



## **JUDICIAL CONFERENCE OF AUSTRALIA INC.**

### **President's Report for the year ended 30 June 2010**

#### **1 Superannuation surcharge**

I reported to the 2009 AGM about the meeting between the Hon Chris Bowen, the Minister for Financial Services, Superannuation & Corporate Law and Justice Edmonds of the Federal Court of Australia, Justice Rose of the Family Court of Australia and myself on 28 August 2009 at which we discussed the JCA's arguments for abolition of the superannuation surcharge as it applies to judges of the Federal Court of Australia, the Family Court of Australia and the Supreme Court of the Northern Territory, who were appointed during the period the surcharge was in effect (7 December 1997 – 30 June 2005). Those arguments were set out in a Key Points document prepared by Justices Edmonds and Rose. The Minister had a document from Treasury responding to the Key Points document. While there was a thorough discussion of the JCA's arguments at the meeting, it was felt that more justice could be done to the Treasury's points if the JCA could see them in written form. The Minister agreed to provide Treasury's comments in writing to the JCA so that the JCA could provide a detailed response.

Instead, on 10 November, a letter was received from the Minister enclosing Treasury's comments, but saying that the Government did not propose to waive the surcharge for federal judges. The Minister's letter was profoundly disappointing as the JCA representatives had been led to believe that discussions about abolition would continue. Subsequently, after discussions between myself and Justices Rose, Stone, Edmonds and Harper and Judge Withers, I sent the Minister a letter responding to the Minister and to Treasury's responses.

Despite advice from Minister Bowen's office that a letter in reply has been sent to the Minister for his signature after the May budget the JCA was advised that the issue had become caught up in matters concerning superannuation arising from the Budget. At the time of the last Governing Council meeting in June 2010 it was generally agreed that the prospect of getting a response from Minister Bowen (or the Government generally) was gloomy.

I understand the Federal and Family Courts keep the matter under review.

## **2 Complaints against Judicial Officers project**

The Complaints against Judicial Officers Committee's final report was considered at the Governing Council meeting in March 2010. The meeting also had before it an Addendum prepared by Justice David Harper AM based on the report of the Senate Committee on Legal and Constitutional Affairs Inquiry into Australia's Judicial System and the Role of Judges.

The meeting resolved:

*That the Judicial Conference of Australia supports and promotes the adoption by each jurisdiction (subject to s 72 issues insofar as federal judges are concerned) of a structured system of dealing with complaints against judicial officers, such system being based on that of the NSW Judicial Commission with such modifications as are appropriate for each Australian jurisdiction, given differences in size and financial circumstances.*

I wrote to the Councils of Chief Justices, Chief Judges and Chief Magistrates, the Secretary of the Standing Committee of Attorneys-General, the Chair of the Senate Inquiry Committee, and the Commonwealth, State and Territory Attorneys-General advising of this resolution.

The meeting also resolved:

*That the Governing Council ask the Complaints Against Judicial Officers Committee to consider, and recommend to the Governing Council, the most practical means by which to give effect to the Governing Council's support for and promotion of the adoption by each jurisdiction of a structured means of dealing with complaints against judicial officers.*

Justice Harper reported at the Governing Council meeting held on 19 June 2010 that the Committee had met since the last meeting, and members were assessing the situation in each jurisdiction conscious of the need to proceed carefully in order not to give the impression the JCA was seeking to impose anything on any jurisdiction. He said that the Committee would be meeting again in July.

I reiterate my, and I am sure the entire JCA's, gratitude to Justice David Harper and his committee (Justice Alan Blow, Chief Magistrate Ian Gray, Chief Justice Wayne Martin, Justice Peter McClellan, Justice Philip McMurdo, Judge Geoff Muecke, Justice Margaret Stone, Chief Federal Magistrate John Pascoe, Justice Trevor Riley, Justice Michael Walton and Judge Jon Williams) for the extraordinarily hard work, past and continuing, they have put into this project.

## **3 Judgment Writing Time**

Two reports the JCA commissioned from Professor Kathy Mack and Professor Sharyn Roach Anleu from the Judicial Research Project at Flinders University to examine the issue of the time allowed for judgment writing were placed before the Governing Council at its 19 June 2010 meeting. It was agreed that the final report should be forwarded to the Council of Chief Justices, the Council of Chief Judges

and the Council of Chief Magistrates (as well as to two New South Wales Chief Judges who were not on any of those Councils), as a basis for a protocol on judgment writing time.

#### **4 Magistrates**

In response to a letter from Magistrate John Lowndes, the President of the Association of Australian Magistrates, the Governing Council resolved at its meeting on 13 March 2010 to support the Australian Association of Magistrates' initiative to extend to magistrates in South Australia, Queensland, Western Australia and the Northern Territory the same protection against removal from office as for judges, and the same removal mechanism as for judges, as is enjoyed by magistrates in New South Wales, Victoria, Tasmania and the Australian Capital Territory.

