

# Report

Preliminary results November 2016

Australian Research Council Linkage Project I20200261

## Participation in the administration of justice: deaf citizens as jurors

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Funding:	Australia Research Council Linkage Program 2012 Round 2 (LP120200261)
Partner Organisations:	Deaf Australia (DA), Australian Federation of Deaf Societies (AFDS), Australian Sign Language Interpreters Association (ASLIA)
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Project Dates:	2013-2016

## Acknowledgements

This project *Participation in the administration of justice: deaf citizens as jurors* was carried out with funding from the Australian Research Council Linkage Program 2012 Round 2, and in-kind support from the University of New South Wales, Australian Catholic University, Heriot Watt University and the University of Alberta.

During the project, the support of Partner Organisations: Deaf Australia (DA), Australian Federation of Deaf Societies (AFDS), Australian Sign Language Interpreters Association (ASLIA), and Advisory Group members has been essential. We particularly thank our contacts at Legal Aid NSW, NSW Department of Police and Justice, and NSW Police Force, for all of their in-kind and logistical support.

We are also grateful for the logistical support during the mock-trial from Chantelle Porter, Jake Fing, Ivan Yau and Chirata Deneve Thomsen, who were Law and Interpreting students from the University of New South Wales.

We gratefully acknowledge the very capable work of our research officer, Dr Julie Lim, and our research assistants: Gerry Shearim and Silvia Martinez.

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## 1. Project Aims

Deaf people cannot currently serve as jurors in most, if not all, Australian jurisdictions. The exclusion of deaf people who otherwise satisfy the criteria for jury selection could be considered a human rights issue that would be of interest to linguists, lawyers and legal scholars, anthropologists, criminologists, and communication scholars. The primary aim of this research project was to investigate the capacity of deaf people who use sign language to participate in the administration of justice by serving as jurors. The results of the project will expand Australia's knowledge base about court interpreting and jury service, by pioneering the first study of its kind.

The key objectives of the study were to:

- assess the ability for deaf jurors to access a courtroom trial and jury deliberations via Australian Sign Language (Auslan) interpreters;
- explore how a deaf person can participate in jury deliberations when relying on an interpreter;
- examine the impact of having an interpreter as a '13th person' in the jury room;
- investigate how the presence of a deaf juror impacts on the administration of justice drawing on the perspectives of legal advocates, representatives from the bench, and other stakeholders, as well as consider the potential impacts on witnesses and the accused.

## 2. Background

Research on sign language interpreting is an emerging sub-discipline of interpreting and translation studies (Pöchhacker, 2004). Burgeoning Australian research has significantly strengthened the knowledge and understanding of the Auslan interpreting context in recent years (e.g. Bontempo & Napier, 2007; Napier, 2002). Court interpreting studies have discussed linguistic aspects of court interpreting, the role of the court interpreter, and ethical dilemmas faced by court interpreters (e.g. Berk-Seligson, 1990/2002; Hale, 2004/2010). There has been much discussion of issues for spoken and signed language interpreters in the Australian court system (e.g. Cooke, 2009; Lee, 2009).

Deaf people's access to justice in court via sign language interpreters has been extensively discussed (e.g. McCay & Miller, 2001). Brennan and Brown (1997) conducted a major study to assess deaf people's access to courtroom discourse in the UK. They observed British Sign Language interpreters working in court, administered a survey of legal interpreters, and interviewed deaf people and interpreters about their legal interpreting experiences in police, court and other legal settings. Another significant investigation of sign language interpreting in court was conducted by Debra Russell (2002), who investigated the accuracy of sign language interpretations in Canadian courtroom discourse by contrasting the outcomes of simultaneous and consecutive interpreting approaches during four mock trials with real judges and lawyers, some with experience of working with spoken and signed language interpreters. Napier (2011) conducted a study of remote Auslan interpreting provision in court through audio-visual link (AVL), by comparing 5 case studies of hearings taking place through AVL where the deaf client and Auslan interpreter were in different locations.

Although incredibly informative in terms of sign language interpretation in court, all these studies have focused on interpreting for people who are accessing the justice system, as witnesses, defendants or complainants. Greater numbers of deaf people worldwide are now accessing higher education via interpreters and working in professional roles. Thus there is an emerging new paradigm of sign language interpreting—the 'designated interpreter'—who specialises in working with deaf professionals in their workplace context (Hauser & Hauser, 2008). This paradigm includes working with deaf lawyers (Kurlander, 2008). One of the

advisory group members to this project during the application stage was Kathryn O'Brien, the first Australian deaf lawyer to use an Auslan interpreter in court for a trial in 2011 (Lawyers Weekly, 2011).

So if interpreters can provide access to justice for deaf lawyers to do their job, can they provide sufficient access for deaf jurors to perform their role? In Australia, people are not permitted to serve as jurors if they are unable to read or understand English, or if they are unable, because of sickness, infirmity or disability, to discharge the duties of juror. Technically neither of these reasons applies to deaf people, as they can read and understand English, and if an Auslan interpreter is present, they would be able to access the courtroom discourse and discharge their duties as a juror.

## **2.1 Jury service, comprehension and participation**

In their role as the finders of fact and not law, jurors should understand and weigh up the evidence presented, assess the credibility of witnesses and decide on the likelihood of certain events having occurred, leading them to a decision on whether the Crown has proved its case to the necessary standard of proof (beyond reasonable doubt). Therefore, as opposed to witnesses, defendants or complainants who typically report their version of events, a juror has to make decisions based on the understanding and interpretation of evidence presented in court. Thus their information access needs are different (Mather & Mather, 2003). The legal definition of “capacity” relates to the ability of people to make their own decisions. Capacity is assessed based on the following principles: presumption that a person has capacity; that capacity is decision specific; assessment of the person’s decision-making ability—not the decision they make (NSW Attorney General, 2008). These principles could also be applied to the assessment of whether deaf people can serve as jurors. In order to make decisions as a juror, people need to be able to comprehend the content of courtroom discourse, as well as follow the judicial directions that should shape and constrain their decision-making.

Broadly speaking, many legal commentators and judges have expressed scepticism as to the capacity of jurors to follow complex evidence, as well as what have become increasingly complex directions (Hunter et al., 2015). The seminal study on juror comprehension was conducted by Charrow and Charrow (1979), who tested and supported the hypothesis that standard jury instructions are not well understood by most jurors, based on an analysis of 14 standard jury instructions. Subsequent related studies have also confirmed that jurors find it difficult to comprehend courtroom proceedings and jury instructions (e.g. Levi, 1993; Trimboli, 2008). The NSW Law Reform Commission (2008) conducted an enquiry into jury directions in criminal trials, including the ability of jurors to comprehend and apply the instructions given to them by a judge, with recommendations to enhance comprehension and participation in jury deliberations. A major inquiry in Victoria in 2014 (Weinberg, 2012) led to the enactment of a new *Jury Directions Act 2015* (Vic) designed to simplify jury directions in relation to both substantive criminal law and the assessment of evidence.

