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DENIAL OF SUPPORT TO QLD. JUROR

In light of the High Court decision to deny deaf Queenslander Gaye Lyons her right to participate in the jury process, Queensland Advocacy Incorporated Director, Michelle O'Flynn expressed her disappointment in that decision. "While the high court may have made the correct decision according to our laws, it is apparent that sweeping changes to a swathe of outdated or discriminatory laws must happen as part of a Disability Justice Plan".

Issues relating to the interaction people with disability have with the criminal justice system have been of long standing concern to QAI. In 2007, the organisation published the first book "Disabled justice: barriers to justice for persons with disability in Queensland.

Following this, QAI released the second publication "dis-Abled justice: reforms to justice for persons with disability". Ms O'Flynn outlined some of the issues:-

Jury service is a litmus test for participatory citizenship. Article 12 of the Convention on the Rights of Persons with Disabilities proposes that persons with disabilities should be provided with the supports they need to exercise their legal capacity on an equal basis with others. The Australian Law Reform Commission's recent discussion paper *Equality, Capacity and Disability in Commonwealth Laws* has proposed new decision-making principles that include the proposition that '[p]ersons who may require decision-making support should be supported to participate in and contribute to all aspects of life'. Given the overrepresentation in the criminal justice system of people with disability as defendants and offenders, it is ironic that people with disability may for that reason be denied a place in the jury room, which is both symbolically and substantively the key public contribution to the determination of criminal responsibility and the administration of criminal justice.

Every Australian has the right to a fair trial or, more accurately, a right not to be tried unfairly. Consistent with that right is an expectation that jurors will conscientiously analyse and weigh evidence in discussion with other jurors. That expectation is not incompatible with the inclusion of jurors with diminished capacity, a sensory, communication or other kind of disability.

There are two filters that currently operate to exclude people with disabilities:

- Only persons enrolled as electors are eligible for jury service. People of 'unsound mind' may be excluded from the electoral roll.
- A person who has a 'physical or mental disability' that makes them incapable of effectively performing the functions of a juror is not eligible for jury service in Queensland.

> QAI recommends that the *Jury Act 1995* (Qld) be amended to provide that a person is qualified to serve on a jury if the person can (with appropriate support if required) in the circumstances for which that person is summoned:

- understand the information relevant to the decisions that they will have to make in the course of the proceedings and jury deliberations
- retain that information to the extent necessary to make these decisions

- use or weigh that information as part of the jury's decision-making process
- communicate the person's decisions to the other members of the jury and to the court.

> The legislation should be amended (in accordance with Article 12 of the CRPD), to provide that communication assistants or decision-making supporters allowed by the trial judge to assist a juror should:

- swear an oath faithfully to communicate the proceedings or jury deliberations
- be permitted in the jury room during deliberations, provided they are subject to and comply with requirements for the secrecy of jury deliberations
- be exposed to offences in relation to the soliciting by third parties of communication assistants for:
 - the provision of information about the jury deliberations
 - the disclosure of information by communication assistants or decision-making assistants about the jury deliberations.

> The legislation if amended to comply with Article 12 of the CRPD would provide that decision-making support be taken into account in determining whether a person is qualified to serve on a jury.