

Advancing jury inclusivity in Australia



Remedy
AUSTRALIA

by

Remedy.org.au

August 2021

© Remedy Australia, 2021

Prepared by **Eliza Nugent, Preyasi Domun and Winuri De Alwis**
on behalf of Remedy Australia in collaboration with the
Castan Centre for Human Rights Law, Monash University
Melbourne, Australia

Contents

Introduction	4
Part I: International law and jurisprudence	5
Individual communications under the CRPD	5
<i>Lockrey v Australia</i> (2016)	5
<i>Beasley v Australia</i> (2016)	5
<i>JH v Australia</i> (2018)	6
CRPD General Comment No. 6 (2018)	7
UN Access to Justice Guidelines (2020)	7
Capacity constraints	8
Part II: Developments in overseas jurisdictions	9
Aotearoa/New Zealand	9
United Kingdom	9
Republic of Ireland	11
Part III: Australian case law: <i>Lyons</i> & the ‘13 th person rule’	12
Part IV: Australian legislative developments	14
New South Wales	14
Northern Territory	15
South Australia	15
Queensland	16
Tasmania	16
Victoria	17
Western Australia	17
Australian Capital Territory	18
Conclusion	19
Recommendations	20
Bibliography	21

“It’s very important for courts, for juries, for UN Committees to be microcosms of society. Juries need to represent us – the full spectrum of society. We want trial by our peers, trial by the full gamut of the community.

“We are as intelligent as any other group in society. All groups bring their strengths. Blind people, for example, are very good at listening to voices, listening to hesitation in voices, listening to the timbre of voices. Deaf and hard-of-hearing persons are very good at looking at faces, lip-reading, looking at the whole profile of the person.”

– Prof. Ron McCallum AO¹

¹ Nick Gadd & Gemma Walsh, ‘Inclusive juries: Interview with Prof. Ron McCallum,’ *Old Law, New Law: A podcast by the VLRC* (Victorian Law Reform Commission, 23 December 2020) <<http://vlrc.podbean.com/e/inclusive-juries-interview-with-professor-ron-mccallum>>.

Introduction

The democratic notion of trial by one's peers requires that juries genuinely reflect society. The inclusivity of juries invokes human rights principles of equality and non-discrimination, access to justice and the right to participate in public life.² International human rights law, including the UN *Convention on the Rights of Persons with Disabilities* (CRPD),³ requires reasonable accommodations to ensure juries are accessible to persons with disability.

In Australia, persons with disabilities continue to face barriers to performing jury service, a civic duty. Legislation that governs jury processes in most of Australia's various states and territories functions to exclude persons with disability. Jury participation is also inhibited where reasonable accommodations are not provided to enable everyone to serve as jurors. This report focuses on persons with hearing or vision disability.⁴

In its 2019 *Concluding Observations on the Combined Second and Third Periodic Reports of Australia* (hereafter the '2019 *Concluding Observations on Australia*'),⁵ the UN Committee on the Rights of Persons with Disabilities (hereinafter 'the Committee') raised concerns about failures to include persons with disabilities in Australian juries. It recommended Australia:

- develop legislation in all states [*sic*] on the equal participation of persons with disabilities in the jury system;⁶ and
- ensure that training on working with persons with disabilities and the CRPD be mandated for police, prison officers, lawyers, judicial officers, judges and court staff.⁷

Remedy Australia herein offers independent follow-up information on the extent to which Australia has implemented these recommendations and the Committee's jurisprudence. We focus on developments since 2018 to avoid replicating the Committee's own work.

Part I of this report sets out relevant rights, principles and jurisprudence from international legal instruments and bodies. **Part II** explores recent developments in selected common law jurisdictions abroad. **Part III** reviews relevant Australian case law; followed by a discussion of recent legislative developments in Australia in **Part IV**; concluding with recommendations.

² UN Committee on the Rights of Persons with Disabilities, *Views: Communication No 13/2013*, UN Doc CRPD/C/15/D/13/2013 (25 April 2016) ('*Lockrey v Australia*') [8.2-8.6, 8.9].

³ UN *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

⁴ Acknowledging varied nomenclature preferred by persons with physical conditions, impairments and disability relating to hearing and vision, this submission adopts language in UN documents, such as the Committee on the Rights of Persons with Disabilities' 2019 *Concluding Observations on Australia* (see full citation below).

⁵ UN Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Second and Third Combined Reports of Australia*, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019).

⁶ *Ibid* [26(a)].

⁷ *Ibid* [26(f)].

Part I: International law and jurisprudence

Individual communications under the CRPD

The Committee has adopted views relating to jury inclusivity in Australia on three occasions in response to individual communications from Deaf authors. The Committee has made clear the human rights pertaining to jury inclusivity, namely:

- CRPD art 5: Right to equality and non-discrimination (*Lockrey*,⁸ *Beasley*⁹ and *JH*¹⁰);
- CRPD art 9: Right to accessibility (*Lockrey* and *Beasley*);
- CRPD art 13: Right to access justice (*Lockrey* and *Beasley*);
- CRPD art 21: Freedom of expression, opinion and access to communication (*Lockrey*, *Beasley* and *JH*); and
- CRPD art 29: Right to participate in public life (*Lockrey* and *Beasley*).

Lockrey v Australia (2016)

Mr Lockrey is Deaf and requires real-time steno-captioning in order to communicate. In 2012, he was summoned to serve as a juror, but when he informed authorities he would need steno-captioning, the NSW Sheriff refused, claiming that to have a captioner in the jury room would breach the confidentiality of jury deliberations.

The UN Committee on the Rights of Persons with Disabilities found that Australia had discriminated against Mr Lockrey by failing to make reasonable adjustments to accommodate him (art 5), noting that a captioner could take an oath of confidentiality in order to be present in the jury room.¹¹ The Committee further found violations concerning Mr Lockrey's rights to accessibility (art 9), to express himself in official interactions (art 21)¹² and to equal access to justice (art 13).¹³

Beasley v Australia (2016)

At the same time as the *Lockrey* decision, the Committee found Australia again in breach of the Convention in relation to jury inclusivity. Ms Beasley is Deaf and uses Auslan (Australian sign language) to communicate. Summoned to perform jury duty in NSW in 2012, she was turned away because she requires an Auslan interpreter to communicate with hearing jurors and others in the courtroom. The Committee found

⁸ *Lockrey v Australia*. Case summary available at: <https://remedy.org.au/cases/37>

⁹ UN Committee on the Rights of Persons with Disabilities, *Views: Communication No 11/2013*, UN Doc CRPD/C/15/D/11/2013 (25 May 2016) ('*Beasley v Australia*'). Case summary available at: <https://remedy.org.au/cases/39>

¹⁰ UN Committee on the Rights of Persons with Disabilities, *Views: Communication No 35/2016*, UN Doc CRPD/C/20/D/35/2016 (20 December 2018) ('*JH v Australia*'). Case summary available at: <https://remedy.org.au/cases/44>

¹¹ *Lockrey v Australia*, n 2 [8.5].

¹² *Ibid* [8.6-8.8].

¹³ *Ibid* [8.9].

this denial of a reasonable accommodation to allow Ms Beasley to exercise her legal capacity on an equal basis was a violation of her rights to equality before the law (art 5(1)), to reasonable accommodation (art 5(3)), to equal access to information and communications (art 9(1)), to access to justice (art 13(1)), to freedom of expression (art 21(b)) and to participate in the conduct of public affairs (art 29(b)).

