



Judicial Conference of Australia

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Comments on judge's sentencing decision are wrong

The Vice-President of the Judicial Conference of Australia (JCA), Justice Glenn Martin, today said he thought it was important to correct some errors made by two people quoted in an online article entitled "Judge invited to tour Alice Springs Correctional Facility after sentencing comments", posted on February 15, 2019 by Alex Barwick and Emily Smith.

The story concerned the fact that a judge of the Northern Territory Supreme Court gave conditions in the Alice Springs Correctional Centre "some weight" when sentencing a man for historical sex offences.

"I should make it clear that I do not find fault with the article," Justice Martin said, "However, the article reports comments from two people who, perhaps understandably, have not properly understood what the judge was saying and are not aware of what the law requires of a judge imposing a sentence."

The sentencing judge referred to the conditions under which the offender was detained while on remand in the Alice Springs Correctional Centre saying, "The conditions are appalling, overcrowded and without any significant ventilation, more like those commonly found in Third World countries rather than in a country like Australia." He gave this "some weight" in passing sentence.

Alice Spring's Women's Shelter chief executive Di Gipney took issue with the judge's approach. She is quoted as saying that prison conditions and sentencing were two separate issues that should have no bearing on one another, and that imposing a shorter sentence based on the conditions in the prison in which the convicted sex offender would be placed was "ludicrous."

The article reports that NT Corrections Commissioner Scott McNairn was also critical of the judge's approach. The Commissioner is quoted as saying, "It

concerns me that judges would think like that." The Commissioner went on to refer to recent improvements in the facilities at the prison (installation of mist fans and repair of the extractor fan) and proposed future improvements.

"Two points need to be made," Justice Martin said. "The first is that the sentencing judge was referring to the conditions under which the offender had been detained while on remand – in the past - so that the recently implemented and proposed future improvements referred to by the Commissioner are not to the point."

"Second, the comments by both Ms Gipney and Commissioner McNair reflect a misunderstanding of the relevant sentencing principles. It is simply not the law that prison conditions and sentencing have no bearing on each other. It is well established law that if the conditions under which an offender has been detained on remand are worse than those for a sentenced prisoner, that is a relevant factor which a judge can, and in appropriate circumstances should, take into account in determining what is a proper sentence. It was, therefore, entirely appropriate for the judge in question to give those conditions 'some weight'."

Justice Martin added, "Of course the harm to the victim, general and personal deterrence, denunciation, punishment, community protection, rehabilitation and other matters, including some personal to the offender, must also be accorded their due weight."

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

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