



JUDICIAL CONFERENCE OF AUSTRALIA

## EXECUTIVE COMMITTEE

### MINUTES OF MEETING: 2011/5

Held by teleconference on **Thursday 24<sup>th</sup> November 2011**  
commencing at 5.00 pm Eastern Standard time

#### **Participating**

Justice David Harper, AM (President) in the Chair  
Federal Magistrate Michael Baumann  
Justice Alan Blow, OAM  
Chief Magistrate Elizabeth Bolton  
Judge Allan Fenbury  
Justice Peter Garling  
Chief Magistrate Graeme Henson  
Justice Judith Kelly  
Justice Glenn Martin  
Justice Philip McMurdo (Vice President)  
Magistrate Marc Sargent  
Justice Margaret Stone  
Justice Michael Walton

#### **Apologies**

Magistrate Don Jones  
Justice Hilary Penfold  
Judge Brian Withers (Treasurer)

#### **In attendance**

Christopher Roper, AM (Secretary)

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

The minutes of the previous meeting held on 22<sup>nd</sup> September 2011 had been circulated.

#### Resolved:

That the minutes of the meeting held on 22<sup>nd</sup> September 2011 be approved.

## **2 Co-option of members of the Executive Committee**

The President introduced this item.

Resolved:

That Federal Magistrate Michael Baumann, Chief Magistrate Graeme Henson and Magistrate Marc Sargent be co-opted to the Executive Committee until the next Annual General Meeting.

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

### *Developments in Victoria in regard to complaints against judicial officers*

The President said that there was nothing further to report in regard to this matter.

### *Developments in Victoria in regard to sentencing*

The President reported that the *Herald Sun* survey results would be published in a few weeks' time.

### *Governance of courts in Victoria*

The President reported that the Chief Justice of Victoria was currently talking to the Council of Judges in Victoria in regard to this matter, but that he was unable to attend due to this meeting. He said that it looked likely that the Victorian courts would have a completely independent head of the new Courts Administration Authority.

### *Generic document for responding to matters raised in the media*

The President stated that he had drafted an opinion piece which, after consultation with Justice McMurdo, had not been submitted for publication, but he thought it would say much of what the JCA would want to say in this regard. [A copy of that opinion piece is circulated with these minutes.]

Justice Stone said that it would be a resource to be drawn upon as required, so that it was not necessary to "think on the run" as called upon to respond. She observed that as it was used it would be moulded, so that it would be a work in progress.

The President invited members of the Committee to work on the document whenever the occasion may arise.

The President reported that he had initially intended to respond to an article by Chris Merritt (*The Australian*, Friday 11 November 2011). Entitled "*Open justice finds a new champion*" (Victorian Attorney General Robert Clark), the article was concerned with the *NSW Court Suppression and Non-Publication Orders Act*. Section 8(1)(e) of that Act provides that suppression orders can be granted when, in the opinion of the court, such a step is "necessary in the public interest". This, according to Merritt, amounts "to a departure from the limited grounds on which judges were previously allowed to protect themselves and the operation of the justice system,"

The article also suggested that the more the media published stories about the courts, the more the public's confidence in the administration of justice would increase.

The President's initial reaction was that (i) no judge had ever used or ever would use a suppression order for the protective purposes to which Merritt referred, (ii) that the reference to the media and public confidence in the courts was ridiculous, given the tabloid media's relentless attacks on what it generically and wrongly described as "soft" sentencing, attacks which greatly diminished public confidence in the courts, and (iii) that the combination of these two Merritt propositions warranted a response from the JCA.

After consulting with the Vice President, however, the President had changed his mind. He agreed with Justice McMurdo that Merritt was a senior and generally responsible journalist, and that the article was directed at civil rather than criminal litigation. The media was and is an important source of information for the commercial sector about business affairs, and that often included accurate and informative reports about litigation. Although as recounted to Justice McMurdo by the President (who did not have the full text in front of him during the conversation) the article appeared to say that judges were making suppression orders to cover their own mistakes, in fact the courts have always had powers to make suppression orders, and that necessarily meant that to that extent their work was protected from public scrutiny. An attack on Merritt might therefore not be directed towards an appropriate target, or be on the soundest footing. And it is very important that the JCA be judicious in all its extra-judicial criticisms, not least when these are directed to the media.