## **2.2 Deaf citizens as jurors**

Currently, deaf people are unable to serve as jurors in most, if not all, jurisdictions in Australia. Deaf people have been permitted to serve as jurors in some states of the USA for a number of years (Language Services Section (LSS), 2000). More recently, deaf citizens have been permitted to serve on juries in New Zealand (The Dominion Post, 2005). Non-English speaking people can now serve as jurors in the state of New Mexico in the United States (Montalvo, 2001). Thus, the exclusion of deaf people who otherwise satisfy the criteria for jury selection could be considered a human rights issue. Originally deaf people were exempted from jury duty, due to their inability to hear. Though a number of inquiries in England, Australia and Ireland, as well as drawing on the experience in United States’

jurisdictions, it has been established that: (a) deaf people have the capacity to make decisions as jurors, and (b) deaf people can sufficiently comprehend courtroom discourse and jury deliberations through a sign language interpreter. However, in Australia, a recent decision of the High Court has confirmed that current legislative frameworks do not permit a deaf citizen to participate on a jury. In *Lyons v Queensland*, the High Court was asked to determine whether the exclusion of Gaye Lyons, a deaf citizen, from a jury panel amounted to unlawful discrimination on the basis of disability. In holding that there was no unlawful discrimination, the court relied on the fact that the relevant legislation did not expressly authorise the presence of an additional person in the jury room during deliberations. Because Lyons could not participate in deliberations without the presence of an interpreter she was (in the words of the Act) 'incapable of effectively performing the functions of a juror' and was thus ineligible for jury service. In rejecting Lyons' appeal, the court confirmed that the continued application of a longstanding common law principle that there cannot be a non-juror 'stranger' (i.e., an interpreter) as a 13<sup>th</sup> person in the jury room (Heffernan, 2010). This principle reflects both the strong commitment to the confidentiality of jury deliberations as well as a concern that an interpreter would inappropriately participate in, or otherwise influence or inhibit full and frank discussion, jury deliberations. In support of its decision, the court pointed out that the *Jury Act 1995* (Qld) did not provide for an interpreter to take an oath to maintain confidentiality, equivalent to that taken by jurors. Significantly, none of the decision makers in the Lyons litigation based their decision on a finding that a deaf juror in fact lacked the capacity (in the sense described above) to participate on a jury, but rather they found that there was a legislative bar to their participation. The approach and outcome in *Lyons* can be contrasted with the position taken by the United Nations Committee on the Rights of Persons with Disabilities in relation to two Communications, challenging the exclusion of two deaf people from the jury pool. The UN Committee found that failing to make provision to include deaf citizens on juries amounted to a breach of Australia's obligations under the Convention on the Rights of Persons with Disabilities (CRPD, 2016). However, as discussed further below, both the NSW Law Reform Commission (2006), as well as interpreting scholars (e.g. Turner & Brown, 2001), have noted that interpreters are bound by a code of ethics which requires interpreters to remain impartial and uphold confidentiality. While the obligations of confidentiality, as well as the courts obligations to ensure a fair trial are important, there is no evidence (from studies or from experience in US jurisdictions) that an interpreter, as a 13<sup>th</sup> person in the jury room, would have a deleterious effect on the nature and/or confidentiality of jury deliberations.

### 2.3 Research on deaf jurors

The 2006 NSW Law Reform Commission inquiry mentioned above recommended to the NSW Attorney General that deaf people who use sign language should be permitted to serve as jurors, after drawing on findings from a pioneering pilot study conducted by Napier, Spencer and Sabolcec (2007), which investigated deaf juror comprehension of legal discourse. The aims of the study were to: (i) investigate the accuracy of English to Auslan interpretations of legal transcripts taken from court proceedings; (ii) determine the level of comprehension of interpretation of potential deaf jurors as compared to a control group of hearing jurors; and (iii) assess the ability for deaf jurors to access court proceedings via sign language interpreters.

Two excerpts from a judge's summation from a real court case were interpreted into Auslan by an experienced legal interpreter, and filmed. The excerpts provided directions to the jury on the difference between murder and manslaughter and the legal requirement of causation (*actus reus*) to support a verdict of guilty. Two versions of a comprehension test were then developed in English and Auslan, according to established testing methodologies, to check understanding of the facts of the case and legal concepts, and included closed, multiple choice and open-ended questions. Six deaf and six hearing people acting as jurors then watched/listened to the summation and completed the comprehension test in English or

Auslan. The results showed that the interpretation was highly accurate in terms of conveying legal concepts, and that both hearing and deaf 'jurors' misunderstood some concepts. In relation to the closed/ multiple choice questions, approximately 10.5% of the questions were answered incorrectly by all participants. Of the open-ended questions, some responses were problematic for both deaf and hearing participants. In the post-test interviews, all participants commented that the facts were easy to follow, but that the legalistic language and amount of repetition made the text difficult to comprehend. In summary, findings showed that both the deaf and hearing 'jurors' equally misunderstood some terms and concepts, and thus deaf people can equally understand the facts of a case and complex legal doctrine as their hearing counterparts. Analysis of findings showed that legal facts and concepts can be conveyed in Auslan effectively enough for deaf people to access court proceedings and thus serve as jurors.

The ground-breaking findings of the pilot study were reported in two newspaper articles (Mitchell, 2007; Nickless, 2007) as well as in the journal of national and international law reform (Napier & Spencer, 2007) and an international volume on interpreting in legal settings (Napier & Spencer, 2008). The pilot study was followed up with a further investigation which consisted of the administration of the same comprehension test with 60 deaf and hearing people throughout Australia to test for statistical significance. The study found that, as in the pilot study, both hearing and deaf 'jurors' misunderstood some concepts (Napier & Spencer, submitted). A further study which involved a survey of, and interviews with, legal practitioners and sign language interpreters' perceptions of the feasibility of deaf people serving as jurors (Napier & McEwin, 2015) found that in principle these stakeholders felt it is feasible.

In addition to examining the level of comprehension and perceptions of stakeholders, it is vital to analyse a deaf juror's participation in jury deliberations, and the impact of having interpreters in the jury room, before a true understanding of the capacity and feasibility for deaf people to serve as jurors can be achieved.

## **2.4 Statement of the problem**

Although we knew that deaf people could understand a judge's summation and courtroom discourse through interpreters, we were still presented with a problem in that we needed to understand more about how they can participate in the jury deliberation process and how their (and the interpreters') presence would actually impact on a criminal trial. This information is vital for the legal system to consider how deaf people can be involved; for the Australian Sign Language Interpreters Association (ASLIA) and the Australian Federation of Deaf Societies (AFDS) to understand how to provide and train interpreters for deaf jurors, as opposed to defendants or witnesses; and for Deaf Australia in order to educate the Deaf community about how they can perform their civic duty as jurors.

The jury trial is a uniquely oral performance, but we needed to consider the implications for communication when information is transformed from an oral to a visual form. The oral trial itself is a transformation of the written word into the oral word, so providing interpretation into another language means a further layer of translation is occurring. An investigation of interpreting for deaf jurors may identify principles of interpreting for potential future deaf solicitors, barristers and judges to participate in the administration of justice. This research study has addressed several important problems in relation to sign language interpreting, deaf people and the Australian legal system. There is a lack of research on sign language interpreting generally, especially from Australia, and particularly in the legal domain. In light of the 2007 *United Nations Convention of the Rights of People with Disabilities (UNCRPD)*, and the fact that the United Nations Committee on the Rights of People with Disabilities in May 2016 upheld appeals from two deaf people in NSW that their exclusion under the NSW Jury Act 1977 amounted to a breach of their rights under the UNCRPD, the assumption that deaf people in Australia are unable to serve as jurors is problematic.

