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# Inclusive Juries: Access for People Who Are Deaf, Hard of Hearing, Blind or Have Low Vision

## Summary of the Consultation Paper

- 1 We want to hear your views about how to reform the law to enable people who are deaf, hard of hearing, blind or who have low vision (**the subject groups**) to serve as jurors in Victoria.
- 2 This is a summary of the consultation paper, which raises key issues for community discussion.

### Barriers in current law and practice

- 3 The role of a jury in criminal and civil trials is to determine questions of fact and to apply the law, as stated by the judge, to those facts to reach a verdict.<sup>1</sup>
- 4 People in the subject groups may be called for jury service alongside others in the community but existing law and practice prevent many from serving as jurors. Concern has been expressed that this occurs without sufficient reasons.<sup>2</sup>
- 5 The *Juries Act 2000* (Vic) does not specifically exclude people who are deaf, hard of hearing, blind or who have low vision from serving as jurors in Victoria. The Act specifies that a person is ineligible to serve if they are ‘unable to communicate in or understand the English language adequately’ or have ‘a physical disability that renders the person incapable of performing the duties of jury service’.<sup>3</sup>
- 6 Many limitations resulting from a person’s disability can be overcome with supports (also described as adjustments or accommodations) for example an Auslan interpreter or screen reading programs, but the Act does not state when courts should consider or provide supports.
- 7 A further legal barrier is the old common law rule that there must not be more than 12 jurors present in jury deliberations (the jury room). This is known as the ‘13th person rule’ and it was re-affirmed by the High Court in 2016.<sup>4</sup> The High Court held that a deaf juror could not be assisted by a non-juror in jury deliberations, because a jury needs to be ‘kept separate’ to maintain confidentiality, prevent influence or disruption, and to encourage frank discussion.<sup>5</sup>
- 8 The combination of the 13th person rule and the lack of guidance about the provision of supports means that jury service is often not possible for people in the subject groups. In practice, it is likely that when people in the subject groups are selected for jury duty they are left with no option other than to seek to be excused or they are deemed ineligible to serve.

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1 Victorian Law Reform Commission, *Jury Empanelment* (Report No 27, May 2014) 8 <[https://www.lawreform.vic.gov.au/sites/default/files/VLRC\\_Jury\\_Empanelment\\_Report.pdf](https://www.lawreform.vic.gov.au/sites/default/files/VLRC_Jury_Empanelment_Report.pdf)>.

2 Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws* (Discussion Paper No 81, 22 May 2014) 234 [7.204] <<https://www.alrc.gov.au/publication/equality-capacity-and-disability-in-commonwealth-laws-dp-81/>>.

3 *Juries Act 2000* (Vic) sch 2 cl (3)(a), (f).

4 *Lyons v State of Queensland* [2016] HCA 38, [33]; 259 CLR 518, [33].

5 *Ibid.*

## Reasons to make juries more inclusive

- 9 Participation as a juror is an ‘important aspect of civic life’ or a ‘manifestation of active citizenship’.<sup>6</sup> People who are deaf, hard of hearing, blind or who have low vision should be represented on juries because they are part of our community. They should be able to participate in civic life on equal terms with others.
- 10 Reform will respond to recent decisions by the United Nations Committee on the Rights of Persons with Disabilities (the UN Committee) calling for change to jury laws in Australia.<sup>7</sup>
- 11 Reform will also be consistent with the Victorian Charter of Human Rights and Responsibilities, which integrates international human rights standards into Victorian law. It includes the right to equality before the law and protection from discrimination, including on the basis of disability.<sup>8</sup>
- 12 Overseas jurisdictions in the United States, Canada and New Zealand have allowed and facilitated jury service for people in the subject groups with supports for at least ten years and in the United States for much longer. Supports are also provided in England outside of the jury room (where the 13th person rule still applies). We discuss the experiences of people in the subject groups who have served on juries overseas in Chapter 4 of the consultation paper.
- 13 In 2018 the Australian Capital Territory (ACT) became the first jurisdiction in Australia to amend its laws to require consideration of the provision of reasonable supports, and to limit the application of the 13th person rule.<sup>9</sup>
- 14 Changing the law would align it with modern community standards and expectations. Communication tools for people in the subject groups are now increasingly visible in our community. Many may be surprised that the law does not impose any positive obligation on the courts to consider supports for jury service.
- 15 In developing recommendations for reform, the Commission will be examining options for enabling more representative juries and equality of civic obligations that also enable delivery of a fair trial. Any reforms must ensure that a jury functions effectively, that jurors perform their duties adequately and confidence in the jury system is maintained.
- 16 We intend to design practical reforms that will work in the context of a busy and demanding court environment with limited resources in both metropolitan and regional areas.

