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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

Juries (Peremptory Challenges) Amendment Bill 2025

EXPLANATORY STATEMENT

**Presented by
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INTRODUCTION

This explanatory statement relates to the *Juries (Peremptory Challenges) Amendment Bill 2025* as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW

The purpose of this bill is to improve the representativeness of ACT juries and to reduce the time and cost associated with jury empanelment in a criminal trial.

Terminology in this Explanatory Statement

A *peremptory challenge* is part of the jury selection process, in which one party (Defence or Prosecution) refuses to allow a specific potential juror to sit on a jury, without giving any reason or cause.

A *challenge with cause* requires the party to provide a justifiable reason for the challenge to the potential juror. No Australian jurisdiction has numerical limits on challenges with a cause, but they are limited in practice because the challenger must justify their challenge and provide evidence, if required.

In this context, a *characteristic* is an observable feature of a potential juror, such as age, gender, ethnicity or physical disability. It is different from a *behaviour*, which is something that a potential juror does, rather than how they appear.

Rationale

Peremptory challenges are often based on observable characteristics, such as apparent age, ethnicity, gender or physical disability, and excluding potential jurors on this basis reduces the diversity and representativeness of juries. For example, in 2018-19 in Victoria, 70% of peremptory challenges were against women, resulting in Victorian juries having a lower proportion of women than in the general community¹.

In addition to the potential discriminatory application, allowing for a high number of peremptory challenges prolongs the jury empanelment process which can cause unnecessary stress for potential jurors, as well as cause delays to criminal proceedings, negatively impacting the accused, victims and witnesses. It can also increase administrative costs for the court, the Prosecution, as well as increased legal fees for the accused (which in some cases are borne by Legal Aid). While not a typical example, at the 2009 trial of Abdul Benbrika and his associates, over 2,000 citizens had to be summoned in order to empanel one jury, and over 1,000 had to attend court over two days for the empanelment process². Trials can cost thousands of dollars per hour and any saving in time is also a saving in funds. Furthermore, empaneling a large number of potential jurors is a substantial financial cost to the employers of the potential jurors, and the jurors themselves, if they are self-employed.

While some overseas jurisdictions have abolished peremptory challenges (the United Kingdom in 1988, and Canada in 2019), this is not proposed for the ACT. This is because there may be circumstances in which the behaviour of potential jurors, rather than their observable characteristics, may lead to concern for the Defence or Prosecution, but the behaviour may not meet the standard of proof that can be required for a challenge with cause. For example, a potential juror glaring at the accused, reacting strongly to the nature of the charges or behaving in a flippant manner, might be behaviours

¹ Victorian Law Reform Commission (2022) *Inclusive Juries — Access for People Who Are Deaf, Hard of Hearing, Blind or Have Low Vision Report*, p.36

² Horan, J. & Goodman-Delahunty, J. (2010) 'Challenging the peremptory challenge system in Australia', *Criminal Law Journal*, vol. 34, pp.167-186

that suggest a potential bias, and the parties should have the right to challenge a potential juror with such behaviours, without needing to prove unequivocally that the potential juror held that bias.

The number of peremptory challenges available to the Defence and Prosecution varies across Australian jurisdictions. In the ACT, the Defence and Prosecution are entitled to eight peremptory challenges to potential jurors; where there are multiple accused being tried together, there are eight peremptory challenges per accused person (section 34 of the *Juries Act 1967*).

Reducing the number of peremptory challenges would bring the ACT more in line with other jurisdictions. In New South Wales, Victoria, South Australia and Western Australia, the number of peremptory challenges permitted is three. In Queensland, the number of peremptory challenges is eight, while in Tasmania and the Northern Territory, the number of peremptory challenges is six (except for serious offences such as murder in the Northern Territory, when it is twelve).

It is essential that the entitlement to an unlimited number of challenges for cause remains, to ensure a fair trial for the accused.

HUMAN RIGHTS ISSUES

During the development of this Bill due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2024* (the HR Act).

The Bill engages section 21(1) of the HR Act which provides that everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing (“right to a fair trial”).

The ACT’s criminal trial system permits, and for some offences requires, a trial by jury. Being able to challenge potential jurors (either on a peremptory or ‘with cause’ basis) allows the accused to have input into the composition of a jury.

The impartiality of jurors is important in promoting the right to a fair trial, but also in promoting equality before the law (section 8 of the HR Act).

The Bill will reduce the number of peremptory challenges to prospective jurors. The intended purpose of the amendments is to address concerns that its use, based on the appearance of the juror, is arbitrary and relies on stereotypes and rather than fairness. Peremptory challenges can be discriminatory and impact the representative nature of juries by eliminating people with certain apparent characteristics.

It is not considered that the reduction to the number of peremptory challenges will limit the right to a fair hearing. The Bill does not alter the right to trial by jury for eligible offences and does not remove the power to challenge jurors for cause, which remains as a key procedural safeguard.

Unlike peremptory challenges, a challenge for cause requires a reason grounded in fact, not a stereotype or intuition. This ensures that input into jury selection is directed to actual fairness concerns, not subjective impressions or discriminatory assumptions. Challenge for cause allows jurors to be removed where there is a substantial risk of bias, ensuring impartiality, judicial oversight and transparency in the jury empanelment process.

CLAUSE NOTES

Clause 1 - Name of Act

This clause provides that the short title for this Act will be the *Juries (Peremptory Challenges) Amendment Act 2025*.

Clause 2 - Commencement

This clause provides that the Act commences 6 months after its notification day.

Clause 3 - Legislation amended

This clause provides that the Act to be amended is the *Juries Act 1967*.

Clause 4 - Expanded juries in some criminal trials Section 31A (3)

This clause refers to Section 34, in which this Bill will reduce the number of peremptory challenges for juries of 12 people from eight (8) to four (4).

Clause 5 - Section 31A (3) (a) to (c)

This clause reduces the number of peremptory challenges for juries of specified sizes by four (4) in each case.

Clause 6 - Challenges at criminal trials Section 34 (1) (a) and (2) (a)

This clause reduces the number of peremptory challenges for juries of 12 people from eight (8) to four (4).