# Acknowledgement of country

Juries Victoria acknowledges the Traditional Owners of the lands across Victoria on which we operate, and pays respect to their Elders, past, present and emerging.

# About Juries Victoria

Juries Victoria (JV) is responsible for providing a system of trial by jury that delivers outstanding service to the higher jurisdiction courts and inspires community confidence.

JV is a citizen-centric organisation that takes pride in the important role juries play in bringing the values, standards and expectations of our community into the courtroom.

JV operates under the *Juries Act 2000* (Vic). Section 1 of the Actsets out our purpose.

To provide for the operation and administration of a system of trial by jury that–

1. equitably spreads the obligation of jury service amongst the community; and
2. makes juries more representative of the community; and
3. permits the timely adoption of new technologies for the selection of persons for jury service.

Each year, JV notifies an average of 190,000 individuals across Victoria of their random selection for jury service[[1]](#footnote-1). Those selected are required to complete a questionnaire, allowing JV to assess their eligibility and availability for jury service against criteria listed under sections 8 and 9 and schedules 1 and 2 of the Act[[2]](#footnote-2).

Of those assessed as both eligible and available for jury service, an average of 55,000 individuals are sent a summons, with approximately 25,000 summonsed in Melbourne and 30,000 summonsed in regional Victoria[[3]](#footnote-3). Ultimately, an average of 20,000 individuals attend for jury service (13,000 in Melbourne and 7,000 in regional Victoria), and around 6,000 people are empanelled on an average of 510 criminal and civil trials[[4]](#footnote-4).

JV does not record whether individuals have vision or hearing impairments, and relies on self-identification of people in the subject groups at any stage of the jury process.

# Summary

JV acknowledges that we have remained silent on a number of questions and issues raised in the consultation paper. While JV would welcome the opportunity to contribute to the discussions which will no doubt arise from the publication of the final report, we believe the process is best served by limiting our submission to those areas in which JV is empowered by the Act, or in which we have significant involvement as pertains to the effective and efficient operation and administration of a system of trial by jury.

Where JV is silent on a question or issue, it should not be inferred that we support or do not support any particular approach, stance, or model.

# The importance of inclusive juries

Juries are a cornerstone of the Australian justice system and are enshrined accordingly in the Australian Constitution (section 80). The representative nature of juries is a central feature of the jury system, ensuring a variety of views, values and life experiences are brought together in the consideration of relevant court matters.

Jurors contribute in an extraordinary and fundamental way to the delivery of justice in Victoria. Juries are the voice of the community’s conscience, independent of both the judiciary and the government. A jury represents the community from which it is drawn, a cross-section of citizens, each with their own experiences and opinions, standards and expectations.[[5]](#footnote-5) Where a particular segment of the community is excluded from jury service, the jury system’s capacity to act as this voice may be reduced.

The Victorian Parliament saw fit to enumerate a number of categories of both compulsory and voluntary exclusion from jury service in the Act. However, only four of these categories result in a permanent exclusion from jury service[[6]](#footnote-6), thereby seeking to strike a balance between excluding members of the community on reasonable grounds, and having the broadest possible inclusion of the community in the jury process.

This represents an acknowledgement that juries are enhanced by a broad inclusion of the community, an acknowledgment which is reinforced in section 1 of the Act, cited above. Indeed, if juries are to be truly representative of the community, diversity is essential in ensuring they reflect the views and values of the whole community[[7]](#footnote-7).

As exemplified in other jurisdictions, both domestically and internationally, utilising technological supports and improved facilities can enable the inclusion of people with hearing or vision impairments in the jury process. It would also have the added benefit of improving the jury experience of those who, while not currently excluded from jury service, nonetheless experience hearing or vision difficulties in the courtroom through the availability of new supports.

# Making juries more inclusive

JV supports a default approach by the courts towards the provision of reasonable supports for people in the subject groups. This is in line with the purpose laid out in section 1 of the Juries Act in providing for a jury system which equitably spreads the obligation of jury service amongst the community and makes juries more representative of the community.

To facilitate this approach, JV would amend the current eligibility questionnaire sent out to randomly selected individuals to include an option for those with vision and hearing impairments to notify us accordingly. As not all those who are eligible for jury service are ultimately summonsed, JV does not propose discussions as to the specific supports an individual may require occur at this stage.

Instead, a discussion on supports available and those needed can occur at summons stage, should a person within the subject groups receive a summons. Although not all individuals summonsed are ultimately required to attend for jury service, the chances of doing so are greater than at the random selection stage. To facilitate these discussions, JV’s jury management system (JMS) may be able to be calibrated to flag any summonsed individual who had previously indicated they have a hearing or vision impairment. Once flagged, a JV staff member would contact the individual to initiate a conversation around the provision of supports.

