



Judicial Conference of Australia

## GOVERNING COUNCIL

### MINUTES OF MEETING: 2014/1

Held on **Saturday 29<sup>th</sup> March 2014** at the Supreme Court of Queensland, Brisbane.

The meeting commenced at 10.00 am.

#### **Present**

Justice Philip McMurdo (in the Chair)	Supreme Court of Queensland
Judge Michael Baumann	Federal Circuit Court of Australia
Chief Justice Alan Blow, OAM	Supreme Court of Tasmania
Judge Wayne Chivell	District Court of South Australia
Judge Alan Fenbury	District Court of Western Australia
Magistrate Greg Grogin	Local Court of New South Wales
Magistrate Don Jones	Magistrates Court of Tasmania
Justice Judith Kelly	Supreme Court of the Northern Territory
Chief Magistrate John Lowndes	Magistrates Court of the Northern Territory
Justice Glenn Martin	Industrial Court of Queensland
Judge Michael McInerney	District Court of Queensland
Justice Carmel McLure	Supreme Court of Western Australia
Judge Garry Neilson	District Court of New South Wales
Justice Hilary Penfold, PSM	Supreme Court of the Australian Capital Territory
Justice Steven Rares	Federal Court of Australia
Judge Michael Shanahan	County Court of Victoria
Justice Terry Sheahan, AO	Land and Environment Court of New South Wales
Justice James Stevenson	Supreme Court of New South Wales
Judge Brian Withers	Supreme Court of South Australia

#### **In attendance**

Christopher Roper, AM	Secretary
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## Apologies

Apologies were received from:

Magistrate Richard Bayly	Magistrates Court of Western Australia
Justice David Beach	Supreme Court of Victoria
Justice David Beech-Jones	Supreme Court of New South Wales
Chief Magistrate Elizabeth Bolton	Magistrates Court of South Australia
Magistrate Karen Fryar, AM	Magistrates Court of the Australian Capital Territory
Chief Magistrate Peter Lauritsen	Magistrates Court of Victoria
Justice Peter Murphy	Family Court of Australia
Chief Judge John Pascoe AO, CVO	Federal Circuit Court of Australia
Justice Michael Walton	Industrial Court of New South Wales

## Alternates

<i>Alternate</i>	<i>Representating</i>
Judge Michael Baumann	Chief Judge John Pascoe
Justice James Stevenson	Justice Robert Beech-Jones

### Resolved (2014/1)

That the apologies be noted and received.

## 1 New members and alternates

The President welcomed Chief Magistrate John Lowndes and Justice Glenn Martin who were attending as new members of the Governing Council. He also welcomed Judge Michael Baumann and Justice James Stevenson who were attending as alternates.

## 2 Confirmation of minutes of the previous meetings of the Governing Council

The minutes of the meetings of the Governing Council held on 11<sup>th</sup> and 12<sup>th</sup> October 2013 had been circulated.

### Resolved (2014/2)

That the minutes of the previous meetings held on 11<sup>th</sup> and 12<sup>th</sup> October 2013 be confirmed subject to the correction of the spelling of Judge Neilson's first name, the change of the court for Judge Michael Shanahan to District Court of Queensland, and the inclusion on the list of those attending of Judge Michael McInerney.

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

The minutes of the Executive Committee meetings held on 28<sup>th</sup> November 2013 and 6<sup>th</sup> February 2014 had been circulated.

Resolved (2014/3)

That the minutes of the meetings of the Executive Committee held on 28<sup>th</sup> November 2013 and 6<sup>th</sup> February 2014 be noted.

Discussion then ensued in regard to the reference in the minutes of the Executive Committee meeting of 28<sup>th</sup> November 2013 to some judges of the Industrial Court of New South Wales (at item 9).

There was then discussion as to whether the JCA should make representations in regard to this matter. The principle to be put would be that there is an anomalous position in the tax treatment of people over 65 years who accept redundancy and whose statutory retirement age is over 65 years. In the case of judges, as they have tenure, they are entitled to work until a later age.

It was noted that, unless the anomaly was fixed, judicial officers in this situation who were over 65 years would, in future, ask for a higher pay-out figure to make up for their higher tax bill.

