



JUDICIAL CONFERENCE OF AUSTRALIA

## EXECUTIVE COMMITTEE

### MINUTES OF MEETING: 2011/3

Held by teleconference on **Thursday 28<sup>th</sup> July 2011**  
commencing at 5.00 pm Eastern Standard time

#### **Participating**

Justice David Harper, AM (President) in the Chair  
Federal Magistrate Michael Baumann  
Chief Magistrate Graeme Henson  
Magistrate Don Jones  
Justice Judith Kelly  
Justice Philip McMurdo (Vice President)  
Justice Hilary Penfold  
Justice Michael Walton  
Judge Brian Withers (Treasurer)

#### **Apologies**

Justice Alan Blow, OAM  
Chief Magistrate Elizabeth Bolton  
Justice Peter Garling  
Justice Glenn Martin  
Magistrate Marc Sargent  
Justice Margaret Stone

#### **Not participating**

Judge Allan Fenbury

#### **In attendance**

Christopher Roper, AM (Secretary)  
Dominic McNeill (Administrative Assistant)

#### **1 Minutes of the previous meeting (14<sup>th</sup> April 2011)**

The minutes of the previous meeting had been circulated.

#### Resolved:

That the minutes of the meeting held on 14<sup>th</sup> April 2011 be approved.

That a point-form summary only of the minutes of Executive Committee meetings, as with the summary of the minutes of Governing Council meetings, be uploaded to the Members' Section of the JCA's website.

That a point-form summary of the minutes of the April 2011 meeting of the Executive Committee be prepared by the Secretariat, and circulated to members of the Executive Committee for their input as to whether the format reflected the wishes and expectations of members.

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

### *Complaints against judicial officers*

The President reported that there had been developments in Victoria. He said that the Government had put out a paper for discussion which proposed a Judicial Commission comprising three retired judges and one member of the public, but no heads of jurisdiction. He said that its proposed powers included the power to stand down a judicial officer. He said its responsibilities would include VCAT so that the Commissioners would have a very large job. The President reported that the Chief Justice and the Chief Judge had, about ten days previously, written jointly to the Government and had said that the powers of the Commission were totally inappropriate for a body constituted as proposes, and that it had to involve the heads of jurisdiction.

The President said that the paper from the Government had not been distributed publicly and he did not think it had been sent to the legal professional bodies. He said that he had offered the JCA's assistance to the Chief Justice but she had not asked for it at this stage. She may do so after she has she received a response from the Government. He said, were there to be a call for such assistance, he would immediately advise the Executive Committee.

It was observed that the proposal that the Commission should have the power to stand down a judicial officer reflected a mentality that they were to be treated as public servants. The President observed that the correspondence had come from the committee appointed to set up the Judicial Commission, which was a committee comprised of public servants.

### *Developments in Victoria in regard to court governance*

The President reported that this matter was proceeding with extraordinary difficulty. He said that the public servants were putting forward non-acceptable proposals which had apparently not been put to the Attorney General. He instanced the difficulties in regard to the Chief Executive Officer – how an appointment would be done and the nature of the position. The President said that it may well be that the Attorney General would be sympathetic to the judicial position.

### *The role of the JCA particularly in regard to issues in the media*

The President referred to the draft opinion piece and the text of his Kerferd Oration, which had been circulated.

He said that he had, on the previous day, spoken to the Chief Justice as the Government had, on that day, through the *Herald Sun*, distributed its survey on law and order. He said it was being conducted on the web and through the *Herald Sun*. He said that it posited a number (seventeen, in fact) of scenarios. He said respondents could be from anywhere, not just Victoria, and could make multiple responses. He said the scenarios had just a few paragraphs of facts which included no mitigating circumstances. Respondents were asked to indicate what the sentence should be, and then go to the next section in which they were asked how each of a number of factors would affect the sentence the respondent would give. These included aggravating and mitigating circumstances.

The President said that the Chief Justice was preparing to deal with this matter and had indicated that she would wish that, for the present, the opinion piece not be distributed to

the media. The President said that he would wait for one week and consult with the Chief Justice again. He said that the opinion piece might go to media outside Victoria. He noted that Prue Innes had suggested that the opinion piece was too long and that she would work on it.

*Justice Kelly left the meeting at this point.*

Justice McMurdo said that he felt all members of the Committee would be happy to abide by the Chief Justice's request. He said he thought the opinion piece and the oration were splendid and would, by their nature, have a long term ongoing value.

