



Judicial Conference of Australia

**MEDIA RELEASE BY
THE HON JUSTICE STEVEN RARES
PRESIDENT, JUDICIAL CONFERENCE OF AUSTRALIA
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Politicians attacking judges

Justice Steven Rares, President of the Judicial Conference of Australia, called today for politicians to refrain from making personal attacks on judicial officers with whose decisions they disagree. Justice Rares said that everyone, including politicians, has a democratic right to comment on and criticise court decisions but that politicians damage our democracy and public confidence in the rule of law when they make personal and intemperate attacks on courts, judges or magistrates and others. He also said that such political, personal attacks on individual judges and courts were unfair because judges cannot not answer back. “Judges must and do explain their decisions in reasoned judgments but they cannot engage in a debate about those judgments in response to a personal attack” Justice Rares said.

Justice Rares said that it has been the accepted convention that each of the three arms of government (Parliament, the Executive and the Judiciary) should not undermine the other arms’ independent, constitutional integrity. As part of this convention judges do not make personal attacks on the politicians responsible for the legislation they are interpreting. That is because the courts know,

and respect, the constitutional role of parliaments in our system of government to make difficult and important political decisions. The Courts and the individual judges are entitled to a reciprocal level of respect.

Justice Rares expressed concern because of recent comments by a member of the Victorian Parliament about the recent decision concerning “baseline sentencing” under the *Sentencing Act 1991 (Vic)* in *Director of Public Prosecutions v Daniel Waters (a pseudonym)* [2015] VSCA 303. In that judgment, the majority (Maxwell P, Redlich Tate and Priest JJA) held that “the baseline sentencing provisions are incapable of being given any practical operation” and gave detailed written reasons for that conclusion. The fifth judge (Whelan JA) disagreed for detailed written reasons that he also gave.

One member of the Victorian Parliament said that the judgment was “an unbelievable rebuff of the will of Parliament”. Justice Rares noted that another member of that Parliament endorsed his colleague’s statement and added on his webpage and Facebook page that “judges ... don’t like tougher sentencing, so they will just ignore new laws and claim they don’t know what the new laws require”. The second member also commented that “some judges wonder why many members of the community believe judges are soft on crime and out of touch with reality”.

The clear implication of the statements that the judges had rebuffed the will of Parliament and only “claim[ed]” to not know what the law in question required is the judges were not acting honestly and were acting instead on their personal views that they “don’t like tougher sentencing”. These were unfortunate personal attacks on the integrity and impartiality of the judges that went beyond appropriate or legitimate criticism of the Court’s decision. The comments were not criticisms of the Court’s reasons for its decision about what the

sentencing legislation meant. The judges had performed their constitutional function of interpreting and applying the law to the facts of a particular case.

Justice Rares called on politicians to be mindful that the courts have a vital role in our society in ensuring that we all live under the rule of law. They should be careful not to undermine the courts' constitutional integrity by making personal, political attacks on judges.

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

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