Resolved (2014/4)

That the JCA make representations to the Treasurer to address the anomalous tax treatment of redundancy payments, or payments in the nature of redundancy payments, to judicial officers leaving office over the age of 65 years.

The discussion then proceeded to the superannuation surcharge. After outlining some of what had happened in the past, the President said that he would write to the relevant ministers in the new Government in regard to the continuing anomaly as it affected some judges.

## **Reports**

### **4 President's Report**

#### *4.1 Vicious Lawless Association Disestablishment Act 2013 (Qld)*

The President reported that the JCA had made representations in regard to these laws. He noted that the JCA had the advantage of

having generated a general policy when it was considering the people smuggling laws, and so was able to be consistent.

*4.2 Queensland law giving the Executive power to detain certain sex offenders beyond their term of imprisonment.*

The President noted that this law was found to be invalid by the Queensland Court of Appeal. He said that the JCA issued a brief statement.

*4.3 Queensland judge's statement in reaction to statements made by the Queensland Premier*

The President noted that a Queensland Supreme Court judge had put a stay on a bail application in response to remarks by the Premier which he considered could influence his court. The President noted that the judge's decision had been overturned by the Court of Appeal. He reported that the Executive Committee had decided that the President should not make any comment until after the bail application had been disposed of by the Court of Appeal. The President reported that after the matter had been dealt with by the Court of Appeal he had written an opinion piece which had been published in *The Australian*.

*4.4 Queensland Chief Magistrate's Practice Direction in regard to bail applications*

The President noted that the Practice Direction in fact stated that all bail applications involving alleged bikies would be centralised to a court room in Brisbane: not that only he, the Chief Magistrate, should hear them. The President reported that the JCA had commented pointing out that the Practice Direction was not limited to a court where the Chief Magistrate was sitting; that it was a matter for a head of jurisdiction to determine the disposition of work in his/her court on the basis of the statutory power given to the head of jurisdiction; and that the JCA expressly reserved any comment on the efficacy of the Practice Direction.

The President said that judicial independence was not compromised by the exercise by a head of jurisdiction of his/her power to regulate the disposition of work in his/her court.

*4.5 Queensland Chief Magistrate's speech at the swearing-in of magistrates*

The President said that the Chief Magistrate had made certain remarks in regard to judicial independence. He said that the JCA was not contacted for comment by the media, but he felt the JCA had to

comment as the issue was about judicial independence. The JCA had, therefore, issued a media statement.

Generally, the President observed that in almost all cases the JCA had responded to requests from the media.

4.6 *Vice President's media statement in regard to the confidentiality of discussions between heads of courts and government*

The President said that he had played no part in the development of the statement. He congratulated Justice Rares on the wording of the statement, and this was endorsed by the members of the Governing Council.

4.7 *Expulsion of resident magistrate in Nauru*

The President reminded members that the Chief Justice of Nauru had issued an injunction to prevent the expulsion of the resident magistrate, which had been ignored by the Nauru Government. The Government had then refused to issue a visa to the Chief Justice to enable him to visit the country. At this point, the JCA issued a media statement in support of the Chief Justice. The President noted that Chief Justice Eames had subsequently resigned.

4.8 *Mandatory sentencing laws in New South Wales*

The President reminded members that there were two sets of laws. One was in regard to so-called one-punch cases, which had been enacted. The other laws were a more general set imposing mandatory sentencing in a wide range of areas. He reported that the Legislative Council had rejected these laws and they had been sent back to the Legislative Assembly. The legislation was not yet enacted.

It was noted that the laws, if enacted, would mean significantly more work for the District Court unless the Local Court's jurisdiction was raised.

The President asked whether the JCA should have a more extensive stated position on its website, so that it would be possible to refer back to it as the need arose.

The President also reported that, in regard to the one-punch laws, he had been asked to write an opinion piece for *The Australian* but had decided not to as the matter was so highly charged, centred on the Kelly/Loveridge case, and he felt there was a danger for the JCA to become involved.

4.9 *An alternative means of providing comment and information to the media*

The question was raised of whether the JCA should have alternative avenues for putting its point of view where it would otherwise feel constrained, *ie.* as serving judges not being able to comment on current cases or appearing to be unnecessarily self-defensive. She wondered if an arrangement could be made whereby retired judges might be available to comment. In such a situation, the judge could comment more freely and the comment would not appear to be defensive of judges generally. It was noted that there is a perception that the mandatory sentencing legislation is necessary because of judges, and so any press release by the JCA itself would be seen as defensive.

