



Judicial Conference of Australia

**Media release by Justice Judith Kelly, the President
of the Judicial Conference of Australia
16 April 2020**

**Inaccurate and unfair media commentary on
the High Court decision in the Pell case**

The President of the Australian association of judges and magistrates, Justice Judith Kelly, has responded to, what she called, “the flood of emotion and tsunami of articles following the High Court decision in the Pell case”. Justice Kelly said that “Some of the commentary directed at the Victorian Court of Appeal has been inaccurate and grossly unfair”.

Justice Kelly, the President of the Judicial Conference of Australia, has issued the following statement, which was published in the online edition of *The Australian* yesterday.

In an article in *The Australian* on April 8 John Ferguson wrote:

“There will be those who want to take comfort from the fact that the cathedral allegations passed through three courts.

But the manner in which they were excoriated by the High Court suggests that this was a function of a triumph of luck – and maybe even prejudice – rather than necessarily evidence of any weight of facts.”

Wrong on all counts.

The High Court did not excoriate anyone: neither the jury who found Pell guilty, nor the judges on the Victorian Court of Appeal who dismissed his appeal against that conviction. The High Court analysed the evidence and the

applicable legal principles, found that on the whole of the evidence a jury, acting rationally, ought to have entertained a reasonable doubt as to Cardinal Pell's guilt and, with appropriate courtesy, allowed the appeal.

The remark "and maybe even prejudice" is grossly unfair, especially in the context in which it appears. There is nothing, anywhere, in the High Court's decision which could ground an apprehension that the Court of Appeal acted out of prejudice or did anything other than conscientiously apply the law to the facts in accordance with their oath of office. The High Court found that analysis to be mistaken. It did not hint, even obliquely, that the majority judges on the court may have been motivated by prejudice or any other improper motive or cast any doubt whatsoever on the honesty or integrity of the Appeal Court judges.

On the same date, Paul Kelly wrote in *The Australian*, "The High Court in reality, has saved our institutions from the dishonourable way they discharged their duties".

It should not need saying that there is nothing dishonourable about being overturned on appeal. There is nothing in the High Court decision which suggests in any way that the Victorian Court of Appeal judges acted dishonourably, failed to abide by their oaths of office, or did anything other than conscientiously attempt to apply the law as they construed it to the important task of deciding the appeal. All the High Court did was to decide that the judges in the majority were mistaken in that application of the law.

On the same date, John Ferguson wrote under the headline: "Quashed: High Court declares Pell innocent":

"The High Court has freed George Pell in a stunning repudiation of the Victorian judicial system and the police force..."

Wrong on both counts.

And then, on Wednesday, the *Herald Sun* published a disgraceful article by former Victorian premier Jeff Kennett in which he suggested that the Chief Justice and President of the Court of Appeal should resign. The notion that a judge should resign because he or she was overturned on appeal is simply ridiculous. It betrays Mr Kennett's absence of knowledge about the system of courts in Australia.

Appointments to judicial office in Victoria, as in the rest of Australia, have traditionally been made solely on the basis of the professional criteria of expertise, intellectual and analytical ability, and a demonstrated capacity and willingness for sustained hard work; and the personal qualities of integrity, fairness, independence, impartiality, sound temperament and good character. There is nothing in the High Court decision in the Pell case to suggest that the majority judges on the Court of Appeal are wanting in any of these qualities.

Many of the recent plethora of articles have decried "the media driven frenzy" and "the lynch mob mentality" of some sectors of the media who were "out to get Pell". It is just as disgraceful for some in the media to be baying for the blood of the majority judges on the Court of Appeal.

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 of the JCA is not available for broadcast or television interviews on this matter.