



Judicial Conference of Australia

## GOVERNING COUNCIL

### MINUTES OF MEETING: 2018/1

Held on **Saturday 17<sup>th</sup> March 2018** at the ACT Magistrates Court, Canberra.

The meeting commenced at 12 noon.

#### Present

Justice Robert Beech-Jones (in the Chair)	Supreme Court of New South Wales
Magistrate Jennifer Atkinson	Local Court of New South Wales
Chief Justice Alan Blow, AO	Supreme Court of Tasmania
Deputy Chief Magistrate Andrew Cannon, AM	Magistrates Court of South Australia
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
Magistrate Karen Fryar, AM	Magistrates Court of the Australian Capital Territory
Justice Terence Higgins, AO	National Court of Papua New Guinea
Justice Judith Kelly	Supreme Court of the Northern Territory
Judge Rachelle Lewitan, AM	County Court of Victoria
Chief Judge John Lowndes	Local Court of the Northern Territory
Justice Glenn Martin, AM	Supreme Court of Queensland
Justice Neil McKerracher	Federal Court of Australia
Justice Peter Murphy	Family 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 Tony Pagone	International Association of Judges
Justice Hilary Penfold, PSM	Supreme Court of the Australian Capital Territory
Judge Anthony Rafter, SC	District Court of Queensland

Justice Terry Sheahan, AO

Land & Environment Court of  
New South Wales

Justice Michael Walton

Supreme Court of New South  
Wales

Judge Joshua Wilson

Federal Circuit Court of Australia

### **In attendance**

Christopher Roper, AM

Secretary

### **Apologies**

Apologies were received from:

Justice Michael Baumann, AM

Family Court of Australia

Justice Timothy Ginnane

Supreme Court of Victoria

Judge Peter Hannon

Industrial Relations Court of  
South Australia

Magistrate Andree Horrigan

Magistrates Court of Western  
Australia

Justice Rene Le Miere

Supreme Court of Western  
Australia

Magistrate Marc Sargent

Magistrates' Court of Victoria

#### Resolved (2018/1)

That the apologies be noted and received.

The President welcomed Judge Rachelle Lewitan, Judge Anthony Rafter and Judge Joshua Wilson, who were attending their first meetings of the Governing Council; in the case of Judge Lewitan as a member of the Governing Council.

The President noted that this would be the last meeting for Deputy Chief Magistrate Andrew Cannon and Justice Hilary Penfold. On behalf of the Governing Council he wished them well in their retirements from the bench and thanked them for their contributions to the JCA.

The President also noted that Judge Philip Eaton had retired as a judge and resigned from the Governing Council, and that the new representative of his Court would be Judge Andrew Stavrianou.

### **1 Confirmation of minutes of the previous meetings of the Governing Council**

The minutes of the meetings of the Governing Council held on 6<sup>th</sup> and 7<sup>th</sup> October 2017 had been circulated.

#### Resolved (2018/2)

That the minutes of the previous meetings held on 6<sup>th</sup> and 7<sup>th</sup> October 2017 be confirmed.

## **2 Minutes of the meetings of the Executive Committee held since the last meeting**

The minutes of the Executive Committee meetings held on 19<sup>th</sup> October 2017 and 1<sup>st</sup> February 2018 had been circulated.

Resolved (2018/3)

That the minutes of the meetings of the Executive Committee held on 19<sup>th</sup> October 2017 and 1<sup>st</sup> February 2018 be noted.

## **President's Business**

### **3 President's Report**

The President reported as follows:

**Note:** *The following section is legally professional privileged.*

#### *3.1 Taxation arrangements affecting pensions of retired judges*

[This section has been redacted to protect legal professional privilege.]

*End of legally professionally privileged section.*

#### *3.2 Recent interactions with the media*

The President referred to the media clippings included with the agenda papers, and in particular those relating to the attacks on the Victorian judiciary. The President said that he issued a media release which said that the JCA accepted criticism of judicial decisions but that it was not right to 'sledge the umpire'.

A member noted that there was an article in *The Australian* of today reporting on a study which suggested the Victorian judiciary gave comparatively lighter sentences than those given nationwide. Justice McKerracher also referred to recent criticism by the Hon Dyson Heydon of the Victorian Court of Appeal during which he made a reference to the JCA.

#### *3.3 Independent National Security Legislation Monitor*

The President referred to a letter recently received from the Independent National Security Legislation Monitor, which had been circulated, in which he sought a submission from the JCA in regard to his imminent review of legislation relating to the prosecution and sentencing of children for Commonwealth terrorist offences. The President said that generally the JCA had avoided making submissions in regard to substantive law reform, except for those relating to matters such as the constitution of courts and related areas. He also noted that the JCA's view may not, in fact, reflect the views of all JCA members. However, he noted that in 2012 the JCA had made a submission to the Senate Legal and Constitutional Affairs Legislation Committee in regard to its inquiry into the Migration Amendment (Removal of Mandatory Minimum Penalties) Bill 2012.

The President suggested that the JCA not make a submission but that it refer to the submission made to the Senate Committee in 2012. He also suggested that the JCA should not respond in regard to the appropriate procedures in such cases. The meeting agreed with this approach.