Again the Committee found that reasonable accommodation would be to allow a support person – in this case, an Auslan interpreter – to take an oath of confidentiality regarding jury deliberations.

Responding to the Committee’s Final Views in *Lockrey* and *Beasley*, Australia maintained that admitting an interpreter would compromise the ‘13th person rule’ and fair trial guarantees¹⁴ (see page 12 for discussion of the rule). Notably, Australia did not argue in this instance that the proposed accommodation would constitute an undue or disproportionate burden.¹⁵

***JH v Australia* (2018)**

Most recently, a Deaf woman pseudonymously known as ‘JH’ was summoned to perform jury duty in Western Australia in 2014. She was then turned away because she requires an Auslan interpreter to communicate with hearing jurors and others in the courtroom. Australia defended the decision, citing the need to preserve the secrecy of jury deliberations and to afford a fair trial.¹⁶

The Committee found this denial of a reasonable accommodation constituted discrimination (art 5(2) and 5(3))¹⁷ and a violation of her freedom of expression in ‘official interactions’ (art 21(b) and 21(e)).¹⁸ The Committee agreed that reasonable accommodation would be to allow Auslan interpreters to take an oath of confidentiality.

In February 2020, the Australian Government published a response to the Committee’s Final Views in *JH*, continuing to argue that providing interpreters for a juror with hearing impairment is not a ‘reasonable accommodation’ under Article 2(3) of the Convention because, it claimed, sign language is inadequate for conveying non-verbal aural evidence;¹⁹ because securing multiple interpreters for lengthy trials may be difficult²⁰ and costly.²¹

Despite the Committee determining that Australia has violated Convention rights in response to each of these individual communications, Australia has not accepted the Committee’s findings or acted to prevent repetition of the violations.

¹⁴ Australian Attorney-General’s Department, ‘Response of Australia to the Views of the Committee on the Rights of Person with Disabilities in Communications No 11/2013 (*GB v Australia*) and 13/2013 (*ML v Australia*) Human Rights Communications (27 June 2017) 2 <www.ag.gov.au/sites/default/files/2020-03/M-L-v-Australia-Australian-Government-Response.PDF>.

¹⁵ *Ibid* [8.5].

¹⁶ *JH v Australia*, n 10 [4.9].

¹⁷ *Ibid* [7.2].

¹⁸ *Ibid* [7.6].

¹⁹ Australian Attorney-General’s Department, ‘Response of Australia to the Views of the Committee on the Rights of Persons with Disabilities in Communication No 35/2016 (*JH v Australia*) (11 Feb. 2020) <www.ag.gov.au/sites/default/files/2020-03/jh-australian-government-response-to-views.PDF> 2 [9(a)].

²⁰ *Ibid* 2 [9(b)]

²¹ *Ibid* 3 [10].

CRPD General Comment No. 6 (2018) on Equality and Non-Discrimination

Following the aforementioned communications, the Committee issued *General Comment No. 6 (2018) on Equality and Non-Discrimination* (hereafter ‘*General Comment No. 6*’), a highly authoritative statement on the obligations of all States parties under Article 5 of the Convention.

Concerning access to justice, *General Comment No. 6* distinguishes between ‘procedural accommodations’ under Article 13 and ‘reasonable accommodations’ under Article 5.²² The term ‘procedural accommodations’ refers to systemic procedures that are not limited by the concept of proportionality.²³ In contrast, ‘reasonable accommodations’ must not impose a disproportionate or undue burden on the provider of the accommodation. Such accommodations are responsive to the needs of the individual with disability, such as when requested by a person with disability or in circumstances where the provider ought to have realised such accommodations are necessary.

The Committee lists access to support personnel as an example of a reasonable accommodation.²⁴ In most, if not all, instances where an interpreter or other support person is required, two or more may be required to assist a juror with disability, to allow for breaks. The cost of such accommodations will depend on the length of the trial.²⁵

2020 UN Access to Justice Guidelines

Following the 2019 *Concluding Observations on Australia*, the UN Office of the High Commissioner for Human Rights issued *International Principles and Guidelines on Access to Justice for Persons with Disabilities* (the ‘*Access to Justice Guidelines*’).²⁶ Principle 7 concerns equality of participation in the administration of justice. It requires the removal of ‘all disability-related barriers ... that prevent persons with disabilities from being ... jurors.’²⁷ It also requires States to provide ‘all necessary support, reasonable accommodations and procedural accommodations’ to ensure the equal participation of persons with disabilities in the jury system.²⁸

Further, States must provide to everyone with a role in the administration of justice legally mandated training on the rights of persons with disabilities and the provision of accommodations (Principle 10).²⁹

There can be no doubt, from treaty-body jurisprudence and the most authoritative interpretations of international law, that Australia’s obligation is to provide reasonable accommodations in our courts – including interpreters and steno-captioners – to enable

²² CRPD Committee, *General Comment No. 6 (2018) on equality and non-discrimination*, UN Doc CRPD/C/GC/6 (26 April 2018) [51].

²³ *Ibid* [24].

²⁴ *Ibid* [23].

²⁵ Victorian Law Reform Commission, *Jury Empanelment* (Report No 27, May 2014) 76.

²⁶ UN Human Rights Special Procedures, *International Principles and Guidelines on Access to Justice for Persons with Disabilities* (August 2020) <www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf>.

²⁷ *Ibid* 22, Principle 7.2(b).

²⁸ *Ibid* 22, Principle 7.2(c).

²⁹ *Ibid* 26, Principle 10.1(a) & 10.2.

people with disability to participate in our juries and public life on an equal basis with others.

Capacity constraints

There may be situations where a person with hearing or vision disability is not capable of performing the functions of a juror, although the Victorian Law Reform Commission anticipates they will be rare.³⁰ As former Chair of the CRPD Committee Ron McCallum notes:

“There may be some circumstances where it would not be sensible for a person who is blind or vision-impaired or Deaf or hard of hearing to sit on a jury. Suppose the trial is for murder, and the evidence is identification evidence made up of photographs and identification parades. The question really is: Did the person who is identified do or not do the murder? In that circumstance where eye-sight identification is central, it would make sense for a blind or vision-impaired person to be moved on to another jury trial that didn’t have that element in it.

There may be issues in other trials of voice identification, where it would make sense for a Deaf or hard-of-hearing person to be moved on to another trial. This is just common sense, and it shouldn’t prevent persons with these types of disabilities from being involved in jury service.”³¹

Sign language interpreting in a courtroom is difficult and may require specialist training.³² However, a study by Napier and Spencer into the accuracy of Auslan interpretations in the courtroom found that ‘both deaf and hearing jurors equally misunderstood some terms and concepts, and that deaf people do not appear to be at a disadvantage by accessing information indirectly through an interpreter’.³³

The occasional inability for certain disabled persons to perform the functions of a juror in particular trials is not reason to broadly exclude persons with disabilities from all jury service. The Australian Capital Territory’s new jury legislation (see page 18) enables judges to consider the reasonableness of accommodating a juror prior to authorising support.³⁴ Additionally, courts may ‘stand aside’ jurors in trials to preserve the competence of the jury.³⁵

³⁰ Ibid 57.

