



Judicial Conference of Australia

GOVERNING COUNCIL

MINUTES OF MEETING: 2015/1

Held on **Saturday 28th March 2015** at the Federal Court of Australia, Melbourne

The meeting commenced at 10.00 am.

Present

Justice Steven Rares (in the Chair)	Federal Court of Australia
Judge Michael Baumann, AM Justice Robert Beech-Jones	Federal Circuit Court of Australia Supreme Court of New South Wales
Chief Justice Alan Blow, OAM Chief Magistrate Elizabeth Bolton	Supreme Court of Tasmania Magistrates Court of South Australia
Magistrate Michael Brett Judge Wayne Chivell Magistrate Karen Fryar, AM	Magistrates Court of Tasmania District Court of South Australia Magistrates Court of the Australian Capital Territory
Justice Timothy Ginnane Magistrate Greg Grogin Judge Peter Hannon	Supreme Court of Victoria Local Court of New South Wales Industrial Relations Court of South Australia
Justice Graham Hiley	Supreme Court of the Northern Territory
Chief Magistrate Peter Lauritsen Chief Magistrate John Lowndes	Magistrates' Court of Victoria Northern Territory Magistrates Court
Justice Glenn Martin, AM Justice Carmel McLure	Supreme Court of Queensland Supreme Court of Western Australia
Judge Michael McInerney Judge Stephen Norrish Deputy President Daniel O'Connor Deputy Chief Magistrate Leanne O'Shea	County Court of Victoria District Court of New South Wales Industrial Court of Queensland Magistrates Court of Queensland
Justice Tony Pagone	International Association of Judges
Justice Hilary Penfold, PSM	Supreme Court of the Australian Capital Territory

Judge Michael Shanahan
Justice Terry Sheahan, AO

District Court of Queensland
Land and Environment Court of
New South Wales

Justice Michael Walton

Industrial Court of New South
Wales

Judge Brian Withers, AM

Supreme Court of South
Australia

In attendance

Christopher Roper, AM

Secretary

Apologies

Apologies were received from:

Magistrate Richard Bayly

Magistrates Court of Western
Australia

Justice Paul Cronin (alternate)
Judge Allan Fenbury

Family Court of Australia
District Court of Western
Australia

Justice Judith Kelly

Supreme Court of the Northern
Territory

Justice Peter Murphy
Judge Garry Neilson
Chief Judge John Pascoe AO, CVO

Family Court of Australia
District Court of New South Wales
Federal Circuit Court of Australia

Alternates

Alternate

Judge Michael Baumann
Justice Graham Hiley
Judge Stephen Norrish

Representating

Chief Judge John Pascoe
Justice Judith Kelly
Judge Garry Neilson

Resolved (2015/1)

That the apologies be noted and received.

1 New members and alternates

The President welcomed Magistrate Michael Brett, Judge Peter Hannon and Deputy President Daniel O'Connor to their first meeting of the Governing Council. He also welcomed Judge Michael Baumann, Justice Graham Hiley and Judge Stephen Norrish who were attending as alternates.

2 Confirmation of minutes of the previous meetings of the Governing Council

The minutes of the meetings of the Governing Council held on 10th and 11th October 2014 had been circulated.

Resolved (2015/2)

That the minutes of the previous meetings held on 10th and 11th October 2014 be confirmed subject to corrections in regard to the attendances of Judges McInerney and Shanahan.

3 Minutes of meetings of the Executive Committee held since the last meeting

The minutes of the Executive Committee meetings held on 27th November 2014 and 5th February 2015 had been circulated.

Resolved (2015/3)

That the minutes of the meetings of the Executive Committee held on 27th November 2014 and 5th February 2015 be noted.

4 Co-option of Justice Tony Pagone to the Governing Council

The President introduced this item and reported that the Executive Committee proposed to the Governing Council that it could be desirable that Justice Tony Pagone, at present a Vice President of the International Association of Judges (IAJ), be co-opted to the Governing Council in order to be a 'point person' between the JCA and the IAJ.

