



Judicial Conference of Australia

GOVERNING COUNCIL

MINUTES OF MEETING: 2015/2

Held on **Saturday 27th June 2015** at the Federal Court of Australia, Sydney

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 Magistrate Michael Brett Judge Wayne Chivell Judge Philip Eaton	Supreme Court of Tasmania Magistrates Court of Tasmania District Court of South Australia District Court of Western Australia
Judge Peter Hannon	Industrial Relations Court of South Australia
Justice Ian Loughnan Justice Glenn Martin, AM Judge Michael McInerney Deputy President Daniel O'Connor Deputy Chief Magistrate Leanne O'Shea Justice Tony Pagone	Family Court of Australia Supreme Court of Queensland County Court of Victoria Industrial Court of Queensland Magistrates Court of Queensland International Association of Judges
Justice Hilary Penfold, PSM	Supreme Court of the Australian Capital Territory
Judge Chris Robison Justice Terry Sheahan, AO	District Court of New South Wales Land and Environment Court of New South Wales
Magistrate Theo Tsavdaridis Judge Brian Withers, AM	Local Court of New South Wales Supreme Court of South Australia

In attendance

Christopher Roper, AM Jeremy Leith	Secretary Administrative Assistant
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Apologies

Apologies were received from:

Magistrate Richard Bayly	Magistrates Court of Western Australia
Chief Magistrate Elizabeth Bolton	Magistrates Court of South Australia
Judge Allan Fenbury	District Court of Western Australia
Magistrate Karen Fryar, AM	Magistrates Court of the Australian Capital Territory
Justice Timothy Ginnane	Supreme Court of Victoria
Magistrate Greg Grogin	Local Court of New South Wales
Justice Judith Kelly	Supreme Court of the Northern Territory
Chief Magistrate Peter Lauritsen	Magistrates' Court of Victoria
Chief Magistrate John Lowndes	Magistrates Court of the Northern Territory
Justice Carmel McLure	Supreme Court of Western Australia
Justice Peter Murphy	Family Court of Australia
Judge Garry Neilson	District Court of New South Wales
Chief Judge John Pascoe AO, CVO	Federal Circuit Court of Australia
Judge Michael Shanahan	District Court of Queensland
Justice Michael Walton	Industrial Court of New South Wales

Alternates

<i>Alternate</i>	<i>Representating</i>
Judge Michael Baumann	Chief Judge John Pascoe
Judge Philip Eaton	Judge Allan Fenbury
Justice Ian Loughnan	Justice Peter Murphy
Judge Chris Robison	Judge Garry Neilson
Magistrate Theo Tsavdaridis	Magistrate Greg Grogin

Resolved (2015/10)

That the apologies be noted and received.

1 Alternates

The President welcomed Judge Michael Baumann, Judge Philip Eaton, Justice Ian Loughnan, Judge Chris Robison and Magistrate Theo Tsavdaridis who were attending as alternates.

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

The minutes of the meeting of the Governing Council held on 28th March 2015 had been circulated.

Resolved (2015/11)

That the minutes of the previous meeting held on 28th March 2015 be confirmed.

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

The minutes of the Executive Committee meeting held on 30th April 2015 had been circulated.

Resolved (2015/12)

That the minutes of the meeting of the Executive Committee held on 30th April 2015 be noted.

Reports

4 President's Report

4.1 Taxation treatment of redundancy payments

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

4.2 Judges still subject to the superannuation surcharge

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

The Secretary was asked to check if the letters to the Ministers had been written to the current Ministers or those in the previous Government.

4.3 The Chief Justice of Victoria and the publication by the media of a photograph of a judge outside court

The Vice President reported that Chief Justice Warren had approached the Secretary and asked if the JCA would take up what she regarded as a breach of protocol by the media when a photograph of Justice Margaret McMurdo taken outside court had been published in the *Courier-Mail*. The Vice President said that after the Secretary had raised this with him he had spoken to Justice McMurdo who had indicated that she was not concerned and did not wish the matter to be taken up with the media.

There was then some general discussion of similar incidents in the past.

5 Secretary's report

The Secretary had nothing to report.

6 Treasurer's report

A profit & loss statement for the period to 31st March 2015 had been circulated and was noted.

The Treasurer reported that the JCA held a total of about \$571,000 in deposits.

