



Judicial Conference of Australia

## **EXECUTIVE COMMITTEE**

### **MINUTES OF MEETING: 2015/3**

Held by teleconference on **Thursday 23<sup>rd</sup> July 2015**  
commencing at 5.00 pm Eastern Standard Time

#### **Participating**

Justice Steven Rares (President) in the Chair  
Judge Michael Baumann, AM  
Justice Robert Beech-Jones  
Chief Justice Alan Blow, OAM  
Justice Glenn Martin, AM  
Chief Magistrate Graeme Henson  
Justice Judith Kelly  
Justice Hilary Penfold, PSM  
Magistrate Marc Sargent  
Justice Michael Walton  
Judge Brian Withers, AM

#### **Apologies**

Chief Magistrate Elizabeth Bolton  
Judge Allan Fenbury  
Justice Timothy Ginnane

#### **In attendance**

Christopher Roper, AM (Secretary)

### **1 Minutes of the previous meeting**

The minutes of the previous meeting held on 30<sup>th</sup> April 2015 had been circulated.

*Resolved:*

That the minutes of the meeting held on 30<sup>th</sup> April 2015 be approved.

### **2 President's report and business**

#### *2.1 Superannuation surcharge*

The President reported that he had ascertained that Justice McMurdo had written to the Treasurer and had received a reply but that as Justice McMurdo was at present overseas he would forward the reply when he returned to chambers.

## 2.2 *Anomaly in regard to taxation of redundancy payments*

The President reported that he had ascertained that Justice McMurdo had also written to the Treasurer in regard to this matter, and had received a reply but that as Justice McMurdo was at present overseas he would forward the reply when he returned to chambers.

## 2.3 *Supreme Court of Queensland*

The President noted that this matter had been resolved and could now be taken off the agenda.

## 2.4 *New Zealand judges*

The President reported that he had received a reply from the Chief Justice of New Zealand, which he had circulated, and noted that Justice Ellis of the High Court of New Zealand would be attending the Colloquium and, as an observer, the Governing Council meetings taking place during the Colloquium.

## 2.5 *Attacks on judicial officers in the mainline and social media*

The President reported that he was still working on this matter.

## 2.6 *Remuneration Tribunal's freeze on judicial salaries*

The President reported that he had written to Mr Conde.

Magistrate Marc Sargent noted that the flow-on effect of the Remuneration Tribunal's decision applied to all judicial officers in Victoria, and so the pool of those affected was even greater than indicated in the letter to Mr Condie.

## 2.7 *Michael Rozenes, AO, QC*

The President reported that he had, as requested, written to Michael Rozenes.

## 2.8 *Productivity Commission's report on Access to Justice Arrangements*

The President reported that he had presented a paper on this report at a conference held in Melbourne, and that there had been some mention in the press of what he had said.

## 2.9 *Elizabeth Bolton*

The President noted that it had been announced on that day that Chief Magistrate Elizabeth Bolton would be resigning as Chief Magistrate of South Australia. Members expressed their sadness that it had become necessary for her to resign and their concern for her.

### Resolved:

To express to Elizabeth Bolton the sincere thanks of the Executive Committee for her contributions to the work of the judiciary, the Executive Committee and the Judicial Conference of Australia generally.

### **3 Financial matters**

A financial report for the period 1<sup>st</sup> April to 30<sup>th</sup> June 2015 had been circulated, and was noted. The Treasurer reported that the current balance in the accounts at the bank totalled \$623,000.

Resolved:

That the Treasurer's report be received.

The President noted that this would be the last meeting attended by Judge Brian Withers, AM as he would be retiring from his Court, and also as the JCA's Treasurer, in the near future. There was strong agreement with the President's observation that Judge Withers had done a very good job as Treasurer over a number of years, and that his counsel and advice had been very valuable.

Resolved:

To express the Executive Committee's sincere thanks to Judge Brian Withers, AM, and that he was owed a debt of gratitude for his years of devotion to the JCA in general and the Executive Committee in particular.

### **4 Membership matters**

A membership report as at 17<sup>th</sup> July 2015 had been circulated, and was noted.

The Secretary reported that the rate of renewal of membership was strong and that he thought this had been aided by the availability of being able to renew online. He also noted that there had been a strong rate of renewal by retired judicial officers and that this was due in part to the availability to them of three years membership – thus a number of those shown as renewed had, in fact, taken out three years of membership in the previous year.

