



Judicial Conference of Australia

EXECUTIVE COMMITTEE

MINUTES OF MEETING: 2017/4

Held by teleconference on **Thursday 19th October 2017**
commencing at 5.00 pm Eastern Summer Time

Participating

Justice Robert Beech-Jones (President)	in the Chair
Justice Judith Kelly	Vice-President
Judge Wayne Chivell	
Judge Philip Eaton	
Justice Timothy Ginnane	
Justice Glenn Martin	
Justice Neil McKerracher	
Justice Hilary Penfold, PSM	
Magistrate Marc Sargent	
Justice Michael Walton	

Apologies

Judge Michael Baumann, AM	Treasurer
Chief Justice Alan Blow, OAM	
Chief Magistrate Graeme Henson, AM	

In attendance

Christopher Roper, AM (Secretary)
Anjali Iyer (Secretariat Administrative Assistant)

1 Co-option of members

The Committee noted that it had power to co-opt under Rule 16(2)(c) of the JCA's Rules.

Resolved:

That Chief Magistrate Graeme Henson and Justice Glenn Martin be co-opted to the Executive Committee until the next Annual General Meeting.

2 Minutes of the previous meeting

The minutes of the previous meeting held on 20th July 2017 had been circulated.

Resolved:

That the minutes of the meeting held on 20th July 2017 be approved.

3 Correspondence received since the July 2017 meeting of the Executive Committee

The Executive Committee noted that there had been no correspondence received, and that letters had been sent by the President to the new Chief Justice of the Supreme Court of Victoria, the new Chief Justice of the Family Court of Australia, and the new Chief Judge of the Federal Circuit Court of Australia, as well as to Magistrate Noreen Toohey to congratulate her on the award of the Medal of the Order of Australia.

4 President's report

4.1 Taxation and superannuation issues

The President confirmed that Allens + Linklaters and counsel had been engaged, pursuant to the resolution at the Governing Council meeting on 6th October. He said that it was anticipated that the advice would be received in November.

He also said that he had spoken to Justice Bell of the High Court advising her that the JCA was seeking advice on a matter which may come to the High Court. She said she would speak to the three other High Court justices who were members of the JCA.

The President raised the question of what the JCA should do with the advice; in particular the need to maintain its privilege. He suggested that the membership could be advised that it was available to any member who gave an undertaking that he/she would keep it confidential and not circulate it further, so as to save its privilege.

Discussion then turned to a letter from a judge of the Supreme Court of Queensland which Justice Martin had forwarded to the President in regard to the impact of the legislative change on judges who had a private superannuation fund. That judge had sought advice from the Queensland Treasury which had, in turn, sought advice from the Federal Treasury. Justice Martin said that further advice had subsequently been received from the Queensland Treasury to the effect that the attitude of the Australian Taxation Office was that the cap does not apply for the current financial year but that there would be legislative amendments forthcoming to provide that the \$1.6m cap would apply in future years.

The President said that, in light of this, it was good that the JCA had not sought counsel's advice on the subsequent question raised by a retired Victorian Supreme Court judge as the information since received is contrary to the JCA's understanding of the position. He suggested that the JCA seek the draft legislation from the Treasury once it was released.

Justice Penfold pointed out that it was likely that there would be an exposure draft of the legislation.

Justice Walton suggested that, in regard to the maintaining of the advice's privilege when it was circulated to any JCA members, the JCA may have had a protocol for this when the advice of (then) Mr Geoffrey Nettle, QC in regard to the *Austin* litigation was received. The Secretary was asked to search whether such a protocol was used.

Justice Penfold noted that the Briefing Note provided to counsel refers to judges of the Supreme Court of Tasmania but not those in the Australian Capital Territory or the Northern Territory. There was some discussion of this matter. Justice Kelly said that she thought the Briefing Note would include a question as to whether the matter raised applied to the Territories. The President suggested that a note could be sent to counsel that the use of the words “any other reason” in the question to counsel should be read as including whether the question applies to Territory judges.

It was agreed to wait until counsel’s advice had been received and if it indicated that there was a chance of success in challenging the legislation, then counsel be asked to advise on the position of Tasmanian judges.

4.2 *Independent National Security Legislation Monitor*

The President reported that he had received a letter from Dr James Renwick, SC, the Independent National Security Legislation Monitor, reporting that he had completed his first three reports and asking the JCA, once the reports were released to the public, to indicate whether there were any particular provisions of the counter-terrorism and national security laws which should now be reviewed, and if there were more than one, which should be reviewed more urgently than others.

