Equity and fairness in jury selection

Response to Department of Justice and Regulation Discussion Paper

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Victoria Legal Aid (VLA) appreciates the opportunity to comment on the reforms proposed in the Department of Justice and Regulation’s *Discussion Paper: equality and fairness in jury selection*.

The jury’s role in criminal trials is one of the most important features of our criminal justice system. Juries serve multiple purposes by ensuring that justice is administered in accordance with community standards whilst also protecting the rights of an accused person. The process of jury empanelment has the capacity to both increase the community’s faith in a fair and impartial judicial system, as well as erode it, and is key to community confidence in an effective and open justice system.

# Deaf and blind jurors

We recognise that disability is as much determined by the environmental and attitudinal barriers that make it harder for someone to fully and effectively be a part of society, as it is about physical impairment.

VLA’s Equality Law program provides legal assistance to people with a disability who have experienced discrimination, vilification or harassment.

Our Disability Action Plan recognises the way people with disability contribute to the broader justice environment, and addresses the achievement of tangible changes in attitudes and practices which serve to discriminate. The Plan outlines concrete, measurable steps and actions for promoting inclusion and participation in the community, advocating for systemic change and strengthening our service response to people with disability.

VLA welcomes processes that would enable people who are deaf, hearing impaired, blind or vision impaired to serve on juries where there are practical and appropriate supports in place to facilitate effective juror participation and ensure that accused people receive a fair trial. The provision of proper supports would be particularly important for blind and vision impaired jurors in trials involving identification, as closed circuit television and other audio visual material are often exhibited**.** For instance, providing accurate descriptions of the material or alternative ways in which the juror can view or listen to evidence (for example, where it is displaced on a screen at some distance from the jury box) would be critical for safeguarding an accused person’s right to a fair trial.

There may be some trials where the nature of the visual or aural evidence places both the prospective impaired juror and the accused at insurmountable disadvantage, where the risk of a miscarriage of justice is too high. There will not be too many such trials but a balancing exercise may be necessary depending on the nature of the evidence and the juror’s impairment.

# Peremptory challenges

VLA supports the current process of empanelling a jury, including the number of challenges available in criminal trials, and the challenge for cause provisions.

We recognise the need for a jury to be representative of the community and that a jury panel should be, as far as possible, impartial given this is one of the fundamental concepts underpinning the conduct of a fair trial.

We consider that peremptory challenges are an essential part of the jury empanelment process and that changes do not need to be made to this aspect of the process. Six peremptory challenges ensure that an accused person can meaningfully participate in the process which determines the composition of the jury of his or her peers who will determine his or her future.

Peremptory challenges provide a critical opportunity for accused people to be directly involved in their trial. More broadly, they provide one of the fundamental safeguards against a jury that is, or is perceived to be, biased or unfairly constituted. VLA considers that this balance can be achieved by maintaining the current number of peremptory challenges.

# Voicing the challenge

VLA advocates for a more flexible approach to the way in which peremptory challenges can be made. Many accused suffer from mental and physical health problems that impede their ability to voice a challenge. This can be a very stressful and intimidating task for those accused who are vulnerable, from culturally and linguistically diverse backgrounds, or whose verbal presentation may act to prejudice them in the eyes of prospective jurors.

We recommend that provision be made in section 39(3) of the *Juries Act 2000* (the Act)to allow an accused to elect for his or her defence practitioner to voice peremptory challenges on their behalf.

# Challenges for cause

VLA considers that the current process of requiring a party to provide a reason to the judge as to why the prospective juror should not be a part of the jury is appropriate. A two-tiered process for challenge for cause risks extending the length of a trial in circumstances where there are a sufficient number of jurors.

# Panel by number or name

VLA would support a proposal for prospective jurors to be identified by number only to alleviate potential juror concerns about privacy and security.

# Additional jurors

The importance of making sure that trials are not delayed or aborted cannot be understated given the resourcing implications for all parties, and the personal impact this has on victims and accused people.

VLA acknowledges the importance of section 23 of the Act which allows a court to empanel additional jurors, where necessary, in order to maintain jury numbers for the duration of lengthy trials. However, we agree with the commentary in the Victorian Law Reform Commission report on *Jury Empanelment* (2014) which indicated that additional jurors are often aggrieved when they cannot see their task to its conclusion having participated in the trial to the point of verdict.

VLA considers that additional jurors should be required to stay on for deliberations and contribute to the ultimate verdict as the best way of addressing the jury’s potential disenfranchisement with the jury process.