



**ethnic
communities'
council of
victoria**

Patron

The Right Hon Malcolm Fraser
AC, CH, former Prime Minister of
Australia

The ECCV Submission on Jury empanelment to the Victorian Law Reform Commission

November 2013

About the ECCV

1. The Ethnic Communities' Council of Victoria Inc. (ECCV) is the peak body for ethnic and multicultural organisations in Victoria. It is a community based, member driven organisation committed to empowering people from diverse multicultural backgrounds. We are proud to have been the key advocate for culturally diverse communities in Victoria since 1974. For over 35 years we have been the link between multicultural communities, government and the wider community.
2. The organisation advocates and lobbies all levels of government on behalf of multicultural communities in areas like human rights, access and equity, improving services, racism and discrimination, community harmony, employment, education and training, health and community services, disability, child protection law and justice, arts and culture.

We also help build the capacity of new and emerging communities and develop policy on a wide range of issues including undertaking culturally inclusive research in collaboration with major tertiary institutions.

Victoria's Multicultural Communities

3. Although Victoria's culturally diverse communities have different understandings and experiences of law and authority, most research across Australia has shown that members of these communities display some degree of apprehension at contact with the Australian legal system. Many of them come from countries with a history of corruption, discrimination and abuse within the institutions of justice, destroying their confidence in legal system.
4. The ECCV is of the view that culturally diverse communities still have low levels of understanding of the Australian legal system. This is substantiated by feedback provided during community consultations with African Australians by the

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Australian Human Rights Commission in 2009, indicating their lack of understanding of how the Australian court system works. They also affirmed that courts were seen as intimidating by people from culturally diverse communities.

5. The ECCV believes that participation by members of the culturally diverse communities in jury duty would enhance their understanding of Victoria's court system and complement existing initiatives that aim to increase their knowledge about the Australian legal system. Some of those initiatives include presentations conducted by the Department of Justice and court officials to community meetings and community visits to courts.

Furthermore, jury service would be an exercise of responsible citizenship and give these communities the opportunity to participate in civic life.

Peremptory challenges and the crown right to stand aside for criminal and civil trials

6. The ECCV is of the opinion that peremptory challenges should be retained as the alternative approaches described in the consultation paper by the Victorian Law Reform Commission (challenge for cause, pre-trial questioning of jurors, challenges by consent etc.) are intimidating and uncomfortable for prospective jurors from culturally diverse communities. However, the ECCV suggests that the peremptory challenge and stand aside process should be conducted in a culturally sensitive manner that acknowledges the particular circumstances of these communities, especially when it comes to criminal trials.

- 6.1. As highlighted in the jury empanelment consultation paper by the Victorian Law Reform Commission, peremptory challenge has the potential to give rise to feelings of rejections, striking a chord with prospective jurors from culturally diverse backgrounds' sense of injustice as many of them originate from countries whose judicial system is relatively tainted with corruption and arbitrary use of power by government officials. The ECCV agrees with the Law Reform Commission of Western Australian's suggestion that an important part of orientation sessions should be devoted to peremptory challenges, its purpose and examples of reasons for exercising this type of challenge. In addition, the sessions should be as interactive as possible and should be conducted with a smaller number of participants (between 20 and 40



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people), creating a less intimidating atmosphere and providing greater opportunity for people from these communities to ask questions.

- 6.2. The ECCV has been made aware of the stress and discomfort experienced by jurors when parading before the defendant through feedback from some of its stakeholders. This mechanism used as part of peremptory challenge allows a party to remove a prospective juror without giving any reasons. The ECCV is of the view that 'parading' jurors is not necessary and Victoria's court system should adopt the same approach as the one used in other Australian Jurisdictions such as the Australian Capital Territory, South Australia, Tasmania and Western Australian. That approach consists of providing a list of prospective jurors with their names, localities (not their exact addresses) and professional backgrounds to both parties. However, culturally diverse communities' members expressed concern about revealing their localities or suburbs. The ECCV recommends that juror's electoral district should be included on the list instead. The request for the list is made no early than 4pm on the day preceding the day fixed for trial. Either party would receive this information before a jury selection takes place, giving both parties enough time to determine the suitability of each juror (Queensland Law Reform Commission, 2011).

Recommendation 1

That orientation session should have an important component dealing with the use of peremptory challenge, its purpose and reasons for exercising it.

Recommendation 2

That small group interactive sessions should be conducted in order to allow members from culturally diverse communities to feel confident enough to seek clarifications.

Recommendation 3

That the process of 'parading' prospective jurors in front of the defendant should be abandoned and replaced with the process used in South Australia's jurisdiction. This process gives both parties the opportunity to view the list of prospective jurors before jury selection. The list should include electoral districts and not specific suburbs in which jurors reside.



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Calling the panel by number

7. The ECCV strongly believes that members of culturally diverse communities would prefer a jury panel to be called by numbers only, especially in criminal trials. There is an indication that this option may not be in the best interest of the defendant. However, the ECCV holds the view that this concern would be put to rest if similar process to the one used in South Australia regarding the type of information available to the parties is applied. That process involves making the list of prospective jurors including their numbers, names and suburbs available to both parties in court on the day fixed for trial prior to jury selection. However, that list should contain the electoral districts of jurors instead of the suburbs in which they live.

Recommendation 4

That jurors should be empanelled by number.

References

Australian Human Rights Commission (2010), *In our own words – African Australians: A Review of Human Rights and Social Inclusions*, pp. 29.

Queensland Law Reform Commission (2011), *A Review of Jury Selection Report*, pp. 301.

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