



JUDICIAL CONFERENCE OF AUSTRALIA

The Prime Minister's criticism of the High Court

The Prime Minister's comments about the High Court's judgment this week are disappointing and concerning.

No court, including our highest court, is immune from criticism. But any criticism should go to the legal merit of the court's judgment and it should not misrepresent the court's task in upholding the rule of law.

The Prime Minister described the judgment as "a missed opportunity to enhance our region's response to the evil of people smuggling". This was misguided. It is not the court's role to look for and take "opportunities". Its job here was to decide whether the Minister's actions were lawful, according to the statute which the Parliament had enacted. And that is what all seven members of the court did, each conscientiously discharging his or her duty.

Further, the Prime Minister's singling out of the Chief Justice for particular criticism is extraordinary, unfair and curious in the circumstance that he is one of six justices who reached the same conclusion. The seventh dissented.

Responsible criticism by one branch of government of another is a healthy sign of a free society. Irresponsible criticism, especially from a Prime Minister, could tend to upset the balance of separated powers which is essential to that society.

Justice Philip McMurdo

Vice President, Judicial Conference of Australia

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