#### **5 Retired judicial officers**

The Governing Council resolved at its meeting of 19 June 2010 to appoint an ad hoc Steering Committee for a Retired Judicial Officers section. The Committee will be asked to make recommendations as to the scope of activities that the JCA should support for retired judicial officers including the costs it envisages might be involved with all recommendations to be approved by the Executive Committee. The Hon David Levine AO RFD QC has agreed to chair the Committee.

#### **6 National Legal Profession Reform Bill**

In April 2010 the National Legal Profession Taskforce presented the draft Legal Profession National Law to the Council of Australian Governments (COAG). The National Law is part of the plan COAG agreed upon in April 2009 designed to achieve national regulation of the legal profession. The draft National Law proposed a number of reforms including establishing a National Legal Services Board.

At its Governing Council meeting of 19 June 2010, the JCA resolved to forward a submission concerning, in particular, the model proposed for selection of the Board to the Taskforce. In the meantime, the Taskforce released a discussion paper commenting on criticisms already received and suggesting other models for appointment of the Board. The JCA's submission, which was forwarded to the Profession Taskforce after the reporting date but within the submission deadline, addressed these issues too.

#### **7 National Judicial College of Australia**

In response to a letter from Chief Justice Martin of Western Australia and Chair of the National Judicial College of Australia ("NJCA"), the Governing Council resolved at its meeting of 19 June 2010 that it supported the NJCA being allocated a period at the 2011 Colloquium at which its representatives could talk about its work and seek feedback.

## **8 The Governing Council**

During the year we were pleased to welcome a number of new members to the Governing Council:

- Justice Judith Kelly – Supreme Court of the Northern Territory, replacing Justice David Angel
- Justice Terry Sheahan – Land & Environment Court of NSW, replacing Justice David Lloyd
- Magistrate Maria Doogan – Magistrates Court of the Australian Capital Territory, replacing Chief Magistrate Ron Cahill
- Magistrate Leanne O’Shea – Magistrates Court of Queensland, replacing Magistrate Bernadette Callaghan and
- Justice Peter Young – Family Court of Australia, replacing Justice Peter Rose.

## **9 Justice David Angel**

Justice David Angel retired as a judge of the Supreme Court of the Northern Territory in January 2010. His Honour was a founding member of the JCA. He made a significant and invaluable contribution to the JCA’s work. He was the Supreme Court of the Northern Territory’s representative on the JCA for many years, a position he only relinquished on his retirement from the Court. On 13 March 2010, the Governing Council resolved to appoint the Hon David Angel as an honorary member of the Judicial Conference of Australia.

## **10 Membership**

The membership of the JCA remained at strong levels during the year and stood at 632 members at the end of March 2010. The year was marked by a steady stream of new membership applications, particularly from newly appointed judges and magistrates.

## **11 E-news**

During the year I decided that it was most helpful to members to circulate an issue of e-news after a Governing Council meeting so that important decisions could be communicated in a timely manner. Obviously that policy can be varied in need. In the reporting year, three issues of e-news were distributed to members.

## **12 Colloquium Organisation**

This year’s colloquium has been organised by a committee comprising Justice David Harper AM, Justice Roslyn Atkinson, Justice Robert Benjamin, Justice Alan Blow AOM, Chief Magistrate Elizabeth Bolton, Justice Mordecai Bromberg, Judge Richard Cogswell, Judge Allan Fenbury, Chief Magistrate Ian Gray, Magistrate Don Jones, Justice Glenn Martin, Magistrate Marc Sargent and Justice Michael Walton. I

express my gratitude to them all for arranging an exciting programme – both business and social – at a remarkable venue. The anxious attention they have clearly paid to every detail of the Colloquium to ensure it goes off without a hitch is manifest! I also express the JCA's thanks to Aghi Di Maio of A M Meetings Plus Pty Limited and her staff for their as always solicitous and efficient assistance in taking care of the administrative side. It has been invaluable.

### **13 The Secretariat**

Christopher Roper, our Secretary and his Administrative Assistant, Jonathan Hon, have ensured the JCA's day-to-day business is conducted quietly, calmly and efficiently – without unduly burdening the executive officers. I extend my heartfelt gratitude to them for that and, I am sure, the gratitude of all members.

Edwards Marshall, Chartered Accountants based in Adelaide, continue to assist with basic record keeping as well with the provision of financial services and reports.

### **14 The Executive**

This is my last Annual General Meeting as President of the JCA. I have been honoured that its members elected me their President. I have tried to do my best to represent their interests. I hope I have succeeded if only in small measure.

The support of the Executive Committee and the Governing Council has been essential to me discharging my duties. I thank all the members of those two bodies for their commitment to, and enthusiastic participation in, the JCA's work.

I must specifically acknowledge Justice David Harper AM and Judge Brian Withers. Their support for me as Vice-President and Treasurer respectively has been immeasurable. They have always responded promptly to every request and contributed thoughtfully to the problems both big and small which can arise in every organisation. I thank them for that and for their considerable forbearance in suffering my peccadillos with good humour.

I leave my position with the conviction that the time has come for renewal and with the quiet confidence that I am leaving the JCA in thoroughly capable hands.

**Ruth McColl**

**President**

**7 October 2010**