



Judicial Conference of Australia

**Media release by the President
of the Judicial Conference of Australia
7th February 2017**

The President of the Judicial Conference of Australia, Justice Robert Beech-Jones, submitted the below letter to the Australian in response to an opinion piece published on 30 January 2017.

The opinion piece in the Australian entitled “Courts Must Dispense Justice, Not Therapy” and published on 30 January 2017 conveys an inaccurate representation of the role of the judiciary in the criminal justice system. The article suggests that a form of “revolutionary court” has emerged in Australia “without a parliamentary vote or public consent”. This “revolutionary court” is said to involve a “transform[ation of] court practice from black letter law to therapy culture” in which there is not a “faithful application of legislation and just punishment for crime” but instead judges “manage” the emotions of offenders.

The article confuses the role of various participants in the criminal justice system with that of the judiciary. It includes quotes that are supposed to support its central tenet from persons who are not members of the judiciary and then groups them together with the judiciary as part of an assertion of an overall failure on the part of the “justice system”. Those persons may be lawyers and owe duties to the Courts and their clients but it is only the Court’s function to administer criminal justice according to law. Nothing in the article provides any support for a contention that the Courts of Victoria or anywhere else in Australia are not doing so.

Although the maximum penalties and sentencing regimes for criminal offences vary throughout Australian jurisdictions, the factors to be considered in imposing sentences established by case law and statute are generally consistent and include deterrence, punishment, retribution and the rehabilitation of the offender. Judicial officers who place emphasis on rehabilitation when sentencing offenders do so on a basis firmly grounded in law, whether “black letter” or otherwise. A comprehensive system of appeals exists for both the prosecution and accused in the event that any sentence imposed on an offender was the result of undue weight being placed on any sentencing consideration including rehabilitation or that the sentence was otherwise manifestly excessive or manifestly inadequate. That system is

supported and underpinned by the obligation imposed on all judicial officers to provide reasons for their decisions, including sentences.

The article also makes reference to various specialist criminal courts such as mental health and drug courts as exemplars of some illegitimate trend. Courts of that kind are found throughout Australia. They are all established by statute – that is to say that, contrary to the opening assertion of the article, they were established by a parliamentary vote. Judges sitting in those Courts are “faithfully appl[ying] legislation”.

Finally, the article implies that the asserted revolution in the Courts was somehow responsible for the recent terrible events in Bourke Street. No evidence was put forward to support that assertion and conclusions about those events should await the outcome of evidence based inquiries.

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

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