The President said that he thought that the JCA would not be interested to respond but would wait to make a final decision when the reports were available. He said that members of the Committee may want to mention this to their head of jurisdiction.

4.3 *Articles in The Australian in regard to correspondence between the former Chief Justice of Victoria and the Commonwealth Director of Public Prosecutions*

The President noted that there had been reporting in *The Australian* in regard to this matter which he thought, although it had again misrepresented the situation in regard to the Federal Ministers’ criticism of members of the Victorian Court of Appeal, was legitimate public discussion and therefore the JCA should not comment on it. Justice Ginnane confirmed that there had been no expectation within his Court that the JCA would make a public comment.

5 Media release issued since the last meeting of the Executive Committee

It was noted that one media release had been issued since the last meeting on 21st July 2017 entitled “Poland’s judges under threat to their independence”.

6 Financial matters

A profit & loss report for the period 1st July to 30th September 2017 had been circulated, and was noted. It was also noted that the balance in the accounts and term deposits at the bank as at 13th July 2017 totalled \$662,078.

Resolved:

That the Treasurer’s report be received.

7 Membership matters

A membership report as at 16th October 2017 had been circulated, together with a list of newly appointed judicial officers to whom the President had written and a list of new members, and they were noted.

The Membership Report was received.

8 Secretariat matters

A curriculum vitae for Ms Anjali Iyer, the newly appointed administrative assistant, had been circulated and was noted.

9 Governing Council and Executive Committee meeting dates in 2018

A memorandum and a table of conflicting dates had been circulated and was noted.

Resolved:

That the meetings of the Governing Council and Executive Committee in 2018 be held as follows –

February 1	Executive Committee
March 17	Governing Council – in Canberra at the Magistrates Court, subject to availability
April 19	Executive Committee
June 2	Governing Council – in Sydney
August 2	Executive Committee
October 5 & 6	Governing Council – in Melbourne
October 18	Executive Committee

10 Colloquiums

2017 Colloquium

Justice Kelly reported that the Colloquium had been a great success, and that she had received positive feedback. The Secretary said he would compile the responses to the evaluation questionnaire and distribute a report.

2018 Colloquium

There was some brief discussion of a possible venue. The Secretary was asked to seek proposals for three venues from AM Meetings Plus, to be presented to the first meeting of the new Planning Committee.

Justice Kelly said she had already received some suggestions for the program. It was agreed that Chief Justice Ferguson be asked to open the Colloquium and give the keynote address. Justice Ginnane said he would approach her informally once she had settled into her new role.

In regard to the composition of the Planning Committee, it was

| Resolved:

That the Planning Committee for the 2018 Colloquium be Justice Judith Kelly, Justice Tim Ginnane, Judge Rachel Lewitan (subject to her agreement) or the new representative of the County Court of Victoria, when appointed, and Magistrate Marc Sargent.

It was agreed that the first meeting would be held in several weeks time, after the proposals for a venue were received.

11 Legal Aid and Self-Represented Litigants sub-committee

It was noted that Judge Baumann proposed that this item be removed from the agenda.

12 Judicial Attitude Survey

A letter from the AIJA to Chief Justice Kiefel, seeking the support of heads of jurisdiction to the proposed survey, had been circulated, and was noted. Justice Martin said that it was essential that the Chief Justices supported the survey otherwise it would not get sufficient responses to make it useful. Justice Martin observed that if the Chief Justices did not back the project then there would be no point in conducting it.

The President asked what would be the source/s of funding for the survey. Justice Martin said the supporting bodies were, in addition to the JCA, the AIJA, the National Judicial College of Australia, the Judicial College of Victoria but not the Judicial Commission of New South Wales. He said it was unlikely to be too expensive as the English researcher had offered the questions used and the software to analyse the responses free of charge. The Secretary confirmed that, at this stage, no budget had been prepared by the ad hoc committee.

13 National Judicial College of Australia – proposed Leadership Program

The Committee noted that the NJCA proposed to conduct its Leadership Program for Heads of Jurisdiction again in October 2018, and had sought from the JCA input on current areas of interest for heads of jurisdiction. The President asked that members of the Committee send him an email with any suggestions they may have. Justice Martin said that he would look at the program for this course when it was last held and see what were the topics then considered.

14 Next meeting

It was noted that the next meeting would be held on Thursday 2nd February 2018 at 5.00pm Eastern Summer Time.