### **3. Approach and methodology**

This multi-method qualitative study collected data from a mock-trial and post-trial stakeholder interviews and focus groups.

The study is grounded in an Interactional Sociolinguistics (IS) conceptual framework (Gumperz, 1982) which has been used elsewhere in interpreting studies (Metzger, 1999; Roy, 2000; Wadensjö, 1998). IS embraces contextual data, such as ethnographic observation, discourse analysis of language use in context and retrospective interviews with participants, which can help the researcher to better understand and pinpoint sources of (mis)communication and shifts in footing by participants. The framework has been applied by (Tannen, 2005) to investigate (mis)communication in cross-cultural interaction, so it is an apt framework to analyse the interpreted communication and interaction that takes place in jury deliberations. Furthermore, Interaction Process Analysis (Bales, 1950) is another tool that was used to classify human behaviours and reactions between participants during the jury deliberations. Content analysis (Krippendorff, 2004) and thematic analysis (Silverman, 2006) were used to analyse participant interviews and follow-up focus group discussions.

The study has adopted an inter-disciplinary approach to working with the Deaf community, sign language interpreters and legal professionals to develop an understanding of how deaf people can sufficiently access court proceedings and interactions in order to make informed decisions as jury members. In the context of this study, a one-off event is more realistic given the complexity of organising a mock-trial. This was a qualitative, not an experimental study. It addressed the following key questions:

1. Does the presence of an interpreter as 13th person in the jury room have an impact on jury deliberations?
2. What are the interaction patterns of jury deliberations when a deaf juror and sign language interpreter are present?
3. What are hearing juror perceptions of deaf juror participation and sign language interpreter presence in jury deliberations?
4. What are stakeholder perceptions of the presence of a deaf juror in a courtroom trial?

The research methodology involved three key stages and a complex matrix of data collection. The first stage focused on planning and preparation of the mock-trial. The organisation of the mock-trial was complex, and time was spent: sourcing an appropriate trial scenario; identifying appropriate participants; and, organising the logistics of the mock-trial with legal personnel, a complainant, defendant and witnesses, a jury, and sign language interpreters. Court observations in the USA were also carried out to inform the planning of the mock trial. Stage 2 concentrated on carrying out the mock trial, followed by the collection and analysis of the mock-trial and post-trial interview data. The final stage, Stage 3, saw further data collection from focus groups and discussion groups with key stakeholder individuals and groups. The focus and discussion groups were quantitatively and qualitatively analysed.

### **4. Project progress**

From July 2013, the project's investigators consulted with partner organisations and advocates from Legal Aid NSW to discuss the different stages of the research project. The NSW Department of Attorney General and Justice assisted in booking a courtroom, and investigators were able to start planning for a mock trial to be carried out in July 2014. This discussion and planning stage involved deciding on a suitable trial case which a mock jury would witness and deliberate on, and engaging various legal professionals to participate in the trial. This was done with the invaluable assistance of two senior Legal Aid NSW lawyers,

Stephen Doumit and Paul Johnson, who were also involved in the preparation of the mock trial.

A National Ethics Application Form submitted to undertake the project was approved by the UNSW Human Research Ethics Committee (ref. # HC14049) in March 2014.

The running of the mock trial has been followed by a period of reporting and consultation with relevant stakeholders, in particular, widening consultations to include a broader cross section of the legal and judicial community.

#### **4.1 US observations of deaf juror empanelment**

At the end of March 2014, partner investigators Napier and Russell visited the New York State Courts at the Monroe Country Hall of Justice in Rochester, USA. They undertook an ethnographic observation of the jury empanelment process involving deaf jurors, and also had the opportunity to speak with various legal practitioners and court personnel concerning jury service for the deaf. The aim of the ethnographic observation and conversations undertaken in the USA in March 2014 was to give investigators the opportunity to observe the processes, interactions, and communication between deaf people, sign language interpreters and any court personnel, in order to inform the design of the Sydney mock trial, carried out in July 2014.

The USA has a long history of deaf people serving as jurors, dating back to 1979. Because of the constitutional and moral imperative that exists in the USA not to exclude unreasonably a citizen with a disability from an activity that is the right and responsibility of all other citizens, various states have established guidelines for the provision of sign language interpreters for deaf jurors. For example, the New Jersey Guidelines covers the scheduling of interpreters, the qualifications and experience required of interpreters to work with deaf jurors, positioning of the interpreters in the jury empanelment process, positioning of interpreters and deaf jurors in the courtroom during trial, and instructions to the jury about the interpreters' role. Rochester, in New York State, is home to the Rochester Institute of Technology (RIT) and the National Technical Institute for the Deaf (NTID), so there is a large population of deaf American Sign Language (ASL) users living in the city, and as such, the Monroe County Courts have a well-established system that includes provisions to allow for deaf ASL users to serve as jurors.

##### **4.1.1 Observations of jury selection process**

Napier and Russell spent one week at the Monroe Country Courts, during which they were able to observe a full day covering the jury pool induction and waiting period and the jury empanelment process, including one deaf juror and an ASL/English interpreter. They observed that in the jury induction waiting area, the interpreter explained her role before entering the court room. She would occasionally engage in conversation with the deaf jury pool member while waiting, but minimally so, and not about anything to do with the case being selected. The interpreter appeared confident about the processes involved and occasionally made comments to the deaf jury pool member about what was happening and why (e.g. while waiting and during the selection process). The work was tiring for one interpreter on her own for the full day, and the investigators were informed that when a deaf person is selected for jury service, two interpreters are provided for the trial. It was also observed that the interpreter's ergonomics were less than satisfactory: her seat was uncomfortable; she kept fidgeting, and crossing and uncrossing her legs. Although the deaf juror was not ultimately selected for jury, the observations presented valuable insight into how a deaf juror might participate in the trial process, what information they receive, and how an interpreter works with a deaf juror.

#### **4.1.2 Interpreter costs/funding**

Each month it is typical to have a deaf person participate in the jury selection process and interpreters who are certified and have specialised legal training work for the empanelment and subsequent trials if the deaf person is selected. In spite of the significant cost involved in having interpreters (approximately US\$300,000 annually, including US\$100,000 for ASL interpreting), there is a shortage of interpreters across most major cities in the USA and interpreters do not always want to work for the rates paid by the courts, which tend to be lower than in the private sector.

#### **4.1.3 Specialised training for interpreters**

The importance of specialised training was a common theme from the conversations. In the USA, the Register of Interpreters for the Deaf, Inc. (RID) administers a national program of training for the *Specialist Certificate: Legal (SCL)* that can be undertaken with a minimum of an undergraduate degree in interpreting and relevant experience. The training is two years part-time, followed by a specialised skills and knowledge exam that leads to national certification as a specialised legal interpreter. There is noticeable difference in quality of interpreters that are SCL certified. However, not all states require the SCL and therefore, courts might be accessing interpreters who lack the specialised skills and knowledge required.