Resolved (2015/13)

To receive the Treasurer's report.

7 Membership report

The Secretary reported that the new online system for renewal of membership had been taken up by a significant number of members. He said that the existing system and the existing membership database was this year being run in parallel with the new system in case there was any failure in the new system, but that so far this had not occurred.

8 Honorary and life members of the JCA

After some discussion the Governing Council resolved to approve of the following special resolutions to be proposed to the Annual General Meeting to be held in October 2015:

Resolved (2015/14)

- 1 That Rule 4A of the JCA's Rules be deleted and replaced with the following rule:

"4A. Life members

- (1) All persons who have been or shall have been Presidents of the Conference are hereby appointed life members of the Conference.
- (2) Life members are entitled to all the rights and privileges of membership of the Conference.
- (3) Life members are exempt from liability for membership fees."

- (4) Additionally, the Governing Council can appoint any person as a life member of the Conference.

2 That the following rule be inserted:

“4B. Honorary Members

- (1) The Governing Council may appoint any person as an honorary member of the Conference.
- (2) Honorary members are not entitled to vote or exercise the rights and privileges of membership of the Conference.
- (3) Honorary members are exempt from liability for membership fees.”

9 Possible JCA membership of the Commonwealth Magistrates’ and Judges’ Association

The Governing Council noted that this matter had been considered by the Executive Committee and that the Executive Committee had agreed that the JCA should have a watching brief on this matter for one year, and reconsider it in one year’s time.

10 Possible extension of membership of the JCA to New Zealand judges

A letter from the President to Chief Justice Elias of New Zealand, her reply, and her more recent letter nominating Justice Ellis to be an observer at the Governing Council had been circulated and were noted. The President observed that Justice Ellis would be attending the October meetings and the Colloquium, and that he had written to Chief Justice Elias sending details of the Colloquium. It was noted that the arrangement could be extended to New Zealand District Court judges in due course.

Activities, projects and matters of concern

11 2015 Colloquium

Justice Beech-Jones reported on the program. He noted that Dame Quentin Bryce was not able to participate and an invitation had been extended to the Hon Marcia Neave, and that he was awaiting a response from her.

After some discussion it was agreed that, in light of some comments made by Rosie Batty in regard to the Family Court, Chief Justice Bryant should be invited to join the session on domestic violence and

the courts, and provide some commentary. It was also agreed that Ms Batty should be advised that Chief Justice Bryant would be joining this session.

The Secretary reported that the printed copy of the brochure had very recently been circulated to all JCA members. He said an electronic copy had already been circulated to all members. He said he would in the following week send the electronic copy to all Governing Council members with a request that they distribute it to all members of their respective courts. It was reported that, in light of this widespread distribution, the Planning Committee had agreed that additional printed copies of the brochure would not be printed and sent to Governing Council members for distribution to members of their courts.

Resolved (2015/15)

To congratulate Justice Beech-Jones and the Planning Committee on the planning of the Colloquium program and the work they had done.

12 International Association of Judges

Justice Pagone reported on several matters:

- 1 He said that the mechanism for the JCA to assume the membership of the ad hoc group of judges had been effective, and that the JCA was now the formal member of the IAJ. The formal documentation had been submitted and had gone through satisfactorily.
- 2 He said that the JCA had to make sure it was aware of what was being said on its behalf by the IAJ. He said that this was not normally a problem but it might be in some situations, for example, the current proposal for judges from Iraq to become members. He said there also was an application from Palestine for its judges to join the IAJ, and that, although this would not happen this year, it would be divisive within the IAJ.
- 3 He said there was a process for dealing with the extensive material that comes in from the IAJ Secretariat and otherwise. He said this was starting to work well.
- 4 He reported that there was now a more structured process for matters to go to the General Council from the regional groups.

In response to a question, he said that there were regional groups and study commissions in the IAJ, and Australia has judges on its regional group and all of the study commissions.

The President suggested that the Governing Council could form a sub-committee to work out how the JCA might respond to the various matters arising from its membership of the IAJ. This committee could evolve a way for the JCA to express and fulfil its membership of the IAJ.

Resolved (2015/16)

To form an IAJ sub-committee, comprising Justice Tony Pagone (as chair), Justice Robert Beech-Jones, Justice Glenn Martin and Magistrate Michael Brett, to have initial responsibility for the JCA's overall interests on the IAJ and in particular to develop a way for the JCA to express and fulfil its membership.

