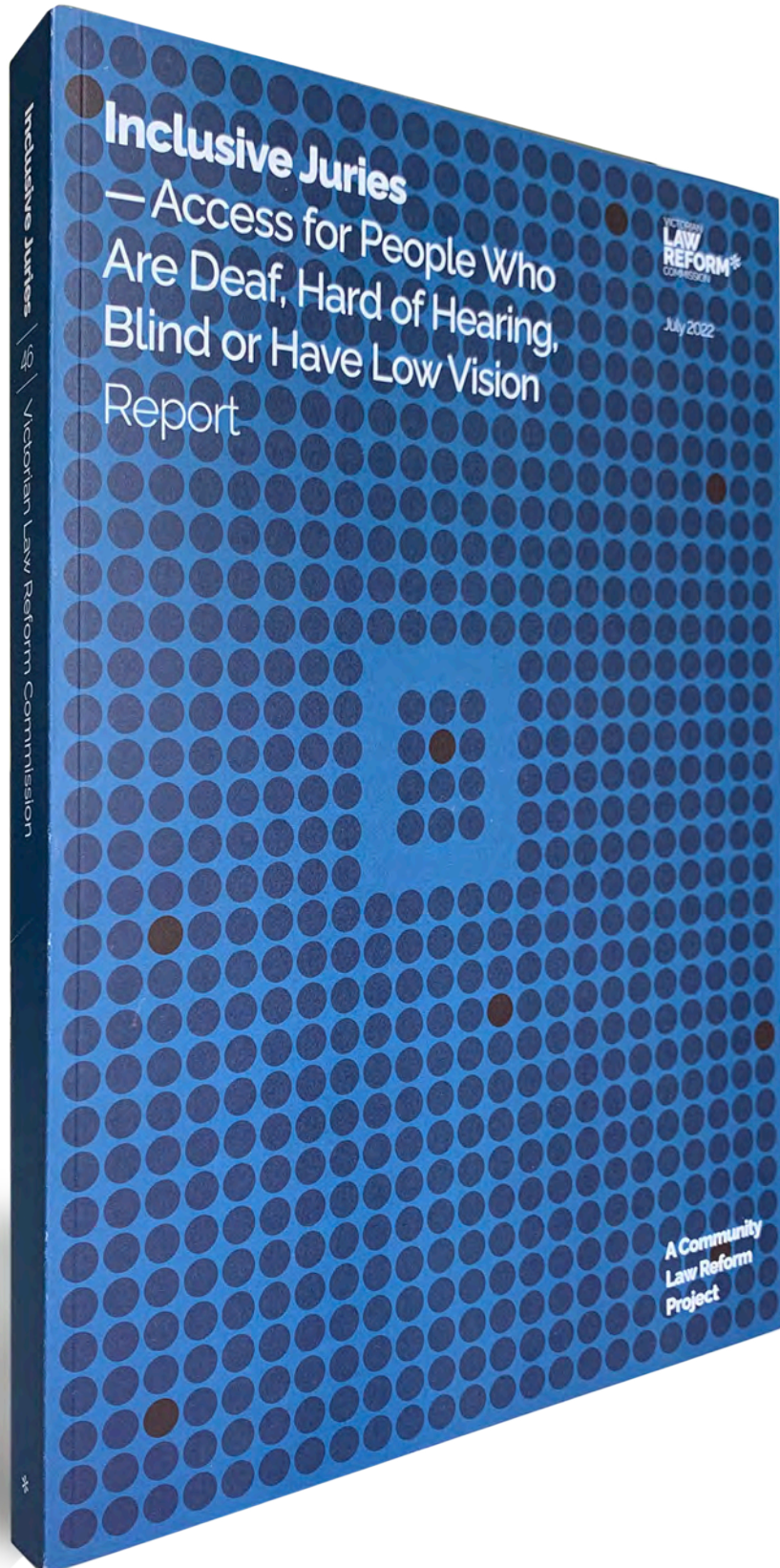


CASE STUDY 2

INCLUSIVE JURIES—ACCESS FOR PEOPLE WHO ARE DEAF, HARD OF HEARING, BLIND OR HAVE LOW VISION



Juries are supposed to be representative of a broad cross-section of the community and serving on juries is an important civic responsibility. However, people who are deaf, hard of hearing, blind or have low vision are currently unable to serve on juries. The United Nations has found in several cases that Australia is in breach of its responsibilities under the Convention on the Rights of Persons with Disabilities. People with disabilities should be represented on juries because they are part of our community and should be able to participate in civic life on equal terms with others.