Resolved (2015/4)

That, in accordance with Rule 11(1)(c) of the JCA Rules, Justice Tony Pagone be co-opted to the Governing Council until the next annual general meeting, and the co-option then be reviewed annually.

Justice Pagone then, at the invitation of the President, briefly addressed the meeting on the history of the IAJ, its present work, its mode of operation and its value.

Reports

5 President's Report

5.1 Taxation treatment of redundancy payments

The President reported that he had not received any communications from the Treasurer or Attorney General.

5.2 *Judges still subject to the superannuation surcharge*

The President reported that he had not received any communications from the relevant ministers.

5.3 *Productivity Commission report on Access to Justice Arrangements*

The President reported that he had been interviewed on this topic in December by *The Canberra Times* and had also spoken on this topic at a multicultural conference in Sydney in mid March. He reported that the Australasian Institute of Judicial Administration (AIJA) would be meeting with the Productivity Commission on 26th June and that he would be attending.

Subsequently in the meeting Justice Beech-Jones enquired as to the current status of the Productivity Commission's recommendations. It was noted that it was on the Federal Government's agenda but it was not clear whether the recommendations of the Productivity Commission which were of especial concern to the JCA would be pursued or not. Justice Beech-Jones urged the Governing Council to ensure the situation was monitored so that the recommendations of concern were not adopted with the other recommendations without the JCA putting its case to government. [Note: this matter was dealt with again later in the meeting at item 11.]

5.4 *Australian Association of Magistrates*

The President reported that the JCA had decided not to take up the suggestion that it might assist the AAM with its conferences, and the AAM had approached the AIJA. The AIJA had advised the AAM that the notice was too short to assist with this year's conference. The President noted that this year the AAM's conference would be in Adelaide, and the AIJA had told the AAM that the JCA's colloquium would also be in Adelaide and that it might be possible to link with it in some way, but neither the AIJA nor the JCA had heard anything from the AAM.

5.5 *Independence of the judiciary in Timor-leste*

The President reported that he had written, in English and Portuguese, to the President and Prime Minister of Timor-leste, and to the President of its Court of Appeal, but he had not received any responses.

5.6 *Letter to the Editor of the Courier Mail*

The President reported that on 9th March 2015 he had written to the Editor of the *Courier Mail* in response to an article published on 2nd March entitled “Judicial transparency vital for open justice”, and that the letter had been published in full. A copy of the letter, which responded to misrepresentations in the article in regard to the accountability of the judiciary, had been circulated with the agenda. He said that he had run the draft letter past Chief Justice Carmody, who had expressed no objection to its publication.

5.7 *Commonwealth Magistrates’ and Judges’ Association triennial conference*

The President noted that the Commonwealth Magistrates’ and Judges’ Association (CMJA) would be holding its triennial conference in Wellington, New Zealand, later this year. Details of the conference had been circulated shortly prior to the meeting.

Chief Magistrate Lowndes briefly described the work of the CMJA, of which he is the Vice President for the Pacific region. He said that it had similar objectives to the JCA. Chief Magistrate Lowndes said that both associations and individuals could be members, and that the AAM was a member.

The President raised the question of whether the JCA should consider joining the CMJA. It was decided that:

- the Executive Committee should look at this suggestion and report to the next meeting of the Governing Council
- the Secretary and Chief Magistrate Lowndes should prepare a paper for consideration by the Executive Committee
- Chief Magistrate Lowndes should participate in the next meeting of the Executive Committee when this matter is discussed.

6 Possible invitation to Professor James Crawford of the International Court of Justice to become a member of the JCA

A memorandum had been circulated and the matter was discussed, including –

- the question as to why the JCA should wish to have judges outside Australia, such as Professor Crawford, as members of the JCA;
- what the terms “exercises judicial power” and “duties substantially judicial in nature” meant, and the need for caution in order to restrict membership within Australia; and
- the possibility of having two forms of additional membership, namely life membership, which could be limited to former Presidents, and honorary membership, which could be used in

situations where the JCA wished to honour a person or otherwise incorporate them into membership, whether in Australia or elsewhere.