JV supports maintaining the option for a person within the subject groups to request to be excused or permanently excused from jury service based on their impairments. This requires no change to current legislation, as these options already exist under section 8 and 9 of the Act, respectively.

## Assessment of reasonable supports

### Assessment by trial judge

In practice, the trial judge may not be best placed to be the primary assessor as to whether or not a person who is deaf, hard of hearing, blind or with low vision can discharge their duties in the circumstances of a particular case. By ‘primary assessor’, we mean that any assessment by the trial judge cannot be the first or only assessment made, and can neither be the most detailed assessment.

While this may stand in contrast to the judicial practice of trial judges having considerable control over their courtroom, our reasons are based on the logistics and impact on the efficient running of trials this would create, as well as respect for the individual in the subject groups.

Given the nature of our random summonsing practice and the random jury panel balloting process, we won’t know until the very last minute which trial, if any, a person in the subject groups will be randomly balloted to. As such, trial judges would be unable to make a decision ahead of the empanelment process. This means empanelment would need to be delayed while the judge, with or without counsel, spoke with the person in the subject groups to determine whether they can discharge their duties in the circumstances of that trial. This would significantly single out the person in question, potentially creating distress and discomfort for them.

This process would also require the rest of the jury panel to wait outside the courtroom while the assessment is undertaken. This is highly impractical, as it creates a risk of real or perceived contamination of the jury through exposure to, and contact with, parties or individuals involved in the trial. This is especially the case if counsel are also removed from the courtroom while the trial judge undertakes their assessment.

To add to the operational difficulties such a process would create, having upwards of 35 people clustered in a public hallway in the court building while an assessment is being conducted may not adhere to fire safety practices and may create a risk of personal injury, pursuant to section 55 of the Act[[8]](#footnote-8).

This process would also extend the time taken to empanel a jury, which is currently about an hour in most cases.

### Assessment procedure

Given the trial judge may not be best placed to make a considered assessment in a timely manner on the day of empanelment, a potentially feasible solution could be a three-stage system of assessment. This solution presupposes all involved receive relevant disability and accessibility training.

JV notes that the format of any assessment system would be at the discretion of the courts. It is our belief, however, that the following system could meet the necessary considerations of such a system, while providing an efficient process that complemented, rather than interrupted, court operations. We have therefore included it purely as a contribution to any future discussion.

#### Stage One: Juries Commissioner

The Juries Commissioner would make the initial assessment as to whether the required supports could be reasonably provided to the individual in the relevant court location. This would occur when summonses were created in our JMS, roughly two months prior to the date of attendance.

#### Stage Two: Judicial officer

A judicial officer, through discussion with the individual in the subject groups, would then make a detailed assessment as to what elements in a specific trial may render it unsuitable for them to serve on as a juror. For example, it may be assessed that, due to the individual’s blindness, trials where a key part of the evidence or facts in dispute hinged on the visual identification of the accused in CCTV footage would be unsuitable for the individual to be a member of the jury. This would act as a general assessment of the overall suitability of trials, based on various specific circumstances, to include the individual as a juror.

The judicial officer would be drawn from a panel comprised of representatives from the criminal and common law divisions in both the Supreme and County Courts. Such a panel would ensure the ready availability of a judicial officer to conduct these assessments.

#### Stage Three: Trial judge

In the days prior to empanelment, trial judges would make a final assessment as to the suitability of their trial to have a jury which included the individual in the subject groups, based upon the detailed assessment conducted earlier. The trial judge would be required to notify JV if they determined their trial was not suitable for the individual in question.

It is a matter for the trial judge as to how and when to advise counsel of the potential for a person in the subject groups being empanelled as a juror in their trial.

### Balloting the jury panel

Where a trial judge informs JV that their trial is not suitable for an individual in the subject groups, JV would remove the individual’s ballot card when randomly balloting for that trial. This would require amending the Act to provide protocols similar to those currently in place for lengthy trials[[9]](#footnote-9).

The individual’s ballot card would, however, be included for all ballots for trials where the trial judge has not determined the trial to be unsuitable for the individual’s empanelment.

## The thirteenth person rule

The question of changing the common law exclusion of non-jurors from the jury deliberation room is beyond JV’s scope to comment upon. We have instead provided support options for consideration, both under the exclusion as it currently stands and in the instance of the exclusion being amended.

Where the common law exclusion remains unchanged, other support options may be offered, including but not limited to adjusting seating arrangements to facilitate lip reading, the provision of talk-to-text or other technological supports, the provision of evidence in braille or large print, and the assistance of fellow jurors (eg assisting a vision impaired individual with navigation around the deliberation room, making a coffee/tea, etc).

Were the common law exclusion to be amended to allow the presence of Auslan interpreters and support individuals in the jury deliberation room where necessary, JV supports them taking an oath to adhere to the confidentiality of deliberations, and to faithfully and impartially convey deliberations (in the instance of Auslan interpreters). Non-jurors would be equally bound by confidentiality legislation and subject to disclosure offences as jurors.