³¹ Gadd & Walsh (n 1).

³² WE Hewitt, *Court Interpretation: Model Guides for Policy and Practice in the State Courts* (National Centre for State Courts, Williamsburg, 1995) at 16
<www.ncsconline.org/WC/Publications/Res_CtInte_ModelGuidesPub.pdf>.

³³ Jemina Napier & David Spencer, ‘Jury instructions: Comparing hearing and Deaf jurors’ comprehension via direct or mediated communication’ (2017) 24(1) *International Journal of Speech Language and the Law* 1, 20.

³⁴ *Juries Act 1967* (ACT) s16(3).

³⁵ Victorian Law Reform Commission, *Jury Empanelment* (Report No 27, May 2014) [3.243]
<<https://www.lawreform.vic.gov.au/project/jury-empanelment/>>.

Part II: Developments in overseas jurisdictions

Australia lags behind comparable nations and international standards relating to jury inclusivity. Considerable progress, notably in the UK and Ireland, has occurred since the Committee's 2019 *Concluding Observations on Australia*.

Aotearoa/New Zealand

In 2005, Wellington academic David McKee became the first Deaf person to serve on a Aotearoa/New Zealand jury, but had served on US juries twice before that.³⁶ In the NZ case, which concerned tax fraud, he was chosen as jury foreman by his fellow jurors. "The interpreter was positioned opposite the jury and the interpreter just interpreted throughout the proceedings. I had two interpreters who alternated because it was an all-day case and, yes, it proceeded quite smoothly,"³⁷ recalls Dr McKee. "I was quite excited about the jury duty, because I knew I'd be breaking down barriers and opening doors for other Deaf people who in the future wanted to participate." He thought the judge may have been more open to having New Zealand Sign Language (NZSL) interpreters in the court because NZSL had just been made a national language and recognised for use in legal proceedings.³⁸

United Kingdom

In 2019, Matthew Johnston successfully sat on three jury panels over a two-week period in the Blackfriars Crown Court, making him one of the first jurors in the United Kingdom with a hearing disability.³⁹ Johnston was initially denied his request for a stenographer to assist him during the trial. However, he was able to demonstrate to court officials his ability to perform the functions of a juror. Two court stenographers transcribed events in the courtroom in real time which Johnston read from a tablet device.

Following the trial, Johnston was interviewed by *The Guardian* newspaper. He described minor difficulties, such as the tablet device running low on battery and his not knowing when to enter the courtroom, because announcements had no visual

³⁶ As early as 1982, six states of the United States permitted blind people to serve as jurors, and one state allowed Deaf jurors. MB Goldbas (1982). 'Due process: The Deaf and the blind as jurors', *New England Review* vol 17(1) 119-52 <<https://www.ojp.gov/ncjrs/virtual-library/abstracts/due-process-deaf-and-blind-jurors>>.

³⁷ Annie Guest, 'Deaf jurors serve in US and New Zealand, but High Court blocks Australian Gaye Lyons' bid', *ABC News* (5 October 2016) <<https://www.abc.net.au/news/2016-10-05/deaf-jurors-allowed-in-us,-nz/7905810>>.

³⁸ *New Zealand Sign Language (NZSL) Act 2005*. Jemina Napier & David Spencer (2008). 'Guilty or not guilty? An investigation of deaf jurors' access to court proceedings via sign language interpreting,' in D Russell & S Hale (eds), *Interpreting in Legal Settings* (72-122) (Gallaudet University Press).

³⁹ Howard Swains, 'Subtitles help Deaf jurors past "13th Stranger" court rules', *The Guardian UK* (28 April 2019) <<https://www.theguardian.com/law/2019/aug/28/man-sets-legal-landmark-as-first-deaf-juror-in-english-court>>.

equivalent. Nonetheless, Johnston found the experience fulfilling and hoped it would lead to the permanent introduction of closed captioning in courtrooms.⁴⁰

More recently, the *Police, Crime, Sentencing and Courts Bill 2021* (UK) has been introduced, containing amendments to a variety of legislation. Section 164 of the Bill seeks to amend the *Juries Act 1974* (UK) to enable interpreters to assist jurors with hearing disability, notwithstanding the ‘13th person rule’. The Minister for Justice has cited the technological impacts of the COVID-19 pandemic as impetus for the reform.⁴¹ At the time of writing, this Bill has not yet been passed into law.

What accommodations are accepted as ‘reasonable’ will undoubtedly change as technology advances and uses evolve. Australia’s legal sector, like the UK’s, has been forced to adjust, adapt attitudes, processes and operations in response to the COVID-19 pandemic, demonstrating the legal system may be more flexible than previously thought.⁴² This has included innovations such as ‘e-courtroom’ and ‘e-lodgment’ services in federal courts in Australia,⁴³ as well as virtual hearings.⁴⁴

We ought to capitalise on the substantial changes occurring in the legal sector to improve jury inclusivity through technological accommodations for jurors requiring assistance.⁴⁵ Technologies such as automated speech recognition,⁴⁶ lip-reading devices translating speech into text⁴⁷ and electronic Braille displays could all be employed to assist jurors with disabilities:⁴⁸ most merely require an application on a smartphone. However, many of these technologies are still in the early stages of development and have not been applied to formal settings.

⁴⁰ Ibid.

⁴¹ ‘Civil Justice for Harry Dunn?’, *Law in Action* (BBC Radio 4, 4 March 2021) 00.26.00 <<https://www.bbc.co.uk/programmes/m000sqlf>>.

⁴² Mark Andrews, ‘The times are a-changin’ with COVID-19: And law firms show they can adapt’ (May 2020) *Australasian Law Management Journal* 1-5.

⁴³ ‘E-courtroom: Online Courtroom for Registered Users’, *Federal Court of Australia* <<https://www.fedcourt.gov.au/online-services/ecourtroom>>.

⁴⁴ Patrick Palance & Jordan Couch, ‘Ten predictions: How COVID-19 will change the legal industry forever’ (2020) *American Bar Association* 37 (6).

⁴⁵ Disability Discrimination Commissioner Ben Gauntlett, ‘Technology Must be Gateway to Inclusion For People with Disability’ (speech, Australian Human Rights Commission, June 2019).

⁴⁶ Larry Medwetzky, ‘Mobile device apps for people with hearing loss’ (September/October 2015) *Hearing Loss Magazine* 26, 27.

⁴⁷ Matthew Hutson, ‘Lip-reading artificial intelligence could help the Deaf—or spies’, *Science AAAS* (31 July 2018) <<https://www.sciencemag.org/news/2018/07/lip-reading-artificial-intelligence-could-help-deaf-or-spies>>.

⁴⁸ ‘Library Guide: Blind/Visual Impairment: Common Assistive Technologies’, *Illinois Library* <<https://guides.library.illinois.edu/c.php?g=526852&p=3602299>>.