It was decided that the matter should be considered again by the Executive Committee in the light of the discussion at the Governing Council.

7 Possible extension of membership of the JCA to include New Zealand judges

In the course of the discussion on the CMJA and the possible appointment of a judge outside Australia as an honorary member, the President raised the question as to whether the JCA should consider extending its membership to New Zealand judges. In this regard, it was noted –

- the Council of Chief Justices was a council of Australian and New Zealand Chief Justices;
- the AIJA was an Australian and New Zealand body;
- the Supreme and Federal Courts Judges Conferences include New Zealand judges, who attend in substantial numbers; and
- New Zealand judges had in the past expressed interest in establishing a body similar to the JCA in New Zealand and indeed had sent some representatives to previous JCA Colloquiums.

Chief Justice Blow said that he would shortly be attending a meeting of the Council of Chief Justices to be held in New Zealand and that he would informally raise this suggestion at that time.

It was noted that such a change would require a Special Resolution at an Annual General Meeting.

It was agreed that the Executive Committee be asked to consider the matter and bring a proposal back to the Governing Council at its next meeting.

8 Secretary's report

A report had been circulated and was noted. The Secretary reported that the panel of retired members available for media comment had been used again in the previous week in regard to the media's requests for comments on the retirement speech of Justice Wilson, a judge of the Supreme Court of Queensland, in which he made a number of comments in regard to the Chief Justice of Queensland.

In regard to the venues for future colloquiums it was –

Resolved (2015/5)

That the 2017 Colloquium be held in Melbourne, and the 2018 Colloquium be held in Hobart.

9 Treasurer's report

A profit & loss statement for the period to 31st December 2014 had been circulated and was noted.

The Treasurer reported that the JCA held a total of about \$553,000 in deposits.

Resolved (2015/6)

To receive the Treasurer's report.

10 Membership report

A membership report as at 18th March 2015 had been circulated, and was noted.

Activities, projects and matters of concern

11 2015 Colloquium

Justice Beech-Jones reported on the program. He said that the venue would be the Stamford Grand at Glenelg Beach. He said that the program was about half way finalised. He said that apart from the opening, hopefully by the Governor of South Australia, and a keynote address by Chief Justice Kourakis, there would most likely be topics on Magna Carta, recognising stress and depression, domestic violence, sentencing, and the media. He said that the dinner venue had not yet been finalised.

It was agreed that, as with last year, the printed brochure should be sent to all Governing Council members for distribution to all members of their court.

There was some discussion of the focus of the session on domestic violence. Chief Magistrate Lauritsen referred to the recently established Royal Commission on Domestic Violence in Victoria, conducted by Marcia Neave, and suggested that she might possibly be involved in the session. Chief Magistrate Lauritsen suggested that the opportunity should be taken to push the discussion further than just a broad-ranging one.

Mention was also made of the recent report prepared in Queensland by Dame Quentin Bryce which looks at how domestic violence cases are processed through the courts.

Chief Magistrate Bolton said that this session could feed into the session on sentencing. She said that there were questions as to whether offenders who were sent to remedial programs attended them or, if they did, if they learnt anything from them. She suggested that the focus of the domestic violence session might be on sentencing.

Judge Baumann noted that the federal system dealt with children in domestic violence situations, and the state systems with the adult victims, and this split of jurisdictions was a difficulty in how the courts dealt with the issue.

It was agreed that the session on sentencing needed a clear focus.

It was suggested that possible speakers were Stephen Odgers, Lloyd Babb and Mark Weinberg.

Justice Walton then proposed that the Productivity Commission's proposals in regard to service arrangements in the courts might be a suitable topic. He suggested the Colloquium could be used to develop a position on this, should it become a serious matter. Justice Beech-Jones said that the problem was that it was not known if, by October, this would have become a real issue or not.

It was proposed, and it was agreed that the JCA should prepare a position on this issue whether or not it were dealt with at the Colloquium.

