



Judicial Conference of Australia

EXECUTIVE COMMITTEE

MINUTES OF MEETING: 2014/5

Held by teleconference on **Thursday 27th November 2014**
commencing at 5.00 pm Eastern Standard Time

Participating

Justice Steven Rares (President) in the Chair
Justice Robert Beech-Jones
Chief Justice Alan Blow, OAM
Justice Timothy Ginnane
Justice Judith Kelly
Chief Magistrate Graeme Henson
Justice Glenn Martin, AM
Justice Hilary Penfold, PSM
Magistrate Marc Sargent
Justice Michael Walton
Judge Brian Withers

Apologies

Judge Michael Baumann, AM
Chief Magistrate Elizabeth Bolton
Judge Allan Fenbury

In attendance

Christopher Roper, AM (Secretary)

1 Minutes of the previous meeting

The minutes of the previous meeting held on 18th September 2014 had been circulated.

Resolved:

That the minutes of the meeting held on 18th September 2014 be approved.

2 President's report and business

2.1 Judicial selection and appointments project

The President reported that the sub-committee had met and that the document was now at a stage that it was in order for it to go to the Governing Council to be published. He said that the committee had taken the view that the JCA should not tell governments how to appoint to the judiciary and rather that the document should set out how it is presently done and some of the history, and thus outline

what is available. He said the AIJA was working on criteria or desirable characteristics for appointment, and these would be included as an appendix.

Justice Ginnane said that the section on Victoria was now partially out of date and it was arranged that he would send edits to the Secretary.

Resolved:

That the Judicial Appointments document, after incorporation of further amendments in regard to Victoria, be submitted to the Governing Council for consideration at its next meeting.

2.2 Superannuation surcharge

The President reported that there had been no developments.

2.3 Anomaly in regard to taxation of redundancy payments

The President reported that there had been no developments.

2.4 Territory judges and effect on them of changes in regard to treatment of superannuation

Justice Penfold questioned if the minutes of the previous meeting correctly reflected the situation in regard to judges in the ACT. She said that the specific statutory protection (*Supreme Court Act*, s 37UA) was only in regard to the 1997 surcharge levy and not generally.

Justice Kelly agreed and said that she understood that (in addition) there was a specific provision in the ACT *Self Government Act* to the effect that there could be no reduction in judges' entitlements, and that this was missing from the Northern Territory *Self Government Act*.

Justice Penfold said that in regard to the new tax, which was not called a superannuation surcharge, there had been an approach from the Court to the ACT Justice Directorate, and there appeared to be a willingness to consider fixing the difficulty in the same way as it was fixed in 1997.

[Justice Penfold later advised that the protection against any reduction in remuneration of ACT judges was in the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (s 73(3A)). She thought it unlikely that the provision would be read as either precluding the Commonwealth taxing judicial pensions as proposed, or requiring the ACT Government to make up the difference.]

Justice Kelly said that that was good for the ACT but the Northern Territory Government had not given any protection to the two judges in the Northern Territory who were affected by the old Superannuation Guarantee levy and was unlikely to agree to any such legislative protection for judges in respect of the new tax. She said that she understood the Northern Territory Solicitor General was talking to the ACT Solicitor General in order to find out who, in the Commonwealth public service, was the appropriate person to talk to in relation to proposed amendments to the Commonwealth legislation.

2.5 *Association of Australian Magistrates*

There was discussion in regard to the possibility of joint conferences by the JCA and the AAM.

2.6 *Guidelines on the use of social media for judges and court officials*

The President referred to the information received from Professor George Williams that he would be undertaking research in this area, and he noted that Professor Williams could do some work for the JCA. He suggested that Professor Williams could expand his work to look at developing guidelines for use within the courts on how judicial officers should protect themselves.

Justice Kelly said she was presently involved in the process of reviewing the Northern Territory Supreme Court media policy. She said that it was possible that the approach would turn from being generally prohibitive to being generally encouraging.

The President asked for nominations to the committee to look at this matter.

Resolved:

That Justice Judith Kelly and Magistrate Marc Sargent be appointed to the committee to develop guidelines on the use of social media by judges and court officials.

It was agreed that members of the Governing Council be asked if any wished to join this committee.

The Secretary was asked to contact Professor Williams and ask him if he could develop his project so that it encompassed the development of recommended guidelines for judicial officers and court staff on the use of social media.

2.7 *International Association of Judges*

The President briefly reported including that Justice Pagone was now a Vice President of the IAJ. He suggested that Justice Pagone might be appointed as the JCA's 'point person' for the IAJ, and that he might be co-opted to the Governing Council.¹

2.8 *Appointment of Professor James Crawford to the International Court of Justice*

The President reported that a suggestion had been made from the Secretariat that Professor Crawford might be appointed as an honorary member of the JCA. It was also suggested that he might, in the alternative, be invited to join the JCA. There was then a discussion as to whether this would be appropriate and feasible.