#### **4.1.4 'Fearing the work'**

The issue of interpreters fearing the work arose from a combination of interpreters lacking the specialised training for interpreting in legal settings, and legal discourse having no schema for what might take place in such a legal event. It was also a matter of other interpreters who do the work engaging in what investigators call 'gatekeeping'—some existing interpreters who like the work and wish to maintain their workload say to potential interpreters: "it's difficult, you can't make a mistake and they don't treat us well", creating an impression that the working conditions are terrible and that one can be held liable for mistakes, feeding that fear.

#### **4.1.5 Judicial perceptions on deaf people and interpreters**

Among the judges and lawyers there were differing perceptions concerning the notion that having an interpreter working might be distracting for the jurors and they might miss the aspects of the trial; one lawyer spoke about having the attention taken away from him and worried about it undermining the process based on a misconception that the interpreter could bring a bias into the trial. Other lawyers and judges who had positive experiences did not report that it was distracting at all if the interpreter was well trained in both language and protocol. There was overall general agreement that experiences with deaf people were positive, however, some were concerned that the interpreters did not respect the judicial space and the jurisdiction of the judge, and others emphasised the need for interpreters to be unobtrusive and not to be advocates for the deaf juror.

#### **4.1.6 Appropriateness of trial**

Some judges said that they wished they could select the trials that might be appropriate for an interpreter, suggesting that interpreters would not be able to work in a trial where there is audiotaped surveillance, again, based on misperceptions of what interpreters can handle in the language. The lawyers, on the other hand, did not perceive this as problematic. One suggestion for cases involving audio-taped evidence (e.g. a wire-tapped conversation) was for transcripts to be provided to all deaf *and* non-deaf jurors.

#### **4.1.7 Accommodations**

Some deaf people expressed a desire to have captioning in the courtroom with interpreters. This has not been introduced as yet.

#### **4.1.8 Translatability**

Finally, the over-arching question from judges and lawyers was in relation to translatability, as they suspected that interpreters could not adequately convey emotions and the effect of a witness. They (inaccurately) assumed that signed languages are impoverished compared to spoken languages, without ways to address concepts covered in the courtroom.

### **4.2 Mock trial**

On 16-17 July 2014, project investigators simulated a mock trial at the Sydney West Trial Courts in Parramatta, facilitated by the NSW Department of Police and Justice. The trial, involving authentic legal practitioners and actors as witnesses, was observed by a mock jury comprising eleven hearing jurors and two deaf jurors. Two Auslan interpreters interpreted for two deaf jurors (with only one deaf juror participating in deliberations).

The development of the drugs-related trial case was led by two senior Legal Aid lawyers, Steven Doumit and Paul Johnson, who were instructing solicitors respectively for crown prosecutor Tim Macintosh and defence lawyer David Evenden during the mock trial. The trial was presided over by retired district court judge, Justice Chris Geraghty, with actors performing in the roles of the accused and his mother, two serving members of the NSW Police Force as informants and Eve Gerzabek, a current court officer, performed that role.

The mock jury, initially comprising eleven hearing jurors and two deaf jurors, observed the trial proceedings, interpreted by two alternating university trained Auslan interpreters seated nearby. The hearing jurors were given a written brief about the role of the interpreter prior to commencing the trial. The position of the interpreters was determined in order to establish sightlines and to allow for filming.

Prior to jury deliberation on the second day, the number of deaf jurors was reduced to one, bringing the total number of jurors deliberating to twelve. The two Auslan interpreters entered the jury deliberation room to interpret for the deaf juror. A verdict was reached in just over two hours.

Following the mock trial, investigators conducted interviews with the actors, witnesses, legal professionals, court personnel, deaf jurors and Auslan interpreters, in addition to a focus group with the hearing jurors. Their research findings are presented below.

#### **4.2.1 Perceptions of the interpreter's role**

Interviewees who were legal personnel (i.e. court officers, counsel, etc.) expressed a consistent understanding of the role of the interpreter in a trial and all believed the interpreters should be appropriately qualified, though some of the 'hearing' participants were not aware of the interpreter accreditation process and ethical requirements. The deaf jurors were very clear on what the minimum requirements would be for interpreters working in court. All agreed on the value of having interpreters with training and experience in court procedures and/or the law as a necessary prerequisite to their employment.

### **4.2.2 Interpreting accuracy**

Hearing interviewees expressed concern about the accuracy of the interpreting and anxiety over the possibility that the interpreting might be inaccurate. The more assured interviewees were about the interpreting accuracy, the less anxiety they felt about whether a fair trial could take place, and the more confidence they placed in the administration of justice involving deaf people on juries. In addition, the issue of accurately interpreting non-verbal language was also of concern to participants who were legal personnel, with some wondering whether the meanings associated with vocal intonation might not be successfully conveyed in the interpreting process, particularly during jury deliberation. Alternatively, the deaf and interpreter participants were confident that accuracy was achievable, although it was challenging to deal with some legal terminology, as it would be in any language.

It was generally agreed that as the level of complexity of the issues associated with a trial increased, so too would the problem of maintaining accuracy in sign language interpreting. This viewpoint appeared to be based on the (inaccurate) *perception* that sign language interpreting does not deal well with complex issues, in relation to language and legal concepts. At least one of the legal professionals expressed reticence in acknowledging that effective communication of both simple and complex language that convey the full spectrum of substantive legal concepts can be successfully achieved through sign language.

### **4.2.3 Pre-trial preparation**

Interviewee responses were unanimous on the need for pre-trial preparation of all courtroom participants. As some jurors were initially clearly distracted by the presence of the interpreters when the trial commenced, interviewees have pointed to the need for jurors to receive detailed instructions from the bench, a demonstration, and a greater understanding of sign language prior to such trials commencing. Technical language needs to be agreed upon by relevant interpreting and legal professionals beforehand.

Additionally, lawyers and the bench also need training and appropriate preparation to perform in court where deaf people and interpreters are involved, such that the pace of delivery and any complex issues that require specific interpretation progress without issue. The deaf jurors and interpreters suggested that pre-trial preparations could also determine processes and protocols around access and the extent of flexibility inside individual courtrooms when it comes to interpreter positioning.

However, there remains some caution in, and resistance to, providing interpreters and deaf jurors exclusively with pre-trial briefings from the legal personnel interviewed, due to a perception of the possibility of the perceived and actual advantage that could be asserted in the trial that could skew the verdict and lead to a successful appeal. The interpreters and deaf interviewees also agreed that deaf people should not be given *carte blanche* permission to serve as jurors, as some trials may be more appropriate than others.

### **4.2.4 Courtroom layout**

There were several comments about the layout of the courtroom in terms of accommodating the two interpreters. It was clear that the interpreters had to move every time the jury needed access to the door leading to the jury deliberation room and other juror facilities. Some interviewees thought the interpreters were seated too close to the witness box, potentially discomforting, and have suggested an improved and more appropriate line-of-sight could be achieved by having the interpreters positioned at the bar table instead. This location would also enable the deaf juror to successfully view the interpreters, advocates, witnesses and the accused in the one field of sight. Deaf jurors felt the positioning of the interpreters stifled their ability to connect with court room participants and due to the number of times it was

necessary for them to turn their head to look at the courtroom, it would not be physically sustainable in a longer trial.

