



Judicial Conference of Australia

GOVERNING COUNCIL

MINUTES OF MEETING: 2019/1

Held on **Saturday 16th March 2019** at the Supreme Court of Victoria, Melbourne.

The meeting commenced at 10.00am.

Present

Justice Judith Kelly, President	Supreme Court of the Northern Territory
Magistrate Jennifer Atkinson	Local Court of New South Wales
Justice Michael Baumann, AM	Family Court of Australia
Justice Michael Brett	Supreme Court of Tasmania
Justice John Burns	Supreme Court of the Australian Capital Territory
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
President Justice Steven Dolphin	South Australian Employment Tribunal
Justice Rene Le Miere	Supreme Court of Western Australia
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 Steven Moore	Supreme Court of Victoria
Magistrate Peter Morrison	Magistrates Court of the Australian Capital Territory
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
The Hon Tony Pagone, QC	International Association of Judges
Judge Anthony Rafter, SC	District Court of Queensland
Magistrate Marc Sargent	Magistrates' Court of Victoria
Justice Terry Sheahan, AO	Land & Environment Court of New South Wales

Judge Andrew Stavrianou

District Court of Western
Australia

Justice Michael Walton

Supreme Court of New South
Wales

Justice Joshua Wilson

Federal Circuit Court of Australia

In attendance

Christopher Roper, AM
Anjali Iyer

Secretary
Secretariat Administrative Assistant

Apologies

Apologies were received from:

Chief Justice Alan Blow, AO
Magistrate Andree Horrigan

Supreme Court of Tasmania
Magistrates Court of Western
Australia

Justice Neil McKerracher
Judge Anthony Rafter

Federal Court of Australia
District Court of Queensland

Resolved (2019/1)

That the apologies be noted and received.

The President welcomed Justice Steven Moore and Magistrate Peter Morrison, who were attending their first meeting of the Governing Council. She also welcomed Justice Michael Brett who was attending as an alternate for Chief Justice Alan Blow.

1 Tragedy in Christchurch, New Zealand

The President referred to the news of the recent tragedy in Christchurch where 50 people had been killed in two mosques by a gunman. She proposed that the Governing Council move a motion of support for the New Zealand people and that the Judicial Association of New Zealand be advised of the resolution.

Resolved (2019/2)

That the Governing Council record its deep sorrow at the loss of many innocent lives as a result of recent shootings in two mosques in Christchurch, New Zealand.

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

The minutes of the meetings of the Governing Council held on 5th and 6th October 2018 had been circulated.

Resolved (2019/3)

That the minutes of the meetings held on 5th and 6th October 2018 be confirmed.

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

The minutes of the Executive Committee meetings held on 18th October 2018 and 31st January 2019 had been circulated.

Resolved (2019/4)

That the minutes of the meetings of the Executive Committee held on 18th October 2018 and 31st January 2019 be noted.

President's Business

4 President's Report

The President reported as follows:

Retirement of Justice Tim Ginnane

The President noted that Justice Tim Ginnane had retired from the Governing Council and she proposed that the Governing Council resolve to thank him for his services to the JCA.

Resolved (2019/5)

That the Governing Council express its thanks to Justice Tim Ginnane for his contributions to the work of the Governing Council and the JCA more generally.

2020 Colloquium

The President noted that the Governing Council had authorised the Executive Committee to decide whether the 2020 Colloquium would be held in New Zealand. She said that there would be a report later in the meeting.

Letters to newly appointed judicial officers

The President reported that, in addition to the usual letter sent to newly appointed judicial officers at the time of their appointment, a further letter was sent towards the end of last year to all those who had not joined the JCA. She said this had been quite successful and there had been a take-up rate of about 20%.

Membership renewals – payment by direct debit

The President reported that arrangements were now in place with the JCA's bank for members to establish an ongoing direct debit arrangement for payment of their JCA membership fee. She said this was part of an endeavour to establish an opt-out rather than an opt-in process for membership renewals.

