



Civil Liberties Australia, Inc
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29 November 2010

Mr Simon Corbell MLA
Attorney General for the ACT
GPO BOX 1020
CANBERRA ACT 2601

Dear Mr Corbell

RE: PROPOSED LIMITATIONS ON THE RIGHT TO TRIAL BY JURY

Thank you for your letter of 19 November 2010 advising of your intention to re-define the definition of 'summary offence' to be any offence punishable by five years imprisonment or less.

Civil Liberties Australia vigorously opposes any such amendment.

The effect of your proposal, if enacted, would be to severely curtail the right to trial by jury. The right to a jury trial in the British common law world has been a basic common law right for more than 800 years, with its fundamental importance being entrenched in the Magna Carta. It is right that has endured through major world wars, the security imperatives of the Cold War, and the threat from Irish Republican Army terrorists, and later from Islamic extremist terrorists.

Until recently both the community and accused persons in the ACT enjoyed the benefits of the right to trial by jury for offences punishable by more than 12 months imprisonment.

Your government began to erode this fundamental right in the *Crimes Legislation Amendment Act 2008*, which redefined a summary offence to be an offence punishable by more than two years imprisonment. Now you propose to erode it even further by increasing this definition to include any offence punishable by more than 5 years imprisonment.

In moving to erode this right, you clearly fail to recognise the public utility of this right. His Honour Justice Deane succinctly explained the benefits of the right to trial by jury in his judgement in *Kingswell v The Queen* (1985) 159 CLR 264:

Trial by jury also brings important practical benefits to the administration of criminal justice. A system of criminal law cannot be attuned to the needs of the people whom it exists to serve unless its administration, proceedings and judgments are comprehensible by both the accused and the general public and have the appearance, as well as the substance, of being impartial and just. In a legal system where the question of criminal guilt is determined by a jury of ordinary citizens, the participating lawyers are constrained to present the evidence and issues in a manner that can be understood by laymen. The result is that the accused and the public can follow and understand the proceedings. Equally important, the presence and function of a jury in a criminal trial and the well-known tendency of jurors to identify and side with a fellow-citizen who is, in their view, being denied a "fair go" tend to ensure observance of the consideration and respect to which ordinary notions of fair play entitle an accused or a witness. Few lawyers with practical experience in criminal matters would deny the importance of the institution of the jury to the maintenance of the appearance, as well as the substance, of impartial justice in criminal cases [at page 301].

His Honour also explained that:

The institution of trial by jury also serves the function of protecting both the administration of justice and the accused from the rash judgment and prejudices of the community itself. The nature of the jury as a body of ordinary citizens called from the community to try the particular case offers some assurance that the community as a whole will be more likely to accept a jury's verdict than it would be to accept the judgment of a judge or magistrate who might be, or be portrayed as being, over-responsive to authority or remote from the affairs and concerns of ordinary people [at page 302].

I understand that your purpose in eroding this right is to help alleviate the backlog of cases and the attendant delays in the ACT Supreme Court. It is now notorious amongst members of the legal profession that these delays are the result of a combination of a lack of necessary judicial officers and inefficiencies in the administration of the courts.

It is a remarkable, to say the least, that your response to this problem is to erode a fundamental right, instead of to appoint additional judicial officers and ensure the courts are run more efficiently.

I understand that there has been tension between yourself and the Chief Justice over the proper staffing of the courts. I also understand that, as a result, you would be reluctant to appoint further judges so as not to 'lose face'.

It will be a very poor indictment upon your government if the right to a trial by jury, which has endured for centuries through times of great crisis, is to be a victim of your government's inability to properly manage the ACT's judicial system.

I also understand that, at the same time that you are preparing to erode the right to a jury trial by redefining the definition of a summary offence, you are considering mandating that certain serious offences, such as murder and other serious sexual and violence offences, must be tried only by a jury. I understand that this is a reaction to perceptions by some sections of the community about an 'out of touch' and unduly lenient Supreme Court bench. If you were to take such an approach, the inconsistency in logic between the two proposed amendments would be extraordinary. How, on the one hand, can you say that jury trials have a greater role to play for serious offences in order to engender greater public confidence in the justice system whilst, on the other hand, substantially eroding the right to jury trial by removing it for all offences punishable by five years or less imprisonment?

I would also like to express my concern about the lack of consultation in the decision-making process that has led to this decision. It is of great concern that once again your government has announced proposed major changes to the Territory's criminal justice system after selectively consulting some stakeholders only.

I ask that you consider not proceeding with your proposal to amend the definition of summary offence, or, at the very least, delay the amendment with a view to further consulting with a truly representative cross-section of the community.

Yours sincerely

Dr Kristine Klugman OAM
President, Civil Liberties Australia

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