



Judicial Conference of Australia

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of the Judicial Conference of Australia
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Grossly Improper and Unfair Attack on Victorian Judiciary

The statements attributed to three federal Ministers concerning senior members of the Victorian Supreme Court on the front page of *The Australian* on 13 June 2017 are an apparent coordinated and direct attack on the character and independence of the Victorian judiciary. They could be misconstrued as an attempt to interfere in the outcome of a particular case before the Victorian Court of Appeal, the President of the Judicial Conference of Australia, Justice Robert Beech-Jones, stated today.

The statements as attributed were “unfounded, grossly improper and unfair” he said.

The statements attributed to the three Ministers were made in response to comments made by the Chief Justice of Victoria and a Judge of Appeal during argument on an appeal by the Commonwealth Director of Public Prosecutions (CDPP) against a sentence imposed on an offender for a terrorist offence. The reported comments concerned an apparent difference between the sentences imposed by New South Wales and Victorian courts for terrorist offences under the Commonwealth Criminal Code. The Court reserved its decision.

For Ministers of the Commonwealth to personally attack judges who have reserved on a judgment in which a Commonwealth agency is a litigant is grossly improper. Their actions could be misinterpreted as an attempt to influence the Court of Appeal in determining the CDPP’s appeal.

One of the statements attributed to a Federal Minister was that the comments made by the two judges during argument about sentences for terrorism offences imposed in New South Wales could have the “effect of undermining the public’s confidence in the judiciary to take terrorism seriously” and that the “attitude of judges like these has eroded any trust that remained in the legal system”. These statements are misconceived.

The comments made by the Chief Justice of Victoria and the Victorian Judge of Appeal concerning the sentences imposed in New South Wales were part of the ordinary exchange that occurs between members of an appellate court and the legal representatives of the parties during an appeal concerning the application of Commonwealth law. No doubt the members of the Court were responding to

submissions of the parties including the CDPP concerning the significance of sentences imposed in other states.

Comments made during argument do not represent final views of the court. “It was not inappropriate for members of the Court to consider and comment upon sentences imposed in other States” Justice Beech-Jones stated. “To the contrary, the judges were required to do so as part of their duty to address the submissions of the parties including the CDPP” Justice Beech-Jones said.

“The only statements that serve to undermine confidence in the legal system were those of the Ministers and not of the Court” Justice Beech-Jones said.

The article also reports a Minister as stating that “the Victorian court system [is] becoming a forum for ‘ideological experiments’ that ignored the reality of the local and global terrorism threat” and the “state courts should not be places for ideological experiments in the face of global and local threats from Islamic extremism that has led to such tragic losses”. Another Minister is reported as stating that it is the “continued appointment of hard left activists has come back to bite Victorians”. Yet another Minister referred to judges being “divorced from reality”.

“These comments are a slur on the character of the Victorian judiciary” Justice Beech-Jones stated. The reference to “ideological experiments” is completely unfounded as is the references to the judiciary being “hard left activists”, Justice Beech-Jones said. These comments have no evidentiary foundation. They are capable of undermining public confidence in the judiciary. They should have never have been stated by any Minister but especially by a Minister in a government about a decision involving that government which is before the Court” Justice Beech-Jones stated.

The statements made by the Ministers were also grossly unfair. While the Court is reserved on the CDPP’s appeal, none of the members of the Court are able to directly respond to the misinterpretation of their comments in Court or the slurs upon their character, Justice Beech-Jones said.

“The statements attributed to the Ministers are deeply troubling. They represent a threat to the rule of law. They should never have been made.” Justice Beech-Jones stated.

The Judicial Conference of Australia is the professional association of judges and magistrates in Australia.

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