

Submission
No 16

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

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OUR REFERENCE

DIRECTOR'S CHAMBERS

YOUR REFERENCE

DATE



6 August 2010

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

Dear Madam

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

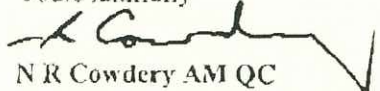
Thank you for your invitation to make a submission to this inquiry.

I am generally in favour of extending the pool of available jurors to include as many eligible citizens as possible, but given that the relatively small number of sitting Members of Parliament would not greatly expand the jury pool, I am persuaded against that option by a number of valid reasons for continuing to exclude sitting members from jury service.

I do not propose to make detailed submissions about whether an immunity or exemption from jury service exists at common law; suffice to say that there is a risk of a perception that the Judiciary and the Executive have become fused (or at least the division blurred) if Members of Parliament were to sit on juries. This risk may of itself be an adequate reason, based on the separation of powers doctrine, that immunity from service already exists in the common law. In rural courts particularly, a local Member of Parliament summonsed to serve on a jury would in all likelihood be sitting on a matter where one of his constituents is the accused person. That gives rise to a real or perceived conflict of roles. For instance, Members of Parliament from time to time make representations about criminal cases to the Attorney General or the ODPP on behalf of their constituents, be they victims or accused persons.

Members of Parliament occupy busy and important positions where they are already serving the community. There is a valid argument that the Parliament should have the first right to their services, unimpeded by the demands of sitting on a jury. But more pragmatically, the demands of their work as Parliamentarians would almost inevitably be a strong basis for applications to the court to be excused in particular cases. Further challenges for cause may be sustained if, for instance, the Parliamentarian was a member of a party that introduced a particular criminal law. Therefore there is significant risk that including Parliamentarians on the jury roll would lead to the time of the Member and of the court being unnecessarily wasted.

Yours faithfully


 N R Cowdery AM QC
 Director of Public Prosecutions