



Judicial Conference of Australia

EXECUTIVE COMMITTEE

MINUTES OF MEETING: 2014/1

Held by teleconference on **Thursday 6th February 2014**
commencing at 5.00 pm Eastern Summer Time

Participating

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

Apologies

Judge Michael Baumann, AM
Justice David Beach
Chief Magistrate Elizabeth Bolton
Judge Allan Fenbury
Magistrate Don Jones

In attendance

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

1 Minutes of the previous meeting

The minutes of the previous meeting held on 28th November 2013 had been circulated.

Resolved:

That the minutes of the meeting held on 28th November 2013 be approved.

2 President's report and business

Representation on the Governing Council by industrial courts

The President reported that he had recently written to Governing Council members seeking their views on the representation of the Industrial Courts in South Australia and Queensland on the Governing Council. There was also some brief

discussion as to the qualification of the Fair Work Commission to have a representative on the Governing Council. It was noted that Justice Iain Ross would be entitled to JCA membership as he is a member of the Federal Court.

International Association of Judges

The President reported that he had had a discussion with Justice Pagone who, with others, had attended the recent annual meeting of the International Association of Judges (IAJ). He said that Justice Pagone was able to report that the admission of the JCA as a member of the IAJ would not be problematic and there would be no requirement for vetting because Australia already had representation.

The President said that the cost of membership would be modest; less than \$2,000 per annum. He said that the cost of a country's membership is based on the number of delegates sent to the annual conference. Australia has sent five representatives and is entitled to send a maximum of six. The cost of sending five delegates would be \$1,100. Each country is entitled to decide how many delegates it sends, up to the allowable maximum. The President reported that, were the JCA to take up membership, the cost of travelling to the annual conference and other events would be borne by the delegates not the JCA.

The President said that, in regard to who the delegates should be, as a practical matter in the short term it would be best if the representation were to be largely unchanged; although the JCA may wish to send a sixth delegate. He suggested that for consistency and to take advantage of their expertise, it would be best if the existing delegates were to continue to attend, but as representatives of the JCA.

The President said that he was not seeking a decision but rather reporting on this matter. The decision as to membership would be made at the forthcoming Governing Council meeting.

One member said that he thought the JCA would want its President or one of its senior office holders to attend the annual conference so that there was someone there who was across all current issues for the JCA – and there is scope for this because of the sixth position.

The JCA's response in regard to the situation in Nauru

The President noted that the JCA had issued a media release, and in doing so he was conscious that Australian judicial officers were involved, Nauru is a near neighbour and there is an appeal from its courts to the High Court of Australia.

There was some discussion of the situation where retired judges take up judicial appointments in other countries where there is a de facto government. It was discussed whether the JCA would want to provide some guidance in regard to these appointments.

In the course of the discussion it was noted that the recent changes to the JCA's objects made it clear that it was appropriate for it to make statements in regard to judicial independence and the rule of law in other countries. It was noted that, even before those changes, it had made statements in regard to judges in Zimbabwe and Pakistan.

It was decided that this matter should be one for further consideration.

The situation in Queensland

The President reported that he had issued a media statement in response to the statement by Judge Carmody on judicial independence. He said that he was prompted to issue the statement because, given that Judge Carmody was speaking about the independence of the judiciary, the JCA could hardly say that it did not have a view on the issue. He said he had also been asked to comment on the opinion piece by Fitzgerald, QC and Crooke, QC but had decided not to do so.

The situation in New South Wales

The President reported that he had been approached by *The Australian* to write an opinion piece on the mandatory sentencing requirements for one-punch killings, but had declined because he was not confident that he knew enough about the situation in New South Wales and the matter was still very fluid. He said he would have wanted to see how the situation played out in the following days.

A member briefly reported on the emerging proposed legislation and outlined the impact of it on the judicial, police and prison systems. Some statistics were provided on the likely impact on the District Court and Local Court, and it was suggested that the cost could be up to \$1.3 billion across all the systems.

There was mention of Chief Justice Bathurst's address for the Opening of Law Term, and the Chief Justice would be approached to see if a link to that address could be included on the JCA's website.

The President then reported that he had been approached by the ABC's *Law Report* to participate in a panel discussing issues in regard to judicial independence in Queensland, New South Wales and Victoria. He said he thought he would probably not ultimately be asked to join the panel as he had indicated the limits to which he would be able to speak; in particular, that he could not speak on specific cases. Chief Justice Bathurst's approach was referred to in this regard as seen in his Opening of Law Term address. The President pointed out that there would be a difference between a speech, over the content of which one has control, and participation in a panel discussion.

It was decided to wait for developments in regard to mandatory sentencing in New South Wales.

3 Financial matters

A financial report for the period to 31st December 2013 had been circulated and was noted. The Treasurer reported that the current balances at bank were in total about \$561,000. He said that the apparent surplus from the 2013 Colloquium was over \$18,000.

A copy of a letter from the JCA's auditor reporting on the 2012-13 audit had been circulated. It was noted that the audit was a clean audit.

Resolved:

That the Treasurer's report be received.

4 Membership matters

A report for the period to 24th January 2014 had been circulated and was noted.

5 Secretariat matters

There were no matters to report.

6 2014 Colloquium

The President reported that Justice Pat Keane had accepted an invitation to give the keynote address at the Colloquium, which would need to be programmed as one of the Saturday sessions.

He said that Justice Atkinson had agreed to join the planning committee.

He also reported that a session on the involvement of the media with the courts would be a useful session. It was thought that a panel comprising a number of journalists would be a good way to conduct the session. Names were mentioned as to possible panellists.

The Secretary mentioned that he had an approach from a Canadian Provincial Court judge to attend the Colloquium. It was decided to advise the judge that it would be in order for him to attend but on the basis that he paid the registration fee.

7 Development of a policy on the judicial selection and appointment process

The Vice President reported that work had started on a revamp of a paper prepared by Justice Sackville in 2005. He observed that, with the change of federal government, it was not clear what approach the new Attorney General would adopt in regard to judicial appointments.

8 Development of guidelines on the use of social media by judicial officers and courts

The Vice President noted that given the break, he had not attended to this item and will pursue it in preparation for the next meeting.

9 Research project on the independence of the judiciary

The letter of appointment of Professor George Williams and Rebecca Welsh was noted.

There was some discussion of the proposal to expand the research to include the role of judicial officers in providing advice to holders of vice regal office and the exercise by judicial officers of vice regal powers or position.

Resolved:

That the project be expanded to include the role of judicial officers in providing advice to holders of vice regal office and the exercise by judicial officers of vice regal powers or position, and that an additional sum of \$xxx be expended for this purpose.

The Vice President questioned why the researchers were being prohibited from publishing the report. He suggested that it was in the JCA's best interests that the report be circulated as widely as possible in order to add to the public debate, and this could be facilitated if the researchers were also to publish the report. He also thought this would encourage them to do a better job.

It was decided that the researchers be advised that they may, with the JCA's permission at the time, publish their report.

10 Monitoring of the digital media by iSentia

A memorandum had been circulated prior to the meeting, and was noted. There was some discussion of the value of monitoring the digital media.

Resolved:

That the contract with iSentia continue to include the monitoring of the digital media, as at present.

11 Next meeting

It was noted that the next meeting would be held on Thursday 1st May 2014 at 5.00pm Eastern Standard Time.