



**Office of the Hon Brad Hazzard MP**  
Attorney General  
Minister for Justice

12 MAY 2014

Mr D A Elliott MP  
Member for Baulkham Hills  
Suite 1, 25-33 Old Northern Road  
BAULKHAM HILLS NSW 2153

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MATTER14/002169

07 MAY 2014

  
Dear Mr Elliott

Thank you for your representations to the former Attorney General on behalf of Mr John Wilson of 19 Elm Place, North Rocks NSW 2151, about the right to trial by jury. I have been asked to reply.

I note that section 80 of the Australian Constitution provides that an offence against any law of the Commonwealth that is tried on indictment is to be tried by a jury. This provision of the Australian Constitution does not apply to offences under NSW criminal law. However section 131 of the NSW *Criminal Procedure Act 1986* provides that criminal proceedings in the District Court or the Supreme Court are to be tried by a jury, unless an application is made for a trial by judge alone.

In trials of offences under NSW criminal law, an accused person can waive the right to trial by jury, with the consent of the prosecution. The trial would then proceed by judge alone. If the prosecution does not agree, the court may still order that the trial be by judge alone, if it considers it to be in the interests of justice. A trial cannot be by judge alone, if the accused person does not consent. An accused person cannot waive their right to a trial by jury for a Commonwealth offence.

In civil proceedings, cases (except for defamation) in either the Supreme Court or the District Court are tried without a jury, unless the court orders otherwise. If either party requests a jury, the court must be satisfied that the interests of justice require it.

I trust the information provided is of assistance in responding to Mr Wilson.

Yours sincerely



The Hon David Clarke MLC  
Parliamentary Secretary for Justice