



Judicial Conference of Australia

EXECUTIVE COMMITTEE

MINUTES OF MEETING: 2014/4

Held by teleconference on **Thursday 18th September 2014**
commencing at 5.00 pm Eastern Standard Time

Participating

Justice Philip McMurdo (President) in the Chair
Justice Robert Beech-Jones
Chief Justice Alan Blow, OAM
Justice Judith Kelly
Justice Steven Rares
Justice Michael Walton

Apologies

Judge Michael Baumann, AM
Chief Magistrate Elizabeth Bolton
Judge Allan Fenbury
Justice Timothy Ginnane
Chief Magistrate Graeme Henson
Justice Hilary Penfold, PSM
Magistrate Marc Sargent
Judge Brian Withers

In attendance

Christopher Roper, AM (Secretary)

1 Minutes of the previous meeting

The minutes of the previous meeting held on 24th July 2014 had been circulated.

Resolved:

That the minutes of the meeting held on 24th July 2014 be approved.

2 President's report and business

Judicial selection and appointments project

The President reported that he had met with Justice May and Professor Gregory Reinhardt and that he had the impression that the AIJA's focus in their study in this area was somewhat different to the JCA's, being more concerned with selection criteria rather than the appointment process. Justice Kelly said that she understood the AIJA's Executive had specifically precluded consideration of the process. The President said that he thought there was still scope for a joint

endeavour but that the differing focusses would become apparent. Justice Rares said that the AJA was looking at guidelines for appointment and saw the JCA dealing with the process.

The President said that he was aware of the Judiciary Project being undertaken by the Gilbert + Tobin Centre for Public Law at the University of New South Wales. He said that its Director, Andrew Lynch, had written a good paper in regard to the appointment of the Queensland Chief Justice. He reported that he had written to Andrew Lynch in which he said that the JCA was interested in the work of the Centre, and also would be interested in involvement in the proposed conference (see below at item 7).

Justice Kelly reported that the Northern Territory Government, after the recent matter involving Magistrate Maley, had decided to review the process of judicial appointments and judicial ethics. The latter aspect was of concern to the judiciary and the Acting Chief Justice and Chief Magistrate had written to the Government and referred to the JCA's project. A response was received from the Solicitor General which said that the Government was only interested in whether there had been a breach of standards. As well, it was considering whether there should be a register of pecuniary interests for judicial officers.

The President outlined the situation in regard to Magistrate Maley. He noted that Magistrate Maley had resigned although the reasons were not fully known. Justice Kelly reported that there would be a meeting with the Chief Minister in the next week to settle the terms of reference of the enquiry and to discuss an appropriate person to conduct the review. The President asked that Justice Kelly keep him informed and advise the JCA, if and when she and the Chief Justice considered it appropriate, whether it could assist.

International Association of Judges

The President reported that he has been receiving regular emails from Justice Pagone which contained material being prepared for the forthcoming meeting in Brazil. He said that nothing that was being received required action by the JCA.

Superannuation surcharge

The President said that he had received a reply from the Commonwealth Attorney General to his letter in regard to the long-standing grievance of judges still affected by the superannuation surcharge. The letter had been circulated. The letter said that the matter had been referred to the Treasurer and Acting Assistant Treasurer.

Taxation of redundancy payments

The President reported that he had received a reply from the Acting Assistant Treasurer to his letter in regard to this matter. The letter had been circulated. It was noted that the reply did not address the point raised in the President's letter. Justice Rares suggested that the President should write back to the Acting Assistant Treasurer and point out that the JCA was asking for a reform of the law in light of the situation in which judicial officers could find themselves should they be declared redundant.

[Justice Beech-Jones joined the meeting.]

Internal correspondence in regard to taxation issues

The President reported that Justice Penfold had raised with him the situation of judges in the Territories who were affected as a result of changes to the law regarding superannuation whereby State and Federal judges were exempted but not Territory judges. The President noted that the Government was providing exemptions only to the extent that it was constitutionally required. Justice Kelly noted that the situation was worse for Northern Territory judges as the ACT judges were protected under Commonwealth law whereby their entitlements could not be reduced, but this did not apply to Northern Territory judges. The President said that if the Northern Territory judges wanted the JCA to write to the Government about this it would do so. Justice Kelly said that she would check with Chief Justice Riley.

[Subsequent to the meeting, Justice Kelly provided the following information:

This is what Michael Grant (Solicitor General) advised in relation to the position of ACT judges. Our position is different. Our pensions are provided for in Territory legislation and we do not have the same constitutional guarantee in the *Northern Territory Self Government Act*.