#### 3.4 *Mandatory retirement age for magistrates in the ACT*

The President noted that the mandatory retirement age for magistrates in the ACT was 65 and he queried whether it would be appropriate for the JCA to write to the ACT Attorney-General pointing out the situation in other jurisdictions. Magistrate Fryar said that the ACT Chief Magistrate had raised this matter with the Attorney-General without any positive outcome.

Resolved (2018/4)

That the President's Report be received.

### **4 Media releases and letters to the editor issued since the last meeting of the Governing Council**

The five media releases which had been circulated were noted.

## **Administration and Membership**

### **5 Secretary's report**

The Secretary advised members that the JCA had two printed publications, *Judge for Yourself* and *Working with the Media*, and in respect of both he asked whether they should be reviewed with a view to updating them, and then republished. Copies of the booklets were made available to members at the meeting. There was some discussion.

Resolved (2018/5)

That the booklets, *Judge for Yourself* and *Working with the Media* be updated with a view to their republication, and for that purpose an approach be made to Professor Arie Fryberg in regard to *Judge for Yourself* and to a group of court media officers through the NSW Judicial Commission in regard to *Working with the Media*.

It was agreed that the Executive Committee would be responsible for the management of this process.

### **6 Treasurer's report**

The profit and loss statement up to 31<sup>st</sup> December 2017, which had been circulated, and the bank balances, were noted.

## **7 Membership report**

A membership report had been circulated, and was noted.

## **Activities, projects and matters of concern**

### **8 Colloquiums**

#### *2018 Colloquium*

Justice Judith Kelly, the Vice President, reported on planning for the Colloquium. She advised that arrangements were in place for the Colloquium venue and dinner. She reported that a letter had been sent to the Governor's Official Secretary asking if a reception might be held at Government House. She said that the program was in place and invitations extended to all speakers. She noted that one of the speakers, Professor Alan Duffy, would be paid, and that the after-dinner speaker, Mr John Silvester, would also be paid, but that there were savings in that the rest of the speakers, except one, were Melbourne based and there would therefore not be significant travel costs.

#### *2019 Colloquium*

The meeting then discussed whether the date of the 2019 Colloquium should be changed in order to avoid the weather which occur in October. After some discussion it was agreed that the 2019 Colloquium be held on the Queen's Birthday weekend (Friday 7 – Sunday 9 June, 2019), and that a Governing Council meeting would be held in October, at which time the Annual General Meeting would also be held.

### **9 International Association of Judges**

Justice Martin reported on the 2017 IAJ Meeting held in Santiago, Chile and the one day meeting of the ANAO held at the same time. He said that at the Meeting there were reports from the various jurisdictions, a discussion on judicial education, a discussion of out-of-court communication with judges, and how the USA judges' body educates judges and the public on the rule of law. He also said that he was impressed by the work of the four study commissions and he noted that each one issues a communique after its discussion. He said that the General Meeting of the Council discussed new members of the IAJ, the situation in Turkey, and other matters. There was also a report from Chief Judge Lowndes on the Commonwealth Magistrates' and Judges' Association. Justice Martin said that the 2019 meeting would be held in Marrakesh, Morocco.

He then briefly outlined the situation if Australia were to be the venue for an IAJ annual meeting. He noted that it would be very expensive as the host body bears all the costs and there is no registration fee. There would be 300 – 400 people at such a meeting.

Justice Pagone then reported. He reported on plans for the IAJ in the coming years, designed to make some structural improvements, for example, in regard to the study commissions. He also said that he wished to see an increase in the

IAJ's membership, including enabling judges' associations in countries, where there was not a sufficiently strong rule of law and independence of the judiciary, to be associate members. He said that the IAJ could provide very useful support to such associations. He also noted threats to the independence of the judiciary in Europe, in particular in Poland and Hungary.

## **10 Commonwealth Magistrates' and Judges' Association**

Chief Judge Lowndes reported that the CMJA's Conference would be held in Brisbane later in the year. He said that he was hopeful that there would be about 500 delegates, and that there would be strong support from the Australian judiciary. He noted that the last CMJA conference in Australia was in 1991.

## **11 Judicial Attitude Survey**

The Secretary reported that there were no developments to report.

## **12 Proposal for an additional meeting following Governing Council meetings**

Justice Martin said that he had been impressed by the deliberations of the IAJ study commissions. He suggested that at the two meetings of the Governing Council held each year, other than those held at the time of the Colloquium, an additional meeting might be held in the afternoon for a few hours to discuss in depth, and in a focussed way, an issue of interest to the JCA. He said that an example could be, where the JCA had commissioned a report, a meeting could be held with those engaged to write the report. The Secretary suggested that another example could be that academics in the relevant city who were working on research of direct relevance to the JCA could be invited to discuss their research with the Governing Council members.

## **13 Meeting with Californian judges**

The President said that he had met with a group of judges from California in November and that they had extended an invitation to any JCA member travelling to California to contact them and they would provide hospitality. Justice Pagone said that a similar arrangement could be made with IAJ members, who would be pleased to provide hospitality to Australian judicial officers travelling to their countries.

## **14 Next meeting**

The next meeting will be held on Saturday 2<sup>nd</sup> June 2018 in Sydney.

There being no further business, the meeting concluded at about 1.45 pm.

Signed as a true record:

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President