

Submission
No 10

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

Name: The Hon Ronald Dyer MLC

Position: Former Member

Date received: 27/07/2010

INQUIRY INTO THE ELIGIBILITY OF MEMBERS OF PARLIAMENT TO SERVE AS JURORS

SUBMISSION

1. **Whether there exists an immunity (or privilege) that attaches at common law to Members of Parliament that prevents them being compelled to attend other courts in response to a summons for jury service.**

I have no doubt that there is a subsisting immunity or privilege at common law that prevents Members of Parliament being compelled to attend for jury service.

The NSW Law Reform Commission Report notes that "One of the ancient privileges that attaches to a Member of Parliament is the right to exemption from jury service".⁽¹⁾ May's Parliamentary Practice states that "... the service of Members upon juries not being absolutely necessary, their more immediate duties in Parliament are held to supersede the obligation of attendance in other courts and this privilege has been confirmed by statute. ⁽²⁾

However, it should be noted here that the statutory position in the United Kingdom is now different. Lovelock and Evans in their *NSW Legislative Council Practice* note that, though the Juries Act, 1974 previously excused from jury service certain categories of persons including members and officers of the House of Lords and House of Commons, those provisions were repealed by the Criminal Justice Act, 2003. ⁽³⁾

May's Practice also refers to a provision of the Juries Act, 1922 to the effect that every person whose name is included in the jurors' book is liable to serve as a juror, notwithstanding that he may have been entitled by reason of some exemption to claim that he ought not to be marked in the electors' list as a juror. May then states, "This, however, does not affect the right of the House to treat as a breach of its privileges any refusal to excuse a Member who is summoned as a juror from attending or serving; or any attempt to punish him for not attending or for refusing to attend as a juror. ⁽⁴⁾ May concludes on this issue that "... it would appear that the mere summoning of a Member to serve on a jury would constitute a breach of privilege". ⁽⁵⁾

The NSW Law Reform Commission Report advances the view that the application of the ancient immunity to Members of the NSW Parliament has been the subject of some controversy and that this arises from the failure of the NSW Parliament to legislate to define its privileges, unlike all

other Australian parliaments. However, I agree with the LRC that "the weight of opinion appears to be in support of the continued existence of the immunity from jury service." (6)

2. The extent of any such immunity (or privilege), in particular whether the rights that arise apply in periods when Parliament is not sitting.

The NSW Law Reform Commission expresses the view that the extent of the immunity is uncertain and cites Professor Enid Campbell to the effect that Members of the House of Commons, if otherwise qualified to serve as jurors, were liable to serve when the Parliament was not sitting. (7)

Erskine May notes on this issue that the exemption held good during an adjournment but was not ordinarily claimed after a prorogation. (8)

It would be my view that the exemption from jury service is certainly less clear at common law during periods when the House is not sitting.

3. The appropriateness of any such immunity (or privilege).

In my opinion, the immunity or privilege is appropriate when viewed from the standpoint of the duty of service that a Member of Parliament owes to both the legislature and his or her constituents.

It is hardly compatible with such a duty that a Member should be compelled to attend on jury service. The conflict is most readily appreciated when the House is sitting but is also present during periods of adjournment when constituency duties and service on parliamentary committees predominates.

Members of Parliament are, after all, the elected representatives of the people and nothing should be allowed to derogate from the duties that flow from that; such as, sitting and voting in Parliament, attending and deliberating in parliamentary committees and making representations on behalf of constituents.

4. Whether any such immunity should be abolished, altered or more precisely defined.

5. Whether the existing provisions in the *Jury Act 1977* that make Members of Parliament ineligible for jury service are necessary in light of any such immunity/privilege and, if so, whether they are appropriate.

6. Whether the existing provisions in the *Jury Act 1977* that make Members of Parliament ineligible for jury service should be repealed

or amended.

It is my opinion that the existing statutory ineligibility that currently applies to Members of Parliament should be maintained, both for Ministers of the Crown and for other Members of Parliament. It would be less than ideal for the statutory provisions to be repealed and for the common law immunity to remain. As the Law Reform Commission contemplates in the report, it would be a matter for Parliament to then determine whether the immunity should remain and its extent.

It is far more sound in my view to have a clear statutory provision exempting Members of Parliament from jury service. To revert to a reliance on the common law would invite uncertainty and a lack of clarity.

The views I have expressed in this submission are not intended to refer to retired Members of Parliament, who do not have a continuing obligation to attend and serve in Parliament. Such retired Members could be expected to make useful jurors, based on their experience of public life. Also, I do not see any good reason why such retired Members should be ineligible for jury service for a period such as five or ten years following their retirement from Parliament, as is the case in some Australian jurisdictions.⁽⁹⁾

26 July, 2010

References

- (1) NSW Law Reform Commission Report, p 67
- (2) Erskine May, 17th Edition (1964) 77
- (3) Lovelock and Evans - NSW Legislative Council Practice (2008) 80
- (4) Erskine May, 78
- (5) Erskine May, 78
- (6) NSW LRC Report, 67
- (7) E. Campbell - Parliamentary Privilege in Australia (1965), 72
- (8) Erskine May, 78
- (9) Juries Act, 1957 (W.A.); Juries Act, 2000 (Vic)