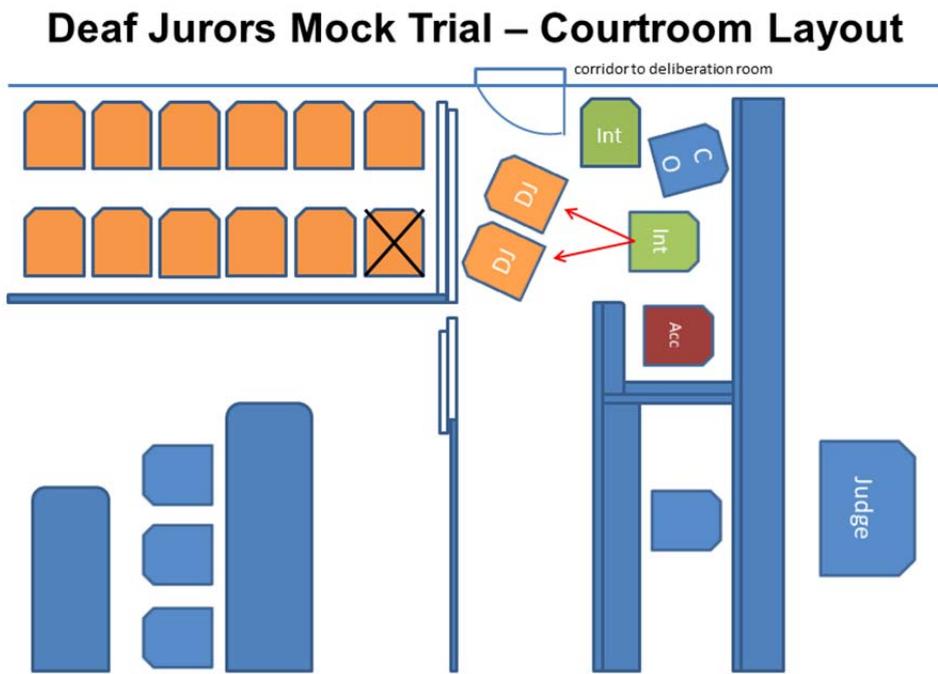


Figure 1 (Acc: accused CO: court officer; DJ: deaf juror; Int: Auslan interpreter)

#### 4.2.5 Interpreting & jury deliberations

Following are preliminary findings to three of the researchers' questions concerning the deaf juror and the interpreters in the jury deliberation process:

1. *Was the deaf juror able to participate to the same degree as the others?*

Analysis of the percentage of overall time taken by each juror (12.32% for the deaf juror) coupled with the number of juror turns (see Figure 2) suggest the deaf juror was an active participant in the jury deliberation process. Responses from hearing jurors indicate there was general agreement that the deaf juror "had greater attention to detail than most of us" and that "it was obvious that the information that the deaf juror had was the same as the information that we'd had. They were asking the same questions and putting forward the same points and so it seemed very clear that they were getting a good view of the information, as good a view of the information as we seemed to" (quotes from jurors).

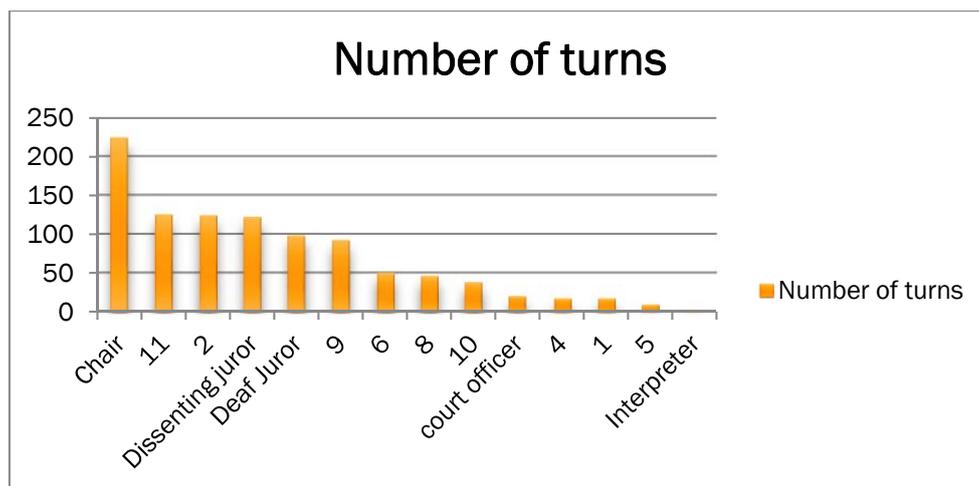


Figure 2

## 2. *Would the interpreters become active participants in the jury deliberations?*

The number of turns by the interpreters is one indication of their level of participation (see Figure 2). Another measure of interpreter participation other than interpreting can be seen in juror comments about the interpreters. Jurors noted that the interpreters “didn’t get involved at all, themselves”, and that when asked to comment, interpreters politely stated “we have a code of ethics, we can’t really answer that”. One juror commented: “I wouldn’t even know what their point of view was about the case. I don’t think they stepped over that boundary or anything.”

## 3. *Were the other jurors comfortable with the deaf juror and the interpreters?*

Overall, juror responses suggest that jurors were comfortable with both. One juror stated that “when we came to deliberate, [the deaf juror] was so specific of what he heard, but he didn’t hear anything. It was what was interpreted to him. So everything that had got interpreted was spot on”. Another expressed her surprise at the ease with which the deliberations with the deaf juror and interpreters were carried out: “It was just so easy and even after just one day, you’re so comfortable with the people and the interpreters that you start looking at the people rather than the interpreters and I was surprised how well it worked and how easy it was ... It was so natural”.

Some jurors admitted to being initially distracted by the presence and positioning of the interpreters, but this was temporary and they got used to having the interpreters present.

### **4.2.6 Interviews with interpreters**

One of the key issues that has been addressed in our previous research (Napier & Spencer, 2007, 2008) but was still raised by legal professionals in our observations of jury empanelment in the USA (see section 4.1.8) concerned the translatability of legal concepts. In the interviews with the interpreters involved in the mock trial, they both confirmed that they felt they were able to accurately convey in Auslan all the key legal concepts that came up in the trial and during the deliberations. Another issue that has been raised has been the role of the interpreters in the jury deliberation room, and the potential impact that their presence might have on the interaction if they are perceived as participants by other jurors (see Napier & Spencer, 2007, 2008; Napier & McEwin, 2015). The interpreters felt that all the jurors generally understood their role, primarily because of the clear instructions given by the judge before they went into the deliberation room. They did report using strategies to discourage hearing and deaf jurors from addressing them directly (e.g. not making eye contact) and tried to be as unobtrusive as possible, which they felt was particularly important in this context,

although neither of them specifically felt the need to tell people not to speak to them as they felt that the jurors understood that they were not participants in the interaction. However, the interpreter who was observing the trial (and on standby to replace one of the working interpreters if needed) noted that it is important to have consistency in the signs used between the interpreters. She also noted the importance that interpreters have general court interpreting experience before they work with deaf jurors, and that ideally they should have completed some form of legal interpreter training.