Republic of Ireland

Despite signing the CRPD when it was opened for signature in 2007, Ireland did not ratify the Convention until 2018,⁴⁹ due to Ireland's practice of ratifying international instruments only after ensuring compliance of its domestic processes.⁵⁰ In 2014, an interdepartmental committee reviewed Irish laws and policies to identify areas in need of reform in order to conform to the Convention.⁵¹ The exclusion of persons with hearing impairments from jury service was identified as one such shortcoming.⁵²

The *Irish Sign Language Act 2017* now provides accommodations for jurors with hearing impairments.⁵³ In passing this bill, Senator Martin Conway cited Ireland's intention to ratify the Convention as motivation for this reform.⁵⁴

In September 2020, Patricia Heffernan became the first person with a hearing disability to participate in jury deliberations in Ireland during a six-day trial,⁵⁵ having previously been excluded from jury duty twice on account of her disability. Heffernan was aided by two Irish Sign Language interpreters who took an oath of the court not to interfere with the jury's deliberations.⁵⁶

Heffernan did cite some practical hurdles in her experience as a juror. It became clear during the trial that a third interpreter was needed. It was also necessary at times for the judge to remind parties not to talk over one another for the sake of the interpreters, yet one source reported this improved the ability of all jurors to follow proceedings.⁵⁷

⁴⁹ Eilionóir Flynn, 'The long road to reform' in Emily Julie Kakoullis & Kelley Johnston (eds) *Recognising Human Rights in Different Cultural Contexts: The United Nations Convention on the Rights of Persons with Disabilities* (2020, Springer) 133.

⁵⁰ *Ibid* 136.

⁵¹ *Ibid* 137.

⁵² *Ibid* 138.

⁵³ *Irish Sign Language Act 2017* s 4.

⁵⁴ Seanad Eireann Debate, 15 December 2017, vol 225(4) <<https://www.oireachtas.ie/en/debates/debate/seanad/2017-12-15/3/>>.

⁵⁵ Heffernan was not the first person with a hearing disability to perform jury duty in Ireland; she was the first to participate in jury *deliberations* with the aid of interpreters.

⁵⁶ Conor Gallagher, 'Galway woman makes history as first Deaf person to deliberate on an Irish jury,' *The Irish Times* (5 October 2020) <<https://www.irishtimes.com/news/crime-and-law/galway-woman-makes-history-as-first-deaf-person-to-deliberate-on-irish-jury-1.4370644>>

⁵⁷ *Ibid*.

Part III: Australian case law: *Lyons* and the ‘13th person rule’

In 2014, 20-year-old disability rights campaigner Drisana Levitze-Gray achieved a new landmark in the fight for jury inclusivity in Australia when she became the first Deaf person in Australia to participate in a jury selection process with the aid of an accredited Auslan interpreter at Perth District Court in Western Australia, although she was not ultimately appointed to a jury in a non-discriminatory random ballot process.⁵⁸ Said Ms Levitze-Gray:

“This is a massive step forward for the Deaf community, not only for Perth and WA, but especially for Australia, and internationally too, as the USA and New Zealand are some of only a handful of countries that allow Deaf people to serve on juries. I am extremely hopeful that my experience and success will now pave the way for an increase in Deaf people being accepted to complete their civic duty. ... There is no evidence to suggest that having a Deaf person and interpreter present in the [jury] deliberation room would negatively impact proceedings.”⁵⁹

The following year, Ms Levitze-Gray was made Young Australian of the Year.⁶⁰

However in 2016, *Lyons v Queensland* in the High Court of Australia halted momentum towards jury inclusivity for persons with hearing disability in Australia.⁶¹ In that case, Gaye Lyons – a Deaf woman who received a summons to participate in a Queensland jury – was denied the services of Auslan interpreters to enable her to serve as a juror. A unanimous High Court in *Lyons* ultimately ruled that it was lawful to exclude a person with a hearing disability from jury duty where an interpreter is required, on the basis that the interpreter’s presence in the jury room would breach the ‘13th person rule’ protecting jury secrecy.⁶² This long-standing common law rule dictates that no-one beyond the 12 jurors may be present in the jury deliberation room, in order to maintain the confidentiality and validity of the verdict and ensure a fair trial.⁶³

Although *Lyons* related to Queensland’s juries legislation, most jurisdictions have similar statutes and thus the decision is applicable across most Australian jurisdictions (see Part IV). Importantly, the High Court made clear that without legislative reform, persons with hearing and vision disability can lawfully be excluded from juries.⁶⁴

⁵⁸ WA Association of the Deaf, ‘First Deaf person to take part in the jury process!’ *Deaf Australia* (15 January 2014) <<https://deafaustralia.org.au/first-deaf-person-to-take-part-in-the-jury-process/>>.

⁵⁹ Sylvia Varnham O’Regan, ‘WA woman “first Deaf Australian to participate in jury duty”’, *SBS News* (24 January 2014) <www.sbs.com.au/news/wa-woman-first-deaf-australian-to-participate-in-jury-duty>.

⁶⁰ Her citation says, in part: “Drisana is the embodiment of the concept of ‘deaf gain’, not ‘hearing loss’, inspiring the deaf community, encouraging others to accept diversity and promoting a positive image of deafness which says loudly and proudly: ‘it is OK to be deaf’.” Australian of the Year Awards (2015) <<https://www.australianoftheyear.org.au/recipients/drisana-levitzke-gray/1253/>>.

⁶¹ *Lyons v Queensland* (2016) 259 (CLR) 518.

⁶² *Ibid* 530 [37] & 532 [38].

⁶³ William Blackstone, *Commentaries on the Laws of England* (W Clarke & Sons, 2nd edn, 1809) vol 3, 375; Patrick Devlin, *Trial by Jury* (Stevens, 3rd edn, 1966) 41–42; William Holdsworth, *A History of English Law* (Methuen, 6th edn, 1938) vol 11, 553–554.

⁶⁴ *Lyons* (n 61).

The High Court decision served to entrench the strict approach courts in Australia have taken in relation to jury secrecy.⁶⁵ Despite the landmark case of *Teoh* in 1995, confirming the legitimate role of international principles in shaping the application of the common law in Australia,⁶⁶ the High Court in *Lyons* remained unmoved by Australia's international human rights commitments, such as the CRPD.⁶⁷

Over the five years to 2020, Juries Victoria (the state government body 'responsible for providing a jury system that delivers outstanding service and inspires community confidence'⁶⁸) received six requests for accommodations from persons with vision or hearing disability seeking to participate as jurors. The requests were denied, and the applicants were unable to serve as jurors.⁶⁹ There appear to have been no further cases litigating the exclusion of persons with disability from jury participation since *Lyons*.⁷⁰

⁶⁵ *Youssef (A Pseudonym) v R* [2019] VSCA 240, 8 [37].

⁶⁶ *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 288.

⁶⁷ Brock Budworth, Trevor Ryan & Lorana Bartles, 'Reigniting the lamp: The case for including people who are blind or Deaf as jurors' (2017) 24(2) *University of Western Australia Law Review* 30, 45.

⁶⁸ Juries Victoria's homepage <<https://www.juriesvictoria.vic.gov.au/>>.

⁶⁹ VLRC, *Inclusive Juries: Access for People Who are Deaf, Hard of Hearing, Blind or Have Low Vision* (Consultation Paper, December 2020) 16 [2.15].

⁷⁰ In the ACT, at least one juror served with the aid of hearing loops in court in 2018, but as they did not require an interpreter or other assistant, this did not test the 13th person rule. Email from ACT Sheriff's Office to Winuri de Alwis (13 May 2021).

