



Judicial Conference of Australia

EXECUTIVE COMMITTEE

MINUTES OF MEETING: 2013/5

Held by teleconference on **Thursday 28th November 2013**
commencing at 5.00 pm Eastern Standard Time

Participating

Justice Philip McMurdo (President) in the Chair
Judge Michael Baumann, AM
Chief Justice Alan Blow, OAM
Justice Robert Beech-Jones
Chief Magistrate Graeme Henson
Magistrate Don Jones
Justice Hilary Penfold, PSM
Justice Steven Rares (Vice President)
Magistrate Marc Sargent
Justice Michael Walton
Judge Brian Withers (Treasurer)

Apologies

Justice David Beach
Chief Magistrate Elizabeth Bolton
Judge Allan Fenbury
Justice Judith Kelly

In attendance

Christopher Roper, AM (Secretary)
Jeremy Leith, Administrative Assistant

1 Minutes of the previous meeting

The minutes of the previous meeting held on 19th September 2013 had been circulated.

Resolved:

That the minutes of the meeting held on 19th September 2013 be approved subject to the deletion, on page 4, of "Justice ???" and its replacement by the words "It was".

2 President's report and business

JCA's media statements on recent legislation in Queensland

The President reported in regard to recent Queensland legislation regarding bikies and sex offenders. He noted that, whilst these were Queensland issues, they had

a wider import. He noted that the JCA's media statements had been circulated to Governing Council members and discussed by the Council's members by email.

The President said that the general feedback on the media releases varied, ranging from those who were angered by the legislation through to those who thought the JCA's input was appropriate. He said it was a matter of perception but he felt the JCA could feel comfortable about what it had done.

The President said that, in reacting to these matters, the JCA had been able to refer to what it had submitted to the Senate Committee on mandatory sentencing for people smuggling. That submission was a base and it showed that the JCA's position was consistent. He said the JCA was also able to refer to its policy on commenting on proposed legislation, which was a valuable resource. He said the recent experience showed the benefit of building up a core of policies, and having them readily accessible as new issues arose.

Queensland's Chief Magistrate's Practice Direction

The President noted that a media statement had also been issued on this matter. He said there had been concerns amongst some people that the Practice Direction compromised the independence of members of the Magistrates Court. He said that the legislation establishing the Magistrates Court gave power to the Chief Magistrate to allocate work, so the Practice Direction was simply an implementation of existing legislative powers.

The Vice President noted that the Chief Magistrate's letter to the *Courier Mail* noted that he was not allocating the bail applications to himself but only centralising them to a single court. The President observed that the Practice Direction really came about because the Director of Public Prosecutions had said he wished to appear in these matters, not police prosecutors, and it was to accommodate this request.

Queensland Premier's comments on the judiciary

The President then reported on what action had been taken in regard to the Premier's comments, which followed the remarks of Justice Fryberg when staying a bail application on the basis of earlier remarks from the Premier. The President said that, as there was an appeal to the Court of Appeal from Justice Fryberg, it was not appropriate for the JCA to comment until that appeal had been heard. After the decision of the Court of Appeal the President submitted an opinion piece to *The Australian*, which had been published.

Some media comments and reports following the decision in Loveridge's case in New South Wales

The President said that he had been very concerned about the treatment of Justice Campbell by some sections of the Sydney media after his sentencing in the Loveridge case. He said there had been some very unfair personal attacks on the judge. The President reported that the JCA had issued a media statement in which it said that the judge had conscientiously applied himself to the case and the criticism was unfair. He observed that the media had not given this media statement much play, probably because it criticised the media themselves.

Membership of the JCA by judges of industrial courts

The President reported that he had written to the head of the South Australian Industrial Court who had replied that the judges of that Court were interested in joining the JCA. He mentioned that the Industrial Court in Queensland had been reconstituted and there were three eligible members, one of whom was Justice Glenn Martin, who was already a JCA member. The President said Justice Martin had approached him and said the Court was a distinct court for the purposes of membership of the JCA and the Governing Council. He said the other two judges would be invited to join the JCA.

The President said he would, prior to issuing the invitations, circulate to Governing Council members his proposal to invite the judges of these courts to join the JCA, in case any Governing Council member had another view on their eligibility.

3 Financial matters

A financial report was not provided for this meeting. The Treasurer reported that the current balances at bank were in total about \$585,000, and that the likely profit from the Colloquium would be about \$12,615. The Treasurer's report was noted.

4 Membership matters

A report for the period to 9th October 2013 had been circulated and was noted.

There was some discussion as to whether registrars would be entitled to membership. The meeting concluded that they would not comply with Rule 4(b) as their appointments were not on terms similar to judges.

