



GOVERNING COUNCIL

MINUTES OF MEETING: 2012/2

Held on **Saturday 16th June 2012** at the Supreme Court of Victoria, Melbourne.

The meeting commenced at 10.00am.

Present

Justice David Harper AM (in the Chair)	Supreme Court of Victoria
Justice Alan Blow, OAM	Supreme Court of Tasmania
Chief Magistrate Elizabeth Bolton	Magistrates Court of South Australia
Judge Allan Fenbury	District Court of Western Australia
Justice Peter Garling	Supreme Court of New South Wales
Magistrate Don Jones	Magistrates Court of Tasmania
Justice Judith Kelly	Supreme Court of the Northern Territory
Judge Michael McNerney	County Court of Victoria
Justice Philip McMurdo	Supreme Court of Queensland
Judge Geoffrey Muecke	District Court of South Australia
Magistrate Leanne O'Shea	Magistrates Court of Queensland
Justice Hilary Penfold, PSM	Supreme Court of the ACT
Justice Seven Rares	Federal Court of Australia
Judge Michael Shanahan	District Court of Queensland
Justice Terry Sheahan, AO	Land and Environment Court of New South Wales
Justice Michael Walton	Industrial Court of New South Wales
Judge Jon Williams	District Court of New South Wales
Justice Richard White	Supreme Court of South Australia
Justice Peter Young	Family Court of Australia

In attendance

Christopher Roper, AM

Secretary

Apologies

Apologies were received from:

Magistrate John Birch	Magistrates Court of the Northern Territory
Magistrate Lee Gilmour	Local Court of New South Wales
Chief Magistrate Ian Gray	Magistrates Court of Victoria
Chief Magistrate Steven Heath	Magistrates Court of Western Australia
Justice Glenn Martin	Co-opted
Justice Carmel McLure	Supreme Court of Western Australia
Chief Federal Magistrate John Pascoe AO, CVO	Federal Magistrates Court of Australia
Judge Brian Withers	Treasurer

Alternates

<i>Alternate</i>	<i>Representating</i>
Federal Magistrate Michael Baumann	Chief Federal Magistrate John Pascoe
Deputy Chief Magistrate Peter Lauristen	Chief Magistrate Ian Gray

Resolved

That the apologies be noted and received.

1 Alternates attending

The President welcomed Federal Magistrate Baumann and Deputy Chief Magistrate Peter Lauristen who were attending as alternates for Governing Council members.

2 Confirmation of minutes of the previous meeting of the Governing Council

The minutes of the meeting of the Governing Council held on 17th March 2012 had been circulated.

Resolved

That the minutes of the previous meeting held on 17th March 2012 be confirmed, subject to the change of the name “McKechnie” to “McKerecher” in item 8 of the minutes.

3 Minutes of meeting of the Executive Committee held since the last meeting

The minutes of the Executive Committee meeting held on 19th April 2012 had been circulated.

Resolved

That the minutes of the meeting of the Executive Committee held on 19th April 2012 be noted.

Reports

4 President's Report

Federal Magistrates Court

The President asked Federal Magistrate Baumann to report on developments in regard to the Federal Magistrates Court. Federal Magistrate Baumann reported that the Attorney General had announced that the name of the Court would be changed, and that the titles of the judicial officers would also change. He said that the Attorney General saw the Court as the principal trial court of the Commonwealth, and was looking for additional jurisdiction to confer on it. He said that these changes were not opposed by the Opposition.

In regard to the litigation commenced by the federal magistrates against the Commonwealth, Federal Magistrate Baumann said that the Commonwealth and the remaining applicants had agreed on a statement of facts and that the matter was to be heard by the Full Court of the Federal Court on 16th August 2012. He said that there had been mediation before the Hon Michael McHugh, QC.

