

Submission
No 19

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

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Position: Former Member

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Submission into the Inquiry into the eligibility of Members of Parliament to serve on Juries.

I am writing this submission without the benefit of the amended BAIL ACT and other legislation that has recently increased penalties for various types of crime. Legislation that is intended to prove that the Government is 'not soft on crime'.

The result of this legislation has been to greatly increase the prison population in New South Wales, it is now the highest of any state in Australia. Yet, the majority of prisoners are not hardened criminals, but people from disadvantaged backgrounds, many fundamentally illiterate, and too many are mentally disturbed.

It is for this reason that I believe that it would be valuable if Members of Parliament were given the opportunities to serve on juries. When legislation that introduces tougher penalties, denies bail, or does not fully recognise the mental state of the offender is debated, members of all political parties have little knowledge of the socio-economic background of a potential offender, the person they might see in the dock if they were a member of a jury.

I know from personal experience how easy it is to support (or oppose) legislation on the basis of a ministerial briefing. It is difficult, if not impossible, to assess what effect the legislation may have once it is enforced. Many unintended and dangerous consequences may result, they can never be determined through statistics alone.

I was a member of the Legislative Council from 1981 to 1998 and during that time I visited many of the prisons in New South Wales. In 1995, I undertook a study tour in Great Britain to discover how British jails treated offenders with a history of drug abuse and sexual violence. My report was lodged with the Parliament in 1996. There were many rehabilitation programmes that were available in Great Britain and that still do not exist in New South Wales.

I do not feel that it is necessary for Members of Parliament to be denied the opportunity to undertake jury service, which is part of our democratic legal system.

If there is an immunity that currently exists under common law, it can surely be repealed to meet the needs of the current era. The virtue of common law is that it is not static, it has been re-defined many times over the centuries.

There is evidence to show that draconian penalties do not rid society of criminals, also evidence to prove that in many cases incarceration can do more harm than good; particularly if the prisoner is mentally handicapped in a facility that is not equipped to handle mental illness.

Sadly, few members of parliament are interested in prison reform, it is likely that they have been warned as I was that policies for the treatment of criminals or of the mentally disturbed do not win votes. I am aware that public attitudes have hardened over the years, and it is now popular to adopt the mantra of 'lock 'em up' and throw away the key.

Since my retirement, I have served on the Judicial Commission, the Legal Services Division of the Administrative Decisions Tribunal. As a Member of Parliament, I was a parliamentary representative of the Law Society of New South Wales. I am a Council member of the International Commission of Jurists.

I am firmly of the belief that all Members of Parliament should have the opportunity to understand the detail of the law, the range of penalties imposed on those who break the law, and what opportunities there are for rehabilitation if they receive a custodial sentence. Members of Parliament should make it their business to understand the problems faced by the least privileged members of society, particularly those who are brought before the Court.

On the surface, our society is very prosperous, but there are still gross inequities and a greater understanding of the impoverished members of society would be gained through jury service. Not only the needs of the accused but also of the problems faced by prison officers, parole officers and welfare services.