

## **LAW REFORM COMMITTEE**

### **Inquiry into oaths, statutory declarations and affidavits for multicultural community**

Melbourne – 2 August 2002

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#### Witnesses

Mr L. Taig, JP, President; and

Mr K. Frampton, JP, Immediate Past President, Royal Victorian Association of Honorary Justices.

**The ACTING CHAIRMAN (Mr Bowden)** — On behalf of the committee I welcome you here today and appreciate your attendance. Our chairman has a commitment that will take him away for approximately half an hour, so in his absence my colleague and I will continue. Before we do, I would like Hansard to record the fact that I am a justice of the peace, that my registration number is 8049, and that I am also a bail justice and my registration number is 1259. That is just to help the record.

Would you like to proceed with the information you wish to present to us?

**Mr TAIG** — Yes, Mr Bowden. My name is Laurie Taig and I am the President of the Royal Victorian Association of Honorary Justices. I have with me Mr Frampton, who is the immediate past president and our representative on the selection panel for honorary justices, to which the previous speaker spoke. We have distributed to the committee a number of documents and a number of answers we have prepared to some questions we have been given notice of.

In respect to the first of those questions relating mainly to training, we inform the committee that honorary justices are provided with training by the Royal Victorian Association of Honorary Justices in a number of ways, including in-service triennial training in judicial duties for accredited bail justices. We run one metropolitan and one regional course which are made up of two sessions. They are held on an annual basis for two full days duration. As a matter of interest we are holding a session in Ballarat next Saturday for the first of those two days and a session the following Saturday for the second day.

Initial training of justices of the peace and other persons authorised under the Evidence Act in respect to taking of declarations and swearing of affidavits is undertaken by some eight scheduled half-day sessions annually at metropolitan and regional locations and other locations as required. The training of other authorised persons is either arranged with individual accountants, pharmacists or whoever wishes to attend our courses, or with associations for which we run specialised courses on their behalf.

We do such things as hold seminars on children and young persons, independent persons and others on a periodic basis. Training in independent persons and revision and update of that part of our role is currently being undertaken in conjunction with Youth Law, which is a group operating out of Werribee Legal Service and Fitzroy Legal Service. We undertake authorised customs training for JPs to conduct hearings to determine whether body searches are applicable under the Customs Act at points of entry into Australia located within Victoria.

Training is done with specialist guest speakers at branch meetings. On the back of our journal you will see there are some 21 regional and metropolitan branches, and they meet on a regular basis. For example, at Central Gippsland branch next month we are having guest speakers on indigenous awareness. Two of our indigenous bail justices will be conducting that session, and I am pleased to say that one of those has recently been appointed to our board. We also do training through peer group support and discussions, and we provide specialised service on particular rosters, such as rosters for the probate office, the Supreme Court, the Royal Melbourne Hospital and a roster run out of our office in Camberwell, to name just a few.

We have a mentor program particularly for newly accredited bail justices, both metropolitan and regional. That is coordinated throughout the state, and Mr Frampton has a significant role in that activity.

Cultural awareness training is formally incorporated in our in-service training for accredited bail justices and also in our justice of the peace training. That is reflected in the notes we have given you in the blue-bound cover, which to some extent covers the circumstances likely to be encountered.

Informal training in cultural awareness is undertaken more particularly through the peer group conferences and the like, due to the multicultural make-up of our membership. We are able to call

upon colleagues in that respect, and do so frequently, given that our members are appointed from within their community groups and that many of them are leaders and some are actually religious leaders in those groups.

I have included a submission that we have put to the National Bank of Australia community link project, which is a document you may care to refer to for an overview of our training and what have you. That was specifically prepared to try to get a grant for this association. It has been supported by Judge Betty King from the County Court, who assists us in some of our training, and also Mr John Griffin, who is the executive director of courts, Department of Justice.

Mr Griffin comments in the letter of reference attached to that submission on training that:

The RVAHJ provides an important educative service to honorary justices. The association assists the Magistrates Court of Victoria in providing the mandatory initial training course for bail justices. The association also provides an initial training course for justices of the peace, offers refresher and special training courses for all honorary justices (not just its members), and designs and runs courses on document attestation for accountants, pharmacists, bank managers and other persons authorised to sign statutory declarations and take affidavits. The RVAHJ's journal keeps its members informed in the law and procedures affecting honorary justices' duties.