5 Secretariat matters

The President noted that the JCA's re-launched website was now 'live' and looked good. He said that when he had recently received calls from the media he was aware that all of them had gone initially to the JCA website, and hence the value of having an easily accessible and up to date website. He invited members to look at the website and suggest any further improvements or additional material that might be included.

The President then noted the Secretary's report on the monitoring of the digital media by iSentia, and he suggested that the trial period be continued until the February 2014 meeting when the Executive Committee would review the matter.

6 Meeting dates for 2014

A memorandum had been circulated.

Resolved:

That the meetings of the Governing Council and Executive Committee in 2014 be held as follows –

February 6	Executive Committee
March 29	Governing Council – in Brisbane

May 1	Executive Committee
June 14	Governing Council – in Melbourne
July 24	Executive Committee
September 18	Executive Committee
October 10 & 11	Governing Council – at Colloquium
November 27	Executive Committee

7 Colloquium

A report, based on responses to the evaluation questionnaire used at the 2013 Colloquium, was noted. It was noted that the responses were overall very positive, except in regard to the food and wine at the Dinner. The President said that the Organising Committee should be very pleased with the success of the Colloquium. It was noted that the Colloquium was likely to have generated a surplus of about \$12,615.

In regard to the 2014 Colloquium, the President proposed that a planning sub-committee be appointed, to be chaired by Justice Rares. He suggested that Justice Atkinson of the Supreme Court of Queensland be approached to join the committee. Judge Baumann, Magistrate Sargent and Chief Justice Blow offered to join the committee.

In regard to topics for the 2014 Colloquium, the President suggested that a number of people from the media might be involved in a session. The aim would be for the media to understand judges better, and for judges' understanding of the media to be improved.

It was agreed that the venue for the dinner be Berado's.

8 Industrial Court of New South Wales

The President reported that a matter had been raised with him regarding the tax implications associated with the retirement of some judges of the New South Wales Industrial Court. There was discussion of the matter. The consensus was that the JCA could not assist with the matter raised as it essentially arose because of the implications of the taxation laws.

9 Research project on the independence of the judiciary

Four expressions of interest had been received, and were briefly discussed. The Secretary pointed out that the proposal from Professor Williams asked if the work should encompass legislation, and also indicated that it would include proposals for reform; and he asked if that was what the JCA wished.

The President said that he considered that the core value of the project would be that it would provide the JCA with a piece of intellectual capital, which would be a good resource when occasions arose to use it. He said he did not think that would necessarily be enhanced by a very detailed, and perhaps expensive, review of legislation. He said his interest was in ensuring the JCA was up to date with judicial consideration of this matter, and with a resource which had the clout of having been prepared by an eminent constitutional lawyer.

The President said that he would like the researchers to address specifically:

- 1 The role, if any, of judicial officers providing advice to holders of vice regal office, and
- 2 The exercise by judicial officers of vice regal powers or position.

It was agreed that proposals for reform could be included in the report, subject to whether there would be an additional, or a substantial additional, cost.

Resolved:

1. That the Secretary be asked to progress discussions with Professor Williams in respect of his research proposal, and report to the President and Vice President about progress.
2. That the President and Vice President be authorised to enter into a contract with Professor Williams after, if convenient, advising the Executive Committee or Governing Council by a flying minute.

10 Congratulations to Justice Walton

The President, on behalf of himself and those present at the meeting, expressed congratulations to Justice Michael Walton on his appointment as President of the Industrial Court of New South Wales as from February 2014.

11 Western Australia Law Reform Commission report on complaints against the judiciary

The President noted that this report had been circulated to members of the Governing Council. He observed that its recommendations seemed to accord with the JCA's position, as expressed in the reports, which were on the JCA's website.

The Vice President reported that he had, in the absence of the President, had an interview with a journalist from the Courier Mail in regard to a proposal by the Queensland Police Union for the Chief Magistrate to 'discipline' magistrates who were repeatedly appealed from. He said that he had talked to the journalist about the independence of the judiciary and that how complaints about the judiciary should be dealt with was, ultimately, a matter for parliament.

It was agreed that a reference to the Western Australian report, and its accordance with the JCA's proposals, should be included on the JCA's website.

12 Christmas greetings

The President extended Christmas greetings to all members and his best wishes for the Christmas vacation. He said 2013 had been a busy but good year for the JCA. He noted that in 2014 the JCA would reach its 20th year and he proposed that there be a discussion at the February 2014 meeting of how best to use that event to promote the JCA.

13 Next meeting

It was noted that the next meeting would be held on Thursday 6th February 2013 at 5.00pm Eastern Summer Time.