



Judicial Conference of Australia

2013 ANNUAL REPORT

Introduction

It is a pleasure to present, on behalf of the Governing Council, the 2013 Annual Report to the members of the Judicial Conference of Australia.

Office bearers and members of the Executive Committee and Governing Council

The office bearers, the members of the Executive Committee, and the members of the Governing Council of the Judicial Conference of Australia as at the date of preparation of this report are as follows:

Office bearers

<i>President:</i>	The Hon Justice Philip McMurdo
<i>Vice President:</i>	The Hon Chief Justice Alan Blow, OAM
<i>Treasurer:</i>	His Honour Judge Brian Withers
<i>Secretary:</i>	Mr Christopher Roper AM

Executive Committee

His Honour Judge Michael Baumann AM, Federal Circuit Court of Australia
The Hon Justice David Beach, Supreme Court of Victoria
The Hon Justice Robert Beech-Jones, Supreme Court of New South Wales
The Hon Chief Justice Alan Blow OAM, Supreme Court of Tasmania
Her Honour Judge Elizabeth Bolton, Chief Magistrate, Magistrates Court of South Australia
His Honour Judge Allan Fenbury, District Court of Western Australia
His Honour Judge Graeme Henson, Chief Magistrate, Local Court of New South Wales
His Honour Magistrate Don Jones, Magistrates Court of Tasmania
The Hon Justice Judith Kelly, Supreme Court of Northern Territory
The Hon Justice Philip McMurdo, Supreme Court of Queensland
The Hon Justice Hilary Penfold PSM, Supreme Court of the Australian Capital Territory
The Hon Justice Steven Rares, Federal Court of Australia
His Honour Magistrate Marc Sargent, Magistrates Court of Victoria
The Hon Justice Michael Walton, Industrial Court of New South Wales
His Honour Judge Brian Withers, Supreme Court of South Australia.

Governing Council

His Honour Magistrate Richard Bayly, Magistrates Court of Western Australia

The Hon Justice David Beach, Supreme Court of Victoria

The Hon Justice Robert Beech-Jones, Supreme Court of New South Wales

The Hon Chief Justice Alan Blow OAM, Supreme Court of Tasmania

Her Honour Judge Elizabeth Bolton, Chief Magistrate, Magistrates Court of South Australia

His Honour Judge Wayne Chivell, District Court of South Australia

His Honour Judge Allan Fenbury, District Court of Western Australia

His Honour Magistrate Greg Grogin, Local Court of New South Wales

His Honour Magistrate Don Jones, Magistrates Court of Tasmania

The Hon Justice Judith Kelly, Supreme Court of the Northern Territory

His Honour Chief Magistrate Peter Lauritsen, Magistrates Court of Victoria

His Honour Judge Michael McInerney, County Court of Victoria

The Hon Justice Carmel McLure, President, Court of Appeal, Supreme Court of Western Australia

The Hon Justice Philip McMurdo, Supreme Court of Queensland

The Hon Justice Peter Murphy, Family Court of Australia.

His Honour Judge Gary Neilson, District Court of New South Wales

Her Honour Magistrate Leanne O’Shea, Magistrates Court of Queensland

His Honour Chief Judge John Pascoe AO CVO, Federal Circuit Court of Australia

The Hon Justice Hilary Penfold PSM, Supreme Court of the Australian Capital Territory

The Hon Justice Steven Rares, Federal Court of Australia

His Honour Judge Michael Shanahan, District Court of Queensland

The Hon Justice Terry Sheahan AO, Land and Environment Court of New South Wales

The Hon Justice Michael Walton, Industrial Court of New South Wales

His Honour Judge Brian Withers, Supreme Court of South Australia

The position of representative for the Magistrates Court of the Northern Territory is at present unfilled.

The Governing Council has met on three occasions over the past 12 months: in Melbourne (23 March 2013), in Sydney (20 July) and again in Sydney earlier today. Communication involving all members of the Council has taken place, as occasion requires, between meetings.

The Executive Committee met in telephone conference on 22 November 2012, 7 February, 18 April, and 19 September 2013. As with the Governing Council, communication between members also takes place, as occasion requires, between meetings.

Changes in the composition of the Governing Council

During the past twelve months there were several changes in the composition of the Governing Council, as judicial officers retired or, because each court chooses its representative on the Council, internal changes in the allocation of responsibilities within courts dictated a corresponding change in Governing Council representation.