The training program offered by the RVAHJ is an essential feature of the significant voluntary service offered to the community by its honorary justices.

There is reference made there to the journal which is called *Custodes*, and you will see throughout the pages of that quarterly magazine, more particularly towards the latter pages, reference to training. This association is of the view that training is essential to maintaining a satisfactory service to the community. This training needs to be both initial and in-service training.

We have a number of submissions before the government, including a submission for the introduction of mandatory training, to which we have not yet received a response. That is one of a number of items we have put to the government.

We currently operate from the old courthouse in Camberwell on a grace-and-favour basis, and unfortunately this location is being reallocated to the neighbouring police station later this year, and we are advised that further government support is unlikely. We are seeking support from the Department of Justice and reconsideration of the provision of alternative premises. That is the position at the present.

Some honorary justices already refuse to undertake training unless it is mandatory and subsidised. They are not prepared to donate further time or expense to support the performance of their duties in order to provide a community a service which, in their opinion, does not enjoy the appropriate support from government. That view has been expressed as a result of recent attempts to get our bail justices in particular to the current in-service training. Submissions to address these concerns are also before government awaiting response.

I know it is a long answer to the first questions, but I can assure you that the others are not quite as long. Would you like me to proceed?

**The ACTING CHAIRMAN** — Yes, please do.

**Mr TAIG** — In respect to the question of whether we agree there is little demand for religious texts, frankly we do not know the answer to that. All members consulted on this issue confirmed that this option should be maintained in order to ensure that where the option of an oath is taken it is likely to be seriously considered as binding on the conscience of deponent. We think one of the questions most commonly asked by the justice is whether or not taking the oath is binding on the conscience of the deponent.

Do justices of the peace routinely have religious texts other than the Bible available? As they are appointed from within community groups those where there is a religious connotation no doubt

would have an option and a text there. For instance, at Camberwell we have both a Bible and a Koran. I do not know of an occasion where the Koran has been used at this stage. It is likely that the needs of that particular community are met by the honorary justice because of their specific knowledge. This is not transmitted back to us, but I think that our members generally feel that it should be maintained.

We do not believe that every justice should cater for every need. However, should the deponent bring with them a religious book on which to swear it should be accepted as it is likely to be considered more binding than an affirmation. As Mr Kakos said, it is an opportunity. I think in most cases, except for where there is a roster at a particular fixed location and the members of the public come to the justice, a telephone call is made and an appointment made, and it may well be that the justice has the opportunity at that point of saying, 'You bring your particular religious book if you wish.' It is quite within the process of our teaching to give that option and ensure that those questions are asked.

We give examples of other religious oaths at the rear of those training notes for declarations. It is the last two pages. We say that a properly trained honorary justice or other authorised person — we really have not trained many other authorised persons over the years — would be prepared for special requests from within their community. Otherwise they would follow the Royal Victorian Association of Honorary Justices (RVAHJ) training, which provides for a choice of taking the oath on the Bible or other religious book in accordance with the legislation plus an extension because the legislation calls only for the Bible, the Old Testament and/or the New Testament, and by practice and the introduction of cultural awareness already and custom the other religious books are used. The most significant thing is that we teach that whichever is most binding on the deponent's conscience should be the process used.

We have a complaints mechanism and to my knowledge we have had no complaints of the nature that you are inquiring into.

We believe the current system is working well. You may be interested to know that this includes the swearing of police informants bail hearings. We do in the order of some 12 000 hearings a year. A choice is given as previously mentioned, and although some bail justices carry the Bible with them for that purpose, as a result of our revised training we have a situation now where more Bibles are being presented to bail justices during hearings so the information can be taken in a sworn manner as evidence. The suggestion of having another religious book or otherwise there is probably not a practical thing in bail hearings. You may have a different requirement within the court system than in the public arena. In this day and age we think it is presumptuous that governments should try to dictate or prescribe citizens' belief systems and not allow them freedom of choice to select the most appropriate and binding method according to their own personal philosophy or belief. Removing one in favour of the other is logically denying them the validity of a system of belief in favour of no system of belief.