The Secretary was asked to circulate to Governing Council members lists of members from their courts who had not renewed so that they could be encouraged to renew. The Secretary reported that, in accordance with normal practice, a reminder would also be sent by the Secretariat near the end of July to all members who had not renewed.

### **5 Secretariat matters**

A report from the Secretary had been circulated. He spoke briefly to the report.

### **6 Membership of the JCA by Deputy Presidents of the South Australian Workers Compensation Tribunal**

A memorandum had been circulated, and was noted. There was general discussion as to whether, as tribunal members, the Deputy Presidents were judicial officers, in particular whether having tenure was a fundamental indicium. It was noted that, in the past, not all magistrates had tenure but had been regarded as judicial officers for the purpose of membership of the JCA.

Resolved:

To form a sub-committee comprising Justice Beech-Jones and Justice Walton to consider this matter further and report to the next meeting of the Executive Committee.

Justice Walton observed that a similar matter had arisen in regard to the Industrial Relations Commission of New South Wales, and the Secretary was asked to find the correspondence in regard to that matter, and a later similar matter.

## **7 Colloquium**

Justice Robert Beech-Jones reported on progress. It was noted that Chief Magistrate Elizabeth Bolton was a speaker at the session on domestic violence and the courts. It was agreed that Justice Beech-Jones, after consulting with Judge Graeme Henson, would talk with Chief Magistrate Bolton as to whether she wished to continue as a presenter. If she should indicate that she did not wish to continue as a presenter, it was agreed that Justice Beech-Jones would first seek a presenter from the Northern Territory (in consultation with Justice Kelly who would seek out an appropriate person), and thereafter from Victoria (in consultation with Magistrate Sargent who would consult with Chief Magistrate Lauritsen), and thereafter Judge Peter Johnstone, the President of the Children's Court.

The Secretary was asked to circulate to Governing Council members a list of those who had already registered for the Colloquium, with a request that they encourage further registrations.

## **8 Office of the Australian Information Commissioner/the Hon Tim Smith, QC**

Justice Beech-Jones outlined a discussion he had had with Mr Tim Smith in regard to this matter. He noted that Mr Smith and several other distinguished ex-judges were concerned about the way in which the Federal Government was dealing with the Office of the Australian Information Commissioner (OAIC). He said that there had been reforms under the previous government providing for greater transparency, but that the present government was effectively seeking to abolish the Office, remove its review functions to the AAT, and limiting its functions. He noted that the Senate had rejected the Government's legislation to achieve these changes, and so, in the latest Federal Budget, the Government had sought to achieve its desired outcomes by effectively de-funding the Office. He said that the Office was now essentially not functioning.

Justice Beech-Jones said that the JCA had been approached because these actions raised a rule of law concern, with which the JCA is concerned, and the JCA had been asked to comment.<sup>1</sup> He noted that a government could do the same

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<sup>1</sup> The relevant sections of the JCA's Rules, with emphasis added, are:

The objects of the Conference are:

- (a) ...;
- (b) to promote foster and develop within the executive and legislative arms of government, and within the general community, an understanding and appreciation that a strong and independent judiciary is indispensable to the rule of law and to the continuation of a democratic society in Australia;
- (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;<sup>1</sup>

thing to courts. He said that his initial response to Mr Smith was that the JCA's remit was really confined the independence of the judiciary and not the rule of law generally.

The President said that he would be concerned about the JCA becoming involved in the politics of this matter given that it does not involve a court or a judge.

Justice Kelly said that the Government's actions raise a separation of powers issue, but it involves the separation between the Executive and the Legislature, not the Judiciary. On this basis, she did not think it was within the province of the JCA.

Justice Beech-Jones said that he would prepare a short note to Mr Smith in which he would say that the JCA understood the concerns which had been raised but that it considered it should not become involved as they did not relate to the judicial function, or the office of a judge, or the status of a court.

## **9 Next meeting**

It was noted that the next meeting would be changed and would be held on Thursday 24<sup>th</sup> September 2015 at 5.00pm Eastern Standard Time.

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- (d) ....
  - (e) to maintain, promote and improve the quality of the judicial system, as an instrument of the rule of law, in Australia and internationally;
  - (f) ....
  - (g) ....
  - (h) ....