



Judicial Conference of Australia

GOVERNING COUNCIL

MINUTES OF MEETING: 2017/3

Held on **Friday 6th October 2016** at the Grand Chancellor Hotel, Hobart.

The meeting commenced at 1.00pm.

Present

Justice Robert Beech-Jones (in the Chair)	Supreme Court of New South Wales
Magistrate Jennifer Atkinson	Local Court of New South Wales
Judge Michael Baumann, AM	Federal Circuit Court of Australia
Chief Justice Alan Blow, OAM	Supreme Court of Tasmania
Judge Wayne Chivell	District Court of South Australia
Deputy Chief Magistrate Michael Daly	Magistrates Court of Tasmania
Judge Graham Dart	Supreme Court of South Australia
Judge Philip Eaton	District Court of Western Australia
Magistrate Karen Fryar, AM	Magistrates Court of the Australian Capital Territory
Justice Timothy Ginnane	Supreme Court of Victoria
Judge Peter Hannon	South Australian Employment Tribunal
Justice Judith Kelly	Supreme Court of the Northern Territory
Justice Rene Le Miere	Supreme Court of Western Australia
Judge Rachel Lewitan	County Court of Victoria
Chief Judge Dr John Lowndes	Local Court of the Northern Territory
Justice Glenn Martin, AM	Supreme Court of Queensland
Justice Neil McKerracher	Federal Court of Australia
Judge Garry Neilson	District Court of New South Wales
Deputy President Daniel O'Connor	Industrial Court of Queensland
Deputy Chief Magistrate Leanne O'Shea	Magistrates Court of Queensland
Justice Hilary Penfold, PSM	Supreme Court of the Australian Capital Territory
Magistrate Marc Sargent	Magistrates' Court of Victoria

Judge Michael Shanahan
Justice Terry Sheahan, AO

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

Justice Michael Walton

In attendance

Christopher Roper, AM

Secretary

Apologies

Apologies were received from:

Deputy Chief Magistrate Andrew
Cannon, AM

Justice Rebecca Ellis

Chief Magistrate Graeme Henson, AM

Justice Terence Higgins

Magistrate Andree Horrigan

Judge Michael McInerney

Justice Peter Murphy

Justice Tony Pagone

Chief Judge John Pascoe, AO, CVO

Magistrates Court of South
Australia

High Court of New Zealand

Local Court of New South Wales

Supreme & National Courts of
Papua New Guinea

Magistrates Court of Western
Australia

County Court of Victoria

Family Court of Australis

International Association of
Judges

Federal Circuit Court of Australia

Alternates

Alternate

Judge Michael Baumann

Judge Rachel Lewitan

Representating

Chief Judge John Pascoe

Judge Michael McInerney

Resolved (2016/17)

That the apologies be noted and received.

1 Financial Report for the year ended 30th June 2017

A copy of the Financial Report had been circulated.

Resolved (2017/18)

That:

The Governing Council adopts the Report of the Governing Council (at pages 1 and 2) and the Statement by the Governing Council (at page 28), both forming part of the Financial Report for the year ended 30th June 2017, and authorises the President and Treasurer to sign them on behalf of the Governing Council.

Note:

The Report at pages 1 and 2 includes the following statement:

In the opinion of the Governing Council of The Judicial Conference of Australia Incorporated:

- a) During the year ended 30 June 2017 no:
 - i) officer of the Association;
 - ii) firm of which the officer is a member; or
 - iii) body corporate in which the officer has a substantial financial interest,
has received or become entitled to receive a benefit as a result of a contract between the officer, firm or body corporate and the Association; and
- b) During the year ended 30 June 2017 no officer of the Association received directly or indirectly from the Association any payment or other benefit of a pecuniary value.

The Statement at page 28 is:

In the opinion of the Council members of The Judicial Conference of Australia Incorporated:

- (a) the financial report comprising the Statement of Financial Position, Statement of Profit or Loss and Other Comprehensive Income, Statement of Changes in Equity, Statement of Cash Flows and notes to and forming a part of the financial report presents a true and fair view of the financial position of the Judicial Conference of Australia Incorporated as at 30 June 2017 and the performance for the year ended on that date, in accordance with Australian Accounting Standards (including Australian Accounting Interpretations), of the Australian Accounting Standards Board;
- (b) at the date of this statement, there are reasonable grounds to believe that the Judicial Conference Australia Incorporated will be able to pay its debts as and when they fall due; and
- (c) proper accounting records and other records have been kept by the Judicial Conference of Australia Incorporated as required by the Associations Incorporations Act 1991 (ACT).

2 Amendment of the Objects in the Rules of the JCA

The Governing Council noted that the Executive Committee at its meeting on 20th July 2017 had resolved that the amendment to the JCA's Rules as set out below be put to the Annual General Meeting to be held on 7th October 2017.

Resolved (2017/19)

That the following amendment to the Rules of the JCA be put to the Annual General Meeting to be held on 7th October 2017:

That Rule 3(a) of the JCA's Rules be amended to read as follows:

- (a) In the public interest
 - (i) to ensure the maintenance of a strong and independent judiciary as the third arm of government in Australia, and
 - (ii) to defend the judiciary and judicial officers against unwarranted attacks and to respond to such attacks.

3 Legal advice in regard to the impact on judicial pensions of changes made to taxation laws in the 2016 Federal Budget

The President outlined the background to the changes to the non-contributory judicial pensions scheme. The President referred to the capping of the rebate on marginal tax paid on the receipt of judicial pensions at \$10,000. For many judges this had led to a reduction of after tax receipts of between \$15,000 and \$18,000. The changes also had the effect of deeming judicial pensions to meet the limit of \$1.6 million and thus impact the concessional tax treatment of their private funds.

The President noted the JCA had advised members to obtain their own advice on these changes.

The President noted since 1 July 2017 a number of retired judges had approached the JCA expressing concern about these changes. A number of judges expressed support for an *Austin* style challenge to the cap on the rebate. At the July Executive Committee meeting the Executive authorised the President and Secretary to obtain quotes from eminent Senior Counsel concerning a challenge to the changes. Since then quotes have been obtained from both Counsel in the Sydney and Melbourne Bar for the costing of advising on a challenge to the cap. Copies of those quotes have been provided to Governing Council members.

One member who is a former Supreme Court judge also requested advice be sought on a potential challenge to the provisions deeming the judicial pension constitute a person's \$1.6 million fund. The solicitors contacted by the JCA advised it had not yet been possible to obtain quotes on this topic. They suggested that the JCA may wish to defer seeking advice on this question and focus on the capping of the rebate.

The President suggested that, given the depth of feeling on the issue, the number of members of the JCA potentially affected and the contribution made to the JCA's reserves by the proceedings in *Austin*, the Governing Council should authorise the retention of solicitors and one set of Counsel to advise on the validity of the capping of the rebate.

Discussion ensued concerning the cost of the advice and the relative merits of obtaining advice from Senior Counsel as opposed to specialist tax advisors in another State.

The President stated that no litigation would be commenced without the approval of the Governing Council and more detailed consideration of a funding proposal.

Resolved (2017/20)

That the JCA obtain advice on the validity of the cap on the tax rebate for non-contributory judicial pensions as per the draft briefing note from Senior Counsel and Junior Counsel in New South Wales as per the quotes obtained.

The President discussed arrangements for making the advice available to members and other matters associated with obtaining the advice.

There being no further business, the meeting concluded at about 1.30pm.

Signed as a true record:

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President