In a democracy such as ours citizens should be free from government interference in their choice of what is a binding undertaking and select the most appropriate for them. It may perhaps be relevant to point out that the last census showed Australians as being over 80 per cent — there is a contradictory statistic on Mr Trumble's email, perhaps we could say; I am not sure of the figure; in the order of 70 plus per cent — Christian in belief and removing the religious oath to the advantage of a much lesser minority would disadvantage the majority whereas remaining with a dual elective system would disadvantage neither. That is the extent to which we have prepared answers.

**The ACTING CHAIRMAN** — Could you help the committee perhaps by letting us have the source document or the source reference for those nominated rituals?

**Mr TAIG** — It is quoted at the bottom of the first paragraph. The *Magistrate* was an English journal.

**The ACTING CHAIRMAN** — That is very efficient. Thank you.

**Mr FRAMPTON** — Can I comment? The use of a religious text or not is frequently experienced in the case of remand hearings by bail justices when interpreters are being used because, as you would know, the interpreter has to be sworn too. The interpreters, by virtue of their being interpreters, come from so many other racial groups, if you like, including Chinese et cetera, and it is generally the preference to suggest to them that they may care to make the standard affirmation, which has no reference at all to supreme beings or religion in any way.

**Mr LANGUILLER** — Thank you very much for your submission and for making your time available on behalf of your organisation. I have a couple of practical questions. How many justices of the peace are there?

**Mr TAIG** — In our association there are 2700.

**Mr LANGUILLER** — How many of them attend training; do you know the percentage?

**Mr TAIG** — No, I cannot tell you. Anecdotally there would be say 250 JPs a year and bail justices, and for bail justices in the order of 100 per year.

**Mr FRAMPTON** — The capacity of the association to provide training diminishes in respect to geographical spread. The training is provided by selected volunteers from within the board. Their time is pretty valuable too, and there is no support at all. Therefore, conducting training in the more remote areas of Victoria imposes a significant cost which can only be borne from members' subscriptions.

**Mr LANGUILLER** — We have recorded your submission to government as well, by the way. Do JPs explain to deponents that they could take an oath but in fact that that oath could be taken on various sacred texts should they wish — that there are options available to them?

**Mr TAIG** — It is our teaching.

**Mr LANGUILLER** — Consequently, of course, they would explain to deponents as well that there is an affirmation, and that it could be done in a nonreligious way?

**Mr TAIG** — Which is in accordance with the act.

**Mr LANGUILLER** — It was suggested to our committee that on balance, and I qualify that very carefully by saying 'on balance' precisely because of the practical questions of making sacred texts available throughout Victoria to all the judiciary, JPs and so on, that in order to be fair perhaps we should remove the oaths and have simply affirmations. Because of that very fact that one could not provide all of the sacred texts should they be required, consequently it is probably easier and fair to simply have affirmations. That has been put to our committee. What do you think about that?

**Mr TAIG** — Firstly, we think it is more important that the oath is as binding as possible on the conscience of the deponent. Once you start removing the religious connotation from the oath, I think you start watering down the nature of the oath being binding on the conscience of the deponent. In respect to a JP or honorary justice, or other authorised person for that matter, not having the appropriate religious book available, I think if it is really serious enough for that deponent they will make it available, and I think they should have the right to do that if they wish.

**Mr LANGUILLER** — Is that what usually happens in practice, given your experience?

**Mr TAIG** — In 20 years I have never had anyone bring another religious book to me, but I do not work in the area where I would expect it.

**Mr FRAMPTON** — I have not anybody present one themselves nor raise any objection given an invitation to discuss the matter on an affirmation. I think the matter is of some concern with several categories of the authorised persons. I submit that most of us have been standing by when an authorised person has witnessed a statutory declaration, and I suggest that with most being business people they would not have the time nor indeed, dare I say it, the interest in too many of the niceties.

**Mr TAIG** — We have some concerns in regard to the manner in which there is insufficient in my view training for the other authorised persons — that is to say, those without some sort of legal background — because we find that we are reswearing a lot of documents where affidavits have been taken by police officers, pharmacists, accountants and others. In some respects this puts the deponents to a great deal of inconvenience, particularly where they are Queensland documents. They might be over a land sale or something of that order, but they call for a justice of the peace and a justice of the peace is what is required. Those documents will go and come back, and we find that we are reswearing those documents for them.

**Mr LANGUILLER** — As a matter of curiosity I am tempted to seek your opinion given your expertise. I note with interest in the Evidence Act 1958 the professions of the authorised officers. I have always wondered why a plumber, for example, could not be an authorised officer or a well-trained carpenter or members of professions of the kind.