“I have also made an enquiry of my ACT counterpart. The arrangement there is that ACT Supreme Court judges have pension entitlements under the *Judges Pension Act 1968* (Cth), which is applied as an ACT law by the *Supreme Court Act* (ACT) with necessary modifications. The protection against diminution of judicial remuneration is actually written into the *Australian Capital Territory (Self-Government) Act* (Cth), and so operates as a guarantee under Commonwealth law. However, I don't think that makes the pensions automatically immune from this tax burden. There would still need to be some express provision to that effect in the Commonwealth tax legislation, or a judicial determination or tax ruling to that effect.”]

Salary sacrificing in South Australia

The President reported that Judge Chivell had raised with him a problem unique to South Australia where judges can salary sacrifice, with contributions being paid into a government-run fund. As a result of the taxation laws, this option was not as attractive as it was. He noted that this was a function of judges being able to salary sacrifice not specifically because they are judges. He said it was a benefit in South Australia over and above that available in any other jurisdiction, and that he had provided Judge Chivell with his thoughts on the matter.

Association of Australian Magistrates

The President reported that Chief Magistrate Henson had raised the question of whether a discussion might take place between the JCA and the Association of Australian Magistrates (AAM) as to whether the AAM might be merged into the JCA. He said that his own view was that he did not think there should or could be a formal sub-group within the JCA, and that the JCA was always pleased to receive more members. He said he thought the discussion should be continued but that the AAM should not come into the JCA as a sub-group.

Justice Walton said that there were various ways to effect mergers, only one of which might be an autonomous group within the organisation. He thought there could be a merger whereby the AAM members transited into the JCA.

Justice Rares said that it might be possible to have a 'chapter' within the JCA, as there are in other organisations, dealing with matters germane to magistrates and having functions, and so on, on items of interest to magistrates.

Chief Justice Blow queried whether there could be an arrangement whereby a person joining the AAM would automatically become a member of the JCA.

Justice Beech-Jones said that he thought that there was a desire to bring magistrates firmly into the heart of the judiciary and so it may not be seen as desirable for them to be part of a chapter.

Justice Rares said that magistrates could already join the JCA, and that magistrates may feel it was no longer fruitful for them to lobby solely for the magistracy.

The President said he would contact Chief Magistrate Henson to discuss the matter further. He said he agreed with Justice Beech-Jones that the JCA does not want to treat magistrates differently, and they also may not want to be so treated.

Justice Walton noted that these discussions went back to 2006 and that the matter was active for a while but fell away – maybe because the magistrates at that time did not want to see their identity disappear.

3 Financial matters

A financial report for the period 1st July to 31st August 2014 had been circulated and was noted. The Secretary reported on the current balances in the accounts at the bank.

Resolved:

That the Treasurer's report be received.

4 Membership matters

A report as at 9th September 2014 had been circulated and was noted.

5 Secretariat matters

A report from the Secretariat had been circulated, and was noted. There was brief discussion on the analysis of access to the JCA's website

6 2014 Colloquium

A report from AM Meetings Plus had been circulated showing that there were 79 current registrations. Justice Rares reported that there had been two planning teleconferences for the sessions on the media, politicians and the courts, and court governance. The Secretary reported that there was now no further

accommodation at the Sheraton Resort and any further registrants would need to be accommodated elsewhere.

7 Projects on judicial independence from the executive and judges in vice-regal roles

A memorandum had been circulated and was noted. The President referred to the proposed conference to be held at the University of Queensland in July 2015, and said he considered the JCA should be involved as the conference reflected the JCA's core function.

There was some discussion as to whether the two reports should be printed. Justice Rares noted that the reports were an important contribution to the literature and they should be in libraries.

Resolved:

That 200 copies each of the reports be printed.

8 Judicial selection and appointments project

This matter had already been dealt with at item 2.

9 Guidelines on the use of social media by judicial officers and the courts

Justice Rares said that he had nothing to report. Justice Kelly reported that she was collecting material as a basis for taking the next step.

10 Additional material on the JCA's website

A memorandum had been circulated and was noted. There was brief discussion of the draft description of the judiciary. It was felt that the draft was of the right style and length. It was agreed that Justices Beech-Jones and Kelly and the Secretary would settle the wording and bring it back to the next meeting.

11 Vote of thanks to the President

Justice Rares noted that this would be the last Executive Committee meeting at which Justice McMurdo would preside as President. All present at the meeting expressed that considerable thanks to Justice McMurdo for the work he had done as President and his stewardship of the JCA.

Resolved:

That Justice McMurdo be thanked for his contribution as President to the work of the Executive Committee. Passed with acclamation.

12 Next meeting

It was noted that the next meeting would be held on Thursday 27th November 2014 at 5.00pm Eastern Summer Time.