Papua New Guinea

The President said that there had been a flurry of activity at the time of the first arrest of the Chief Justice but matters had quietened since. He said that he had prepared two media releases – longer and shorter varieties (the latter prepared with the assistance of Prue Innes). Both had been widely distributed to the print and electronic media. He said that the only apparent use of them was in an article in *The Australian* based on the longer version. The President said that Prue Innes had spoken to a journalist at *The Post Courier* in Papua New Guinea and she had been told that the JCA's release would be run, but it appeared it was not.

The President said that he had unsuccessfully attempted via email to send the longer version to the Deputy Chief Justice in Papua New Guinea, but that Justice Rares had succeeded. The Deputy Chief Justice had acknowledged receipt. The President reported that the Chief Justice was on bail, and that the matter would come before the court after the election. He also advised that he had had a very helpful conversation with an officer at the Papua New Guinea desk at the Department of Foreign Affairs & Trade. It was implicitly indicated that the Australian Government would be pleased that the JCA was expressing interest and concern in the way it was doing.

Bills before the Commonwealth Parliament in regard to the dealing with complaints against federal judicial officers

The President noted that an article in *The Australian* had challenged the JCA's argument that judicial officers should not have to meet their own legal expenses in responding to complaints dealt with by the officer's head of jurisdiction. Provision had been made for meeting the costs of responding to the more serious complaints which would go before a commission.

The matter was then extensively discussed.

Insurance cover for costs of legal representation

The discussion then proceeded to consider item 18 on the agenda in regard to a suggestion from Justice Rares that the JCA investigate taking out an insurance policy to cover individual members' legal representation costs in such situations.

The matter was then extensively discussed.

The President suggested that the action to be taken should be:

- 1 To authorise Justice Walton to talk with Mr Schmatt.
- 2 To refer the matter to a sub-committee comprising Justices Walton (convenor), Garling, Kelly, Rares and Sheahan.

It was agreed that Justice Walton would have a preliminary discussion with Mr Schmatt and then report back to the sub-committee.

Associations Insurance cover

The President reported to the meeting that the application form for renewal of the “Associations Insurance” cover contained two questions, asking (among other things) whether any director of the association (which could be taken to mean a member of the Governing Council) had been made bankrupt, entered into a scheme of arrangement, etc. Members were invited to consider the questions and indicate to the Secretary if an affirmative answer should be given to either question in respect of themselves.

5 Secretary’s report

The Secretary had no matters to report.

6 Treasurer’s report

A profit & loss statement for the period 1st January to 31st March 2012 had been circulated, and was noted. The President said that the Treasurer had nothing to include by way of additional report.

7 Membership report

A membership report as at 31st March 2012 had been circulated, together with lists of new appointees and retiring judicial officers to whom the President had written. It was pointed out that the number of Family Court judges needed to be corrected. The Secretary reported that several new members had joined since the end of March. He said that the renewal process for the forthcoming membership year would commence in the following week.

8 Amendment to the Rules of the Judicial Conference of Australia

A proposal to amend rules 3(c) and 3(e) had been circulated. The President introduced this item.

Judge Muecke asked if the JCA’s objects were things it wished to do or things to which it aspired. If they were aspirational, he asked if the amended rule 3(e) was something to which the JCA aspired.

Justice Rares said that he thought it was important the JCA had these objectives as we live in an unstable area and countries in the region look to Australia as a model and for support. He felt that Australian judges should be involved internationally. Justice Garling agreed and said such an approach went beyond Australia’s immediate region, and he instanced the interest of judges from Nigeria in what was happening in Australia.

There was some discussion about possible amendments, but it was decided not to make any change.

Resolved:

To recommend to the Annual General Meeting held in October 2012 that rules 3(c) and (e) of the Rules of the JCA be changed to read as follows (with the amendments underlined in order to indicate the changes) –

- (c) to achieve a better public understanding and appreciation, in Australia and internationally, of the benefits of the rule of law and of the role of the judiciary in the administration of justice.
- (e) to maintain, promote and improve the quality of the judicial system, as an instrument of the rule of law, in Australia and internationally.