Observers at Governing Council meetings

The President reported that an invitation had been extended to the Judges Association of New Zealand (JANZ) to send an observer to Governing Council meetings. Justice Martin said this would be considered at the next meeting of the JANZ. The President reported that a similar invitation had been sent (twice) to the Chief Justice of Papua New Guinea to continue their observer status, but no reply had been received from the Chief Justice.

Colloquiums

The President noted that some of the information collected by the evaluation forms at colloquiums was not used for any purpose, and so it was proposed to discontinue collecting that information and confine the evaluations to seeking suggestions for topics for future colloquiums.

She also reported that it had been decided that accompanying persons could attend all sessions at colloquiums.

She further reported that it had been decided that there would be a welcome to country at future colloquiums.

Governing Council meetings at the time of the Annual General Meeting

The President noted that there had been consideration as to whether the business conducted at the first meeting of the Governing Council held prior to each year's Annual General Meeting, namely to approve the annual financial report to be submitted to the Annual General Meeting, might be delegated to the Executive Committee. She said that after advice received from Chief Justice Blow it was decided that this could not be done.

JCA policies

The President referred to the *Compendium of Policies* which had been provided to members at the meeting.

Videoconference meetings of the Executive Committee

The President reported that it was being investigated whether meetings of the Executive Committee might be held by videoconferencing rather than audioconferencing, as at present. Justice Martin noted that there were several providers, such as Skype or Zoom, and he had found it easy to use. The President said it could be helpful to see members' faces during the discussion.

Judicial survey

The President reported that the JCA had been approached to provide in-principle support for a judicial survey being conducted through Flinders University in regard to attitudes, perceptions of work, etc. The survey would be conducted in

conjunction with the ALJA and would expand on recent work done on these topics in Australia and the United Kingdom. Justice Martin said that the survey in the United Kingdom had achieved a 98% response rate; this being easier to achieve where there was a unitary court system, the survey had the active support of heads of jurisdiction, and there had been two decades of inadequate judicial remuneration.

The President said that knowing what judicial officers are thinking is of importance to the JCA.

Judge Lewitan said that she was not in favour of the JCA taking part in the survey. She said she was concerned that an outside body being involved, without control by the judiciary, could result in a negative outcome. She said the survey could diminish the perception of the judiciary by the public, and that she could anticipate that there would be articles or a paper highlighting that the judiciary was under stress. Justice Martin said that the researchers had published papers on studies they had undertaken in this area for many years and had also published a book on Victorian magistrates. He said these publications did not approach the subject matter in the way suggested by Judge Lewitan.

Mr Pagone noted that the ALJA was involved. He said it was a topic which was being discussed internationally.

Correspondence

The President said that in addition to letters sent to new appointees, and the follow-up letters, she had also written to those who had received Order of Australia honours on Australia Day, to the Hon Margaret Beazley on her appointment as Governor of New South Wales, and to Aghi and Mila of AM Meetings Plus on the death of their mother.

As well, a request had been received from the Legal & Constitutional Affairs Committee inviting the JCA to take part in a meeting to consider the proposed changes to the Family Court and the Federal Circuit Court. The invitation had been declined and the Committee was referred to the JCA's previous published position on this matter.

An invitation had been received to participate in a forum conducted by the National Integrity Assessment project. She said the JCA would not participate but the invitation had been passed on to members.

Justice Peter Murphy

Finally, the President noted that Justice Peter Murphy, now retired from the Family Court of Australia, had resigned from the Governing Council and she proposed that a vote of thanks be extended to him.

Resolved (2019/6)

That the Governing Council express its thanks to Justice Peter Murphy for his contributions to the work of the Governing Council and the JCA more generally.

Note: the President had intended to propose a vote of thanks, at this point, to Christopher Roper for organising the very successful informal dinner and hosting the drinks beforehand, as well as sharing his auction 'prize' with those present.

5 Media releases and letters to the editor issued since the last meeting of the Governing Council

The President drew members' attention to the seven media releases and two letters to the editor, which had been circulated and were noted.

