



Judicial Conference of Australia

EXECUTIVE COMMITTEE

MINUTES OF MEETING: 2019/1

Held by teleconference on **Thursday 31st January 2019**
commencing at 6.00 pm Eastern Summer Time

Participating

Justice Judith Kelly (President)
Justice Michael Baumann, AM
Chief Justice Alan Blow, AO
Justice John Burns
Judge Wayne Chivell
Magistrate Brett Dixon
Judge Rachelle Lewitan, AM
Justice Glenn Martin, AM
Justice Steven Moore
Magistrate Marc Sargent
Justice Michael Walton

in the Chair
Treasurer

Apologies

Justice Neil McKerracher

In attendance

Christopher Roper, AM (Secretary)

1 Minutes of the previous meeting

The minutes of the previous meeting held on 18th October 2018 had been circulated.

Resolved:

That the minutes of the meeting held on 18th October 2018 be approved.

2 Co-option of a member

The Executive Committee noted that Justice Steven Moore had been nominated as the representative of the Supreme Court of Victoria on the Governing Council.

Resolved:

That Justice Steven Moore be co-opted to the Executive Committee.

The President welcomed Justice Moore to the Executive Committee.

3 Correspondence received since the October 2018 meeting of the Executive Committee

No formal correspondence had been received.

4 President's report

Retraction by Mr Troy Grant, MP

The President noted that in July 2018 *The Australian* had reported comments of Mr Troy Grant, the then Police Minister in the New South Wales Government in regard to a magistrate's decision in the Phillip Wilson case. She said that she had written a letter to the Editor of *The Australian*. (The letter had previously been circulated with the media releases.) The letter suggested that ministers of the Crown, whilst entitled to comment on decisions, should do so having read the decision and in full knowledge of the applicable law. She noted that Mr Grant had subsequently retracted his comments. A copy of his retraction had been circulated with the agenda papers.

It was decided that the retraction and the President's letter to *The Australian* should be circulated to members in a forthcoming issue of *JCA News & Media*.

Media release in regard to the New South Wales District Court

The President referred to the media release issued on 29th October 2018 in support of Judge Tupman's comments in regard to support for the District Court of New South Wales. She outlined her experience of being interviewed by the *ABC* and how she was reported out of context. The President said that she had sought to talk with Justice Price, the Chief Judge of the District Court, several times in order to apologise but he had not returned her calls.

She said this raised the question of how the JCA could, in future, put out media friendly statements and media releases in addition to its existing practice of sending them to traditional media providers. She questioned whether the JCA should consider using mediums such as Youtube, Twitter, Facebook, etc.

Justice Baumann suggested that a paper be prepared for the next Executive Committee or Governing Council meeting on how organisations similar to the JCA get information out apart from in newspapers. It was noted that the legal professional bodies use a variety of ways, and some of the courts. Judge Lewitan said that she would talk to the Chief Judge of the County Court of Victoria and seek his advice.

Media release in regard to Asia Bibi

The President said that normally the JCA would not comment on judicial proceedings in other countries but that, once it was known that death threats had been made against lawyers and judges in this case, she felt it appropriate for the JCA to condemn such threats.

Article in the Australian Law Journal

The President said that, at the invitation of Justice Francois Kunc, the Editor of the *Australian Law Journal*, she had submitted an article and she understood it would be published in the February edition. She said that Justice Kunc had

invited the JCA to submit opinion pieces from time to time for publication in the *ALJ*.

Comments by Victorian Police Minister

The President reported that a media release had not been issued in response to comments made by the Victorian Police Minister in regard to a Victorian magistrate that he needed to be held to account for his remarks. She said that it was considered that this comment did not overstep the mark.

Legal and Constitutional Affairs Legislation Committee

The President said that the JCA had been invited to attend a public hearing of this Committee in regard to the proposed changes to the Family and Federal Circuit Courts. She said it was decided to decline this invitation and refer the Committee to the JCA's previously stated position on this matter.

Criminal conviction of Judge Murat Arslan in Turkey

The President referred to the statement from a number of European judicial associations in regard to the criminal conviction in Turkey of Judge Murat Arslan. She asked whether the JCA should comment on this matter.

Justice Martin outlined the background to the conviction. He said that the members of the IAJ did not accept that Judge Arslan was engaged in terrorist activity and considered it was part of the Turkish President's actions, after the attempted coup, to remove people who would not support his actions. He said the JCA's concern should be about the lack of judicial process, namely that if a person is charged there should be a proper trial that conforms to the rule of law, and a proper and transparent appeal process. This was denied in this case.

Justice Martin undertook to draft a statement which the JCA could issue, for consideration by the office bearers before it was issued. It was also agreed that the statement would be sent to the Turkish language newspaper/s in Australia, the Turkish Ambassador in Australia, the head of the division responsible for Turkey in the Department of Foreign Affairs & Trade, and the Australian Ambassador to Turkey.

Resolved:

That the President's report be received.

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

The Executive Committee noted the five media releases that had been issued since the last meeting, which had been circulated.

6 Financial matters and Treasurer's report

A profit & loss report for the period 1st October to 31st December 2018 had been circulated, and was noted. It was also noted that the balance in the accounts and term deposits at the bank as at 24th January 2019 totalled \$553,796.55.

The Treasurer suggested that the financial report on the 2018 Colloquium should be circulated to the Executive Committee, and the Secretary agreed to do so.

The Executive Committee then considered an opinion from Chief Justice Blow in which he outlined his reasons why it would not be possible for the Governing Council to delegate to the Executive Committee the authority to approve the annual statement of accounts. The Executive Committee agreed with this decision.

