



**Judicial Conference of Australia**

**GOVERNING COUNCIL  
MINUTES OF MEETING: 2012/4**

Held on **Saturday 6<sup>th</sup> October 2012** at The Esplanade Hotel, Fremantle. The meeting recommenced at 12:30pm after the Annual General Meeting.

**Present**

Justice David Harper AM (in the Chair)	Supreme Court of Victoria
Federal Magistrate Michael Baumann, AM (alternate)	Federal Magistrates Court of Australia
Magistrate Richard Bayly	Magistrates Court of Western Australia
Justice Alan Blow, OAM	Supreme Court of Tasmania
Chief Magistrate Elizabeth Bolton	Magistrates Court of South Australia
Judge Wayne Chivell	District Court of South Australia
Judge Allan Fenbury	District Court of Western Australia
Magistrate Karen Fryar, AM	Magistrates Court of the Australian Capital Territory
Chief Magistrate Graeme Henson	Local Court of New South Wales
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
Justice Glenn Martin	Co-opted
Magistrate Elizabeth Morris	Magistrates Court of the Northern Territory
Judge Michael McNerney	County Court of Victoria
Justice Carmel McLure	Supreme Court of Western Australia
Justice Philip McMurdo	Supreme Court of Queensland
Magistrate Leanne O'Shea	Magistrates Court of Queensland
Justice Hilary Penfold	Supreme Court of the Australian Capital Territory
Magistrate Marc Sargent	Magistrates Court of Victoria
Judge Michael Shanahan	District Court of Queensland
Justice Terry Sheahan, AO	Land and Environment Court of

Justice Tony Siopis	New South Wales
Justice Michael Walton	Federal Court of Australia
	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
Justice Steven Rares	Federal Court of Australia
Judge Brian Withers	Treasurer

### **Alternates**

<i>Alternate</i>	<i>Representating</i>
Federal Magistrate Michael Baumann, AM	Chief Federal Magistrate John Pascoe
Magistrate Elizabeth Morris	Magistrate John Birch
Magistrate Marc Sargent	Chief Magistrate Ian Gray
Justice Tony Siopis	Justice Steven Rares

### Resolved

That the apologies be noted and received.

The Chair welcomed Magistrate Richard Bayly, Magistrate Karen Fryar and Judge Wayne Chivell as new members of the Governing Council, and those attending as alternates for Governing Council members.

## **1 Confirmation of minutes of the previous meeting of the Governing Council**

The minutes of the meeting of the Governing Council held on 16<sup>th</sup> June 2012 had been circulated.

### Resolved

That the minutes of the previous meeting held on 16<sup>th</sup> June 2012 be confirmed subject to the deletion of Magistrate Leanne O'Shea amongst the list of those present.

## **2 Minutes of the meetings of the Executive Committee held since the last meeting**

The minutes of the Executive Committee meetings held on 25<sup>th</sup> July and 13<sup>th</sup> September 2012 had been circulated.

### Resolved

That the minutes of the meetings of the Executive Committee held on 25<sup>th</sup> July 2012 and 13<sup>th</sup> September 2012 be noted.

## **Reports**

### **3 President's Report**

The President had reported on matters on the agenda for the Governing Council at the Annual General Meeting.

### **4 Secretary's report**

The Secretary had no matters to report.

### **5 Treasurer's report**

There was no report from the Treasurer.

### **6 Membership report**

A membership report as at 29<sup>th</sup> September 2012 had been circulated. The Secretary reported that since the date of that report membership had increased further and now exceeded 600 paid up members.

## **Elections**

### **7 President**

Justice Philip McMurdo was nominated as President. There were no other nominations.

### Resolved

That Justice Philip McMurdo be elected President of the Judicial Conference of Australia.

## **8 Vice President**

Justice Alan Blow was nominated as Vice President. There were no other nominations.

Resolved

That Justice Alan Blow be elected Vice President of the Judicial Conference of Australia.