The President agreed that this is a problem for the JCA. It was observed that the JCA's responses always have to be moderate and so do not attract as much attention as they might otherwise do.

There was general agreement that this was worthwhile. It was noted that the retired judge would not speak on behalf of the JCA, but could speak more freely on behalf of the judiciary. It was agreed that the JCA could have available for the media a panel of retired judges for each State and Territory.

The Secretary was asked to circulate the list of members of the JCA who were retired judicial officers so that a pool of people could be identified.

It was observed that there would be a need to establish a level of separation between these people and the JCA.

The President asked that each member of the Governing Council think of possible people for the panel, who would not need to be members of the JCA.

4.10 *Representation of industrial courts on the Governing Council*

The President noted that the industrial courts in South Australia and Queensland were both entitled to representation. He said invitations had been issued, and Justice Martin was present at the meeting as the representative of the Industrial Court of Queensland. The President reported that Judge Jennings of the Industrial Court of South Australia had responded and said he would like to send a representative but no one could be sent to this meeting.

#### 4.11 Remuneration of Secretary

The President referred to a message which he had circulated to all Governing Council members in regard to this matter. The Governing Council resolved in regard to the Secretary's remuneration.

The President observed that the JCA's Rules did not provide for a flying minute, and suggested that should be corrected.

### 5 Secretary's report

A report had been circulated. The Secretary sought the views of Governing Council members to the concept of an electronic-based membership renewal process. There was strong endorsement of this development. The Secretary said he would now bring a detailed, costed proposal to the Executive Committee.

The Governing Council asked that future Secretary's Reports include a report on the number of hits on the JCA website, including a report on hits on the Members' Section.

### 6 Treasurer's report

A profit & loss statement for the period to 31<sup>st</sup> December 2013 had been circulated, and was noted.

The Treasurer reported that the JCA held about \$46,000 in cash at the bank, and about \$510,000 in term deposits.

#### Resolved (2014/7)

To note the financial report for the period to 31<sup>st</sup> December 2013.

The Treasurer noted that the JCA membership fee had remained stable for the last three years. He noted that the JCA was looking at spending more money and there was a need to provide for this. He stated that the CPI increase over the last three years was about 7%, which if applied to the current fee of \$215 would be \$230. It was agreed that it would be better for the membership fee to increase in small amounts.

#### Resolved (2014/8)

That the membership fee for the 2014/15 year be increased to \$230 including GST, and the fee for retired members remain at \$50.

## **7 Membership report**

A membership report as at 12<sup>th</sup> March 2014 had been circulated, and was noted.

## **Activities, projects and matters of concern**

### **8 2014 Colloquium**

The Vice President reported on current planning. He said that the two sessions on the Friday would be devoted to the media, politicians and the courts, in which a range of people from each of these spheres would outline their reactions to each other. He listed some of the confirmed or possible speakers.

He said that the keynote speaker would be Justice Keane. Other topics would be mental health issues in the courts, court governance and independent funding, and a topic of general interest.

The Secretary was asked to check on details of all flights out of Noosa on the Sunday. The Secretary was also asked to circulate with the following week's media clippings a general statement for members outlining the proposed topics and including the name of the hotel, in order to encourage members to commence to make arrangements to attend.

### **9 Research project: Judicial independence, including judicial advice to vice regal office holders**

The meeting noted that the project was in train and a report could be expected in the second quarter of the year.

### **10 Project: Development of a policy on the judicial appointment process**

The Vice President reported on the current state of the research being undertaken in the Secretariat to assist this project. It was agreed that the draft report would be circulated to nominated members of the Governing Council, as below, who would be asked to settle the wording of the relevant section dealing with their jurisdiction, and to seek their input as to what the JCA would want to say about an appointments policy, in particular how specific it would want it to be.

