

11 August 2025

Department of Justice
Courts and Tribunal Services
GPO Box F317
PERTH WA 6841

By email: CTSSubmissions@justice.wa.gov.au

Dear Ms Stampalia

INVOLVEMENT OF AUSLAN INTERPRETERS IN JURY TRIALS

Thank you for your letter dated 21 July 2025 inviting the Law Society to provide feedback to the Department on the involvement of Auslan interpreters in jury service. This consultation was considered by the Society's Courts and Criminal Law Committees.

The Society broadly supports the general propositions of diversity, equity and inclusion in relation to jurors with disabilities representing the Western Australian community. The Society acknowledges that disqualification of deaf and hard of hearing persons results in the exclusion of parts of the community from jury service on the basis of their disability. The inclusion of deaf and hard of hearing persons as jurors also offers accused persons with disabilities the opportunity to be truly assessed by a trial of their peers.

There is a balance required to be struck between the inclusion of community members in jury service and the rights of accused to a fair trial according to law. The Society notes that while it is not uncommon for jurors to utilise headsets and hearing aids to assist them during court hearings, a juror who is deaf or extremely hard of hearing will require additional assistance, which raises the following considerations:

1. Lack of supportive infrastructure in existing Court facilities

There is a question of the physical location of the interpreter in the Courtroom. If it is proposed that an interpreter sits in the jury box, the Society notes that many Court facilities do not have a large number of seats available for jurors. This is particularly an issue in some regional courts and in the case of longer trials where additional jurors are empaneled before deliberations. Assuming more than one interpreter will be required to provide translation, there is also a question of where multiple interpreters will need to be positioned in sight of the juror, counsel, the witness and the judicial officer with minimal disruption to the proceedings.

2. Ensuring the quality of the translation

On the issue of translation in the administrative law context, the High Court of Australia has found that "Perfect interpretations simply do not exist." (*DVO16 v Minister for*

Immigration and Border Protection; BNB17 v Minister for Immigration and Border Protection [2021] HCA 12 at [6]).

Translation of evidence, submissions and judicial comment through Auslan interpretation places another filter between the evidence and submissions and the jury. The quality of that fact finding for the deaf or hard of hearing juror will largely depend on the quality of the translation and the interpreter's view of what is being said.

The Society considers the integrity of jury trials ought not to be complicated by additional filters between the jury as finders of fact and the evidence and submissions being made in a trial.

3. Ensuring the juror (and not the interpreter) is able to appropriately assess witnesses and is personally involved in the deliberations

A juror who requires assistance through Auslan translation will need to watch the translator, and may not have the same opportunity as other jurors to properly visually assess the witness giving evidence. Consideration of a witness's credibility involves the assessment of what is said, the tone of how it is said, any pauses between answers to questions, the interjection of different speakers (for example, the judicial officer or counsel) and the overall demeanour of the witness. The combination of those nuances is picked up and processed by observing and hearing the witness and subsequently taken into consideration when judging a witness's credibility and reliability.

The proposal to include Auslan interpreters in jury trials relies heavily on the professionalism of the interpreter. There must be safeguards to ensure interpreters are held to a standard as officers of the Court and subject to strict obligations. An interpreter for a witness knows that they are communicating the witness' evidence and not giving evidence themselves. There is judicial oversight over this process in open court which does not occur in relation to confidential jury deliberations in the jury room. It is imperative that the juror, and not the interpreter, is the person involved in the deliberations. An interpreter assisting a juror must ensure that their professional role does not influence jury deliberations. Justice must be seen to be done.

4. Costs

While the costs of converting Courtrooms and jury rooms to accommodate deaf or hard of hearing persons is not, in isolation, a compelling reason to exclude people from serving as jurors, the Society has previously advocated for additional resources to be allocated to courts for the benefit of all court users. In particular, urgent upgrades are required to regional courthouses to provide waiting rooms, interview rooms, drinking water and functioning toilets.

In addition to the issue of the costs of changes to the physical infrastructure of courts, the extra time needed for a trial to be conducted necessarily adds to the costs for the State and the accused, both in respect of the costs of multiple interpreters and the additional time for the whole trial process, from jury empanelment to deliberations and a verdict.

5. Extending the length of trials

In the experience of the Society's trial advocates, the inclusion of interpreters for witnesses speaking languages other than English considerably slows down the pace of a trial. The timing of each person's speech must be slow enough to ensure the interpreter

has sufficient time to hear the questions or statements made, consider the translation and communicate this to the witness.

In jury trials, the translation would be required for everyone speaking over the course of the hearing and in the jury room. This would necessarily extend the time allocated for the whole of the trial to ensure the deaf or hard of hearing juror is kept informed of each step in the proceedings. The need for additional hearing time is unlikely to be accommodated when scheduling trial dates and will not be apparent until the first day of the hearing.

6. Legislative amendment

Section 34E of the *Juries Act 1957* provides for a sheriff to determine whether a person should be permanently excused from jury duty because of physical disability or mental impairment. The Society supports amendments to the Act to enable persons with a disability (such as hearing or sight impairment) to be deemed capable of serving as jurors, until evidence is provided to the Court to the contrary, or if the individual makes an application to be excused.

If deaf or hard of hearing jurors are to be included in jury empanelment, there must be appropriate discretion for a judge to assess the required resources and facilities, the impact on timeframes and power to make orders that accommodate the juror. Under the present system, the Society is concerned that the use of Auslan interpreters as a practical measure to accommodate jurors with a hearing disability cannot ensure fairness to the accused in a jury trial. On balance, the rights of the accused must be the paramount consideration.

If you have any questions or wish to discuss the above, please contact Susie Moir, Director, Advocacy and Professional Development to smoir@lawsocietywa.asn.au or telephone 9324 8600.

Yours sincerely

A handwritten signature in grey ink, appearing to be 'GM' or similar, written in a cursive style.

Gary Mack
President