

NSW Government Response to the NSW Law Reform Commission

Report 114

Blind or Deaf Jurors

June 2010

Government Response: NSW Law Reform Commission Report 114: Blind or Deaf Jurors

LRC Recommendation	Government Response
<p>Recommendation 1 - The Jury Act 1977 (NSW) be amended to reflect that:</p> <p>a) people who are blind or deaf should be qualified to serve on juries, and not be prevented from doing so on the basis of that physical disability alone;</p>	<p>Determining whether blind or deaf persons may participate in jury service requires a balancing of complex issues. The rights of individuals with disabilities to participate in the justice system must be weighed against the rights of the accused to a fair trial and the need to maintain an efficient and effective jury system.</p> <p>The LRC report (at p. 54) notes that ineligibility should be considered on a case-by-case basis, depending on the particular circumstances of the trial, including the nature of the evidence to be presented and the sensory issues arising. Schedule 2 and s.14 of the Jury Act currently set out the Sheriff's discretion to assess whether a person's disabilities prevent them from discharging jury duties. A person is ineligible if their disability makes them unable to perform the inherent duties of a juror.</p> <p>The Jury Amendment Bill 2010 omits s.14 and Sch.2 of the Jury Act. A new s.14 provides instead that a person may seek an exemption from jury service for good cause. In accordance with the definition of "good cause" in new s.14A, a person may seek to be exempted on the basis that "some disability associated with that person would render him or her, without reasonable accommodation, unsuitable for or incapable of effectively serving as a juror".</p> <p>The Sheriff, the court or the Coroner may also excuse a person for good cause. New s.14 also provides that a person may request the Sheriff to exempt him or her permanently from jury service because the person suffers from a permanent mental or physical impairment that results in jury service being incompatible with the person's good health or that otherwise renders the person unable to perform jury service.</p> <p>The NSW Government will undertake a review of the terms of the Sheriff's current policy on the participation of deaf or blind people in juries, in conjunction with a review of policy guidelines and professional development activities. The review will take account of technological advances since the policy was established and the range of reasonable adjustments courts may provide to promote greater participation of people with hearing and sight impairment. Disability groups will contribute to the review through Diversity Services in the Department of Justice and Attorney General. A principle of best endeavour will guide the review, meaning that the Sheriff's Office should make their best endeavours to facilitate inclusion of persons with disabilities in the jury system. The review will commence as soon as possible, aiming to complete within 12 months.</p>

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<p>b) people who are blind or deaf should have the right to claim exemption from jury service;</p>	<p>Several mechanisms are already available under the Jury Act 1977 for a blind or deaf person to be excused from jury duty:</p> <ul style="list-style-type: none"> • s.14 (and Schedule 2) whereby the Sheriff has determined that profoundly deaf and blind persons are unable to discharge juror duties and are therefore deleted from the Roll • s.18A Sheriff may excuse a person from jury service before being summonsed where good cause is shown • s.38 the Court or Sheriff may excuse a person summonsed for jury service before or at trial for good cause • s.53B the Court holds a discretionary power to discharge a juror if it appears their ability to perform juror functions is affected <p>The Jury Amendment Bill 2010 omits ss.14 and 18A and, as outlined in relation to recommendation 1(a), provides instead that an exemption from jury may be sought on the basis of "good cause", or permanently, in certain circumstances.</p> <p>The Sheriff, court and Coroner also have a discretionary power to discharge a juror on the basis of "good cause".</p>
<p>c) the Court should have the power to stand aside a blind or deaf person summonsed for jury duty if it appears to the Court that, notwithstanding the provision of reasonable adjustments, the person is unable to discharge the duties of a juror in the circumstances of the trial for which that person is summonsed. This power should be exercisable on the Court's own motion or on application by the Sheriff;</p>	<p>As stated under Rec 1.b) above, the Jury Amendment Bill 2010 provides that the Sheriff, courts and Coroner may discharge a person for "good cause", the definition of which includes "some disability associated with that person would render him or her, without reasonable accommodation, unsuitable for or incapable of effectively serving as a juror".</p> <p>The Court also has a discretionary power to discharge a juror if it appears that their ability to perform juror functions is affected.</p>
<p>d) interpreters and stenographers allowed by the trial judge to assist the deaf or blind juror should swear an oath faithfully to interpret or transcribe the proceedings or jury deliberations;</p>	<p>If this recommendation were accepted, stenographers and interpreters would need to take the appropriate oaths. However, due to the concerns raised in relation to recommendations 1e) and f), this recommendation is not accepted.</p>