Those who resigned from the Council since October last were:

Magistrate John Birch (Magistrates Court of the Northern Territory)
Justice Peter Garling (Supreme Court of New South Wales)
Magistrate Lee Gilmour (Local Court of New South Wales)
Chief Magistrate Ian Gray (Magistrates Court of Victoria)
Chief Magistrate (now Justice) Hilary Hannam (Magistrates Court of the Northern Territory)
Justice Glenn Martin (co-opted from the Supreme Court of Queensland)
Judge (now Chief Judge) Geoffrey Muecke (District Court of South Australia)
Justice Richard White (Supreme Court of South Australia)
Judge Jon Williams (District Court of New South Wales)
Justice Peter Young (Family Court of Australia).

All of these members contributed very significantly to the work of the Governing Council and the JCA is deeply in their debt.

Magistrate John Birch was replaced on the Governing Council by Chief Magistrate Hilary Hannam, but she subsequently resigned upon her appointment to the Family Court of Australia. Justice Peter Garling was replaced by Justice Robert Beech-Jones, Magistrate Lee Gilmour was replaced by Magistrate Greg Grogan, Chief Magistrate Ian Gray, on his appointment to the County Court of Victoria, was replaced by Chief Magistrate Peter Lauritsen, Judge Geoffrey Muecke was replaced by Judge Wayne Chivell, Justice Richard White (upon his appointment to the Federal Court of Australia) was replaced by Judge Brian Withers, Judge Jon Williams was replaced by Judge Gary Neilson and Justice Peter Young was replaced by Justice Peter Murphy.

Thanks

One of the strengths of the JCA comes from the breadth of judicial experience of its membership across Australian courts of diverse jurisdictions. From that diversity, the contribution made by each and every member of the Council has been invaluable in forming policies and opinions which can fairly represent the views of the Australian judiciary.

I am very grateful for the service of each member of the Governing Council and/or Executive Committee. Each is a busy judicial officer who has found time to make a substantial contribution to the ongoing work of the JCA.

I am particularly grateful for the guidance and support which I have received from Chief Justice Blow, as Vice President. It is fortunate for the JCA that he was prepared to continue in this role notwithstanding the heavy demands of the office of Chief Justice of Tasmania to which he was appointed earlier this year.

Again the JCA has been very well served by Judge Brian Withers as Treasurer.

Mr Chris Roper again provided invaluable service as Secretary. At all times he has been able to assist us as issues arise which required sometimes an immediate response by the JCA. An additional burden upon him during this year has been the collation and publication each week of media publications.

After coordinating several Colloquia, Justice Glenn Martin resigned from the Council this year. The JCA is very grateful for his work in organising those events and more generally for his contribution to the work of the Governing Council.

Membership

As at 9 October 2013 the membership of the JCA numbers 632, comprising 522 serving judicial officers and 110 retired judicial officers. The membership extends across every court in Australia. This continuing high membership evidences a broad acceptance of the need in this country for an association of judicial officers which is concerned with the maintenance of a strong and independent judiciary.

The business of the Governing Council and Executive Committee

Development of policy

In the course of the past year, a number of projects for the development of policy have been initiated by the Governing Council. Through various sub-committees of Council members, these constitute substantial work in progress for which the results will be published by the JCA in the forthcoming year.

The first of these projects is the development of guidelines affecting judicial advice to holders of vice-regal office. The work of that sub-committee, comprising Justice Richard White, Justice Terry Sheahan, Judge Jon Williams and myself, is well advanced. Judge Williams has recently retired from the District Court of New South Wales and Justice White has recently been appointed to the Federal Court. Fortunately, each has agreed to continue their work on this project.

Related to that project is a research paper which the JCA will commission from an Australian constitutional law expert upon the subject of the

independence of the judiciary from the executive arm of government. The Secretary has written to the Council of the Australian Law Deans Secretariat, inviting all law schools to submit a research proposal. This paper will provide a valuable resource for the JCA and its members which will have utility in many contexts. Most immediately, it will assist in the finalisation of the project upon judicial advice to the holders of vice-regal office.

Next, a sub-committee is to develop a draft policy, to be considered by the Governing Council, upon the process of the selection and appointment of judicial officers. This comes from the Council's view that the public confidence in the independence of courts is affected by the processes by which judicial appointees are, and are perceived to be, selected.

Thirdly, another sub-committee will prepare draft guidelines, to be considered by the Council, on the use of social media by judicial officers and courts.

