

MEDIA STATEMENT

A MEDIA STATEMENT FROM THE PRESIDENT OF THE BAR ASSOCIATION, ARTHUR MOSES SC



NEW SOUTH WALES
BAR ASSOCIATION

14 DECEMBER 2017

“This morning’s article in the Daily Telegraph entitled “NSW head prosecutor Mark Tedeschi QC issues blunt warning to colleagues to get tough on criminals” contains a number of inaccuracies regarding the purpose and content of communications which have transpired between the Senior Crown Prosecutor and Crown Prosecutors.

The article presents two emails sent from the Senior Crown Prosecutor on successive days as being consistent and that together they comprise an initiative by the Senior Crown Prosecutor to remind prosecutors of their obligations. As a matter of fact, the second email of 8 December was intended to withdraw the previous instruction to prosecutors regarding concessions and emphasise the discretion of counsel to make appropriate concessions and exercise independent forensic judgment in the course of a criminal trial or sentence. That is a duty which Prosecutors, if they wish to remain members of the Bar, are obliged to comply with and it is part of their duty to the Court to conduct themselves in that manner in order to assist in the administration of justice.

The second email followed a letter from the Bar Association to the DPP on 7 December which expressed serious concerns regarding the content of the Senior Crown Prosecutor’s first email, which in the Bar Association’s opinion displayed a fundamental misunderstanding of the independent role of Crown Prosecutors. That first email had the tendency of characterising the role of Crown Prosecutors as mere agents, rather than independent counsel exercising discretion in individual cases. It is a trite observation that a Crown Prosecutor has a duty to exercise independent judgment over and above the role to simply act as a contradictor to the defence, and a failure to do so would be in breach of the Legal Profession Uniform Conduct (Barristers) Rules 2015. A copy of the Association’s letter to the DPP of 7 December is attached. The DPP acknowledged that the Association was correct to raise the issues it did in its correspondence dated 7 December.

The Senior Crown Prosecutor’s second email of 8 December explicitly withdrew the previous communication of 7 December and was intended to correct the record and emphasise the independent duties of Crown Prosecutors in light of the concerns raised in the Association’s letter. It was a matter of profound disappointment that both emails appear to have been released publicly to the Daily Telegraph in circumstances where that media outlet does not appear to have been informed as to the reason for the second email being issued. This omission not only has the tendency to mislead the reporters of the Daily Telegraph, but in turn also has the tendency to mislead the public, the judiciary, and the profession including Crown Prosecutors who were the recipients of both emails.

Appropriate concessions by both prosecutors and defendants in criminal trials have an important role to play in assisting the Court to deal with the real issues in proceedings. Without appropriate concessions, the length of sentencing proceedings in criminal courts would be extended, leading to further delays in our court system which cause unnecessary distress to victims and witnesses who are awaiting matters to be dealt with by our under-resourced courts. It also undermines the early guilty plea reforms announced by the NSW Government.

The article also contains criticisms of Crown Prosecutors which is unfortunate because it unfairly impugns their conduct and performance. The vast majority of Crown Prosecutors in this state discharge their duty in accordance with their lawful obligations, often in very stressful circumstances where they are running back to back trials for serious offences. These Crown Prosecutors should be supported, not publicly criticised.

The article also refers to “paltry sentences and bizarre decisions” by the courts. It is important to note that the judicial officers make decisions regarding sentences on the basis of the material before them, including the evidence and the submissions of the prosecution and defence. It is wholly inappropriate to criticise judges, and their decisions in isolation without understanding the evidence before the Courts and the context in which they are made. Judges have a difficult, stressful and important duty to discharge on behalf of the community when they are sentencing offenders. Judges discharge this solemn duty based on the evidence and the law which must be applied, not according to their own personal views as to what should happen to an offender.”

14 December 2017