

Submission
No 7

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

Organisation: Clerk of the Senate
Name: Ms Rosemary Laing, Clerk of the Senate on behalf of
Senator the Honourable John Hogg
Date received: 19/07/2010



AUSTRALIAN SENATE

PARLIAMENT HOUSE
CANBERRA A.C.T. 2600

CLERK OF THE SENATE

rm.let.17359

19 July 2010

The Hon Christine Robertson MLC
Chair
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Robertson

The President of the Senate, Senator the Hon John Hogg, has asked me to respond on his behalf to your letter of 30 June 2010, inviting him to make a submission to your committee's inquiry into the eligibility of members to serve on juries.

It is my understanding that the exemption of members of Parliament from jury service in all Australian jurisdictions is based on statutory law.¹ Statutory law has therefore superseded the common law in all Australian jurisdictions. This statutory exemption is based on traditional parliamentary immunities exempting members of Parliament from legal processes, including immunity from arrest in civil causes and exemption from compulsory attendance in a court or tribunal. The rationale for these immunities is the principle that a member's first duty is to the House of which he or she is a member and that House has first call on the services of its members. The principle applies to attendance in the House and at meetings of committees to which the member belongs.

According to *Odgers' Australian Senate Practice* (12th edition), there is good ground for retaining these immunities, namely:

the principle that the Houses should have first right to the services of their members, witnesses and officers, and that those services should not be impeded by the requirements of legal proceedings before a court. (p. 57)

¹ Enid Campbell, *Parliamentary Privilege*, Federation Press, 2003, p. 144-45.

The *Parliamentary Privileges Act 1987* codified to a significant extent the immunity of members and senators of the Australian Parliament from arrest in civil causes and attendance before courts or tribunals but limited the time during which these immunities apply to five days either side of a meeting of the House or a committee to which the member belongs. The *Parliamentary Privileges Act 1987* reduced the application of the protection from 40 days before and after a session. Given that sessions generally last for the term of the Parliament, the traditional formulation means a virtually permanent exemption.

The immunity from jury service is covered by the *Jury Exemption Act 1965*. Section 4 of that Act provides as follows:

- (1) A person, or a person included within a class of persons, referred to in the Schedule to this Act is not liable, and shall not be summoned, to serve as a juror in a Federal court, a court of a State or a court of a Territory.

The Schedule to the Act lists senators and members of the House of Representatives as classes of persons not liable to serve as jurors in either a Federal court or a court of a State or Territory. This immunity is not limited by any time factor and operates permanently. While it might be possible in theory to limit the application of the immunity to, say, five days either side of a meeting of a House or a committee, this is likely to be unworkable in practice, certainly as far as the Senate is concerned. Records show that, apart from a period over Christmas and New Year, Senate committees meet somewhere in Australia on most days on which the Senate itself is not sitting. While there are fewer meetings during a prorogation, all Senate committees are empowered to meet following a prorogation and many have done so.

Please let me know if I can provide any further assistance to the committee.

Yours sincerely



(Rosemary Laing)