Part IV: Australian legislative developments

In 2019, the CRPD Committee recommended that Australia develop legislation in all states [*sic*] enabling the equal participation of persons with disability in the jury system.⁷¹ To date, only the ACT has acted on this recommendation.

Australia is a federation of eight state and territory governments. The Commonwealth (national) Government has the power to legislate with respect to the issues outlined in Australia's Constitution, with all other areas falling under state/territory jurisdiction.⁷² The power to legislate on jury processes resides with the state and territory governments. Each of Australia's six states: New South Wales (NSW), Victoria (Vic), South Australia (SA), Western Australia (WA), Queensland (Qld) and Tasmania (Tas), alongside its two territories — the ACT and the Northern Territory (NT) — has separate legislation on jury systems.⁷³ Accordingly, each jurisdiction has the power to determine who is and is not eligible for jury service. Importantly, the Commonwealth Government has the power to enter into human rights and other international treaties, which are then binding on state and territory governments.⁷⁴

As described below, other than the ACT, legislation governing jury processes throughout Australia prevents the participation of persons with hearing and vision disability to some degree. However, conversations on reforming jury laws are underway in most states, to a greater or lesser extent.

New South Wales

In 2006, the NSW Law Reform Commission recommended that the NSW Sheriff's Office develop guidelines for the provision of reasonable accommodations for people requiring assistance to perform jury duty.⁷⁵ However, at time of writing, the NSW Government has not developed guidelines, nor undertaken any review of the *Jury Act 1977* (NSW) pertaining to the participation of persons with disabilities.

Currently under NSW law, there is no blanket exclusion of persons with disabilities from jury duty.⁷⁶ If anyone is to be excluded, there must be a 'good cause'.⁷⁷ Persons with disabilities are excluded if they cannot carry out the inherent functions of a juror without a support person. Hearing loops can be provided to jurors, but not Auslan

⁷¹ 2019 *Concluding Observations on Australia* (n 5) [26(a)].

⁷² *Australian Constitution* s 51, s 52.

⁷³ *Jury Act 1977* (NSW), *Juries Act 2000* (Vic), *Juries Act 1927* (SA), *Juries Act 1957* (WA), *Jury Act 1995* (Qld), *Juries Act 2003* (Tas) *Juries Act 1967* (ACT), *Juries Act 1962* (NT).

⁷⁴ Parliament of Australia, 'Chapter 3: Parliament of Australia' [3.36] <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/pre1996/treaty/report/c03>; *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 46.

⁷⁵ NSW Law Reform Commission, *Blind or Deaf Jurors* (Report No 114, September 2006) 60.

⁷⁶ *Jury Act 1977* (NSW) s 14, s 14A.

⁷⁷ *Ibid* s 14(4).

interpreters or stenography services.⁷⁸ Indeed, Ms Gemma Beasley was denied her request for an Auslan interpreter in NSW, thereby rendered unable to perform jury duty.⁷⁹ Similarly, Mr Michael Lockrey's request for live steno-captioning was denied under this same legislation.⁸⁰ No legislative change has been made following the CRPD Committee's Final Views that these denials violated human rights under the Convention.

Northern Territory

Currently, blindness, deafness and infirmity are lawful basis for automatic excusal from jury service under the *Juries Act 1962* (NT).⁸¹ The legislation does not allow for any consideration of the individual circumstances of a juror, nor whether they could perform jury duty if sufficient accommodations were made. This provision remains unchanged, despite *Lockrey*, *Beasley* and *JH*, and continues to operate as a blanket exclusion for hearing and vision disabled persons.

South Australia

South Australia's *Disability Justice Plan 2014-2017* prioritised identifying and overcoming barriers to persons with disability in performing jury duty.⁸² This was to be led by the Attorney-General's Department and the Courts Administration Authority, however, no information on the progress of this plan has been published.⁸³

Frustrated with the lack of progress in implementing the *Disability Justice Plan* and encouraged by growing research on inclusive juries,⁸⁴ cross-bench MP from the now-defunct Dignity Party, Kelly Vincent, introduced an amendment to the *Juries Act 1927* (SA) in 2017.⁸⁵ It sought to remove the ineligibility of anyone requiring Auslan interpreting from juries.⁸⁶ Unfortunately, her Bill lapsed without being passed by Parliament. Therefore, at present, a person remains ineligible for jury service in South Australia if they are 'physically unfit to carry out the duties of a juror' or 'ha[ve] insufficient command of the English language ... to properly carry out the duties of a juror'.⁸⁷

⁷⁸ NSW Government, *Government Response to the NSW Law Reform Commission Report 114: Blind or Deaf Jurors* (June 2010) 4.

⁷⁹ *Beasley v Australia* (n 9).

⁸⁰ *Lockrey v Australia* (n 2).

⁸¹ *Jury Act 1962* (NT) s 11(1).

⁸² South Australian Attorney-General's Department, *Disability Justice Plan 2014-2017* (Policy Paper) <<https://www.deai.com.au/wp-content/uploads/2014/11/Disability-Justice-Plan.pdf>>.

⁸³ Western Australian Department of Justice, Courts and Tribunal Services, *Participation of People with a Disability in Jury Service* (discussion paper, March 2020) 5.

⁸⁴ South Australia, *Parliamentary Debates*, Legislative Council, 15 November 2017, 15:59 (KL Vincent) <<http://hansardpublic.parliament.sa.gov.au/Pages/HansardResult.aspx#/docid/HANSARD-10-22145>>.

⁸⁵ *Juries (Auslan Interpreters) Amendment Bill 2017* (SA).

⁸⁶ *Juries Act 1927* (SA) s 133(1)(a)-(b); *Juries (Auslan Interpreters) Amendment Bill 2017* (SA), Part 2.

⁸⁷ *Juries Act 1927* (SA) s 13.

Queensland

In 2011, the Queensland Law Reform Commission recommended that people with physical disability be made eligible for jury service. The Commission proposed that eligibility should be determined following consideration of requests for accommodations.⁸⁸

Currently, however, persons who have ‘a physical or mental disability that makes [them] incapable of effectively performing the functions of a juror’ are still deemed ineligible for jury service in Queensland.⁸⁹ In practice, when potential jurors self-identify as having a disability, the Sheriff determines on a case-by-case basis whether they can serve.⁹⁰ This occurred in the 2016 case of *Lyons*, where a Deaf woman was excluded from jury service.

Queensland’s *Human Rights Act* took effect in 2020.⁹¹ It protects a number of civil, political, economic, social and cultural rights. This legislation provides a mechanism for securing domestic remedies for violations of human rights⁹² and has the potential to reinvigorate a discussion on inclusive juries in Queensland.

Tasmania

A person with a physical disability that renders them ‘incapable of effectively performing the duties of a juror’ is ineligible for jury service in Tasmania.⁹³ The Court or Sheriff may order a person not to perform jury service if the court believes such an order is ‘just and reasonable.’⁹⁴ By implication, not all persons with disabilities are ineligible for jury service, but no guidance is provided on how the capability of a juror is assessed, nor the meaning of the term ‘just and reasonable’.

In 2005, the Tasmanian Government developed a Disability Framework for Action (DFA) within which all government departments are to implement fair, just and rights-based policies for Tasmanians with disability.⁹⁵ An explicit goal of the DFA is to ensure persons with disabilities can serve as jurors.⁹⁶ However, the framework does not detail *how* the government will enable the participation of persons with disability in jury duty, and the *Jury Act* (Tas) has not been amended.