Determination of remuneration in New South Wales

A matter of considerable concern this year has been the enactment in New South Wales of the *Statutory and Other Offices Remuneration Amendment (Judicial and Other Office Holders) Act 2013*. The effect of this legislation is to require the independent Remuneration Tribunal in that State, when making a determination of the salaries and entitlements of (amongst others) judicial officers, to give effect to any policy concerning the remuneration of office holders which the executive government declares by a regulation. In the view of the Governing Council, this compromises the independent determination of judicial remuneration, which is a fundamental pillar of an independent judiciary. The JCA protested this enactment but without success, at least thus far.

Web streaming of proceedings in Western Australia

The Chief Justice of Western Australia asked the JCA to consider whether an issue of judicial independence arose in the context of the proposed web streaming of court proceedings in that Court. The Attorney-General of Western Australia had written to the Chief Justice, to the effect that funds should not be spent for this purpose. The Vice President and I considered the correspondence between the Attorney-General and the Chief Justice, and took the view that the Attorney was withholding funds which had already been allocated by the government, as part of the court's information technology funding. Upon that premise, namely that additional funds were not being requested by the court, but rather the court's proposal was to provide this facility from existing funding, we considered that the Attorney-General's refusal to permit the funds to be spent for this purpose challenged the independence of the court to decide the manner and extent of the publication of its own proceedings. I wrote to the Attorney-General and issued a media release stating that position. Some members of the Supreme Court were not in favour of web streaming. But in our view that was a distinct question, upon which we expressly declined to comment, from the principle that it was for the court to decide how its proceedings should be publicised. The Governing Council resolved to support the stance taken on behalf of the JCA.

Judicial pensions

During the year there arose two issues which have or had the potential to affect the real level of judicial remuneration, by treating judicial pensions as superannuation.

The first was a proposal originally announced in last year's Federal Budget, that contributions to superannuation funds by persons earning over \$300,000 per annum would be taxed at a rate of 30 per cent, rather than 15 per cent. It was apprehended that by a series of deeming provisions, this might be made to apply to judges who received or were to receive a non-contributory pension.

Earlier this year, the parliament enacted the *Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Act 2013* (Cth), which provided for that increase in the rate of tax on superannuation contributions. The Act provides specific exemptions for Commonwealth and State judges. But it does not provide exemptions for judges of the Supreme Court of the Australian Capital Territory and the Supreme Court of the Northern Territory.

In May 2013, I wrote to the then Deputy Prime Minister and Treasurer, pointing out this apparent oversight, prior to the legislation being passed. I received no reply. The JCA will press the case of these courts to the new government.

The other matter arose by an announcement on 5 April 2013, by the then Minister for Financial Services and Superannuation, to the effect that there would be a tax imposed upon retirement income, in excess of \$100,000 per annum, derived from a superannuation fund. Again, the concern was that by a series of deeming provisions, this might be made applicable to judicial pensions. I made statements, published in the media, as to the JCA's concern and the need for the proper consultation with courts and the JCA.

In subsequent correspondence from the then Attorney-General to heads of relevant Commonwealth Courts, it was made clear that the government would not seek to apply such a change to judges of those Courts. The position of judges of the States and Territories was not discussed in the Attorney-General's correspondence. I wrote to the then Deputy Prime Minister and Treasurer seeking clarification in relation to judges of the States and Territories, but received no reply. No legislation for this tax was passed before the change of government and the attitude of the new government to this proposal is unknown.

International Association of Judges

Judges who presently represent the Australian judiciary in the International Association of Judges have invited the JCA to take over this role, so that it would become the member to represent the Australian judiciary in that Association. As a general proposal it has been discussed by the Executive Committee, but has not yet been developed in detail. By the end of 2013, the Governing Council will be in a position to consider a detailed proposal. The JCA's principal focus will always be upon matters affecting the judiciary

in Australia. But at the previous Annual General Meeting, the objects of the JCA were amended to provide for a role, where appropriate, in matters affecting the judiciary outside this country, an amendment which was prompted by the events and circumstances at that time in Papua New Guinea.

Colloquium

Once again the organisation of the JCA's Colloquium has been a substantial task and the organising committee of Chief Justice Blow (as Chairman), Justice Robert Beech-Jones, Judge Graeme Henson, Judge Gary Neilson, Justice Steven Rares, Chris Roper, Justice Michael Walton and Judge Jon Williams are thanked for their efforts in securing an outstanding program of speakers and other events.

Philip McMurdo