## Key reform ideas

### A system to make juries more inclusive

- 17 Recent changes to the Juries Act in the ACT provide guidance about the provision and assessment of reasonable supports to enable people in the subject groups to serve as jurors.
- 18 In the ACT if the judge thinks that someone needs supports to properly discharge their duties as a juror, and these supports can be reasonably provided, then they must be. Examples of supports in the notes to the ACT legislation are an Auslan interpreter, an assistance animal, disability aid or support person.<sup>10</sup> The list of factors to be considered in determining whether supports can be reasonably given includes court resources, time frames and facilities, whether a non-juror would inhibit or restrict discussion in the

6 Committee on the Rights of Persons with Disabilities, *Views: Communication No 11/2013*, 15th Session, UN Doc CRPD/C/15/11/2013 (25 April 2016) (*Beasley v Australia*); Committee on the Rights of Persons with Disabilities, *Views: Communication No 13/2013*, 15th Session, UN Doc CRPD/C/15/D/13/2013 (30 May 2016) (*Lockrey v Australia*)

7 *Lockrey v Australia*, UN Doc CRPD/C/a5/D/13/2013 (30 May 2016).

8 *Charter of Human Rights and Responsibilities Act 2006* (VIC) s 8(2) and (3).

9 *Juries Act 1967* (ACT) ss 16, 45A, 45B, sch 1.

10 *Ibid* s 16.

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jury room, and any other issue the judge thinks is relevant.<sup>11</sup> The judge makes the final decision about whether reasonable supports can be provided. This judicial assessment process is similar to the approach in some overseas jurisdictions where people also serve with supports.

- 19 The Commission is keen to hear community views about whether the judge should be given a specific power to exclude a juror when they cannot perform their role, even with supports. Some consider that this power is important to ensure the principle of a fair trial is not undermined. For example, in trials where the jury is called upon to assess pivotal voice or visual identification evidence, it may not be appropriate for a juror who is deaf or blind to serve.
- 20 The ACT Act addresses concerns about participation of a 13th person in the jury room in a straightforward way. If a judge makes a direction allowing an interpreter or support person to assist in the jury room, then the old common law rule does not apply. The supporter must provide an oath or affirmation to the court not to participate in jury deliberations, to maintain confidentiality and to only assist the juror.<sup>12</sup>
- 21 The Commission is keen to hear from the community about whether the approach adopted in the ACT would work in Victoria. The ACT laws appear practical and straightforward and are supported by the practices and procedures of the ACT Sheriff's Office. However, they have not yet been used to assist a person in the subject groups to serve on a jury in the ACT.

### Possible supports to enable inclusive juries

- 22 Chapter 8 provides examples of supports that might assist people in the subject groups to serve as jurors. We are keen to hear from people who are deaf, hard of hearing, blind or who have low vision about what supports will help them to serve and how they could talk to the court or Juries Victoria about what they might need.
- **Australian Sign Language (Auslan) interpreters** Auslan interpreters generally work in pairs in approximately 20-minute shifts. This would mean that multiple interpreters might need to assist in trials and jury deliberations, making it 14 (not 13) people in the jury room. In lengthy trials a third interpreter might be needed to reduce the burden on the interpreters.
    - Auslan interpreters are certified and accredited through the National Accreditation Authority for Translators and Interpreters (NAATI).
    - When working in court rooms, Auslan interpreters are required to abide by the Australian Sign Language Interpreters Association Code of Ethics (ASLIA) which includes obligations about confidentiality and being impartial.
    - A limited number of interpreters in Victoria work in legal settings. It can be difficult to arrange an interpreter at short notice.
  - **Hearing loops** are used by Australian courts including the County Court and Supreme Court in Victoria.
  - **Communication Access Real Time Translation (CART)** is used by the Family Court of Australia and the Federal Court of Australia.<sup>13</sup> CART transcribes and translates spoken words and sounds into text, in real time, on a big screen, or phone, laptop or mobile device. CART operators utilise software to translate speech to text. CART can be combined with an audio component (such as hearing loops).<sup>14</sup> It involves CART writers, stenographers and court reporters.

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11 Ibid s 16(3).

12 Ibid s 16(4).

13 'Service Charter for the Family Court of Australia and the Federal Court of Australia', *Family Court* (Web Page) <[http://www.familycourt.gov.au/wps/wcm/connect/a9c09b4b-1e3c-41b6-85b2-ead26995467ef/ServiceCharter\\_0313V1.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=a9c09b4b-1e3c-41b6-85b2-ead26995467ef](http://www.familycourt.gov.au/wps/wcm/connect/a9c09b4b-1e3c-41b6-85b2-ead26995467ef/ServiceCharter_0313V1.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=a9c09b4b-1e3c-41b6-85b2-ead26995467ef)>.