⁸⁸ Queensland Law Reform Commission, *A Review of Jury Selection* (Report, No 68, February 2011) 234 [8-10]— [8-13].

⁸⁹ *Jury Act 1995 (Qld)* s 4(3)(l).

⁹⁰ Queensland Law Reform Commission (n 88) 220, 233 [8-8].

⁹¹ *Human Rights Act 2019* (Qld).

⁹² *Ibid* s 49-s 51.

⁹³ *Jury Act 2003* (Tas) s 6.

⁹⁴ *Ibid* s 13.

⁹⁵ Tasmanian Department of Communities, *Accessible Island: Tasmania’s Disability Framework for Action 2018-2021* (policy paper) <https://www.communities.tas.gov.au/csr/policy/Policy_Work/accessible_island_tasmanias_disability_framework_for_action_2018-2021_dfa>.

⁹⁶ *Ibid* 20 [2.6].

Victoria

A person is ineligible to serve as a juror in Victoria if they have a physical disability that renders them incapable of performing the duties of jury service, or if they cannot adequately communicate or understand the English language.⁹⁷

The *Juries Act 2000* (Vic) does not explicitly deny persons with hearing or vision disability from jury service. Notwithstanding, there is presently a lack of specific guidance on the provision of reasonable accommodations by the courts. As a result, persons with disabilities may still be excluded indirectly by way of denial of necessary supports.

Moreover, the Victorian legislation does not account for jurors who communicate in Auslan, despite the broad acceptance of Auslan being a language derived from English.⁹⁸ The Victorian Law Reform Commission (VLRC) suggests that the legislation could be amended to read that a juror is ineligible to serve if they are ‘unable to communicate in or understand English or Auslan’ or, alternatively, allow for the presiding judge to determine a prospective juror’s ability to comprehend the evidence presented at the trial on a case-by-case basis.⁹⁹

In response to pressure from disability advocates, in 2020 the VLRC commenced an inquiry into increasing jury participation for persons who are deaf, hard of hearing, blind or have low vision. The Commission is seeking to identify which of Victoria’s laws and practices should be changed to promote jury inclusivity. An interim consultation paper emphasises the need for disability awareness training for court staff, judges and lawyers,¹⁰⁰ in accordance with Principle 10 of the *International Principles and Guidelines on Access to Justice for Persons with Disabilities*. The VLRC consultation paper references the CRPD Committee’s Views in *Beasley v Australia* and *Lockrey v Australia* as grounds for reform.¹⁰¹

The VLRC inquiry is promising, although the Commission is yet to publish its final recommendations, and when it does, its recommendations are not binding on the Victorian Government.

Western Australia

Under WA’s legislation governing jury processes, ‘persons who are not capable of serving effectively as a juror because [of] a physical disability ... are to be excused from jury duty.’¹⁰² Additionally, prospective jurors who require an Auslan interpreter are excluded from jury service due to legislation which prevents ‘any communication’ between a juror and a non-juror during a trial by jury.¹⁰³ It is in this jurisdiction in 2014 that Drisana Levitze-Gray became the first Deaf person in Australia to participate in a jury selection process, but shortly thereafter, ‘JH’ was excluded from jury service

⁹⁷ *Juries Act 2000* (Vic) Schedule 2(3)(a), (f).

⁹⁸ NSW Law Reform Commission, *Blind or Deaf Jurors* (Discussion Paper No 46, 2004) [3.34], cited by VLRC, 60.

⁹⁹ VLRC, *Inclusive Juries* (n 69) [7.35].

¹⁰⁰ *Ibid* [7.35].

¹⁰¹ *Ibid* [1.15].

¹⁰² *Juries Act 1957* (WA) s 334G(2)(f).

¹⁰³ *Criminal Procedure Act 2004* (WA) s 111(2)(c).

following her request for an Auslan interpreter, in violation of the CRPD.¹⁰⁴ Despite the Committee's finding in *JH*, Western Australia has not amended its legislation to prevent further rights violations.

However in 2020, the WA Department of Justice issued a discussion paper on the subject of inclusive juries. The paper explores the provision of supports such as interpreters, adjustments to courtroom layout, costs, training and legislative amendments.¹⁰⁵ Stakeholder submissions made in response to the discussion paper have not been published and the Government's position remains unclear.

Australian Capital Territory

The ACT amended its *Jury Act 1967* (ACT) in 2018 to ensure reasonable accommodations are made so persons with hearing and vision disability may perform jury duty.¹⁰⁶ Under this amendment, the judge has discretion to provide a reasonable accommodation on request. The judge can consider if it would impose a disproportionate burden on court resources, or whether the presence of a non-juror will hinder jury deliberations.¹⁰⁷ The legislation guides judges in determining whether reasonable accommodations can be provided and the nature of such accommodations. For example, Auslan interpreters, assistance animals, disability aids and support persons are among a non-exhaustive list of reasonable accommodations.¹⁰⁸

Under this amendment, the judge may authorise a person other than the twelve jurors to be present in jury deliberations. An interpreter or other support person must be sworn to well and truly interpret proceedings, and to not participate in or disclose the deliberations, but merely assist the juror in question.¹⁰⁹ This effectively creates an exception to the '13th person' rule.

This law reform appears to fulfil the Committee's recommendation in its 2019 *Concluding Observations on Australia* to 'develop legislation ... on the equal participation of persons with disability in the jury system'.¹¹⁰ However, no-one with a hearing or vision disability has yet tested the system by making use of the provision.¹¹¹

In addition to the 2018 legislative reform, disability awareness training is now available, but does not appear to be mandatory in the ACT court system or the ACT Sheriff's office.¹¹² This training seeks to increase the competency of staff in providing services to persons with disability, and to implement the recent reform.¹¹³ It can also further safeguard jury secrecy.¹¹⁴ This training partly fulfils the recommendation made by the

¹⁰⁴ *JH v Australia* (n 10).

¹⁰⁵ *Participation of People with a Disability in Jury Service* (n 83) 3 [5.1] – [5.5].

¹⁰⁶ *Courts and Other Justice Legislation Amendment Act 2018 A2018-9* (ACT).

¹⁰⁷ *Juries Act 1967* (ACT) s 16(3).

¹⁰⁸ *Ibid.*

¹⁰⁹ Schedule 1 Part 1.1A *Juries Act 1967* (ACT).

¹¹⁰ 2019 *Concluding Observations on Australia* (n 5) [26(a)].

¹¹¹ Gordon Ramsay (ACT Attorney-General 2016–2020) email to Winuri de Alwis (17 May 2021).

¹¹² ACT Department of Justice and Community Safety, 'ACT Courts', *For the Multicultural Community* <<https://www.courts.act.gov.au/coming-to-court/get-support/for-the-multicultural-community>>.

¹¹³ VLRC, *Inclusive Juries* (n 69) 78 [9.3].

¹¹⁴ Devlin (1966) 41–42; Holdsworth (1938), 553–554.