The persons to whom the relevant section of the report is to be circulated are –

Federal courts – Justice Rares and Judge Baumann



Australian Capital Territory – Justice Penfold  
New South Wales – Justice Beech-Jones  
Northern Territory – Justice Kelly and Chief Magistrate Lowndes  
Queensland – Justice Martin and Judge Shanahan  
South Australia – Judge Chivell  
Tasmania – Chief Justice Blow  
Victoria – Justice Beach and Judge McInerney  
Western Australia – Justice McLure

**11 Project: Development of JCA guidelines on the use of social media by judicial officers and the courts**

The Vice President reported on the current state of research being undertaken by the Secretariat. He said there was a first draft of the report. It was agreed that the draft report be sent to Justice Kelly who would provide input.

It was reported that the County Court of Victoria had published a policy and that it would be sent it to the Secretariat.

**12 International Association of Judges**

The President had circulated a memorandum shortly prior to the meeting. He said that he considered that it would enhance the standing of the JCA in Australia if it were to be part of the International Association of Judges (IAJ). He agreed that there could be a concern as to what the JCA was involving itself in: could there be any embarrassment? He said that Justice Pagone had assured him that that would not occur. He observed that it appeared that the work done in the IAJ is mostly mundane and not likely to embarrass the JCA. He said that sometimes individual judges are able to make contributions to countries with developing judiciaries.

A member said that he thought it was a very good idea for the JCA to join the IAJ. He said it would help the JCA to mature, and he felt that the President, or the President's delegate, should attend the annual meetings as a matter of course.

A number of issues were raised, and it was agreed that an options paper should be prepared by the Secretariat dealing with them and other issues which needed to be considered. The issues raised were –

- 1 What would be the relationship between the JCA and the judges who are currently members of the IAJ Australian 'section'?
- 2 In particular, what if there were to be a difference of views on a particular issue between the JCA and the judges attending an IAJ meeting?

- 3 Would it be necessary that all judges attending an IAJ meeting be members of the JCA? [The Secretary was asked to check on the current JCA membership status of the judges in the Australian IAJ 'section'.]
- 4 Should the JCA pay the travel and accommodation costs of only the President, or his/her delegate, or provide assistance more broadly?
- 5 What would be the cost of providing the President's travel and accommodation costs, and the impact of that on the JCA budget?

In the course of discussion the following points were made –

- There is an Australian Women Judges Association, and it has been participating in an international association for a number of years. Enquiries should be made to discover how it deals with this issue.
- Some judges have an allowance, which could be used for this purpose, and others do not.
- It should be made clear to those attending that they do so on behalf of the JCA.
- There is a concern that magistrates would not be able to attend, and so they may not appreciate their membership fee being used to cover this expense, where they could not take advantage of it.
- It would be useful to see the agendas from a number of the IAJ annual meetings.

After further discussion it was resolved as follows:

*Resolved (2014/9)*

That the Governing Council supports the continuation of discussions with Justice Pagone and other members of the IAJ to the end of the JCA becoming the Australian representative in the IAJ.

### **13 Commonwealth Magistrates and Judges Association**

Chief Magistrate Lowndes drew the attention of members to this international association, of which he is a Vice President. He noted that the Association of Australian Magistrates was a member. He said this arrangement demonstrated how an association can be a member of an international association. He said that the CMJA had individual

and institutional members. He said individual judges and magistrates may continue joining it even if the JCA were to join the IAJ. He said it is possible to assist some countries, as Australia is in a fortunate position and has an obligation to assist others.

#### **14 Judicial Commission Bill (Victoria)**

It was reported that discussions were continuing in regard to this Bill, including issues such as who could stand down a judge. It was said that the proposed powers of the Commission included the setting of judicial standards. It was reported that the Commission would now comprise the heads of jurisdiction as well as lay members.

#### **15 Statutory & Other Officers Remuneration Act (NSW)**

A report was provided on the current status in regard to this Act. It was said that the judges had received a 2.5% increase but it was reported that magistrates had been excluded from that increase. It was reported that there is some current litigation, and until that was resolved the JCA could not do anything.

#### **16 Circulation of information to members of the JCA**

The Vice President suggested that a summary of the Governing Council's business be circulated to all members with the weekly media clippings, and their input be sought. It was agreed that this be done.

#### **17 Next meeting**

The next meeting will be held in Melbourne on Saturday 14<sup>th</sup> June 2014.

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