14 'Captioning and CART', *Hearing Loss Association of America* (Web Page) <<https://www.hearingloss.org/hearing-help/technology/cartcaptioning/>>.

- It may be necessary to provide supplementary written materials or transcripts to jurors who are deaf or hard of hearing.
- **Automated speech recognition software/apps** transcribe speech from multiple individuals onto a screen in close to real time by connecting to several devices with the app downloaded and microphones turned on.
- **Materials in audio form** Screen-reading programs translate the written text displayed on a screen for a voice synthesizer which reproduces the text as speech.<sup>15</sup> Popular screen readers include the Jaws Screen Reader which speaks electronic or scanned material and can create Braille output.<sup>16</sup> Another example, Zoom Text ‘enlarges and enhances everything on [a] computer screen, echoes your typing and essential program activity, and automatically reads documents, web pages, email.’<sup>17</sup>
- **Changing the format of documents** to larger font size, plain typeface with spacing between the words, or printing on tinted paper. Providing documents in Word so that they can be read by technology.
- **Magnifiers** to enlarge print or pictures. Magnifiers can be non-electronic or electronic. CCTV magnifiers have a camera on a frame, displaying a magnified image on a monitor. Sometimes CCTV magnifiers also include speech output so that a person can hear the text being read as it is displayed on the monitor.<sup>18</sup>
- **Braille material**
- **Assistance animals or mobility canes** may assist a prospective juror to navigate and feel comfortable in a court room, jury room and the court building.
- **Support person**—for example, a person providing assistance during a trial or in jury deliberations to a juror who is blind or with low vision.

## Court processes and practices

23 The following adjustments to court processes and practices may be helpful:

- adjustments to the layout of the court room and the jury room.
- additional breaks to accommodate jurors with disability, along with the needs of Auslan interpreters, support people or assistance animals.
- judicial directions to inform the Court about the running of the trial with supports.<sup>19</sup>

## The logistics of arranging supports

- 24 The jury selection process is unpredictable. It commences with random selection from the jury roll, the panel is selected by random ballot and the prospective juror may be challenged off late in the process. It is therefore impossible to say with certainty that a juror needing supports will be selected for jury duty.
- 25 A prospective juror will need support through the empanelment process and may also need to call on supports during a trial and in jury deliberation.

15 ‘Computer Screen Readers’, *Vision Australia* (Web Page) <<https://www.visionaustralia.org/information/adaptive-technology/using-technology/computer-screen-readers>>.

16 ‘JAWS’, *Freedom Scientific* (Web Page) <<https://www.freedomscientific.com/Products/software/JAWS/>>.

17 ‘ZoomText Magnifier/Reader’, *ZoomText* (Web Page) <<https://www.zoomtext.com/products/zoomtext-magnifierreader/>>.

18 Brian Gerritsen, ‘Electronic Magnifiers and Magnifying Systems’, *VisionAware* (Web Page) <<https://visionaware.org/everyday-living/helpful-products/overview-of-low-vision-devices/electronic-magnifiers/>>.

19 Judicial College of Victoria, *Disability Access Bench Book* (2016) [4.4].

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## Community feedback

- 26 We are keen to hear community views about:
- How to change legislation and practice to ensure that the court considers and assesses reasonable supports for people in the subject groups to allow them to serve.
  - What safeguards might be needed to ensure that participation of people in the subject groups does not prejudice the fairness of trials. Should the judge have a discretion to exclude a prospective juror where they would not be able to perform their role, even with supports, because of the type of evidence in a particular trial—for example, voice or photographic identification evidence?
  - How to overcome the prohibition on having 13 people in a jury room, and whether supporters and interpreters should provide an oath to court affirming that they will maintain confidentiality and not be involved in deliberations.
  - The types of supports that will assist people in the subject groups to serve, and processes to ensure that people can talk to the court about their needs.
  - Whether people in the subject groups should still have the option of being excused from service because of their disability.
  - How to overcome common misconceptions and prejudices about the abilities of people in the subject groups to serve as jurors.
- 27 The Commission will consider recent changes to the law in the ACT, recommendations of other law reform agencies and overseas practice, to develop recommendations for reform that will outline how change can be delivered.

## Answering our online survey

- 28 If you don't have time to answer the technical questions in the consultation paper, we would still like to hear from you. We have designed a short online survey to help us to understand your experiences and ideas. All are welcome to take the survey at [www.lawreform.vic.gov.au/inclusive](http://www.lawreform.vic.gov.au/inclusive). You can find audio, Word and Auslan versions of this paper and the survey on our website. You can provide a written response to the survey, send us an audio file such as MP3, or send us a video using Auslan.
- 29 We may refer to individual survey responses in our reports and publications without identifying the submitter.