It was noted that the JCA's Rules (rule 4A) would not permit Professor Crawford being appointed as an honorary member. In regard to ordinary membership, it

¹ Rule 11(1)(c) states "... the Governing Council shall consist of such further member or members of the Conference as the Governing Council may co-opt for such term as the Governing Council shall specify."

was noted that the wording of rule 4(b) was not clear as to whether it applied to this situation.²

It was decided to put this matter to the Governing Council, and in the meantime to obtain further information.

(Justice Beech-Jones left the meeting at this point.)

2.9 Proposed Judicial Council for the Australian Capital Territory

The President noted that there had been an announcement of a proposed Judicial Council for the ACT. Justice Penfold said that this was being pushed by the ACT Chief Justice and was still being negotiated.

It was decided that there was no need to do anything further at this stage.

3 Financial matters

There was no financial report for the current period. The Treasurer reported on the current balances in the accounts at the bank.

Resolved:

That the Treasurer's report be received.

4 Membership matters

There was no membership report for the current period. The meeting noted that report in the agenda on the current number of members.

5 Secretariat matters

A report from the Secretariat had been circulated, and was noted.

The Secretary reported that Jeremy Leith, the Administrative Assistant, had prepared a proposal for a research project which he would undertake as part of his JD degree, and which he also wished to submit for consideration to the planners for the conference on judicial independence in Brisbane in 2015. A copy of his proposal had been circulated.

It was agreed that the Executive Committee had no objection to Mr Leith's proposals.

6 Dates of 2015 meetings of the Governing Council and Executive Committee

A memorandum had been circulated.

² Rule 4(b) states "A person is qualified to be a member if that person is or has been a person appointed on terms which, in the opinion of the Governing Council, are similar to those upon which judges are usually appointed in Australia and whose duties are, in the opinion of the Governing Council, substantially judicial in nature."

Resolved:

That the 2015 meetings be as follows:

Governing Council

Saturday 28 March

Melbourne (to be confirmed)

Saturday 27 June

Sydney

Friday 9 & Saturday 10 October

Adelaide

Executive Committee

Thursday 5 February

Thursday 30 April

Thursday 23 July

Thursday 17 September

Thursday 26 November

7 Colloquia

7.1 2014 Colloquium

A report collating feedback had been circulated and was noted, with pleasure.

7.2 2015 Colloquium Planning Committee

Resolved:

That the members of the Planning Committee for the 2015 Colloquium be Justice Beech-Jones (convenor) – if he agrees, Judge Julie McIntyre (District Court of South Australia), Justice Peter Murphy, Justice Hilary Penfold and Judge Brian Withers.

7.3 Venue for 2015 Colloquium

Resolved:

That the proposal from the Stamford Grand Adelaide at Glenelg be accepted and the 2015 Colloquium accordingly be held at that venue.

7.4 2017 and 2018 Colloquia

Resolved:

That the 2017 Colloquium be held in Melbourne and the 2018 Colloquium in Hobart, subject to the Governing Council's approval.

8 Judicial Selection and Appointments Process Committee

This matter had already been dealt with at item 2.

9 Guidelines on the Use of Social Media by Judicial Officers and Courts Committee

This matter had already been dealt with at item 2.

10 Additional material on the JCA's website

The updated material on the JCA's website was noted.

11 Independence of the judiciary in Timor-Leste

The President referred to a report, which had been circulated, from Alistair Wyvill, QC, on the current situation of the judiciary in Timor-Leste. He noted that the situation was somewhat similar to what it had been in Nauru and Fiji, and observed that it was a worrying development. He said that there was a suggestion from the President of the Court of Appeal, reported in the Wyvill report, that letters might be written to the President and Prime Minister of Timor-Leste, with copies to the President of the Court of Appeal. The President then reported on the drafting of letters, which he had done in conjunction with Justices Kelly and Middleton and the Secretary.

There was some discussion as to whether the letters should include a reference to the personal safety of the judges in Timor-Leste. It was observed that the JCA would not want to make any suggestions that it was not able to substantiate, and that the main focus should be on the importance of maintaining the independence of the judiciary. Justice Kelly agreed that it was important to remove anything from the letters that might be inflammatory.

The President said that he would circulate the changes to the letters on the following morning with a view to sending them later in the day.

In regard to the draft media release, which had been circulated, it was agreed that the letters should be attached to it.

It was also agreed that the letters should be translated into Portuguese and that both the English and Portuguese versions be sent.

12 Dinner for Justice Philip McMurdo

It was agreed that a dinner would be held to honour Justice Philip McMurdo at the time of the March 2015 Governing Council meeting in Melbourne or the June 2015 meeting in Sydney.

13 Next meeting

It was noted that the next meeting would be held on Thursday 5th February 2015 at 5.00pm Eastern Summer Time.