

## Appendix A

### Legislation in other Australian states and territories

Jurisdiction	Legislation	Relevant provisions
New South Wales	<i>Jury Act 1977</i>	The jury questionnaire may include questions about whether assistance is required for people with a physical disability. <sup>1</sup> A person may apply to the sheriff to be exempted from service because of a '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' <sup>2</sup> The sheriff can exempt them without application if there is good cause, including having a disability, that renders them unsuitable for or incapable of effectively serving' as a juror 'without reasonable accommodations'. <sup>3</sup>
Western Australia	<i>Juries Act 1957</i>	A person who has a disability and may be unable to serve effectively must disclose this information to the court. Similarly, a person must disclose if they do not understand spoken or written English or do not speak English, which 'may mean he or she is not capable of serving effectively as a juror'. <sup>4</sup>  In response, if a sheriff or a judge is satisfied that the person is 'not capable of serving as a juror' they must excuse the person. <sup>5</sup> A sheriff may excuse a person permanently if satisfied that the person is 'permanently incapable of serving effectively' because of a physical disability. <sup>6</sup>

1 *Jury Act 1977* (NSW) s 13(2).

2 *Ibid* s 14(3).

3 *Ibid* ss 14(4), 14A.

4 *Juries Act 1957* (WA) sch 2 cl 8, 9.

5 *Ibid* s 34G(2)(e)(f).

6 *Ibid* s 34E.

Jurisdiction	Legislation	Relevant provisions
Queensland	<i>Jury Act 1995</i>	<p>A person with a mental or physical disability that 'makes the person incapable of effectively performing the functions of a juror' is ineligible to participate in jury service.<sup>7</sup> Both the sheriff and the judge have powers to excuse people from jury service. The legislation requires consideration of a range of factors including the person's health.<sup>8</sup></p> <p>Section 4(3)(k) of the Act exempts 'a person who is not able to read and write in the English language'.</p>
Tasmania	<i>Jury Act 2003</i>	<p>A person who has a physical, intellectual or mental disability that renders them incapable of effectively performing the duties of a juror is ineligible to serve.<sup>9</sup></p> <p>Persons 'who are unable to communicate in or understand the English language adequately' are ineligible to serve.<sup>10</sup></p> <p>The Court and the sheriff have powers to excuse people from jury service for good reason.<sup>11</sup> The sheriff may excuse a person permanently from jury service at any time if there is a good reason for doing so, which includes because of 'the disability of the person.'<sup>12</sup></p>
South Australia	<i>Juries Act 1927</i>	<p>A person is ineligible for jury service if they are mentally or physically unfit to carry out the duties of a juror. A person is also ineligible if he or she has an insufficient command of the English language to properly carry out the duties of a juror.<sup>13</sup></p>
Northern Territory	<i>Juries Act 1963</i>	<p>A person who is 'blind, deaf or dumb or otherwise incapacitated by disease or infirmity' is exempt from jury service. The name of an exempt person must not be included in the jury list.<sup>14</sup></p> <p>Schedule 7 permits the sheriff to question any chosen juror to ascertain whether that juror is able to 'read, write and speak the English language'.</p>

7 *Jury Act 1995* (Qld) s 4(3)(l).

8 *Ibid* s 21.

9 *Juries Act 2003* (Tas) sch 2 cl 9.

10 *Ibid* s 6(3), sch 2.

11 *Ibid* ss 9, 10, 12.

12 *Ibid* s 10(3)(b).

13 *Juries Act 1927* (SA) s 13.

14 *Juries Act 1963* (NT) sch 7, s 11.

Jurisdiction	Legislation	Relevant provisions
Australian Capital Territory	<i>Juries Act 1967</i>	There is a positive obligation on the court to consider the provision of 'reasonable supports' for prospective jurors who have an insufficient understanding of the English language or who have a mental or physical disability and who have not claimed an exemption or otherwise been excused, to enable them to serve. <sup>15</sup> Any direction made by a judge to provide such supports limits the operation of the common law rule against having a non-juror in the jury room. <sup>16</sup> The involvement of a supporter is subject to them first taking an oath or affirmation. <sup>17</sup>

Figure 1: Legislative provisions across Australia that restrict people with disabilities performing jury service

### Peremptory challenges and stand asides in Australia

The key difference between Australian jurisdictions is the number of challenges available. The Northern Territory has the most peremptory challenges, with 12 for capital offences (that is, cases where the penalty is prescribed to be life imprisonment, where the court cannot vary or mitigate the sentence)<sup>18</sup> followed by the Australian Capital Territory (ACT) and Queensland with eight for each party in criminal cases.<sup>19</sup> In some jurisdictions the Crown has peremptory challenges instead of stand asides, and in the ACT and the Northern Territory the Crown has both peremptory and stand aside challenges.<sup>20</sup> State jurisdictions enable peremptory challenges in both civil and criminal trials, with the exception of South Australia and the ACT which have abolished jury trials in civil cases, and the Northern Territory which does not have peremptory challenges in civil jury trials.<sup>21</sup>

15 *Juries Act 1967* (ACT) s 16(1)(a).

16 *Ibid* s 16(4)(a).

17 *Ibid* s 16(4)(c).

18 *Juries Act 1963* (NT) s 5(1).

19 Victorian Law Reform Commission, *Jury Empanelment* (Report No 27, May 2014) Appendix D <<https://www.lawreform.vic.gov.au>>; *Jury Act 1995* (Qld) s 42(3); *Juries Act 1967* (ACT) s 34; *Juries Act 1963* (NT) s 44.

20 Victorian Law Reform Commission, *Jury Empanelment* (Report No 27, May 2014) Appendix D, Appendix E <<https://www.lawreform.vic.gov.au>>; *Juries Act 1967* (ACT) ss 3, 34; *Juries Act 1963* (NT) ss 44, 43.

21 Victorian Law Reform Commission, *Jury Empanelment* (Report No 27, May 2014) Appendix E <<https://www.lawreform.vic.gov.au>>.