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<p>e) interpreters or stenographers allowed by the trial judge to assist the deaf or blind juror should be permitted in the jury room during deliberations without breaching jury secrecy principles, so long as they are subject to and comply with requirements pertaining to the secrecy of jury deliberations; and</p>	<p>Stakeholders raised several concerns about the nature of evidence in certain trials making it difficult for profoundly deaf or blind persons to perform properly the vital functions and duties of jury service. These concerns included the ability of interpreters to translate evidence objectively for a juror such as non-verbal witness behaviour and descriptions of images contained in evidence such as photographs, plans and video evidence (for example, CCTV footage commonly relied on in criminal trials or footage of search warrants being executed). There were also stakeholder concerns about the presence of interpreters in the jury room during deliberations with queries raised as to whether effective safeguards are possible to ensure that the information conveyed to deaf or blind jurors is exactly the same as evidence given or presented in court. Stakeholders also raised concerns about the impact the introduction of interpreters or stenographers would have on the complexity, cost and duration of trials.</p> <p>In view of these concerns over whether it is possible accurately and comprehensively to translate or recount sensory evidence to blind or deaf jurors, this recommendation cannot be supported at this stage. The NSW Government will continue to monitor developments in disability aids, technologies and interpreter services, and review current policies applying to people with disabilities to promote greater jury participation of people with hearing and sight impairment. An overarching principle of best endeavour will guide the Sheriff's Office (in conjunction with the Diversity Services in the Department of Justice and Attorney General) to regularly assess the array of reasonable adjustments available to improve inclusion of deaf or blind persons in juries.</p>
<p>f) offences be created in similar terms to those arising under s 68A and 68B of the Act, in relation to the soliciting by third parties of interpreters or stenographers for the provision of information about the jury deliberations, and in relation to the disclosure of information by such interpreters or stenographers about the jury deliberations.</p>	<p>See response to Rec 1e).</p>
<p>Recommendation 2 - The Sheriff should develop guidelines for the provision of reasonable adjustments, including sign language interpreters and other aids for use by deaf or blind jurors during trial and deliberation.</p>	<p>The Department of Justice and Attorney General currently has arrangements in place for making reasonable adjustments for people with disabilities whose circumstances do not prevent them from carrying out the inherent functions of a juror (for example, hearing loop aids). A review of current practice and guidelines supporting jurors will be carried out to assess the amount of reasonable adjustments currently provided (for example, the transcription of evidence into large print formats for jurors with sight impairment) and to determine whether these could be better publicised and/or expanded.</p>

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	<p>Training and development is an ongoing requirement for staff within the Sheriff's Office and court personnel through induction training, staff meetings and courses. A review of disability service education by the Sheriff's Office in consultation with the Diversity Services in the Department of Justice and Attorney General will be undertaken to ensure internal management procedures use up-to-date principles for greater inclusion of persons with disabilities in the jury system.</p>
<p>Recommendation 3 - A blind or deaf person receiving a Notice of Inclusion on the jury Roll or a jury summons should be required to complete a form either claiming exemption from jury duty or notifying the Sheriff of the reasonable adjustments required by that person to participate as a juror.</p>	<p>The Sheriff's Office currently asks persons with disabilities to contact it at the Notice of Inclusion stage to determine whether that person can discharge the inherent functions of a juror. Persons requiring reasonable adjustments are currently requested to contact the Sheriff's office and discuss their requirements; these are provided where possible for particular court facilities.</p> <p>Section 13(2) of the Jury Amendment Bill 2010 provides that the notice sent by the Sheriff to persons included in the supplementary jury roll for a district may include questions as to whether the person has a physical disability that would require some form of assistance or aid to be rendered to the person to enable them to discharge the duties of a juror.</p>
<p>Recommendation 4 - All relevant personnel, including judicial officers and court staff, should be given the opportunity to participate in professional awareness activities that focus on practical measures to facilitate the inclusion of blind or deaf persons as jurors. The Judicial Commission should develop supporting materials and procedural guidelines as part of this process.</p>	<p>Training and development is an ongoing requirement for staff within the Sheriff's Office and court personnel through induction training, staff meetings and courses.</p> <p>The issue of professional awareness training on disability services to promote greater participation of people with disabilities in the jury system will be referred to the Judicial Commission for the Commission's consideration.</p> <p>The Justice and Attorney General's Disability Strategic Plan includes strategies to remove discriminatory practice and improve access to services. Flexible service delivery and disability awareness training within the court system will be reviewed to focus on promoting greater participation of blind or deaf persons in the jury system with the introduction of an overarching principle of best endeavour.</p>