## **9 Executive Committee**

The following members of the Governing Council were nominated for election to the Executive Committee –

Justice Alan Blow  
Chief Magistrate Elizabeth Bolton  
Judge Alan Fenbury  
Magistrate Donald Jones  
Justice Judith Kelly  
Justice Hilary Penfold  
Justice Steven Rares  
Justice Michael Walton

Resolved

That Justice Alan Blow, Chief Magistrate Elizabeth Bolton, Judge Alan Fenbury, Magistrate Donald Jones, Justice Judith Kelly, Justice Hilary Penfold, Justice Steven Rares and Justice Michael Walton be elected to membership of the Executive Committee.

The President proposed that several other members of the JCA who were not members of the Governing Council be co-opted by the Executive Committee at its next meeting, namely Federal Magistrate Michael Baumann, Chief Magistrate Graeme Henson and Magistrate Marc Sargent.

Note: The Rules provide that the Governing Council may appoint a Treasurer. Judge Brian Withers has already been appointed by the Governing Council as Treasurer for an unlimited term.

## Activities, projects and matters of concern

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

A memorandum had been circulated. Justice McMurdo introduced this item on behalf of the sub-committee comprising himself and Justices Kelly, Penfold and White. He said that the report pointed to a fundamental tension between avoiding commenting on matters that are a question of policy and commenting on proposed laws which so directly affect what judicial officers do in their courts in the administration of justice that they are entitled to comment on them. He noted that the report referred to what had been recently said in the United Kingdom, in particular by Lord Neuberger. There was then brief discussion.

#### Resolved

That the report, *Public Pronouncements about Proposed Legislation: Guidelines* be adopted.

That the paper be uploaded to the publicly accessible part of the JCA's website.

### 11 Insurance for judicial officers affected by complaints processes

Justice Walton introduced this item. He reported that inquiries had been made of the Judicial Commission of New South Wales and some useful information had been obtained. The sub-committee, comprising himself and Justices Garling, Kelly, Rares and Sheahan, had considered it and then some preliminary inquiries had been made of insurers, in particular in regard to the cost of such insurance.

He said that there were some policy and practical difficulties in regard to such insurance, and that once inquiries of insurers had been exhausted the sub-committee would meet again to decide what to recommend to the Governing Council.

### 12 Judicial advice to vice regal office holders

An article by Neil Rees, published in *The Age* on 3<sup>rd</sup> September 2012, and an article by Professor Anne Twomey, to be published in the *Public Law Review*, had been circulated. The President said that the question was whether the JCA should take up the suggestion of Neil Rees that it should take a position on the issue of judges advising holders of vice regal office.

Justice McMurdo noted that the JCA had not received any approaches from journalists as a result of Neil Rees' suggestion. Nevertheless, he felt that the JCA should form a point of view, not just to respond to media inquiries in the future but because it was a fundamental issue. He suggested that it be considered by a sub-committee to be established at the next Executive Committee meeting. Justice Sheahan and Judge Williams indicated that they would be willing to serve on that sub-committee.

Resolved

That the JCA form a position in regard to the principles which apply to judicial advice being provided to holders of vice regal office, and that the Executive Committee form a sub-committee to develop a draft position for consideration by the Governing Council.

**13 Attacks in the media on individual judicial officers**

A copy of two articles in the *Daily Telegraph*, published on 28<sup>th</sup> September 2012, had been circulated. The President indicated that he proposed that this matter be adjourned to a later meeting of the Governing Council.

**14 Publication on the JCA's website of papers presented at other conferences for judicial officers**

Justice McMurdo referred to a proposal by Justice Sheahan that the JCA gather papers made to other conferences for judicial officers and place them on the JCA's website, subject to all appropriate approvals being obtained. He suggested they could be included in the Members Only section of the website and thereby the JCA could be a useful clearinghouse for such papers of interest to judicial officers. He said he would arrange for the proposal to be discussed at the next Executive Committee meeting.

**15 Next meetings**

Justice McMurdo indicated that the next meeting would be held in Melbourne in March, not in Brisbane as indicated in the agenda, and that the June 2013 meeting would be held in Brisbane.

Signed as a true record:

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President