Notwithstanding the above, the uncertainty and minimal advance notice as to whether a person in the subject groups will be empanelled creates difficulty in knowing how long an Auslan interpreter or support person would be required for. This creates challenges around the availability, resourcing, and booking procedures of Auslan interpreters and support persons that will need to be considered and overcome.

## Peremptory challenges and stand asides

JV does not feel peremptory challenges and stand asides should be altered in response to the inclusion of persons in the subject groups in the jury process.

That being said, JV supports education and training for the judiciary, court and JV staff and the legal profession on the importance of inclusive juries, on respectful interactions with people with vision, hearing or other impairments, and on unconscious bias.

# Enabling inclusive juries

It is integral to the success of more inclusive juries that all supports that can be reasonably provided are offered to those who need them. However, what can be ‘reasonably’ provided will vary according to circumstances and facilities. There are 12 operational jury districts at the time of writing, with each presenting different circumstances that may affect the provision of various supports. This inconsistency is unfortunate, and as any efforts to resolve it would sit outside JV’s area of responsibility, it is not our place to speculate on how these efforts may be undertaken.

No matter the circumstances, however, JV believes that people with lived experience of being deaf, hard of hearing, blind or having low vision should be central in co-designing accessibility supports and solutions. Similarly, in instances where a person who is deaf, hard of hearing, blind or with low vision is empanelled on a jury, time should be given after the selection of the jury has concluded for the individual to discuss their specific support requirements with the rest of the jury, if they wish to do so.

In a broader context, written materials could be created and distributed by JV to all members of a jury on which a person in the subject groups has been empanelled, providing general information about interacting with the person (for example, where an Auslan interpreter is required, explaining that jurors should address the person in the subject groups directly, rather than through the interpreter (eg ‘Could you please ask Jenny what her thoughts are on this evidence?’)). The trial judge may also wish to inform counsel and jurors about the supports being used and any changes to usual court proceedings which might be required during their opening remarks to the jury. These remarks precede opening statements by counsel, and are often used to address various other general matters the jury needs to know.

# Embedding cultural change

JV fully supports the provision of Disability Awareness Training for judicial officers, court and JV staff and the legal profession. While we will leave it to the relevant bodies to determine the best method of delivering this training, JV believes that, in our own case, training should be provided quarterly.

# Conclusion

Juries Victoria supports steps towards making juries more inclusive, a position which goes to our very *raison d’etre*. While the extent to which JV can directly influence the broader work required in such an undertaking is limited by the narrow scope of our empowering legislation, we stand prepared to contribute to the discussion and efforts to bring about such changes.

We believe the jury system and, by extension, the justice system can only be enhanced by more inclusive juries.

1. Supreme Court of Victoria, ‘Annual Report 2019-20’, p. 63. [↑](#footnote-ref-1)
2. Schedules 1 and 2 list reasons for disqualification from and ineligibility for jury service, respectively. These are referred to collectively as ‘eligibility criteria’.
Sections 8 and 9 list reasons an individual may be excused or permanently exempted from jury service, respectively. These are referred to collectively as ‘availability criteria’. [↑](#footnote-ref-2)
3. Supreme Court of Victoria, ‘Annual Report 2019-20’, p. 64. [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. Paul Dore, ‘To develop a systemic approach to juror support programs in Australia’ 2018, *Winston Churchill Memorial Trust of Australia*, p. 31. [↑](#footnote-ref-5)
6. Section 9 provides for an individual, or somebody acting on their behalf, to apply to the Juries Commissioner to be permanently exempted from jury service for ‘good reason’, defined as including, but not limited to: continuing poor health, disability and advanced age.

Schedule 1 provides for the disqualification of an individual who has been convicted, in Victoria or elsewhere, of treason or one or more indictable offences and sentenced to imprisonment for a term or terms in the aggregate of, or a period of detention for, three years or more. This is the only disqualification which does not have a sunset period after which the disqualification no longer applies. [↑](#footnote-ref-6)
7. Jacqueline Horan and David Tait, ‘Do juries adequately represent the community? A case study of civil juries in Victoria’ 2007, *Journal of Judicial Administration* 179, p. 198. [↑](#footnote-ref-7)
8. Section 55 of the Juries Act details compensation for personal injury during jury service. [↑](#footnote-ref-8)
9. Section 29 (4B) states: “The Juries Commissioner may exclude a person from a pool if the Juries Commissioner is satisfied that the person is unavailable to sit on a trial due to the likely length of the trial.”

Subsection (4D) states: “A person excluded under subsection (4B) may be allocated to another pool for jury service.”

These subsections provide for JV to remove from random balloting for a lengthy trial those individuals who are unavailable for the entirety of the time. These individuals are not excused, however, and remain in the pool to be included in other ballots. [↑](#footnote-ref-9)