She noted that the JCA had earlier responded to criticisms by the NSW Police Minister of the magistrate in the Bishop Philip Wilson case, in which the JCA had said that the Minister's statement included errors of law. She said that the Minister subsequently withdrew his comments and issued an apology.

She also referred to the JCA's response to the article in the *Australian Financial Review* in which it was sought to measure Federal Court judges' productivity on the basis of the number of words they wrote. She also noted that an opinion piece was about to be published in the *Australian Law Journal* and that the Editor, Justice Francois Kunc, had issued an invitation to the JCA to submit further such pieces.

The President reported on the media release which had been issued in regard to the appointment of new judges in the District Court of New South Wales. She outlined the chain of events and the difficulties which arose, including an interview with the ABC in which her comments were taken out of context. She said she had telephoned the Chief Judge of the District Court to explain the JCA's motivation and apologise for any difficulties it had caused but he had not responded to her call.

She said that the experience of the interview raised with her the question of how to deal with the non-print media, and she wondered whether JCA office bearers should consider receiving training. She said that the Executive Committee had decided to look at how other bodies get messages out using mediums other than the print media. Justice Baumann said that he thought the issue of training was worth looking at and suggested that something be prepared for the next Governing Council meeting. Magistrate Sargent said that two magistrates in his Court had received media training and they were now the go-to people for interactions with the television medium.

It was agreed that a sub-committee be formed, comprising Justice Baumann and Judge Lewitan, to prepare a paper for the Governing Council's meeting, either in June or October 2019.

The President then referred to media releases which had not been issued and the reasons for that decision. She said that the JCA's basic policy was that it was not improper to criticise judicial decisions but it was improper to attack the judicial officer personally. By way of illustration, she referred to the article by Henry Ergas which made a personal attack on the Chief Judge of the NSW Land & Environment Court, in which he questioned the judge's honesty. At that point, the JCA did step in and issued a media release and wrote a letter to the Editor of *The Australian*.

Recent criticism of Judge Sal Vasta

Finally, the President reported to members that she had had correspondence with Chief Justice Alstergren concerning the Law Council's media release in regard to Judge Vasta of the Federal Circuit Court. The matter was discussed.

The President wound up the discussion by observing that the general view seemed to be that the JCA make no response but that she write to Chief Justice Alstergren and advise him that the matter had been considered by the Governing Council, comprising judges and magistrates from all over Australia, and that it was decided that it was best that the JCA not respond in this matter at this time.

Criticism of NSW magistrate in regard to dress in court

The President referred to another instance where the office bearers had decided that the JCA not respond; in this case of criticism in one regional newspaper of a New South Wales magistrate who had said that the dress of a particular woman was not appropriate in the courtroom and she had been accused by a journalist in that newspaper of 'slutshaming'. The President said that the magistrate was justified in what she did but it was decided not to 'give oxygen' to the one article, bearing in mind that all other reports were fair. She said she had reported this to the magistrate concerned who had appreciated that the JCA had considered it and had agreed that she was correct in what she did.

Administration and Membership

6 Secretary's report

The Secretary had nothing to report.

7 Treasurer's report

The profit and loss statement up to 31st December 2018, which had been circulated, and the bank balances, were noted.

Resolved (2019/7)

That the Treasurer's Report be received.

8 Membership report

A membership report had been circulated, and was noted.

Activities, projects and matters of concern

9 Colloquiums – 2019 and future colloquiums

Justice Glenn Martin outlined the program for the 2019 Colloquium. He noted that one of the sessions, *Technology in the Courts*, had been a suggestion at a previous colloquium. He said that there were 43 registrations to date but that 70 were needed to break even.

In regard to the 2020 Colloquium, he noted that it was originally planned that it be in Perth but it was felt best to change this given the 2019 Colloquium would have been in Darwin: and thus would require two long flights for those from the eastern states.