Committee in its 2019 *Concluding Observations on Australia*, which wants to see mandatory training for ‘police officers, prison officers, lawyers, judicial officers, judges and staff.’¹¹⁵

Conclusion

Everyone has an equal right to be tried by one’s peers, to participate in public life, to reasonable accommodations and to express oneself in public interactions. 2021 sees the launch of ‘We the 15’ – a decade of global activism to end discrimination against people with disability, who are some 15% of the world’s population.¹¹⁶ Australia is on the cusp of making its juries inclusive for people with hearing and vision disabilities and the path forward is clear. Experience in other jurisdictions shows inclusive juries can be better for everyone. In Ireland, for example, ensuring people do not to talk over one another in the courtroom for the sake of sign language interpreters has made it easier for everyone to follow proceedings.¹¹⁷

While some Australian states have taken steps towards reform, the ACT is alone in aligning its legislation with the *Convention on the Rights of Persons with Disabilities*, as developed in *General Comment No. 6* (falling short of making training mandatory and extending it to police and prison officers). The new provisions in the ACT have yet to be tested, but nonetheless provide a framework for reform in Australia’s other jurisdictions. Perhaps Victoria and Western Australia are the closest to following the ACT in making these rights advances, moving away from investigating the ability of persons with disabilities to perform jury duty to focus instead on reasonable accommodations.¹¹⁸

“Every time a person with disabilities is summoned to perform jury duty, a thorough, objective and comprehensive assessment of his or her request for adjustment [must be] carried out and all reasonable accommodation[s] duly provided to enable his or her full participation.”¹¹⁹

– *Beasley v Australia* and *Lockrey v Australia* and *JH v Australia*

¹¹⁵ 2019 *Concluding Observations on Australia* (n 5) [26(f)].

¹¹⁶ #WeThe15 campaign <www.wethe15.org>.

¹¹⁷ Conor Gallagher, ‘Galway woman makes history as first Deaf person to deliberate on an Irish jury,’ *The Irish Times* (5 October 2020).

¹¹⁸ Tammy Mills, ‘Law Reform needed to allow deaf and blind people on juries’, *The Age* (Melbourne, 17 January 2021) <<https://www.theage.com.au/national/victoria/law-reform-needed-to-allow-deaf-and-blind-people-on-juries-20210115-p56uav.html>>.

¹¹⁹ *Lockrey v Australia* [9(b)(i)]; *Beasley v Australia* [9(b)(i)] & *JH v Australia* [8(b)(i)].

Recommendations

Australia has largely failed to apply the UN Committee on the Rights of Persons with Disabilities' Final Views in *Lockrey* (2016), *Beasley* (2016) and *JH v Australia* (2018), and the Committee's 2019 *Concluding Observations on Australia* and the 2020 UN *Access to Justice Guidelines*. Of all Australian jurisdictions, the ACT is unique in having acted to realise the rights of people with visual and hearing disabilities to serve on juries. All states and territories must reform their jury laws, set guidelines for reasonable accommodations and provide mandatory disability awareness training.

In order to meet Australia's Convention obligations as determined by the Committee, Remedy Australia recommends that:

1. **The ACT make its disability awareness training mandatory** for police, prison officers, lawyers, judicial officers, judges and court staff.
2. After 5-7 years from 2018, and in close consultation with persons with disabilities and their representative organisations, **the ACT evaluate its inclusive juries model** against its *Human Rights Act 2004*, the *Convention on the Rights of Persons with Disabilities*, the Committee on the Rights of Persons with Disabilities' Final Views in *Lockrey* (2016), *Beasley* (2016) and *JH v Australia* (2018), the Committee's 2019 (or subsequent) *Concluding Observations on Australia* and the 2020 UN *Access to Justice Guidelines*.
3. **All other Australian states and territories**, "in close consultation with persons with disabilities and their representative organisations," consider the ACT's inclusive juries model in amending their "relevant laws, regulations, policies and programs" to enable people with vision and hearing disabilities to serve on juries,¹²⁰ including providing mandatory disability awareness training for police, prison officers, lawyers, judicial officers, judges and court staff.¹²¹
4. **The state of New South Wales provide Mr Lockrey and Ms Beasley** with effective substantive remedies for breaches of the CRPD found in *Lockrey v Australia* and *Beasley v Australia*, respectively, "including reimbursement of any legal costs incurred by [them], together with compensation."¹²²
5. **The state of Western Australia provide Ms JH** with effective substantive remedies for breaches of the CRPD found in *JH v Australia*, "including reimbursement of any legal costs incurred by her, together with compensation."¹²³

¹²⁰ *Lockrey v Australia* [9(b)(ii)]; *Beasley v Australia* [9(b)(ii)]; *JH v Australia* [8(b)(ii)].

¹²¹ 2019 *Concluding Observations on Australia* (n 5) [26(f)].

¹²² *Lockrey v Australia* [9(a)(i)]; *Beasley v Australia* [9(a)(i)].

¹²³ *JH v Australia* [8(a)(i)].

Bibliography

A Articles/Books/Reports

- Andrews, Mark, 'The times are a-changin' with COVID-19: And law firms show they can adapt' (May 2020) *Australasian Law Management Journal* 1
- Blackstone, William, *Commentaries on the Laws of England* (W Clarke and Sons, 2nd ed, 1809)
- Budworth, Brock, Trevor Ryan & Lorana Bartles, 'Reigniting the lamp: The case for including people who are blind or Deaf as jurors' (2017) 24(2) *University of Western Australia Law Review* 30
- Devlin, Patrick, *Trial by Jury* (Stevens, 3rd ed, 1966)
- Flynn, Eilionóir, 'The long road to reform' in Emily Julie Kakoullis & Kelley Johnston (eds) *Recognising Human Rights in Different Cultural Contexts: The United Nations Convention on the Rights of Persons with Disabilities (CRPD)* (2020, Springer)
- Holdsworth, William, *A History of English Law* (Methuen, 6th ed, 1938)
- Medwitzky, Larry, 'Mobile device apps for people with hearing loss', *Hearing Loss Magazine* (September/October 2015) 26
- Napier, Jemina & David Spencer (2008). 'Guilty or not guilty? An investigation of deaf jurors' access to court proceedings via sign language interpreting,' in D Russell & S Hale (eds), *Interpreting in Legal Settings* (72-122) (Gallaudet University Press)
- Napier, Jemina & David Spencer (2017). 'Jury instructions: Comparing hearing and Deaf jurors' comprehension via direct or mediated communication' *International Journal of Speech Language and the Law* 24(1) 1
- O'Regan, Sylvia Varnham, 'WA woman "first Deaf Australian to participate in jury duty"', *SBS News* (24 January 2014) <<https://www.sbs.com.au/news/wa-woman-first-deaf-australian-to-participate-in-jury-duty>>
- Palance, Patrick & Jordan Couch, 'Ten predictions: How COVID-19 will change the legal industry forever' (2020) 37 (6) *American Bar Association* 6

B Cases

- Lyons v Queensland* (2016) 259 (CLR) 518
- Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 288
- Youssef (A Pseudonym) v R* [2019] VSCA 240, 8 [37].