The President expressed his gratitude to the Vice President for his wise counsel.

The President also referred to the additional item on the agenda which had been circulated, and which outlined a practice initiated in 2005 whereby members of the Executive Committee advised the President or Vice President of any item in the media in their own jurisdiction which they thought may warrant a timely response or of which the President and Vice President should be aware. The Secretary observed that this was before the contract with Media Monitors had been entered into. However, there were occasions, such as recently in the Northern Territory, where items were not picked up by Media Monitors. There was general agreement that it would be valuable to supplement the Media Monitors service so that the JCA was able to respond quickly where an item in the media required a swift response.

Resolved:

That members of the Executive Committee will advise the President, or in his absence the Vice President, of reports and articles in the media in their own jurisdiction which might warrant a timely response.

Magistrate Sargent said he would ask Victorian magistrates to do a similar thing by reporting to him, and he would then report any matters raised to the President or Vice President.

Judge Fenbury, noting that Western Australian newspapers tend to publish rabid letters to the editor, asked if the JCA generally responded to such letters. The President replied that generally such letters were not responded to, but if they contained a personal attack on a judicial officer or there was a mass of such letters on a particular issue resulting in a spate of unremitting complaints, a response would be considered.

*2015 CMJA Conference in Melbourne*

The President asked if the Executive Committee would be willing for him to advise Magistrate John Lowndes that the JCA would support an application to have the 2015 Conference of the Commonwealth Magistrates & Judges Association in Melbourne. It was agreed that the President could advise Magistrate Lowndes of the JCA's support. The President said he would indicate to Magistrate Lowndes that if he wanted the support to be

endorsed by the Governing Council then he would arrange for it to go to the next meeting in March 2012.

#### **4 Treasurer's report**

No financial reports were available. The Secretary reported that unfortunately, as he was not able to access the bank accounts online, he was not able to provide the bank balances; but he could assure members, in general terms, that all three accounts were in funds. [The bank balances as at 28<sup>th</sup> November 2011 are – cheque account \$26,021, higher interest account \$144,196, and term deposit \$332,830.]

Resolved:

That the Treasurer's report be received.

#### **5 Membership report**

A membership report was not available. The Secretary reported that 64 members from the 2010/11 year had not yet renewed their membership. Of these 19 were retired judicial officers. It was agreed that the Secretary would advise Executive Committee or Governing Council members of those members from their court who had not renewed so that they could be given one last request to renew their membership.

#### **6 Secretary's report**

A report from the Secretary had been circulated. The Secretary briefly outlined his practice in the limited number of cases where requests had been received from organisations for assistance from members who were retired judicial officers. The meeting noted the comments from Justice Penfold as reported in the Secretary's report.

The Executive Committee agreed that the President's Report at the Annual General Meeting should be uploaded to the Members' Section of the JCA website.

There was discussion of whether the JCA should increase its support of scholarships at the University of Sydney to \$6000 as suggested by the Secretary. Justice Stone proposed that this should not be done, partly because it invited an expectation in this regard which might outstrip the JCA's ability in the future to pay for the scholarships. The Secretary said that there were no immediate indications that the JCA might not be able to retain its room in the Faculty of Law Building, but that he considered it would be good to take the initiative in reinforcing the relationship with the Faculty given that, ultimately, there could well be pressure to free up rooms in the building for general Faculty or University use.

Resolved:

That a provision should not be made in the JCA's budget for an increase in support for scholarships to \$6000, but that, unless there were developments in the meantime, the matter should be placed on the agenda in six months time.

#### **7 Meeting dates for 2012**

A memorandum had been circulated.

