



Australian Government
Attorney-General's Department

MC15/05926

26 May 2015

Mr John Wilson
19 Elm Place
NORTH ROCKS NSW 2151

Dear Mr Wilson

I refer to your letter dated 13 February 2015 to the Prime Minister, the Hon Tony Abbott MP, concerning the right to trial by jury and the work of the Australian Human Rights Commission. Your letter has been referred to the Attorney-General, Senator the Hon George Brandis QC, as the issues you have raised fall within his portfolio responsibilities. The Attorney-General has asked me to reply to you on his behalf.

The Australian Human Rights Commission's functions include promoting understanding of human rights in Australia. In doing so, the Commission facilitates discussion on a wide range of human rights topics, where people may hold different views. The Australian Government supports the important role that the Commission plays in protecting and promoting human rights in Australia. Though the Government will not always agree with the Commission's views, it welcomes a vigorous, diverse and balanced human rights debate in Australia.

Section 80 of the Constitution provides, in part, that the 'trial on indictment of any offence against any law of the Commonwealth shall be by jury'. The requirement in section 80 thus applies to Commonwealth offences, not to State offences. It follows that section 80 would not apply, for example, to an indictment for an offence under a State criminal code. In 1988, a proposal to alter the Constitution to extend the right to trial by jury to offences created by laws made by State Parliaments that are tried on indictment was defeated at a referendum.

You may also be interested to know that the Attorney-General has requested the Australian Law Reform Commission to examine whether Commonwealth laws that encroach on common law rights, freedoms and privileges are appropriately justified. The right to a fair trial is one right that the Commission will examine. A discussion paper is expected to be released in the middle of the year and the final report is due by December 2015.

I trust this information is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Pfitzner', written over a white background.

Paul Pfitzner
Acting Assistant Secretary
Human Rights Policy Branch