#### **4.2.7 Interviews with deaf jurors**

Interviews were conducted with both the deaf people that were involved in the mock trial: the person that actually participated as the juror in the deliberations (Alex) and the other deaf person who only observed the trial prior to the deliberations as a standby juror (Linda). Each deaf juror had slightly different perceptions about their access during the trial—Linda expected to see more strategies from the interpreters to incorporate English, but Alex was satisfied that he had full access to the information. Linda's perception could have been influenced by the fact that she has a preference for knowing what English terms are being used.

Both jurors commented that the positioning of the interpreters in the courtroom is important so that deaf jurors can still look at witnesses/defendants to read their body language. Positioning of interpreters is also important so that jurors can sit with other jurors and see all the participants in the court room (rather than with backs to courtroom to watch the interpreters in the mock-trial who were seated with at the front with their backs to the judge). It was suggested that perhaps interpreters could move around when in the courtroom to stand next to whoever is speaking, to make it easier for the deaf jurors to see who is speaking; and this strategy could also be employed in the deliberation room, where the interpreters could move behind the jurors to stand behind whoever is talking, rather than being seated at the deliberation table. This would mean there were only the 12 jurors seated around the table, which would affirm the fact that the interpreters are not participating in the deliberation.

Alex felt he accessed all the information throughout the trial and the deliberation, but acknowledged that it would be a strain for a long trial to watch interpreters. Both noted that interpreter fatigue could also be an issue, especially in a long trial, because when interpreters get tired it affects the quality of their work. Linda was less confident that she fully accessed all the information, and recognised that it was partly to do with the signing style of one of the interpreters, which she found difficult to watch. Both deaf jurors agreed that they were clear on their role, and felt that the judge gave very clear instructions. Alex felt he had full access and participation in the deliberations, and maybe was advantaged by having interpreters there. It was suggested that hearing people may be beguiled by having interpreters there initially, so care would need to be taken to ensure that the deliberation process is fair and that the deaf person should be treated equally to other jurors: they should not be given any preferential treatment, and interpreters should be the only accommodation (i.e., they should not be given any other additional support).

Alex commented that from his perception, the interpreters managed the turn taking in deliberations, and seemed to be able to keep up, and one interpreter only interrupted once to ask people to speak one at a time. However, he did note that he sometimes used his voice to get attention, as other jurors could more easily interrupt each other. One suggestion that was raised was the possibility of having two interpreters for the deliberation, and another one for social interactions during breaks so the deliberation interpreters could rest but the deaf juror could still interact with other jurors, otherwise the deaf juror is isolated and cannot form the relationships with other jurors that can help the interactions within the deliberation.

Both jurors felt that ideally strategies for working with interpreters should be agreed upon with other jurors at the beginning of the whole process, especially before the deliberations begin. Overall the deaf jurors felt that the hearing jurors seemed comfortable with having a deaf juror present, and also in working with the interpreters, and Alex's perception was that there was no negative impact on the deliberation. Both jurors recommended that interpreters need experience and knowledge of legal interpreting generally before working with deaf jurors, plus good interpersonal skills to facilitate (but not participate in) deaf juror interactions with other jurors. They also felt that there is a need for a high level of accuracy and consistency between interpreters, which was also noted by the interpreter observer. Both jurors said that they trusted in the professionalism of the interpreters and their adherence to the Code of Ethics, which was validated through the interpreters taking an affirmation at the beginning of the trial. Both of them felt that their experience of being involved as a deaf juror was positive, and that deaf people should be given the opportunity to serve as jurors, but they would need to have a good level of English literacy to serve (as would any juror).

#### **4.2.8 Interview with the judge**

The presiding Judge anticipated that the trial would be very different but found in reality that it was no different to the many other trials he had presided over. He did not find the interpreters distracting and found that the Auslan interpreters kept pace with the evidence better than foreign language interpreters. He stated that there was no impact on the rest of the jury or the proceedings by having two deaf people on the jury. His Honour had a perception that Auslan interpreters would find it difficult to interpret adjectives, adverbs, nuances and certain legal phrases but could not comment on the accuracy of the interpretation. However, his Honour noted that the interpreters used their faces very expressively and he assumed this was to reflect the non-verbal elements of the evidence.

When questioned about the logistics of the trial, his Honour conceded that the interpreters were not in the same or similar line-of-sight to the advocates compared to the rest of the jury and that having the same line-of-sight would have been beneficial. His Honour did not see any particular difficulty with the use of oral evidence (such as phone wire taps or video tape evidence) and noted that hearing jurors often struggle with what was said in such evidence and commented that today most of that type of evidence has a transcript attached for use by the jury. When asked about complex trials, he noted they are difficult for all jurors and saw no special problem with deaf jurors in this respect.

His Honour noted that there is no training or protocols to follow on the use of Auslan interpreters in the NSW court system. He was of the view that judges and all court personnel including advocates should be trained in how to run proceedings where there is an Auslan interpreter involved. He also suggested that some education should take place regarding the perceptions of hearing jurors who may think that deaf people are not as smart as people who can hear. Further, his Honour suggested that a short briefing note about the case or access to the witness statements would benefit the interpreters so they can anticipate some the language that may crop up. His Honour stated that as a barrister he would have objected to a deaf person sitting in a jury but after the mock trial experience he would no longer have that concern.

#### **4.2.9 Interviews with police officers**

The informants are focussed on giving their evidence in a factual way so were not distracted by the interpreters, however, they both wondered about the accuracy of the interpretation of their evidence. Overall, they felt comfortable with the trial. Interestingly they both agreed that the interpretation of the non-verbal communication was not an issue for either of them as they were seated in the line-of-sight between the jury, the interpreters and themselves, so

they felt the deaf jurors were seeing the non-verbal communication emanating from them. One informant was concerned about interpreting non-verbal communication.

The informants had no problems with Auslan interpreters interpreting oral evidence given what they witnessed throughout the mock trial. They were confident that such evidence could be conveyed via sign language interpreting. However, one informant mentioned the difficulty he perceived interpreters would have with difficult words such as the chemical names of certain drugs. One of the informants had had experience with an Auslan interpreter interpreting for an accused person in custody and had no problems with the process.

In answering a question about the role of the juror in the jury room, one informant raised the concern about jurors having each other's trust and that trust is built from having a relationship with the other jurors. His concern was if deaf jurors were left out of the social conversation that occurs at coffee and meal breaks then forming relationships could be impaired that could lead to a lack of trust. The same informant also had concerns about the ability of a deaf person to have all of the conversations in a jury room communicated via Auslan given that people often speak over the top of each other.

The informants agreed that they had not received any training on dealing with deaf people in or out of court while they were at the NSW Police Academy or since leaving the Academy. They believed that some form of preparation for the interpreters would assist the process of interpreting even if it was only in court etiquette. One informant felt that having one or more deaf jurors would make the conduct of the trial more complicated and make the job of running a trial harder for everyone although, the same informant felt that deaf people should be able to serve on a jury.

