

Submission
No 15

INQUIRY INTO THE ELIGIBILITY OF MEMBERS OF PARLIAMENT TO SERVE ON JURIES

Organisation: Victorian Legislative Assembly
Name: The Hon Jenny Lindell MP
Position: Speaker
Date received: 5/08/2010



4 August 2010

Hon Christine Robertson MLC
Committee Chair
Standing Committee on Law and Justice
Parliament House
Macquarie St
Sydney NSW 2000

Dear Hon Christine Robertson

**Inquiry into the eligibility of Members of
Parliament to serve on juries**

Thank you for your letter of invitation to make a submission into The Standing Committee on Law and Justice's inquiry into whether the existing provisions in the Jury Act 1977 (NSW) that make Members of Parliament ineligible for service is appropriate or should be repealed or amended.

Last year I contributed to a Victorian inquiry into Jury Service Eligibility in relation to Members of Parliament and I include the comments I made then in a general response to the Committee's Terms of Reference.

It is my position that Members of Parliament, including Presiding Officers, remain exempt from jury service, even when the Parliament is not sitting, to ensure:

- that the principles of maintaining the separation of powers are upheld, and
- the ability of Members to perform their parliamentary duties is not compromised or inhibited

The Victorian Constitution Act 1975 s 34 states:

"The Assembly shall consist of members who shall be representatives of and be elected by the electors of the respective districts."

There may or may not be a similar description in the NSW Constitution however I am sure there is consensus in the premise that a Member's prime responsibility is to the performance of their public duty and relates to his/her obligation to represent the electorate to which they have been elected. That involves the opportunity to speak in the Chamber on any question before the House, or raise a point of order or propose a motion or amendment etc. (SO 104 Victorian Legislative Assembly). Absence from the chamber would effectively compromise their ability to fulfil this duty.

Likewise absence from the electorate on non-sitting days for the purpose of jury

duty may compromise a Member's ability to consult with constituents and/or participate in negotiations on issues relevant to the electorate.

In addition the principle of Parliamentary Privilege, as applied in Victoria from the Commonwealth Privileges Act 1987, provides a Member the freedom not to be obstructed in carrying out their duties as Members in their electorate and when Parliament is sitting. It would be arguable that compulsory attendance for Jury service could be considered a breach of that Privilege.

Immunity for The Presiding Officers

The absence of the Presiding Officer in the Chamber or in the Parliamentary Precinct would cause considerable disruption to the working of the Chamber and require costly and time consuming changes to the standing rules and orders.

Some weight should also be given to the demands of the Presiding Officer's role. Their role is similar to the role of a minister administering a department. The Presiding Officer's duties include overseeing the operations of the Parliament, including all major policy decisions and development, representing the Parliament at official functions and meeting delegates and other official visitors to the Parliament. The role and responsibilities are not confined to a 9am to 5pm working day.

Other comments

Members of Parliament are representatives elected to perform the duties of office without exemption, except in cases provided for in the Standing Orders (generally related to death or illness).

Furthermore the number of people in this category would represent a very small proportion of all excusals.


MPs come from a broad background of occupations many of which would and could be represented in the jury system:

The Constitution Act 1975 s 40 (2) states,

"All questions arising in the Assembly shall be decided by a majority of members present..."

The forced absence of a Member has the potential to distort the numbers in the chamber impeding the true representation of elected Members and bringing disrepute to the Democracy of the Parliament.

Yours sincerely



Hon Jenny Lindell, MP
Speaker