It was noted that the sub-committee could discuss the information that came in from the IAJ and work out how it should be processed.

13 Media attacks on the judiciary, including contemptuous websites

A letter from Justice Peter Murphy to the President, with an extract from a decision of the Full Court of the Family Court, had been circulated and was noted. Also circulated was correspondence between the Australasian Institute of Judicial Administration (AIJA), the Australian Communications and Media Authority and the Chief Justice of the High Court, which was also noted.

The President introduced the discussion on this matter which he described as a serious matter. He noted that the JCA had issued a media release after there had been attacks on and threats to a New South Wales magistrate following the Lindt Café siege. He observed that with social media it was often not possible to know the real identity of a person making a derogatory, contemptuous or defamatory statement, whether the person was within Australia or not, and indeed whether the statement had been made by an individual or had been computer generated (a troll).

The President noted that any attempts to control such statements raised issues of freedom of expression and opinion and the implied constitutional protection to comment on court decisions.

He suggested that the JCA might write to the Attorney General and Minister for Communications pointing out that these statements were a real problem for which there was no easy solution, and propose to the Ministers that a reference to the Australian Law Reform Commission (ALRC) be made to research this area and prepare proposals to regulate it, which balanced all of the competing interests.

There was then general discussion by members of the Council, referring to specific instances of attacks on the judiciary. It was noted that the tools of contempt which courts have are limited and that, even if used, more websites would spring up. The President said that that was why he thought it would be best if a government official were to issue show cause notices why a website should not be closed down. Justice Penfold questioned whether the JCA would want to empower the Executive to act in this way.

Judge Baumann referred to the letter from Justice Murphy and said that he thought that the point being made in that letter was the failure of the relevant bar association to deal with a barrister who had acted irresponsibly, and the failure of the Attorney General to defend the courts. He said the attacks on the judiciary within the traditional media and on social media were a growing issue for the courts, and that he would support any action that the JCA were to take.

Judge Eaton asked whether this was not just part of the 'static' which has always surrounded the courts but now took this form. He said that if the people making these comments were brought into court they were only given a platform for their views. He suggested that they are a relatively small part of the background which has always been there. However, in some situations there could be a real threat to a judicial officer or a court and, in this situation, the material should be tracked to work out which of the threats were dangerous. Justice Loughnan observed that the experience in the Family Court has been that those who were really dangerous did not talk about it.

Magistrate Brett said that these were instances of the fringe element that had always been around, and that it would be better to ensure that the large silent majority were better informed of the work of the courts.

The President pointed out that things which were uploaded to the internet were permanent, in print, and searchable, and to this extent this was a new situation.

Justice Beech-Jones pointed out that Justice Murphy had asked if the JCA would issue a media statement against the rising chatter attacking the Family Court. In regard to any proposal for a referral to the ALRC, he cautioned that the wording of the referral would need to be carefully chosen as the JCA may not be keen to give to the government any more powers.

Justice Pagone said he could not see the value in a referral to the ALRC. He noted that nothing would be produced in the immediate future and it could give people the excuse that someone else was dealing with the issue. He felt there was a need to identify the

problem more precisely. He said that this topic would be considered at the IAJ's conference to be held in Barcelona later this year. He suggested it was necessary to work out what the problem was and what were the issues, and also to get the professions involved.

It was suggested that specific cases could be referred to the Attorney General with a request that he deal with them.

It was also noted that the issue was not so much the protection of judges but the integrity of the system.

Justice Pagone said that there was a responsibility to make sure that a platform was not given for people to say things which were unfounded. He suggested that the JCA could start to have a conversation with the bars and the regulators of the profession.

There was then some discussion of the powers of bar associations to deal with instances such as the one raised by Justice Murphy. Deputy President O'Connor pointed out that matters such as those referred to by Justice Murphy are now dealt with by the legal service commissioners. The President suggested that Chief Justice Bryant could be encouraged to write to the Queensland Bar to find out what had happened to the complaint about the particular barrister.

The Secretary suggested that, in light of Justice Pagone's observation that it was important to identify more precisely the problem and the issues involved, the JCA might approach the AIJA with a suggestion that the JCA and AIJA jointly conduct a workshop-type conference on this topic, broadly defined.