#### **4.2.10 Interviews with lawyers**

##### *4.2.10.1 Prosecution*

Both lawyers for the prosecution had no concerns with the Auslan interpreters and felt they were competent based on the reaction times and activity they applied to the job of interpreting. In this respect they felt that the trial was not lengthened or made more complex by the use of the interpreters. However, they were concerned about trials that had complex elements to them or were of a lengthy duration and the toll that would take on all those involved in the staging of a trial.

Lawyers for the prosecution voiced some concern over oral evidence, notwithstanding that such evidence has a transcript attached to it, but they were concerned about voices speaking over each other and how that would be translated to a deaf juror. They also raised the issue of non-verbal communication in the giving of evidence and the importance of having a line-of-sight between the person giving evidence or the advocates and the deaf juror.

The prosecutor was concerned about having competent interpreters so that the flow of examination-in-chief or cross-examination would not be interrupted although he also stated that if some things are lost because of the inclusion of deaf people on juries then so be it. Sometimes a loss of rhythm can serve the juries' understanding of proceedings.

Both lawyers believed some training in court procedure and common terms would be helpful to the process of including deaf people on juries. However, they were not supportive of any prior briefing about the evidence given it is up to prosecution and defence as to what evidence they lead on the day of the trial. They also opined that there needs to be training for lawyers and judges involved in trials with deaf jurors.

One advocate mentioned the same issue as the informants—that of providing interpreters for coffee and meal breaks as jurors socialise and build trust in each other and deaf jurors must be allowed to participate in that process too. They agreed that having a deaf person and

their Auslan interpreter in the jury room would probably “take a bit of heat out of the deliberations”, given the courtesy required to allow every person to be heard (and interpreted).

#### *4.2.10.2 Defence*

Both lawyers thought the hearing jurors got used to the process of interpretation very quickly, although when prompted, both acknowledged that the process could be problematic in a longer more complex trial. Both were concerned about the non-verbal elements of communication, particularly intonation, being missed or being unable to be conveyed to the deaf juror. They would have liked to have moved the interpreters to the front of the bar table so the deaf jurors had a clear line-of-sight to the advocates.

Counsel for the defence would consider challenging a deaf person being on the jury for the same reason as he would challenge someone who he thought may not have the requisite English language skills. When pressed by the facilitator, counsel for the defence elaborated that he would be concerned in relation to the competency of the deaf person to understand translated evidence. He stated, “Yeah I think there are just numerous issues that might arise, that might mean that the evidence doesn't get properly translated or conveyed to the witness. The difficulty of it is that there's no way to test that or to know that ... it's very difficult to determine in this case whether there's been proper translation, proper comprehension of things”.

The defence lawyers were against the idea of preparing interpreters for their role in court as no one else is similarly briefed and this could set up a situation where deaf jurors have an advantage over hearing jurors. However, they did agree that a better way to do it would be for the advocates to be prepared during the trial to explain complicated matters of substance and language.

In relation to the role of the interpreters in the jury room, both lawyers agreed that having interpreters in the jury room might keep the discussions more reasoned, controlled and civil because of the gentler pace brought about by the lag time in having the interpreter interpret for the deaf jurors.

#### **4.2.11 Advisory Group**

In July 2015, investigators presented preliminary findings to Partner Organisations and members of the Advisory Group, comprising representatives from community and industry. Discussions following the presentation focused on courtroom layout, interpreter positioning, the need for qualified and competent interpreters, and the introduction of specialist accreditation for legal interpreting, currently being considered by NAATI (National Accreditation Authority for Translators and Interpreters), and the professional industry bodies AUSIT (Australian Institute of Interpreters and Translators) and ASLIA (Australian Sign Language Interpreters' Association). Best practice guidelines for using Auslan interpreters in the courtroom will be jointly developed by ASLIA and Deaf Australia. This discussion, coupled with the data analysis from the mock trial, post-trial interviews, and subsequent focus group, has helped investigators develop recommendations regarding the ability of deaf persons to participate in a courtroom trial and jury deliberation process, and the use of interpreters associated with these processes.

#### **4.3 Focus groups**

Two focus groups were conducted on Wednesday 18 May 2016 at the Faculty of Law, University of NSW. The first focus group was conducted between 2.30pm and 4.30pm and consisted of deaf stakeholders that included representatives from:

- Deaf Australia

- Deaf Society of NSW
- World Federation of the Deaf.

The legal stakeholder group met from 4.30pm to 6.30pm in the same location and consisted of representatives from the following organisations:

- Victorian Department of Justice – Legal Policy Officer;
- NSW Department of Justice – Jury Manager; Jury Coordinator; Policy Officer;
- Members of the NSW Bar Association (practising barristers);
- Members of the NSW Law Society (practising solicitors);
- University of NSW – Professor-of-Law teaching and researching in evidence, procedure and criminal justice;
- NSW Director of Public Prosecutions – Senior Crown Prosecutor (and Prosecutor in the mock trial);
- NSW Public Defenders – Senior Public Defender; Solicitor;
- NSW Supreme Court – Justices of the NSW Supreme Court; and
- Interpreter and Counsellor for the deaf.

The following commentary is a report of the main issues raised at those focus groups sessions.

#### **4.3.1 Deaf Stakeholders**

During the focus group discussion key themes that were identified in the analyses of the mock-trial jury deliberations, and also in the post-trial interviews with all the participants. The focus group were asked to comment on their general perceptions, and it was interesting to note that they raised many of the same issues as the interpreters and deaf people that were involved in the mock-trial.

Primarily, the group raised concerns about the skills, experience and qualifications that interpreters would need to interpret with deaf jurors, and whether a juror would be able to choose their preferred interpreters. It was agreed that only the most highly qualified interpreters should be used, but that this still might not be enough to guarantee the right level of service; they should also have had legal interpreter training. The notion of preference was debated, as the participants could see the merits of having familiar interpreters, but also noted that it could influence the way the interpreter chooses to interpret, or how the deaf person interacts with others if they know the interpreter too well. In terms of skill level, the group mentioned that it would not just be important so that they could access information throughout the trial, but also so that they could be accurately represented in the jury deliberations, that is, when they were contributing in Auslan, and their utterance was interpreted into spoken English for the rest of the group.

Another comment was in relation to the English skills required of deaf jurors, and how that would be measured. The group felt it would be important for deaf jurors to have a suitable level of English literacy to serve, so also asked whether the provision of captions throughout the trial could also be an option (and may actually be preferred by some people). The only drawback to that would be that interpreters would still be needed in order to allow the deaf juror to respond in deliberations, as captioning is only a one way process.

A question was asked about the protocols of interpreters being able to interrupt proceedings to ask for clarification, and also whether deaf jurors could ask for clarification if they were not sure of something that the interpreter signed. It was explained that, although it rarely happens, court stenographers can interrupt proceedings to request clarification or repetition, so technically interpreters can do the same. They felt that interpreters could adequately convey the sound/ content of oral evidence (e.g. phone taps) as long as they were highly skilled as an interpreter.