Activities, projects and matters of concern

9 2012 Colloquium

In Justice Martin's absence, a memorandum from him reporting on planning was circulated. It was the view of the Governing Council that an excellent series of sessions had been put in place. Justice Martin and his committee were congratulated on their work.

10 Longer term colloquium planning

Justice Martin had proposed that future colloquia be held in the following cities –

2013	Sydney
2014	Brisbane
2015	Adelaide

There was some discussion of the potential for colloquia to be held close to a Supreme & Federal Courts Judges' Conference, and of the possibility of clashes with such important judicial occasions as the conference of District and County Court judges. It was concluded that clashes or near clashes of this kind could not be altogether avoided, and that the proposed schedule was as satisfactory as it was possible to make it.

Resolved:

That the colloquia over the next three years be held in the following cities –

2013	Sydney
2014	Brisbane
2015	Adelaide

11 A JCA policy on when and whether to make public pronouncements on proposed legislation

Justice McMurdo said that the work of the sub-committee had advanced and it would be in a position to present a draft policy well before the next Governing Council meeting.

12 Judicial pension entitlements and superannuation for magistrates

A further draft of the sub-committee's report had been circulated. Justice McMurdo said that the paper dealt not only with the position of magistrates but also with the wider problem of the retention by courts with pension schemes of those schemes for future appointees. He said the paper was necessarily pitched at a high level of generality. He said it dealt substantially with the unsatisfactory position for magistrates but that also, at a general level, it provided principles from which an argument could be developed as situations arose in the future.

A number of proposed amendments were then suggested. Justice McMurdo said that these would be incorporated.

The President thanked Justice McMurdo and the committee for the work it had done.

Resolved:

To receive, subject to the incorporation of the suggested amendments, the Discussion Paper, *Judicial Officers' Retirement Benefits*, and to place it on the JCA's website.

13 Language and the Law Conference, Darwin, May 2012

Justice Kelly reported that the Conference had been very successful and she thanked the JCA for its support. She said that there had been a high level of enthusiasm displayed at the Conference, particularly amongst the aboriginal interpreters in their engagement with lawyers and judicial officers at the Conference. She said that there was a strong view that the engagement should be continued and it was proposed that there be a conference every two years to follow-up (rather than repeat) the discussions in order to see if progress was occurring.

14 Proposal from the University of Sydney in regard to its Summer Internship Program

A proposal from the Faculty of Law of the University of Sydney had been circulated. The request was discussed. The meeting considered that, whilst the internships were worthy, it would not be appropriate for the JCA to support such internships as the JCA was composed of members from all Australian States and Territories and it would not be appropriate to support a law school in only one jurisdiction nor possible to support a multiplicity of them.

The meeting reaffirmed its support for the JCA Scholarships at the University of Sydney, as they were seen as being in return for the use of a room for the Secretariat in the Faculty of Law building.

The Secretary was asked to convey this decision to the Faculty of Law.

15 Draft Model Protocol for Exchange of Judicial Officers

Correspondence between the Chief Justice of the High Court and the President had been circulated. The President asked if the JCA wished to look at this matter again and, if so, what its position should be. Several members reported on exchanges which had already occurred. There was a general view that such exchanges were potentially valuable.

Resolved:

To restate the JCA's support for a protocol for the exchange of judicial officers.

16 International Criminal Court

Judge McInerney raised the question as to whether the JCA should make any statement in regard to the retention in Libya of the Australian lawyer working with the International Criminal Court. It was decided that, whilst the Governing Council was concerned about this matter, no statement should be made.

17 Federal remuneration decisions

It was reported that a decision was awaited, and that it was expected in the next few weeks. It was likely to be non controversial. It was stated that there should be a major review in the next few years.

18 Next meeting

The next meeting will be held in Fremantle during the Colloquium on Saturday 6th October 2012.

In concluding the meeting, the President referred to the valuable contributions of all members of the Council, and expressed his appreciation for the support and assistance given by them.

There being no further business, the meeting concluded at 1.00pm.

Signed as a true record:

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President