

Challenge for cause

In both civil and criminal trials, the number of potential jurors that each party may challenge for cause is unlimited.¹

Once a **challenge for cause** has been made, it must be determined immediately. The usual process is as follows:

- Any empanelled jurors go to the jury room.
- The jury panel is taken out of the court by a Juries Victoria or court staff member to wait in a suitable area and kept separate from any members of the public.
- The challenged juror is taken to an ante room if the court has one, or other suitable room near the courtroom by another Juries Victoria staff member (if available) or court security to ensure the challenged juror stays put and is not spoken to by anyone. Additional court staff may be required to come into court so that the judge is not left 'unstaffed' as the process unfolds.
- The judge hears the basis for the challenge, allowing submissions on behalf of the accused and evidence taken if required,² and determines the application.³
 - If the application is granted, the challenged potential juror must not be empanelled in the instant trial.⁴ The challenged juror returns to court and is advised that the challenge has been successful so they cannot be a part of this jury panel. The challenged juror will be available for panels for other courts (unless the judge has reason to make an order under section 12 of the *Juries Act 2000* (Vic) ('JA') that the juror is not to perform jury service).⁵ The challenged juror remains in court with the jury panel, but their card is put aside. Empanelled jurors return to the jury box; the jury panel returns to court; empanelment proceeds. The challenged juror returns to the pool with the rest of the panel (and if a section 12 JA order is made, 'discharged' from further service).
 - If the application is refused, the challenged potential juror returns to court and is advised the challenge was unsuccessful. The empanelled jurors return to the jury box; the jury panel returns to court; the judge directs the juror to proceed to the jury box, and the rest of the empanelment proceeds.

Judicial stand aside/removal

A trial judge may order, on their own motion or in response to an application by the Juries Commissioner, that a person will not serve as a juror if it is just and reasonable to do so. This order can be made for the whole or part of the jury service period, a longer period specified by the court, or permanently.⁶

This power can be exercised after the juror has entered the jury box but before being sworn.⁷

If the power is exercised, the trial judge can allow another juror to be selected or discharge those empanelled and direct that another jury be empanelled afresh.⁸

Further information about challenges for cause and judicial stand aside/removal can be found in the [Criminal Proceedings Manual](#) at 11.1.53-61 (page 361-362) and 11.1.85-89 (page 365).

¹ *Juries Act 2000* (Vic) ss 34, 37.

² Questioning potential jurors is an unreliable means of detecting bias: *Bush v R* (1993) 43 FCR 549; *Murphy v R* (1989) 167 CLR 94; [1989] HCA 28.

³ *Juries Act 2000* (Vic) s 40(1).

⁴ *Ibid* s 40(2).

⁵ *Ibid* s 40(3).

⁶ *Ibid* s 12.

⁷ *R v Searle* [1993] 2 VR 367.

⁸ *Ibid*.