia occupied the best part of 12 months. There was a unanimous verdict in that case. South Australia does have majority verdicts but in murder trials the verdict must be unanimous. If one perverse juror had refused to agree, the cost to the people of South Australia would have been some millions of dollars.

"A serious question must always arise in very long trials whether the great cost of the retrial can be justified.

"In the worst-case scenario a guilty person may go free simply because one perverse juror has refused to deliver a true verdict according to the evidence," Boyce says.

"It is all very well to say that there are eccentric persons in the community and it is inevitable that from time to time there will be one among 12 jurors.

"Nowhere else in the community can one eccentric person inflict such enormous damage upon the public purse or so much trauma on a victim or the families of a victim simply by refusing to participate in rational discussion.

"It is only a matter of time in Queensland before there is a very long criminal trial in which a jury cannot return a unanimous verdict due to one perverse juror.

The prosecution must then consider whether the enormous cost of a second trial can be justified. The clock is ticking."

Queensland's Attorney-General and Minister for Justice Linda Lavarch said there were strongly held positions on either side of the debate.

"While I will keep an eye on the introduction of majority verdicts in New South Wales, I do not have any immediate plans to examine a possible change to the situation in Queensland.

"As I have said previously, there will be no move to change the unanimous jury system in Queensland without full consultation with the community."

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Author **Michael Bosscher**
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ONE OF the cornerstones of Queensland's justice system is under threat as the result of a New South Wales decision to abandon the centuries-old legal rule that a jury must reach a unanimous verdict in a murder trial.

NSW will legislate to allow 11-1 majority jury verdicts for murder trials and there are moves within Queensland to do the same.

Queensland's Chief Justice Paul de Jersey supports the move, reportedly saying majority verdicts should apply in all trials, not just those for murder.

As a criminal defence lawyer, I think the idea is appalling and should be vigorously opposed, because it represents a serious erosion of the principles of justice.

The issue has arisen here only because of NSW's wish to streamline courtroom efficiency. A recent high-profile case there was deadlocked by a single juror who held out against the 11 others during 13 days of deliberations.

A "hung" jury usually means a re-trial but rather than submit its courts to hearing the same matter again, the NSW Government has decided to change the rules and allow an 11-1 jury verdict to prevail.

De Jersey's reported support for allowing majority verdicts for all jury trials in Queensland is surprising, and I expect it will draw little support from the legal profession.

The NSW change overthrows a principle which dates back to the Dark Ages and required juries of 12 people to reach a unanimous verdict. Historical records show that the English king Ethelred the Unready set up an early legal system, with a provision that the 12 leading nobles of each district swear to investigate crimes without a bias.

Australia inherited the British legal system and despite its sometimes elephantine ways, it works. Justice is seen to be done.

Our Chief Justice says there is "no particular magic" in the number 12, and therefore majority verdicts of 11-1 should be allowed.

With respect, the Chief Justice has got it wrong. We dismantle the foundations of our legal system at our peril.

If an 11-1 majority verdict is acceptable, we open ourselves to further tinkering with numbers. A jury can't reach an 11- 1 decision? Why not allow 10-2, or 7-5 verdicts? A trial is no place to play football scores with a defendant's liberty.

A majority verdict undermines the concept of what a jury is supposed to do - reach unanimous agreement on guilt or innocence. A political decision to allow majority verdicts opens the way for the "majority" required to be diluted down the track.

If the "rules" driving a jury's deliberations are diluted, it erodes the concept of a case being proven beyond a reasonable doubt. A jury of lay people might not be willing to analyse the evidence minutely if they know they need only a majority to end the case and go home. It may sound simplistic, but jury dynamics must also be considered.

Anyone who analyses the court's calendar would see that in any given year there are more retrials by appeal than there are because of a hung jury.

So do we outlaw or restrict appeals as well, to streamline the efficiency of the courts?

It may sound far-fetched but if we are willing to throw away one traditional legal principle, why not toss out another too, in the interests of "efficiency". Once you flatten the long-proven methods for determining justice, there is no template for what might happen next.

Queensland Attorney-General Linda Lavarch has been guarded on the idea of changing the jury verdict law here and I support her reticence. She has been reported as saying there were no plans to change Queensland's system of requiring a unanimous jury verdict, and no change would be made without full community consultation.

I urge her to keep the Queensland system as it is now.

You must have a unanimous verdict for both acquittals and convictions. Once you start tinkering with jury verdicts, the potential for miscarriage of justice is enormous. A requirement that all 12 jurors reach a unanimous decision minimises the possibility of a perverse juror derailing a fair verdict.

There are occasions when you have a hung jury, but it's not common. Only a tiny percentage of juries cannot reach a unanimous decision.

At the moment some states allow majority verdicts for non-murder trials, but all require a unanimous verdict for murder. With NSW now breaking ranks, the disparity between states for murder verdicts will inevitably increase the inequity

between jurisdictions and attack the fundamental rights requiring a high burden of proof for major offences that can carry a life term.

We will see two different systems in the same country in which people can be found guilty. It will be chaotic, bad for justice and bad for public confidence in the justice system.

NSW has got it wrong. The unanimous jury verdict is a staple of our system and should not be changed on a whim.

Queensland needs to show a firm hand and resist moves to change our jury verdict laws.

Michael Bosscher is managing partner of Brisbane-based law firm Ryan and Bosscher Lawyers.

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