The Commission considered how to make juries more inclusive by changing legislation and practices to remove barriers for people who are deaf, hard of hearing, blind or have low vision to enable them to serve as jurors in Victoria.

TIMELINE

11 March 2020

The VLRC commenced this community law reform project in response to calls for change from advocacy groups and recent challenges to the law in the High Court and the United Nations. The VLRC wrote its own terms of reference.

August 2020

The VLRC held preliminary consultations with a small group of stakeholders including advocacy groups, the courts, legal professionals and academics.

24 December 2020

The VLRC published a consultation paper that explained the current law and why reform was needed, and invited the public to make submissions and answer a survey. Papers were made available in Auslan and audio versions.

March-July 2021

The VLRC held 29 consultations (over Zoom, because of the pandemic). We spoke to people who are deaf, hard of hearing, blind or have low vision and many other stakeholders

about issues raised in the consultation paper and their experiences.

February 2021

14 submissions and 27 survey responses were received.

March-July 2022

The VLRC wrote a report with 53 recommendations about how to enable people who are deaf, hard of hearing, blind or have low vision to serve on juries.

30 July 2022

The report was delivered to the Attorney-General.

WHY DOES THE LAW NEED TO CHANGE?

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. However, 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.'

Using 'reasonable adjustments'—for example an Auslan interpreter or screen reading program—may enable a person to meet the eligibility requirements in the Act. But there is no obligation on the courts or Juries Commissioner to provide reasonable adjustments.

A further legal barrier is the old common law rule that there must not be more than 12 jurors present in the jury room. This is known as the '13th person rule' and it means that a juror cannot be assisted by a non-juror in jury deliberations.

CASE STUDY 2

INCLUSIVE JURIES—ACCESS FOR PEOPLE WHO ARE DEAF, HARD OF HEARING, BLIND OR HAVE LOW VISION

Continued

The Commission's task

The VLRC's task was to 'examine the current legal framework to consider whether legislative change is required, what practical supports would be necessary, and whether there are specific circumstances in which such jury service should be limited.'

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For the complete terms of reference visit lawreform.vic.gov.au

What did the community say?

People who are deaf, hard of hearing, blind or have low vision told us about the barriers they face.

A blind person told us: 'We need to be assessed if we can do a task—not just subjected to people's views on what we can and cannot do.'

We heard that adjustments could enable a person who is deaf, hard of hearing, blind or has low vision to perform the role of juror.

We heard that making juries more inclusive would make them more representative of the community. A broader cross-section of the community on a jury would mean that a wider range of views would be included.

We heard from people involved in the justice system in the United States, United Kingdom and Ireland, where people with disabilities have served on juries, about how those systems work.

While supportive of reform, people in the legal profession told us that more inclusive juries must not affect the accused's right to a fair trial, and that in some cases the evidence in a particular trial might mean that a person with a specific disability cannot serve (for example, if the trial turns on a critical piece of visual or audio evidence).

Report and recommendations

The Commission made 53 recommendations for reforms to the law. These were some of the key recommendations:

- > The report provides examples of the adjustments that could enable people to serve, including Auslan interpreters and support persons, assistance animals, hearing loops, reading assistance software, Braille material and emerging technology.
- > The Juries Act should be amended to require that courts provide reasonable adjustments to enable jury service. The Act should also be amended to state that the '13th person rule' doesn't apply to Auslan interpreters and support persons, so that they can work alongside jurors in the jury room.
- > The final decision about whether a person is able to serve on a jury in a particular trial should be made by the judge, considering a range of factors including the evidence that will be important in that trial.
- > Auslan interpreters and support persons should undertake training to work with jurors. They should also sign up to standards and a code of conduct and provide an oath to the court.
- > Disability awareness training should be required for judges, lawyers and court staff who work with juries.

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Read the report, submissions and other relevant papers in various formats at lawreform.vic.gov.au.