The President said that he envisaged that both would be placed on the JCA's website and that the oration could be uploaded in the following week, after the oration had been delivered.

#### *Anonymising in transcripts, sentencing remarks and judgments*

The President reported that he had written to Justice Mullins who had accepted the request to prepare a paper for the JCA. In response to his request for members of the Committee willing to assist, Justice Penfold and Federal Magistrate Baumann offered to be involved.

The Secretary was asked to send to the President the minutes of the Governing Council meeting at which this issue was first raised, in order to refresh memories as to how this matter was seen at that time.

### **3 Treasurer's report**

A financial report for the period 1<sup>st</sup> April to 30<sup>th</sup> June 2011 had been circulated. The Treasurer reported that there would be a number of end-of-financial-year adjustments so that the report did not fully reflect the final situation. He reported that there were adequate funds held by the JCA in its bank deposits.

He then referred members to the letter from Edwards Marshall about the possibility of their continuing their services for the coming financial year. The letter had been circulated. He proposed that Edwards Marshall be reappointed for a further year.

#### Resolved:

That the Treasurer's report be received.

That Edwards Marshall be appointed as the JCA's accountants for the 2011/12 year on the terms outlined in their letter of 23<sup>rd</sup> June 2011.

*Justice Penfold left the meeting at this point.*

### **4 Membership report**

A membership report as at 30<sup>th</sup> June 2011 had been circulated and was noted. The Secretary reported that the current situation was that 442 members had renewed and 221 were still to renew, representing about one third of members from the previous year. He said that 13 members from the 2009/10 year, who had not renewed in the 2010/11 year, had so far responded to the invitation to re-join the JCA. The exercise to seek them out had therefore been successful. He said that 20 new members had joined recently, many of whom were New South Wales magistrates.

It was agreed that the Secretariat would, in mid August, send to each Governing Council member a list of members from his/her court who had not renewed, with a request that the Governing Council member actively encourage them to renew.

## **5 Secretary's report**

The Secretary had no matters to report.

## **6 Colloquium 2011**

The President reported that all was in place. The registration forms had been distributed and were on the JCA website. He said that it was important that members of the Committee encourage members of their courts to attend, especially where there was funding from the court to support attendance. Judge Withers reported that he had been talking to AM Meetings Plus who had said that registrations were coming in steadily.

## **7 Judicial pension entitlements, superannuation arrangements for Tasmanian judges, and superannuation for magistrates**

Justice McMurdo said that at the beginning of July he had circulated a first draft of a discussion paper to the sub-committee given responsibility to deal with this matter. He said that he would convene a telephone meeting of the sub-committee in about two weeks.

Federal Magistrate Baumann reported on the case brought by federal magistrates in the High Court. He said that there would be a directions hearing in August. He said that South Australia had elected to participate to support the Commonwealth, Tasmania, the ACT and the Northern Territory had elected not to participate, and Queensland, New South Wales and Victoria had not yet decided. He said that the federal magistrates had briefed Bret Walker, SC and Sandy Street, SC. He said the matter may be dealt with by the High Court this year. He also said that there had been no press interest so far but that that may change shortly.

## **8 Retired Judicial Officers Committee**

The Executive Committee noted that –

- the President had written to all Attorneys General
- the Secretary had written to the appropriate officer in AusAID, law school deans, heads of practical legal training courses and the public interest/advocacy bodies
- the Secretary had liaised with the Director of the Australasian Institute of Judicial Administration.

It was noted that there had not, as yet, been a response.

[Note: subsequent to the meeting, there has been a positive response from the Public Interest Advocacy Centre based at the University of New South Wales.]

## **9 Judges of the New South Wales Industrial Court**

Justice Walton reported that there had been no response from the New South Wales Attorney General to the letter to him from the President. Justice Walton said that he had met with the Attorney General since the letter had been sent. He said that that meeting was reasonably satisfactory insofar as the Attorney was willing to consider some of the issues. He said there had also been meetings with the Minister for Finance. He said there were some positive indications on the non-judicial aspects, but the judicial aspects, which are of concern to the JCA, had not been grappled with and there had been no developments. He did not recommend that the JCA do anything further at this stage.

**10 JCA Scholarships at the University of Sydney**

The Executive Committee noted the email received from the Faculty of law and the letter of thanks from one of the JCA Scholarship recipients, both of which had been circulated.

**11 Next meeting**

It was noted that the next meeting would be held on Thursday 22<sup>nd</sup> September 2011 at 5.00pm Eastern Standard Time.