The President summed up the action to be taken as:

- 1 He would prepare a draft media statement (for circulation for comment and input) on defamatory/contemptuous/scandalous attacks on judges, pointing out the responsibilities of the media in giving time to these attacks.
- 2 He would prepare a draft letter to the federal Attorney-General, and State Attorneys-General, asking if the Attorneys saw it as their role to do something about these attacks.
- 3 He would approach the AIJA with the suggestion for a joint conference on this problem and how it might be dealt with.

14 Judicial appointments process report

It was noted that the report had been distributed to attorneys-general, shadow attorneys-general, heads of jurisdiction and the AIJA, and that it had been circulated in electronic form to all JCA members and placed on the JCA website.

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

It was noted that there were no developments.

16 Project: Productivity Commission report on Access to Justice Arrangements

The President reported that he had attended a conference at Monash University on the previous day and had made a speech, which had been circulated to Governing Council members. He had also issued a media statement which had been distributed and placed on the JCA's website. The President said that Warren Mundy of the Productivity Commission had spoken at the conference, and that he had had an opportunity to speak with him briefly. Other speakers had included Judge Baumann and Justice Paddy Bergin. It was noted that the Government had not yet responded to the report.

Justice Beech-Jones said he did not have a problem with the proposal for differential fees as all courts had a power to waive fees which was a form of setting differential fees. He said the issue is who controls the setting of the fees. He said it should be the courts not the Executive. He said the power to set fees is a critical part of the courts getting control of their own budgets.

Judge Eaton observed that those who set fees do not see it as an access to justice issue but just a cost recovery issue.

17 Remuneration Tribunal's freeze on judicial salaries

The President referred to the Statement issued by the Remuneration Tribunal on 31st March 2015. It was noted that, because of the flow-on effect, the decision to freeze salaries affects most of the Australian judiciary. The result was that there had been no increase for two years.

The President suggested that he should write to the Remuneration Tribunal saying that the decision was not acceptable and fair, given that not even a cost of living increase had been granted.

Judge McInerney said that there did not seem to be a process whereby submissions can be made on behalf of the judiciary. He observed that the Remuneration Tribunal does call for submissions but there is no process as to how they are dealt with.

Judge Baumann noted that the Remuneration Tribunal had said that it was waiting on the National Wages Case, which resulted in an increase of 2.5%.

Justice Martin noted that the Remuneration Tribunal has done this before, and that when they tried to “play catch-up” the increase was seen as too big. He feared that if this were to occur again the States may uncouple themselves from the flow-on process. He suggested that the JCA should write to the Remuneration Tribunal saying that it is required to make an annual decision, and it should do so.

Justice Beech-Jones suggested that the JCA should write to say that, by putting off a decision until another decision is made, the process is unfair.

Judge Withers said that the JCA’s concern is that there should be no blockage in the system and that the Remuneration Tribunal should get on with its task.

Deputy Chief Magistrate O’Shea noted that not all courts were attached, by flow-on, to the Remuneration Tribunal decisions.

The President summed up the discussion by saying that he would write to the Mr John Conde at the Remuneration Tribunal saying that the Tribunal’s decision has an impact on much of the Australian judiciary and the Tribunal should be aware of the wider impact of its decisions, that its deferral of a decision is not satisfactory, and that the Tribunal should act promptly and advise the JCA when it would be making a decision.

18 Supreme Court of Queensland’s Issues Paper on Electronic Publication of Court Proceedings

A copy of this Issues Paper had been circulated to Governing Council members. It was decided that it should be uploaded to the JCA’s website and members of the JCA be invited to provide comments on it, and that it be circulated to members with the next weekly media and news distribution with a suggestion that members could make submissions.

19 Analysis of hits on the JCA’s website

An analysis had been circulated and was noted.

20 Chief Judge Michael Rozenes

In concluding the meeting the President noted that Chief Judge Michael Rozenes of the County Court of Victoria had resigned during the previous week due to his severe illness. Judge McInerney said that it had been a sad day for the County Court, and members expressed their sadness at what had befallen Judge Rozenes and his family. It was agreed that the President should write to Mrs Barbara Rozenes, which could be sent via Judge McInerney.

21 Next meetings

The next meetings will be held in Adelaide on Friday 9th and Saturday 10th October 2015.

There being no further business, the meeting concluded at 12.40pm.

Signed as a true record:

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President