**Mr TAIG** — I think the idea there was to bring about some sort of sanction to the profession — we can do without accountants but we cannot do without plumbers. I do not know.

**Mr LANGUILLER** — It is interesting because by and large they happen to be very busy people. My chemist is a terrific bloke, but he is always busy; he does get the document done.

**Mr FRAMPTON** — It may be that recourse to the instructions to the parliamentary draftsman may well throw light on that.

**Mr TAIG** — The Royal Melbourne Hospital pharmacists and a number of the employees there reached a stage where basically they had to say they were there for that function. We intend to resource a number more of those types of rosters. I suppose we should not let this opportunity go without saying that where there are leaders of religious groups who feel that they can service their community better under the current process then they should apply to become justices of the peace. We would welcome more members.

I would like to make one comment on that statistic we gave you of 2700. That represents some 75 per cent of the appointed justices in the state. As the justices are appointed for life, that 25 per cent shortfall covers those in their twilight years. There is a different point with each person — we still have some dealing with documents at 92 years of age, but they are exceptions to say the least. We believe we have as members of the association much more than 75 per cent of the active practitioners in this area.

**Mr FRAMPTON** — The honorary justice who has most contact with swearing is a bail justice, and there is a retiring age of 70 for that so they disappear from the system in a straightforward way. However, every hearing they conduct is one that involves an oath or swearing of one or more people, not the defendant but the police and/or an interpreter.

**The ACTING CHAIRMAN** — During the training for justices of the peace in particular, and it could also relate to bail justices but because of the volume and the amount of documentation that presents to justices of the peace for witnessing, could you confirm or comment for the committee as to the emphasis and the need for the trainee justice to understand that the document must be witnessed correctly or it may result in a complaint, or worse still the document being invalid?

**Mr TAIG** — I think perhaps that is best dealt with on the fact that we have a different colour in those notes for affidavits and declarations. We first of all make a distinction between the two sets of documents, and obviously that brings about the distinction at law in respect to the taking of the oath or otherwise and the manner in which the declaration is taken as well. The training itself is a Powerpoint demonstration which takes an hour and a half. That is working on developing a process from the Department of Justice's quarto-page document. You might not think you can get 1½ hour presentation out of such a dry subject, but believe me because of the circumstances you are talking about there are many who would otherwise put the community to some degree of inconvenience if it were not administered properly. I am not sure I can help you much more than that.

**The ACTING CHAIRMAN** — That is fine. In terms of people who come to justices of the peace for documentation to be witnessed, would you say that most, and hopefully all, justices are sensitive to the cultural differences and aware of the cultural differences that may be presented to them by the persons who appear?

**Mr TAIG** — I believe so, because to be appointed in the first instance they have been through appropriate process to establish that they are first of all honourable people. With most groups of people you have different standards, and I think perhaps the higher standard is delivered by those who take training as a priority. Even for those who have not undertaken the training, there are plenty there who would be mindful of the circumstances you are talking about.

**Mr FRAMPTON** — The assessment panel takes note of the application and the reasons expressed in it for wanting to be a justice of the peace or a bail justice. Also, it has taken regard to the references and to the police report, which deals not only with any criminal history, but in general makes comments as to the acceptance or role of this person in the community. Again, the larger communities have less of this information. Whereas the further out we go from the centre of Melbourne the police have a better opportunity to be able to put forward comments.

**The ACTING CHAIRMAN** — Would the association have a concluding comment or some underlined view that you would like to emphasise to the committee?

**Mr TAIG** — Yes. When we first were aware of this hearing we took the view that we were there to serve the community, that perhaps our view as an association does not matter all that much in terms of whether or not the community requires us to administer the oath in the way that the law provides at the moment or some other way. However, because of the make-up of our membership and a sampling — and that is all that we have done — of opinion, it seems that the view is that the choice ought to be left in order that the oath or the affirmed information is considered to be as binding as possible on the conscience of the deponent. Otherwise, as I say, we are there to serve the community and we will administer it in whatever way the government and the Parliament decides.

**The ACTING CHAIRMAN** — On behalf of our Chairman and other members of the committee and the staff, thank you for giving us your information and submission today. If there is any other matter that we can attend to before you depart that would be fine.

**Witnesses withdrew.**