



Judicial Conference of Australia

## EXECUTIVE COMMITTEE

### MINUTES OF MEETING: 2012/4

Held by teleconference on **Thursday 13<sup>th</sup> September 2012**  
commencing at 5.00 pm Eastern Standard time

#### **Participating**

Justice David Harper, AM (President)                      in the Chair  
Justice Alan Blow, OAM  
Chief Magistrate Elizabeth Bolton  
Justice Peter Garling  
Chief Magistrate Graeme Henson  
Justice Philip McMurdo (Vice President)  
Justice Michael Walton  
Judge Brian Withers (Treasurer)

#### **Apologies**

Federal Magistrate Michael Baumann  
Judge Allan Fenbury  
Magistrate Don Jones  
Justice Judith Kelly  
Justice Glenn Martin  
Justice Hilary Penfold  
Justice Steven Rares  
Magistrate Marc Sargent

#### **In attendance**

Christopher Roper, AM (Secretary)

#### **1 Minutes of the previous meeting**

The minutes of the previous meeting held on 25 July 2012 had been circulated.

##### Resolved:

That the minutes of the meeting held on 25 July 2012 be approved.

#### **2 President's report and business**

##### *Judicial Exchanges*

The President reminded members that Chief Justice French had indicated a renewed interest in the judicial exchanges proposed by him revived his earlier proposal in regard to this matter. The JCA had, in June, slightly amended its proposal and the President had then written to the Chief Justice. The President

said that at a subsequent meeting of the Council of Chief Justices it had been noted that the interest of the JCA in the scheme remained. It was now being looked at by the Council of Chief Justices to see if it could be made into a practical reality.

#### *Magistrates Court of the Australian Capital Territory*

The President said that he had written twice to the Chief Magistrate congratulating her on her appointment and asking her to nominate a representative to the Governing Council (it being the only court not represented there), but had received no acknowledgement or reply. He said that he had now written a third time, and had copied his letter to those magistrates of that court who were members of the JCA. He said he hoped this would produce a response.

#### *Papua New Guinea*

The President reported that he understood that the new Papua New Guinea Government had formally advised, at a recent committal hearing, that it wished to withdraw the charges against the Chief Justice. It was agreed that, so long as the present circumstances remained, the JCA did not need to do anything further.

#### *Judicial remuneration and independence*

The President reported that there had been an approach from the National Judicial Institute in Canada seeking assistance with its project to prepare a report on judicial remuneration and independence. Some information had been sent to the Institute about the situation in Australia. He said the report had now been received from Canada. It amounted to a quite comprehensive survey of a number of countries other than Canada. He noted that in neither Canada nor Ireland was there protection against the judicial salaries of sitting judicial officers being reduced.

It was agreed that the report be circulated to Executive Committee members.

#### *Annual Report*

The President said that he was preparing the Annual Report for the forthcoming Annual General Meeting, and that he would circulate it to Governing Council members in draft form to seek their input.

### **3 Financial matters**

A financial report for the period 1<sup>st</sup> July to 31<sup>st</sup> August 2012 had been circulated. The Treasurer reported on the current balances at bank.

#### Resolved:

That the Treasurer's report be received.

### **4 Membership matters**

A membership report for the period to 31 August 2012 had been circulated, and was noted. The Secretary noted that he had subsequently circulated an updated report showing the current situation, and this showed that just under 100

members were yet to renew their membership and that three courts had 100% membership.

The President reported a suggestion from a member that the option of membership for a longer period, say two or three years, be available at perhaps a reduced rate. After some discussion it was agreed that the current arrangements (with membership being renewed annually) be retained.

Justice Garling left the meeting

The Secretary reported on the two current arrangements whereby –

- members who had not renewed by 31 December were offered, as a final enticement to continue their membership, the opportunity to renew for the remainder of the financial year for half of the annual fee
- new members joining after 1 April were offered membership for the remainder of the financial year and all of the subsequent financial year.

The Executive Committee confirmed its agreement with these policies.

The President noted that the JCA's Rules provided that a person qualified for membership if he/she "is or has been" a member of a court, and he observed that several members had retired as judicial officers and had returned to practice at the bar. There was some discussion as to whether it was appropriate that a barrister could be a member of an association of judicial officers. It was decided not to make any decision on this matter for the time being.

## **5 Secretariat matters**

A report had been circulated and was noted.

## **6 2012 Colloquium**

As Justice Martin was not present, the Secretary reported that he understood that there were 65 registrations to date. It was noted that this was better than the number of registrations at this point in 2011, which was encouraging. It was also noted with regret that there were only 12 registrations from Western Australia and none from the Federal Court (although Justice Barker of the Federal Court is to present a paper).

The Executive Committee confirmed that the dates and cities for forthcoming colloquia would be –

2013 Sydney	Friday 11 – Sunday 13
2014 Brisbane	Friday 10 – Sunday 12
2015 Adelaide	Friday 9 – Sunday 11

## **7 Media Monitors Pty Ltd**

The President reported on a recent situation where Media Monitors had not included a news article on the matter of Sir Anthony Mason's advice to the Governor General in 1975 even though it clearly related to (i) the JCA (which was

mentioned in the article) and (ii) judicial independence (and had those words in its sub-heading). He said that Media Monitors had suggested that its brief be amended by adding the headings “government interference”, “partiality” and “inappropriate behaviour”. It was agreed that Media Monitors be asked to add these headings to the brief.

## **8 Opinion piece in *The Age* in regard to the independence of the judiciary**

A copy of an opinion piece by Neil Rees published in *The Age* on 3 September 2012 had been circulated, together with a paper by Professor Anne Twomey of the University of Sydney. The President noted that Neil Rees had suggested in his opinion piece that the JCA might be the body to make a statement in regard to appropriate judicial behaviour in a situation where a person holding vice regal office sought advice on his/her reserve powers. He went on to say that the article by Professor Twomey provided an historical perspective to the matter as it showed that Sir Anthony Mason had been following a pattern established from the earliest days of Federation.

There was then general discussion on the matter. Justice McMurdo said the issue was essentially about the future, not about what happened in the past and, this being so, the JCA should make a statement about the principle, not on a specific case. He also noted that the public debate had broadened to include the whole question of the reserve powers and it would not be appropriate for the JCA to be commenting on this wider issue. However, he felt that the Governing Council should discuss whether the JCA should publish anything about the principle as it is too big an issue to be ignored and is close to the JCA’s core objectives.

It was agreed that the Rees and Twomey articles would be circulated (with the draft Annual Report) to members of the Governing Council in advance of the meeting in Fremantle with an indication that, the meeting would consider whether a statement should be published by the JCA in regard to the principles which applied to the relationship between the judiciary and vice regal office holders where the exercise of reserve powers arose.

## **9 Insurance in regard to complaints proceedings against judicial officers**

There was general discussion of this matter.

## **10 Policy in regard to public pronouncements**

Justice McMurdo said that his sub-committee would have a report available for consideration at the forthcoming Governing Council meeting in Fremantle.

## **11 Next meeting**

It was noted that the next meeting would be held on Thursday 22 November 2012 at 5.00pm Eastern Summer Time.