



JUDICIAL CONFERENCE OF AUSTRALIA

EXECUTIVE COMMITTEE

MINUTES OF MEETING: 2012/2

Held by teleconference on **Thursday 19th April 2012**
commencing at 5.00 pm Eastern Standard time

Participating

Justice David Harper, AM (President) in the Chair
Judge Allan Fenbury
Magistrate Don Jones
Justice Judith Kelly
Justice Glenn Martin
Justice Philip McMurdo (Vice President)
Justice Hilary Penfold
Justice Steven Rares
Magistrate Marc Sargent
Judge Brian Withers (Treasurer)

Apologies

Federal Magistrate Michael Baumann
Justice Alan Blow, OAM
Chief Magistrate Elizabeth Bolton
Justice Peter Garling
Chief Magistrate Graeme Henson
Justice Michael Walton

In attendance

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

1 Minutes of the previous meeting

The minutes of the previous meeting held on 2nd February 2012 had been circulated.

Resolved:

That the minutes of the meeting held on 2nd February 2012 be approved.

2 President's report and business

Northern Territory Language & Law Conference

A memorandum from Justice Kelly, together with a budget, had been circulated.

The matter was then extensively discussed.

After this discussion it was resolved as follows.

Resolved:

That

- 1 An amount of \$3000 be provided by way of support to the Northern Territory *Language and Law* Conference.
- 2 The exceptional importance of the conference, and the budgetary constraints imposed upon the organisers by the financial circumstances of many whom the conference properly wished to attract as delegates, placed the conference in a seemingly unique category.
- 3 In these circumstances, it be recommended to the Governing Council that, if like requests were made in the future, it should be a necessary qualification for their being considered that the application be accompanied by a full and proper budget.

Developments in Papua New Guinea

The President reported that he had that morning received an email from Glenn McGowan, SC, Chair of the Victorian branch of the International Commission of Jurists. In an interview with Radio Australia, Mr McGowan had criticised the Papua New Guinea Government's proposition that it was the duty of the Courts to uphold all the laws passed by Parliament. By putting forward this proposition, the Government failed to take into account the fundamentally important fact that PNG has a Constitution under which the Court has a duty to strike down laws which are contrary to the Constitution.

The President reported that he had written that day to the Commonwealth Attorney General expressing the JCA's interest in events in Papua New Guinea. He said he had not yet written to Chief Justice Keane or contacted the two Federal Court judges who are also members of the PNG judiciary.

The matter was then discussed.

The President asked Justice Rares to speak to Chief Justice Keane and to his Federal Court/PNG colleagues (Justices Logan and Collier). The President also asked the Secretary to obtain whatever information the Secretary's contacts at the Department of Foreign Affairs & Trade were in a position properly to give. He said that he wanted to be sure that, by speaking, the JCA did not cause unnecessary difficulties for either the Papua New Guinea judges or relations between Australia and Papua New Guinea. He said that he would circulate any information which was obtained.

It was queried whether thought had been given to what the JCA would say. It was suggested that a draft skeletal statement be prepared. The President asked Justice Rares to do this, after discussion with his fellow judges.

Federal legislation in regard to the dealing with complaints against judicial officers

A memorandum prepared by Justice Rares had been circulated. Justice Rares was invited by the President to speak to it.

In doing so, Justice Rares outlined the proposed legislation. He noted that two Bills were involved. One dealt with less serious complaints, which would be handled by the relevant head of jurisdiction pursuant to, and in the exercise of, the powers given by the legislation to that head. The other Bill was concerned with complaints which, if proven, might result in the removal of the judicial officer against whom the complaint was made. Such complaints would be considered by a parliamentary commission, established pursuant to the legislation, before any ultimate decision was made by Parliament itself.

Justice Rares noted that, unlike the Bill dealing with serious complaints, that concerned with matters within the sphere of a head of jurisdiction made no provision for payment of the legal costs of the judicial officer involved. Given that the costs to a judicial officer in these cases might be considerable, and given that the officer concerned could not be compelled to take part in any process instigated by the head of jurisdiction, the prospect of having to incur formidable costs might be a disincentive to the judicial officer to participate.

The President asked if the JCA should write to the Attorney General making the points contained in Justice Rares' memorandum.

The matter was extensively discussed.

Statement by the Hon Phillip Cummins QC in regard to sentencing

The President said that Mr Cummins, a retired judge of the Supreme Court of Victoria, had delivered an address at a function in which awards for reporting on legal affairs had been conferred. During that address, Mr Cummins had (in effect) said that, in his view, media reporting about sentencing decisions did not undermine confidence in the courts, and that media commentary on sentencing did not misinform. The President was of the view that these comments may warrant a response. He said that he would circulate his draft letter to Mr Cummins for members' input.

3 Treasurer's report

A financial report for the period to 31st March 2012 had been circulated. The Treasurer reported that the current balances at bank were – cheque account: \$12,000; at call account: \$117,000; term deposit: \$333,000, making a total of \$461,000.

Resolved:

That the Treasurer's report be received.

Judge Withers left the meeting after presentation of his report.

4 Draft budget for the 2012-13 financial year

A draft budget for the 2012-13 financial year had been circulated.

Resolved:

To adopt the draft budget for the 2012-13 financial year.

5 Membership report

A membership report for the period to 31st March 2012 had been circulated, and was noted.

6 Secretary's report

A report from the Secretary had been circulated. There was discussion in regard to the two logos presently in use by the JCA. The more recent logo had been designed to accompany promotional and other material prepared for JCA colloquia. There was a question about which logo should be preferred, or whether a fresh design should be considered. The meeting agreed that, given a quote of some \$750 for the preparation of a fresh design, a fresh design should be sought. The President asked the Secretary to have the consultant upgrade the more recent logo and then circulate it to members of the Executive Committee so that they could decide whether to use it, retain the older logo, or take some other action.

7 2012 Colloquium

Justice Martin reported that all was under control so far as this matter was concerned.

Justice Martin left the meeting after this item.

8 Judicial pension entitlements

Justice McMurdo said that there was nothing further to report since the last meeting of the Governing Council. He said that the paper considered at that meeting would be reworked and available at the June meeting of the Governing Council.

9 JCA Scholarships at the University of Sydney

A report from the University had been circulated, and it was noted with pleasure.

10 Industrial Court of New South Wales

The President said that he had not heard from Justice Walton and assumed that no action by the JCA was being sought at this time.

11 World Congress on Family Law and Children's Rights Conference, 2013

A request from Justice Stuart Fowler for support for this conference had been reported in the agenda.

Resolved:

That no financial support be provided to this conference but that the organiser be informed that the JCA would be happy to advise its members of the conference and the call for papers.

12 Judicial Research Project

Correspondence from Professors Sharyn Roach and Kathy Mack of Flinders University had been circulated, and was noted.

13 Next meeting

It was noted that the next meeting would be held on Wednesday 25th July 2012 at 5.00pm Eastern Standard Time.