He said that discussions were current with the JANZ to have a joint conference on Friday 2 to Sunday 4 October 2020 at Rotorua. He noted that whilst the Federal & Supreme Courts Judges Conference would be held in January 2021 in Christchurch, the two conferences would be in different parts of New Zealand. He said there were issues to be resolved, such as who would be the conference organisers and how would the payment of registration fees be processed.

Deputy Chief Magistrate O'Shea reported that the International Women Judges Conference would be held in Auckland in May 2020, and that this may limit the number of women judges who would attend the Colloquium in October.

Resolved (2019/8)

That the JCA accept the invitation from the Judges Association of New Zealand to have a joint conference in October 2020.

10 International Association of Judges

Mr Pagone reported on a number of recent activities of the IAJ, as follows:

- The IAJ had written to a number of governments where there had been attacks on the judiciary or judicial independence, including to the President of Poland. He said that the response from the Polish judges indicated that such support had a positive impact on morale.
- In February 2019 there had been a meeting in New York with the United Nations Special Rapporteur on the Independence of the Judiciary, and the topic of judicial accountability had been discussed. He said this was driven, in part, by the reality of corruption in some countries. He noted that the problem was that, in some countries, accountability threatened independence.
- There would be a meeting in May 2019, initiated by UNCITRAL, to settle a convention on the judicial arrest of ships, and that the IAJ's representative at that meeting would be Justice McKerracher.
- The Presidency Committee would be considering a review of the IAJ's Constitution in regard to admission of new members. The issue was whether membership should be confined only to judges associations in countries where

there was true judicial independence or whether in some cases associations in countries where judicial independence was not fully assured might be admitted in order to influence the situation in those countries. He said this was a highly divisive issue.

- One of the new members of the IAJ was likely to be the JANZ, and the vote to admit that association would be in September of this year.
- The IAJ's four Study Commissions, which meet each year at the annual meetings, have created an enormous amount of useful material in their reports. He said that one of the current topics for one of the study commissions was judicial stress and well-being.
- The IAJ has a number of regional groups. Australia is part of ANAO. These groups are quasi-independent. He noted that if situations arose where the JCA may not want to comment, it might be appropriate to approach ANAO and ask it to comment.

Justice Martin then discussed the question of whether an IAJ Annual Meeting might be held in Australia during Mr Pagone's Presidency. He outlined the principal issue which was that, in the absence of a registration fee (which was not the IAJ's practice), funding would need to be obtained, in the order of \$40,000 to \$50,000, but that there was no apparent government-based source for this funding in Australia. He said that even if a registration fee could be charged the JCA would still need to underwrite the meeting and pay all of the up-front costs. As a result, he could not recommend that an IAJ Annual Meeting be held in Australia.

11 Commonwealth Magistrates' and Judges' Association

A report had been circulated. Chief Judge Lowndes drew attention to the matters reported, including:

- The CMJA's recent concerns in regard to the accusations made against the Chief Justice of Nigeria.
- The next Regional Conference to be held in Papua New Guinea in September 2019, and he outlined the topics to be dealt with.

12 Member Benefits Program for the JCA

Justice Martin drew members' attention to the two proposals which had been circulated, from Member Advantage and Member Benefits Solution. He described what could be provided to JCA members, and that the cost, at current rates, would be between \$22 and \$28 per member. He proposed that, if a scheme were to be set up, the JCA absorb the cost in the first year, and then recover the cost by means of increased membership fees of \$10 per member for the next three years. He said that the total cost to the JCA would be about \$30,000. Justice Martin said the JCA was a members group and if benefits could be provided to members as a result of their membership there would likely be more judicial officers who would join and/or more who would retain their membership.

Resolved (2019/9)

That the Governing Council approves of entry into one of the schemes outlined, and authorises Justices Martin and Baumann to negotiate the best package.

13 Next meeting

It was noted that the next meeting would be held on Saturday 8th June 2019 in Darwin.

There being no further business, the meeting concluded at about 12.20 pm.

Signed as a true record:

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President