



Judicial Conference of Australia

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Caution should be exercised before commenting on ongoing Court proceedings

The Vice President of the Judicial Conference of Australia, Justice Judith Kelly, has expressed concern about comments by a State Government Minister critical of Magistrate Stone who is still determining sentence proceedings against the Archbishop of Adelaide. Those comments include unfounded criticisms that the Magistrate failed to apply recent amendments to sentencing legislation which were not applicable.

Last night on the “7.30 report” a Minister in the New South Wales State government expressed strong criticism of the decision of the Magistrate to impose a sentence of 12 months imprisonment with the offender to be assessed for suitability for home detention. “While people in the community are free to express their views about the adequacy of the sentence, even in strong terms, it must be remembered that the Magistrate has yet to conclude the proceedings and it appears that they will be the subject of an appeal,” Justice Kelly stated. “The State is represented in the proceedings before the Magistrate via the Director of Public Prosecution,” Justice Kelly said. “Like any other litigant, the State should exercise caution in complaining about the course of proceedings while they are on foot.”

Like anyone else, government ministers are entitled to criticise decisions of courts, including sentencing decisions, if they consider the criticism warranted. However, when it comes from a government minister, the expectation is that the criticism should be informed by a prior reading of the decision in question, and where reference is made to the law, it should be stated accurately.

In the 7.30 Report interview, the government minister criticised the adequacy of the sentence handed down to Archbishop Philip Wilson in strong terms without any reference to the sentencing remarks in which the magistrate gave detailed reasons for the sentence imposed, setting out and discussing all of the relevant

considerations, including the maximum sentence prescribed by the legislature which is imprisonment for 2 years.

Further, in the 7.30 interview the Minister referred to the “moves by the New South Wales Attorney – General to make it absolutely clear that [offenders] need to be sentenced with the community expectations of today [and] not when the offences occurred ...”. The “moves” referred to the Attorney-General relate to recent amendments to the relevant sentencing legislation that have not yet become law. Even if the amendments had come into force, they would not be applicable to Magistrate Stone’s decision because the Magistrate was not dealing with an offence covered by the legislation.

“The Minister’s criticism of the Magistrate for not having regard to inapplicable legislative amendments that have not come into force was unfortunate,” Justice Kelly said. “Magistrate Stone was required to apply the law in force at the time of the decision and to sentence the Archbishop for the offence for which he was he was convicted.”

Today on the Ray Hadley program the Minister repeated his erroneous criticism of the Magistrate that he failed to apply a recent change to the sentencing legislation, specifically s 25AA of the Crimes (Sentencing Procedure) Act 1999. That provision has not yet been proclaimed into law and did not apply the offence before Magistrate Stone.

“It is regrettable that a Minister of the State government would so trenchantly criticise a Magistrate for failing to apply legislation that was not in force and not applicable to the charge the Magistrate was hearing,” Justice Kelly said. “The Court and an individual magistrate, has been unfairly used as a political football in a manner which can only harm public confidence in our system of criminal justice.”

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

For further information, contact Christopher Roper, Judicial Conference of Australia Secretariat: secretary@jca.asn.au | 0407 419 330

The President and Vice-President of the JCA are not available for broadcast or television interviews on this matter.