



THE JUDICIAL CONFERENCE OF AUSTRALIA

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The Editor
The Courier Mail
Brisbane QLD 4000

Dear Sir

Your editorial of 2 March 2015 headed "Judicial transparency vital for open justice" and the related article on page 11, while raising one substantive issue, seriously misrepresented the real accountability of the judiciary.

It is legitimate to enter a debate about whether Queensland ought to legislate for a formal process to investigate complaints against judicial officers, such as the different models applicable in the Commonwealth¹ and legislative provisions relating to investigations of complaints against Federal judges² and in New South Wales³. Those models respect the independence of the judiciary but provide an effective means to consider whether a complaint about a judicial officer has any substance and how it ought be addressed. The Judicial Conference of Australia has supported such legislation in its 2012 Senate submission on the Commonwealth legislation.

However, it was wrong to attack the integrity and professionalism of the entire Queensland judiciary. It was false to suggest that judges were above the law. A responsible newspaper such as yours should check its facts before publishing such suggestions.

The judiciary is the most transparent institution in this country. Every case is heard in public. Every decision of every judicial officer is given in public with the judge's or magistrate's reasons. Those reasons are open to public scrutiny and criticism. The only exceptions involved cases concerning children, confidential matters and national security. There is no lack of accountability for those independent, open and reasoned decisions. And, yes, sometimes judicial officers make mistakes, just as every other human does, but there are

¹ *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012 (Cth)*

² *in the Courts Legislation Amendment (Judicial Complaints) Act 2012 (Cth)*

³ *Judicial Officers Act 1986 (NSW)*

appeal courts to correct legal errors. Those courts, too, sit and decide in public and give their reasons for exercising the judicial power in the circumstances of the particular case.

Your stories overlooked that each case is different. Usually, Parliaments legislate to provide courts with a discretion to impose a range of sentences. That is because they know that one size does not generally fit all for each offence and individual offenders each have their own circumstances. For example, it is trite to say that taking another person's life is usually among the worst of crimes. But there can be all the difference in the world between a cold blooded gangland murder and a killing by a wife who had been abused and beaten for years by the deceased as the victim of domestic violence. Ordinarily, justice would require quite different sentences for those two killers. There is not necessarily any exact precedent for a sentence, because many variable factors arise for the judicial officer to consider.

The media often sensationalise the end result of a sentence. However, unlike the ordinary member of the public who must rely on the media's version, the journalist was present in court and heard, or could read, the reasons for the sentence. What destroys transparency, is the suppression from the public by the media of the judge's reasons while criticising his or her end result. Better reporting of the reasons for sentences would be a good start to the public understanding of how the Courts came to those results.



The Hon Justice Steven Rares
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Judicial Conference of Australia