



Judicial Conference of Australia

**Media release by the President
of the Judicial Conference of Australia
15 November 2019**

Unfounded criticism of judges' decisions ignores essential facts

The President of the Judicial Conference of Australia, Justice Judith Kelly, has expressed deep concern at the tone and content of three recent articles published in *The Courier-Mail* – an article and editorial on 9 November and an article by Peter Gleeson on 15 November 2019.

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

Justice Kelly has said “Constructive criticism of any court’s decision should be welcomed. But criticism which is unfounded or which ignores essential facts must be corrected”. Last week, *The Courier-Mail* published an article about the reduction of fines imposed on “anti-Adani activists”. Two decisions of the District Court were the subject of discussion, one, given two months ago, by Judge Dearden, and another given by Judge Lynham nine months ago.

The editorial was followed by a vituperative article on the same topic on 15 November 2019 by Peter Gleeson which contained no rational discussion and no analysis of the reasons.

It is most unfortunate when journalists fire off intemperate criticism of judicial decisions which extends to personal abuse (for example: “the principles of socialism are alive and well among some of our judicial leaders”), apparently without troubling themselves to read the decisions in question – both of which are available on the Court’s website. Reasons are

written to inform the public of the basis upon which judgments are made; and the public relies heavily on the press to keep it informed. The Peter Gleeson article fails even to attempt to inform.

Had the authors of the editorial and the article read the decisions in question they would have found that Judge Lynham agreed with many aspects of the original magistrate's approach including his characterisation of the offences as objectively serious and inherently dangerous. After a careful and detailed analysis of the relevant law, Judge Lynham then found that the magistrate had erred in imposing the same fine on each of the offenders regardless of relevant differences in their ages, antecedents and personal and financial circumstances.

This offends an important principle in sentencing. As Judge Lynham explained in his reasons, "Imposing the same fine on people with different capacities to pay, may result in some offenders being punished more severely than others for the same offence."

Judge Lynham re-sentenced each of the offenders having regard to evidence of their financial means and capacity to pay which was not available to the sentencing magistrate. This was sneeringly characterised in the editorial on 9 November 2019 as, "They are getting lighter fines because they are on welfare." However, a court imposing a fine is required to take these matters into account by s 48(1) of the *Penalties and Sentences Act*.

If the author of the editorial disagrees with this, he should take it up with Parliament, not the judicial officer who is obliged to apply the law as it exists.

The judge in the other appeal, Judge Dearden, allowed the appeal after the prosecutor conceded that there had been two errors of law by the magistrate imposing the original sentences. He too allowed the appeal and re-sentenced the appellants after a detailed and careful consideration and application of the relevant legal principles.

The Courier-Mail editorial on 9 November mentioned that Judge Dearden had been President of the Queensland Council for Civil Liberties before he

was appointed as a judge. It did not see fit to mention that the prosecutor had conceded the appeal on the basis of admitted errors in the original sentences. This fact would have been apparent to anyone reading the reasons.

It should be noted that there has been no appeal by the prosecuting authorities against either of the decisions on the appeals or the sentences imposed by either judge.

Articles like this betray the vital role the media has in encouraging informed and constructive debate about the way such matters are dealt with in our courts.

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