

SUBMISSION TO SENATE COMMITTEE ON EMPLOYMENT, WORKPLACE  
RELATIONS AND EDUCATION

INQUIRY INTO

WORKPLACE RELATIONS AMENDMENT (WORK CHOICES) BILL 2005

Submission by

CHRISTOPHER J PUPLOCK AM

1. I appreciate the opportunity to make a submission to the Committee and apologise for the slight lateness of the submission.
2. My submission relates to one point only, namely the importance of including ***being called for jury service*** as one of the items which should be protected under legislation, so that an employer may not refuse an employee time off to serve as a juror, nor use the absence of an employee on jury service as an reason to financially penalise that employee or terminate their employment.
3. The website of the Supreme Court of Victoria (<http://supremecourt.vic.gov.au>) states : “Trial by jury is a vital component of our legal system and our democratic way of life. Jury service is a fundamental responsibility of all citizens, as well as being a unique and rare privilege.” This is a sentiment which I am sure would be endorsed by all Senators and Members of Parliament.
4. The right to trial by one’s peers, now reflected as trial by jury was established as part of the settlement of Magna Carta and has remained fundamental to the legal systems of countries such as Australia, which derive their legal traditions from those of Great Britain. Since the establishment of responsible government in the colonies, and since Federation this aspect of our legal system has remained central to its whole character and operation.
5. Australian citizenship imposes very few responsibilities on individuals in return for the great benefits which it confers. Among these have been the statutory requirements to vote and, using the electoral roll on which one’s enrolment is compulsory (under the Electoral Act), service as a juror.
6. I do not believe that any responsible public official or commentator would disagree with the proposition that potentially undertaking jury duty is a proper and indeed necessary obligation which should lie upon all citizens equally, except where specific exemptions are provided for by law for good and proper public policy purposes.

7. A large number of existing industrial awards provide that employees must be allowed time off, without forfeit of salary, penalty or threat of dismissal to serve on juries. For example Clause 39 of the *New South Wales Universities (General Staff Conditions of Employment)(State)Award* makes such specific provisions and I cite it as simply one example which may be found throughout State and Federal awards in both the public and private sector.
8. Generally, Judges have been reluctant to excuse citizens from jury service simply because this may cause some inconvenience to their employers – as indeed any jury service requirement on staff are likely to do.
9. Similarly, employers have generally accepted that giving staff time off without penalising them in order to undertake jury service is part of their obligations as corporate citizens.
10. As I understand the proposed legislation now before the Committee, jury duty is not one of those items for which employers are required to allow their employees to be absent from work in the way in which sick or parental leave is recognised.
11. However I would submit that jury service is a vital requirement of our legal system and thus of our entire polity. It goes to the very heart of Australian democracy and its unique character. I submit it is worth preserving.
12. If any employee is able to apply for exemption from jury service simply by stating that their employer has prohibited them taking time off for such service, or will dismiss or otherwise penalise them (eg by withholding salary or wages) if they do accept this civic duty, it will make it very difficult for Judges to do other than grant what will become wholesale exemptions.
13. Judges would feel under pressure (perhaps improperly so) to exempt people if their insistence that people serve as jurors is at potential cost of that person's job or financial security. Such applications for exemption might significantly increase the times taken in legal proceedings which would be of benefit to no one.
14. Wholesale exemptions from jury service for what might be described as "ordinary working people" will undoubtedly skew the nature and representative character of jury panels.
15. They will become increasingly composed of people who are unemployed, retired, students, homemakers and others not in the full-time workforce or public servants (if state and federal governments adopt pro-jury service employment award conditions). Such a profile does not genuinely "represent" the Australian community nor does it properly constitute a jury of one's "peers" as it should.

16. In my respectful submission, the Bill before the Committee should be amended so as to provide that **where an individual is called for jury service, and is not otherwise exempted by the Court, no employer shall be allowed to refuse an employee the time off from work required to complete such jury service and shall not be permitted in any way to penalise, dismiss or otherwise disadvantage any such employee for undertaking jury duty.**
17. I thank the Committee for its receipt of my submission.

**Christopher J Puplick AM\***

Post Office Box 238, Neutral Bay Junction, New South Wales 2089.  
Contact : 0403 223 094 (mobile), 9908 3418 (home)  
[puplick@ozemail.com.au](mailto:puplick@ozemail.com.au)

\* Former Senator for New South Wales, submission made in a private capacity.

10 November 2005