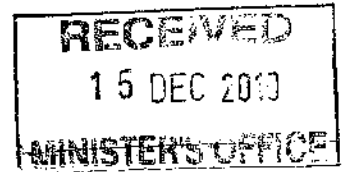




*The Chief Judge  
District Court of NSW*



The Hon J Hatzistergos MLC  
Attorney General and Minister for Justice  
Level 33  
Governor Macquarie Tower  
1 Farrer Place  
SYDNEY 2000

10 December, 2010

Dear Mr Attorney,

Thank you for your letter of 1 December relating to the *Defamation Act 2005*. I refer to my earlier correspondence, copy attached, relating to a submission that it should be made clear there is a wide discretion to dispense with juries in defamation cases.

Yours faithfully,

A handwritten signature in black ink, appearing to be "R O Blanch".

The Hon Justice R O Blanch  
**CHIEF JUDGE**



*The Chief Judge  
District Court of NSW*

The Hon J Hatzistergos MLC  
Attorney General and Minister for Justice  
Level 33  
Governor Macquarie Tower  
1 Farrer Place  
SYDNEY 2000

22 December, 2009

Dear Mr Attorney,

The *Defamation Act 2005* in section 21 provides in subsection (1) "Unless the court orders otherwise, a plaintiff or defendant in defamation proceedings may elect for the proceedings to be tried by jury." For ease of reference I attach a copy of section 21. In the case of *Mallik v McGeown* [2008] NSWSC 129 McCallum J considered section 21 of the Act and said there was no guidance in the statute as to what kind of other issue apart from technical and scientific issues referred to in section 21(3) which should be considered. At [34] of the judgment the judge referred to a right of trial by jury "subject to the Court's limited discretion under s 21(3)." At [41] the judge referred to the fact that Parliament must have considered and rejected the possibility of rejecting applications for juries in order to save time and resources.

At the time this legislation was going through I raised with your predecessor the desirability of the Court having a clear power to dispense with juries in defamation cases. His response was that the section gives a broad power to the Court to reject applications for trial by jury. No doubt that would be the case if the provision was only s21(1) but the interpretation of s21(3) adopted by Justice McCallum is clearly open.

I bring the matter to attention because particularly in this Court defamation actions are often brought seeking small amounts of damages or they are cases where small awards of damages are appropriate. The jury trials which are being conducted are taking two or three weeks and the litigation costs are out of all proportion to the damages awarded.

In my view it would be far more appropriate for juries to be dispensed with altogether. However, if trial by jury is to remain then it seems to me it would be desirable to make it clear that Courts do have a jurisdiction to reject applications for jury trials where the Court considers to do so would be in the interests of justice.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'R O Blanch', followed by a long horizontal line extending to the right.

The Hon Justice R O Blanch  
**CHIEF JUDGE**