Resolved (2015/7)

That a committee comprising Judge Michael Baumann, Justice Glenn Martin, Justice Steven Rares and Justice Michael Walton be formed to prepare a position paper on the proposals in the Productivity Commission's report on *Access to Justice Arrangements* regarding service arrangements.

Chief Magistrate Lauritsen then mentioned that the decision in *Barbaro* was of relevance to magistrates and he asked if it could be said that suspended sentencing has a future.

Justice Hiley mentioned that a topic for the Colloquium might relate to the independence of the judiciary in Timor-leste. He said that the Northern Territory judges were helping in several ways, for example, by exchanges, in response to a request for help from the Timor-leste

judges. It was agreed that an article prepared by Justice Hiley could be included in one of the JCA's weekly news & media mail-outs.

It was suggested that the weekly newsletter could also be used for a discussion on the domestic violence issue.

12 Project: A policy on the judicial appointment process

A draft of the report, *Judicial Appointments: a comparative study* had been circulated in advance of the meeting. There was general discussion.

Justice Glenn Martin suggested that the report not use the word 'current' to describe the situation but specify dates, as the situation will change over time.

There was extensive discussion in regard to the Introduction. Judge Stephen Norrish raised the question of whether the four propositions in the JCA's paper on judicial independence, written by Williams and Ananian-Welsh, should be included. The President responded that the paper was explicitly not advocating how governments should make judicial appointments and rather the report was a document recording the situation as it now is. It was then raised whether, this being the case, paragraphs two and four of the Introduction should be changed or deleted as, it could be said, they did propose to government how it should carry out its responsibilities in making judicial appointments.

Some members of the Governing Council supported a reference to the Williams & Ananian-Welsh propositions, and others supported the wording of the Introduction in its current form.

It was agreed that the Introduction not be changed but that there could be a sentence in the Preface which stated that the JCA had published the Williams & Ananian-Welsh paper, and that the four propositions in it in regard to preserving the independence of the judiciary might be included in an appendix to the report.

It was also agreed that the relevant sections of the further version of the report be sent to Governing Council members from the various States, together with Appendix B, for final approval.

The question was raised as to whether the Williams & Ananian-Welsh papers were on the JCA website. [Note: These papers are on the JCA website under *Reports & Publications*.]

Resolved (2015/8)

That, subject to the amendments discussed and to be submitted by Governing Council members to the Secretary, the report *Judicial Appointments: a comparative study* be approved for publication, that it be uploaded to the JCA's website, and that it be distributed to members.

13 Project: the development of JCA guidelines on the use of social media by judicial officers and the courts

It was noted that Professor George Williams has submitted an application to the Australia Research Council for funding of a project entitled "Social Media and the Courts", that the JCA had been able to have input into the proposal, and that the report would include guidelines which could be used by the JCA.

14 Analysis of 'hits' on the JCA's website

An analysis had been circulated, and was noted.

15 Northern Territory Local Courts Bill

Chief Magistrate Lowndes reported that a Local Courts Bill to be introduced to the Northern Territory Legislative Assembly would provide for a change of title for magistrates to 'judges'. He thanked the JCA for its support of this change of title over many years.

16 Council of Chief Justices' Guidelines for Communications and Relationships between the Judicial Branch of Government and the Legislative and Executive Branches

A copy of these Guidelines, adopted on 23rd April 2014, had been circulated prior to the meeting.

Resolved (2015/9)

To note the Guidelines for Communications and Relationships between the Judicial Branch of Government and the Legislative and Executive Branches adopted by the Council of Chief Justices of Australia and New Zealand on 23rd April 2014.

17 Next meeting

The next meeting will be held in Sydney on Saturday 27th June 2015.

The President suggested that in future there be an informal dinner on the Friday evening before all Governing Council meetings.

In concluding the meeting the President congratulated Judge Brian Withers on his appointment as a Member of the Order of Australia.

There being no further business, the meeting concluded at 12.35pm.

Signed as a true record:

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President