Discussion also focussed on how interpreters would be selected, whether the deaf juror would have a say in that selection, and also how the interpretation would be monitored throughout a trial and measured for accuracy. They stressed that the selection of the interpreters is very important, and also questioned whether a deaf person would have the right to refuse with an interpreter, if they were not comfortable with them. Another point that came up was in relation to the positioning of the interpreters, and what the protocols would be—who would decide?

With regard to the selection of deaf jurors, the group acknowledged that not all deaf people would be suitable to serve on juries, in the same way that not all hearing people are suitable. They felt it was important that everyone should be given the opportunity, rather than being told that they cannot serve because they are deaf; and also they felt it could be discriminatory for a judge to use their discretion to assign deaf jurors only to short trials. However, they did recognise that being involved in a long trial could lead to high levels of fatigue in having to watch the interpreter for lengthy periods. They also suggested that hearing jurors should receive a brief overview of deaf awareness before commencement of a trial.

Essentially, the discussion of the deaf focus group participants confirmed that although they agree with the notion of deaf people being able to serve as jurors in principle, that we need to think carefully about how deaf people can actually participate in the jury because the issue is really about the interpreters—their qualifications, their accreditation, their training—the procedure of booking an interpreter—getting them in—how they're selected to come in to be in the court—where they are positioned; rather than necessarily with the deaf people themselves. There would need to be very clear protocols and guidelines.

#### **4.3.2 Legal Stakeholders**

The concerns expressed in the legal stakeholder group included those that centred on logistical issues, those that raised issues in relation to specific types of evidence, and those that revolved around apprehensions that the presence of a deaf juror (and interpreter) may compromise a fair trial. While the results of the mock trial were discussed, there were doubts raised as to whether the findings could be applied to a longer and/or more complex trial. The orientation and experience of the legal stakeholders led them to be very cautious about introducing what they saw to be a further level of complexity to an already stretched and unpredictable decision making process. A specific issue raised in the consultations by one senior legal stakeholder, and generally endorsed by most of the group, was the problem with recorded evidence such as telephone or listening device intercepts and records of interview. The identified issue was that a deaf person would not be able to hear the sound track which was categorised as primary evidence as opposed to a transcript which he implied would be classed as secondary evidence. Transcripts only allow a juror to check that the recording is accurate. In the experience of this legal participant a lot of recorded evidence is hard to understand or clearly make out in terms of what is said and a deaf person would be at a distinct disadvantage in such circumstances. The participant stated:

“The trouble with having one deaf juror is that one out of 12 jurors is receiving different evidence from what all the others are receiving. He’s only receiving the transmission of the medium through the sign language. It is not receiving the other components of it. In many, many cases—I will say in most cases—that is, extremely important.”

A significant amount of time was spent on this issue with most government representatives agreeing with the stakeholder. While the issue of primary versus secondary evidence is acknowledged, the example given only pertained to a deaf person. The discussion did not take up the issue which was raised, on a situation that can arise of a witness (or electronic intercept evidence) who either does not speak English or has English as a second language and must give evidence via a foreign language interpreter. Often members of the jury are

fluent in the language of the witness and hear both the foreign language version (arguably as primary evidence) and the foreign language interpretation into English (arguably as secondary evidence).

The research team were made aware of a case in the NSW District Court where a foreign language interpreter was not interpreting the foreign language spoken by a witness accurately and a number of members of the jury, fluent in that language, alerted the presiding judicial officer of this fact and the trial was aborted. Keeping in mind that in such a case, the official evidence is the translated English version of that evidence as appearing on the court transcript, we have a situation where all members of the jury are hearing secondary evidence. Those members of the jury that understand the foreign language are receiving both primary and secondary evidence. It is impossible to exclude witnesses who do not speak fluent English from giving evidence therefore, we accept this imperfect evidence.

The situation of a foreign language interpreter is similar to the case of a deaf person serving as a juror. The deaf person hears the secondary evidence via the Auslan interpreter. In cases where a deaf juror is proficient in lip reading, they may have the added benefit of being able to understand both the primary and secondary evidence.

## 5. Conclusion

The emphasis of this current study was to move past perception and instead explore the real impacts, if any, of deaf people participating on juries. The analysis of the deliberations reveals that a deaf juror could effectively participate through sign language interpreters, and there was no detrimental impact on the deliberation process in having a deaf person and interpreters present. In follow-up interviews, similar themes were covered by the different participants, and also in later focus groups, on what the challenges could be and the fact that essentially deaf people can participate as jurors through interpreters, but the provision would be complex and need careful planning.

Nevertheless, the issue of perceptions about deaf people and interpreters still coloured discussion in the post mock trial interviews and the stakeholder focus groups. The two cases, one actual and one simulated, involving deaf jurors in the USA and Australia indicated that in the experience of all participants, including: judges, legal professionals, jurors, and, administrators; deaf jurors can participate in and do not appear to negatively impact the processes of empanelment, the trial or deliberations.

There appear to be some reservations about the cognitive and language skills of prospective deaf jurors, the logistics in engaging and arranging interpreters in court, and quality or standard of interpreters. Notwithstanding this, the standard of interpreting in the mock trial was deemed to be high by all jurors, given the quality and effectiveness of the deaf juror's contributions. Most importantly, the impact of the deaf juror and the Auslan interpreter in the court and jury rooms seemed to be minimal and juror engagement in jury deliberations was apparent.

There are concerns by some lawyers involved in this research about the accuracy of the evidence when interpreted via Auslan. The notion of deaf jurors not having the benefit of "primary evidence" concerned some and was a contributing factor to some lawyers stating they would use their pre-emptory challenges during jury selection to dismiss a deaf person from serving on a jury with one advocate stating in the post mock trial interview, "... but the problem you've got with ... any trial is just that so many different things can go wrong. By introducing a deaf juror, you increase the potential for that".

The key observations from the research include:

Observation 1. In principle, deaf people should be able to serve as jurors;

Observation 2. That an individual's right to access jury service and perform their civic duty as a juror cannot override a defendant's right not to be tried unfairly in cases where there is a real risk that having a deaf juror will compromise a fair trial; and

Observation 3. Standards, quality and logistics of interpreting would be the primary potential barrier.

## **6. Recommendations**

Recommendation 1. Amendments should be made to the respective legislation governing the composition of juries in each state to allow deaf people to serve as jurors using the services of qualified and accredited Auslan interpreters;

Recommendation 2. Recommendations already made by the NSW Law Reform Commission Report No.114 of 2006, recommendations 7-12 – 7-15 of the Australian Law Reform Commission Report No. 124 of 2014, and the decision of the UN Committee on the Rights of People with Disabilities in April 2016 be implemented; and,

Recommendation 3. Courtrooms housing juries should be modified to allow deaf people to serve as jurors.

This research is the final step in a decade-long journey that establishes that deaf people can serve as jurors thereby paving the way for the elimination of a discriminatory practice that excludes deaf citizens from participating in the administration of justice. The various tranches of research prove that deaf people can comprehend legal discourse found in the judicial system and that their presence in the court and jury deliberation rooms is not detrimental to the delivery of a fair trial for the accused. There are clearly some substantive and logistical hurdles to overcome. However, much of this can be achieved by the introduction of educative programs and system changes. The real issue is whether the political will exists to treat deaf citizens the same as their hearing counterparts and give them the right to sit on a jury in Australia.

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