



01 Jun 2018

Herald Sun, Melbourne

Author: Rob Hulls • Section: General News • Article type : News Item  
Classification : Capital City Daily • Audience : 303,140 • Page: 34  
Printed Size: 309.00cm<sup>2</sup> • Market: VIC • Country: Australia • ASR: AUD 17,158  
Words: 709 • Item ID: 962512650

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# Shackle our judiciary and democracy is the poorer



**ROB HULLS**

**A**LMOST a year ago, three senior federal government ministers were ordered to appear before the Supreme Court of Victoria for making highly disparaging comments about a sentencing decision in a federal terrorism case.

While decisions in our courts will always be the subject of debate, on their face value the ministers' comments appeared, according to a letter from the Court Registrar, "to be calculated to influence the Court in its decision or decisions and to interfere with the due administration of justice in this state".

The politicians avoided being charged with contempt of court because they apologised unconditionally and unreservedly withdrew their comments. In doing so, hopefully they realised the importance of maintaining and

defending an independent judiciary.

Unfortunately the message sent in this case does not appear to have been heeded by the assistant secretary of the Police Association. In an extraordinary outburst against a sentence handed down in the Broadmeadows Magistrates Court last week, assistant secretary Bruce McKenzie said that the Police Association was disgusted and outraged by the outcome.

The case involved a woman who

bit a police officer in 2016 and was sentenced to a two-year community corrections order after spending 44 days in jail. This sentence was handed down after the relevant magistrate heard all the submissions made by the prosecution and the defence, heard all the facts surrounding the background of the defendant and applied the relevant law.

Yet on behalf of his members, many of whom had turned up to court as some sort of show of strength — and perhaps emboldened by others who should know better — Mr McKenzie is reported to have said that the judicial system was totally out of touch with community sentiment and that community corrections orders were no penalty at all.

He went on to chastise the relevant magistrate directly by saying, "We hope this will be

the last weak sentencing outcome".

Under the Victoria Police Act, the general functions of police officers are: to preserve the peace; protect life and property; prevent the commission of offences; detect and apprehend offenders; and help those in need of assistance. It is a difficult and often thankless job. The cohesion and safety of our community often depends on the extraordinary work of our diligent policemen and women.

While I respect the right of all unions to advocate for and on behalf of their members, however, nowhere in the Police Act is there a role for police officers, or indeed their association, to attempt to undermine the independence of the judiciary.

Once we interfere with the independence of our judiciary — once we go down that slippery slope of criticising judicial officers

who, unlike the rest of us, hear all the facts and circumstances of a particular case and make their decisions impartially and without fear or favour — we undermine the doctrine of the separation of powers which is fundamental to our democracy. This simple tenet of our system of government was established to guard against executive whim or tyranny, as well as the privileging of one group in the community over another.

Similarly, as evidence in other Australian jurisdictions has shown, the discretion of judges to impose a sentence that addresses the facts of an individual case and the circumstances of an individual offender is one which, if discarded in haste as part of a kneejerk reaction, can produce dire consequences for the community down the track.

Judicial officers and police have

a difficult, different but equally fundamental role to play in our justice system and confidence in both is crucial if people are to respect and adhere to the rule of law. Rather than pitting one part of the justice system against each other, therefore, it is essential that all parts of the system are working to enforce and apply the law with respect for each other.

While police officers and their association do good work for our community, they must not be allowed to overstep their role and become prosecutors, judges and executioners. Let's hope that, in future, the Police Association is a bit more understanding of its role and a bit more circumspect in its comments. The basis of our democracy demands it.

**ROB HULLS IS DIRECTOR AT RMIT'S CENTRE FOR INNOVATIVE JUSTICE**