Resolved:

That the dates for meetings of the Governing Council and Executive Committee in 2012 be –

Thursday February 2	Executive Committee	
Saturday March 17	Governing Council	in Sydney
Thursday April 19	Executive Committee	
Saturday June 16	Governing Council	in Melbourne
Wednesday July 25	Executive Committee	
Thursday September 13	Executive Committee	
Saturday October 6	Governing Council	in Fremantle
Thursday November 22	Executive Committee	

## **8 Colloquium 2012**

Justice Martin reported that it was likely that the financial loss on the 2011 Colloquium would not be as much as originally anticipated.

In regard to the 2012 Colloquium he proposed that Judge Fenbury, Justice McLure and Chief Magistrate Heath be invited to join the planning committee, together with a Federal Court judge based in Perth. Justice Stone said that she would take advantage of the fact that she was then sitting in Perth to make enquiries about those who might be agreeable to co-option. There was also discussion as to whether Michael Murray might be invited to join the planning committee and/or be invited to be the after-dinner speaker at the Colloquium. Justice Martin said he would put this to the Governing Council.

Justice Martin said that he appreciated there would be difficulty in finding a suitable time for meetings of the planning committee and he was considering two meetings – one for those on the east coast and one for those on the west coast.

Justice Martin said that he was planning on the basis of 50 attendees, which was modest but reflected the difficulties in regard to funding to attend the Colloquium for those from the east coast.

Justice Stone left the meeting.

Justice Martin proposed that AM Meetings Plus Pty Ltd be re-appointed as conference organisers for the 2012 Colloquium.

Resolved:

That AM Meetings Plus Pty Ltd be appointed as the organisers for the 2012 Colloquium.

## **9 Colloquium planning 2013 - 2016**

Justice Martin sought the views of members of the Committee as to whether the dates and venues for the next three colloquia might be fixed in advance, on a rolling basis. The Committee considered this would be worthwhile and Justice Martin said he would have this proposal, including possible dates and venues, added to the agenda for the next Governing Council meeting.

## **10 Facilitation of payment of Colloquium expenses**

The President reported that AM Meetings Plus had discussed with him the desirability of there being a process whereby some bills related to the Colloquium could be paid more swiftly than was possible under the present arrangements. The Secretary said he had made enquiries with the National Australia Bank and that there was an arrangement, known as NAB Connect, which could be used for this purpose. He said he would not report in detail now, as the Treasurer was not present, but would report at the next meeting.

Justice Garling left the meeting

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

Justice McMurdo said that he would be able to bring a report from the sub-committee on judicial retirement benefits to the meeting of the Governing Council in March 2012. He said that an issue to be considered at a later date was the publication of such a report having regard to the litigation initiated by federal magistrates. He said it was, however, important for the JCA to publish a policy on judicial retirement benefits.

Justice McMurdo then reported on correspondence received from Judge Wall of the District Court of Queensland in regard to salary sacrificing. He noted that Justice Debelle, when President, had responded to Judge Wall in regard to this matter in 2007. He noted that South Australia has a salary sacrificing arrangement and judges could take the benefit of it if they wished. He said he did not think there was any similar provision in any other jurisdiction. Judge Fenbury reported that two recently retired judges of the District Court of Western Australia had salary sacrificed.

Justice McMurdo said there was a policy question in regard to salary sacrificing which the forthcoming document could deal with. He asked if there was a case to be made for lobbying governments to bring in a provision whereby judicial officers who were in pension schemes might be able to salary sacrifice.

It was agreed that Justice McMurdo would draft a response to Judge Wall, to be signed by the President, indicating that his correspondence had been considered by the Executive Committee but that as matters of wider importance were involved, it would be referred to the Governing Council for consideration at its meeting in March 2012.

**12 Next meeting**

It was noted that the next meeting would be held on Thursday 2<sup>nd</sup> February 2012 at 5.00pm Eastern Summer Time.