C Legislation

Australian Constitution

Courts and Other Justice Legislation Amendment Act 2018 A2018-9 (ACT)

Criminal Procedure Act 2004 (WA) s 111(2)(c)

Human Rights Act 2004 (ACT)

Human Rights Act 2019 (Qld)

Irish Sign Language Act 2017

Juries (Auslan Interpreters) Amendment Bill 2017 (SA)

Juries Act 1927 (SA)

Juries Act 1957 (WA)

Juries Act 1962 (NT)

Juries Act 1967 (ACT)

Juries Act 1974 (UK)

Juries Act 2000 (Vic)

Juries Act 2003 (Tas)

Jury Act 1977 (NSW)

Jury Act 1995 (Qld)

Police, Crime, Sentencing and Courts Bill 2021 (UK)

D Treaties

Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008)

Optional Protocol to the Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2518 UNTS 283 (entered into force 3 May 2008)

Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980)

E Views adopted by the CRPD Committee

UN Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Second and Third Combined Reports of Australia*, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019)

UN Committee on the Rights of Persons with Disabilities, *Views: Communication No 11/2013*, UN Doc CRPD/C/15/D/11/2013 (25 May 2016) (*‘Beasley v Australia’*)

UN Committee on the Rights of Persons with Disabilities, *Views: Communication No 35/2016*, UN Doc CRPD/C/20/D/35/2016 (20 December 2018) ('*JH v Australia*')

UN Committee on the Rights of Persons with Disabilities, *Views: Communication No 13/2013*, UN Doc CRPD/C/15/D/13/2013 (25 April 2016) ('*Lockrey v Australia*')

F UN Documents

International Principles and Guidelines on Access to Justice for Persons with Disabilities (August 2020)
<www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Access-to-Justice-EN.pdf>

UN Committee on the Rights of Persons with Disabilities, *General comment No. 6 (2018) on Equality and Non-Discrimination*, UN Doc CRPD/C/GC/6 (26 April 2018)

G Law Reform Commission Publications

New South Wales Law Reform Commission, *Blind or Deaf Jurors* (Discussion Paper No 46, 2004).

New South Wales Law Reform Commission, *Blind or Deaf Jurors* (Report No 114, September 2006)

Queensland Law Reform Commission, *A Review of Jury Selection* (Report, No 68, February 2011)

Victorian Law Reform Commission, *Inclusive Juries: Access for People Who are Deaf, Hard of Hearing, Blind or Have Low Vision* (Consultation Paper, December 2020)

Victorian Law Reform Commission, *Jury Empanelment* (Report No 27, May 2014)

H Government Resources

ACT Department of Justice & Community Safety, 'ACT Courts', *For the Multicultural Community* <<https://www.courts.act.gov.au/coming-to-court/get-support/for-the-multicultural-community>>

Australian Attorney-General's Department 'Response of Australia to the Views of the Committee on the Rights of Person with Disabilities in Communications No 11/2013 (*GB v Australia*) and 13/2013 (*ML v Australia*)', *Human Rights Communications* (27 June 2017) 2 <<https://www.ag.gov.au/sites/default/files/2020-03/M-L-v-Australia-Australian-Government-Response.PDF>>

Australian Attorney-General's Department, 'Response of Australia to the Views of the Committee on the Rights of Persons with Disabilities in Communication No 35/2016 (*JH v Australia*)' *Human Rights Communications* (11 February 2020) <<https://www.ag.gov.au/sites/default/files/2020-03/jh-australian-government-response-to-views.PDF>>

New South Wales Government, *Government Response to the NSW Law Reform Commission Report 114: Blind or Deaf Jurors* (June 2010)

Parliament of Australia, 'Chapter 3: Parliament of Australia' <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/pre1996/treaty/report/c03>

South Australia, *Parliamentary Debates*, Legislative Council (15 November 2017) 15:59 (KL Vincent)

<<http://hansardpublic.parliament.sa.gov.au/Pages/HansardResult.aspx#/docid/HANSARD-10-22145>>

South Australian Attorney-General's Department, *Disability Justice Plan 2014-2017* (Policy Paper) <<https://www.deai.com.au/wp-content/uploads/2014/11/Disability-Justice-Plan.pdf>>

Tasmanian Government Department of Communities, *Accessible Island: Tasmania's Disability Framework for Action 2018-2021* (policy paper) <https://www.communities.tas.gov.au/csr/policy/Policy_Work/accessible_island_tasmanias_disability_framework_for_action_2018-2021_dfa>

Western Australia Department of Justice, Courts and Tribunal Services, *Participation of People with a Disability in Jury Service* (discussion paper, March 2020) 5.

I Online Resources

Australian of the Year Awards (2015) 'Drisana Levitzke-Gray: Deaf advocate' <<https://www.australianoftheyear.org.au/recipient/drisana-levitzke-gray/1253/>>

Deaf Australia News, 'First Deaf person to take part in the jury process!' *Deaf Australia* (15 January 2014) <<https://deafaustralia.org.au/first-deaf-person-to-take-part-in-the-jury-process/>>

'E-courtroom: Online Courtroom for Registered Users' *Federal Court of Australia* <<https://www.fedcourt.gov.au/online-services/ecourtroom>>

Eireann, Seanad, (Debate 15 December 2017) vol 225 no 4 <<https://www.oireachtas.ie/en/debates/debate/seanad/2017-12-15/3/>>

Gallagher, Conor, 'Galway woman makes history as first Deaf person to deliberate on an Irish jury,' *The Irish Times* (5 October 2020) <<https://www.irishtimes.com/news/crime-and-law/galway-woman-makes-history-as-first-deaf-person-to-deliberate-on-irish-jury-1.4370644>>

Hewitt, WE, *Court Interpretation: Model Guides for Policy and Practice in the State Courts* (National Centre for State Courts, Williamsburg, 1995) <www.ncsconline.org/WC/Publications/Res_CtInte_ModelGuidesPub.pdf>

Hutson, Matthew, 'Lip-reading artificial intelligence could help the Deaf—or spies', *Science AAAS* (31 July 2018) <<https://www.sciencemag.org/news/2018/07/lip-reading-artificial-intelligence-could-help-deaf-or-spies>>

Illinois Library, 'Library guide: Blind/visual impairment: Common assistive technologies' <<https://guides.library.illinois.edu/c.php?g=526852&p=3602299>>

Rozenberg, Joshua & Diane Richardson, 'Civil justice for Harry Dunn?', *Law in Action*, BBC Radio 4 (4 March 2021) <<https://www.bbc.co.uk/programmes/m000sqlf>>

Mills, Tammy, 'Law reform needed to allow deaf and blind people on juries', *The Age* (Melbourne, 17 January 2021) <<https://www.theage.com.au/national/victoria/law-reform-needed-to-allow-deaf-and-blind-people-on-juries-20210115-p56uav.html>>

Swains, Howard, 'Subtitles help Deaf jurors past "13th stranger" court rules,' *The Guardian UK* (28 April 2019) <<https://www.theguardian.com/law/2019/aug/28/man-sets-legal-landmark-as-first-deaf-juror-in-english-court>>

#WeThe15 campaign <<https://www.wethe15.org/>>

J Other

ACT Sheriff's Office, email to Winuri de Alwis (13 May 2021)

Gauntlett, Ben, 'Technology must be gateway to inclusion for people with disability' (speech, Australian Human Rights Commission, June 2019)

People with Disability Australia, Submission to Productivity Commission Issues Paper, *Access to Justice Arrangements* (November 2013)

Ramsay, Gordon, ACT Attorney-General 2016-2020, email to Winuri de Alwis (17 May 2021)