The Committee noted that the process for 2019 would be that:

- the Governing Council would meet by teleconference shortly prior to its October meeting in Sydney to approve the accounts and authorise the President and Treasurer to sign them on its behalf
- they would then be sent to the auditor for his signature on his report
- the Annual General Meeting would be held immediately prior to the October Governing Council meeting, attended by those attending the Governing Council meeting and any others, from Sydney or elsewhere, who decided to attend
- the Governing Council would then meet for its usual business and for the conduct of the usual elections.

Resolved:

That the Treasurer's report be received.

7 Membership matters

A membership report as at 24th January 2019 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.

Justice Kelly noted that her proposal that at the end of 2018 a letter be sent to all who had not taken up membership during the year, reminding and encouraging those judicial officers to take up JCA membership, had been implemented and had resulted in at least three of those judicial officers responding to the President's letter and taking up membership. The Secretary undertook to analyse whether others had done so without notifying the President.

A memorandum had been circulated in regard to the President's proposal, at the last meeting, that members could give an annual ongoing direct debit direction to their banks to pay for their membership renewal, thus obviating the need for them to do anything further. The memorandum indicated that this could be done. The matter was discussed and there was support for this proposal. It was noted that a letter or email should be sent to all members who had joined this scheme about one month before the funds were transferred advising them that a transfer was to take place on a certain date and the amount that would be transferred.

Resolved:

That the JCA offer members the option of renewing their membership by an ongoing direct debit, provided this is not repugnant to the JCA's Rules.

Resolved:

That the membership report be received.

8 Secretariat matters

Compendium of Policies

A draft Compendium of Policies had been circulated. There was general agreement that it would be valuable to have such a document.

It was agreed that the Compendium of Policies be provided to all existing and future Governing Council members, and uploaded to the Members' Section of the JCA website.

Judges Association of New Zealand

The Secretary noted that this had incorrectly been included on the agenda as it had already been agreed that the Judges Association of New Zealand be invited to appoint a permanent observer to the Governing Council. He said that a letter had already been sent to Judge Winter, the Vice President of the Association, but a reply had not been received. He said that he had that day emailed to Judge Winter who had replied that an observer would definitely be sent to the June meeting in Darwin, and that the question of an ongoing observer would be discussed at the Association's meeting on 8th February.

Use of videoconferencing for Executive Committee meetings

The Secretary reported that Justice Martin had suggested that it be considered whether members of the Executive Committee might have the option of participating in its meetings by videoconferencing. He said that he had used Zoom for meetings of the National Judicial College and found it very satisfactory. There was some discussion of how such meetings would be held, and general agreement that it was worth considering.

It was agreed that a trial meeting of the office bearers would be held in the near future followed by a report back to the Executive Committee.

Request from the Commonwealth Attorney-General's Department in regard to independent legal assessors under the Assistance and Access Act.

The Secretary noted that this request had been passed on to all JCA members who were retired judicial officers, and that as he had asked them to respond directly to the Ministry of Home Affairs he was not aware whether anyone had taken this further or not.

9 Benefits for members

A memorandum had been circulated. The Secretary briefly outlined what had occurred in regard to establishing a Corporate Group Scheme with Qantas Club. He said he would follow up with those who had indicated an interest as to whether they had contacted Qantas and set up their membership.

Justice Martin briefly outlined how member benefit schemes work and proposed that an approach be made to the two largest brokers of member benefits schemes with a view to them making a proposal to the JCA of what they could offer and at what cost. He said that it might be, if they were Melbourne based, they could briefly address the Governing Council meeting to be held in March.

He suggested that the JCA's members may value access to such a scheme. He said the issue for the JCA would be the cost, and suggested that the JCA might possibly absorb the cost in the first year and increase the JCA membership fee in the second year to cover the costs.

It was agreed that a proposal be put to the March 2019 meeting of the Governing Council.

10 Colloquiums

Darwin Colloquium

Justice Martin reported on planning. It was noted that the Planning Committee would meet on 5th February and that it was important that the program be finalised then so that the registration brochure could be finalised and distributed to members. It was agreed that the brochure should be sent to members no later than the middle of February.

2020 Colloquium

There was then discussion in regard to the venue for the 2020 Colloquium, in particular whether it should be in Perth, as currently planned, or in New Zealand in conjunction with the Judges Association of New Zealand (JANZ). It was noted that, for east coast members, to go to Perth one year after Darwin might not be seen as desirable. It was also noted that the Supreme and Federal Courts Judges Conference would be held in Christchurch, New Zealand in January 2021, only three months after a possible JCA/JANZ colloquium in New Zealand. It was felt that this would not necessarily inhibit the holding of the Colloquium in New Zealand in 2020 but it would probably need to be in another city.

Justice Martin said that the IAJ would not be decided until September of this year where its 2020 Annual Meeting would be held, so it was best not to take that into account in considering the venue for the JCA Colloquium.

Justice Martin said that he would obtain the views of the President and Vice President of the JANZ, including whether it was interested in having a joint conference with the JCA, and report back. At the same time he would check whether the JANZ would be agreeable to AM Meetings Plus being the conference organisers on behalf of both bodies.

11 International Association of Judges

A memorandum had been circulated. It was noted that Justice Martin would report to the next Governing Council meeting.

12 National Judicial Survey

A memorandum, together with a summary of the proposed survey, had been circulated. It was noted that the JCA was being asked to indicate its support in principle for the proposed survey, in order for this to be included in the researchers' application to the Australian Research Council.

Judge Lewitan expressed her strong reservations in regard to the JCA becoming involved in the project. Included amongst her reservations were concerns that it was not known what the researchers would do with the information and that their report could include material which demeaned judicial officers. She also asked why the judiciary should want to be portrayed as having problems such as those mentioned in the proposal.

Magistrate Dixon said that the researchers had a long and good track record for research in this area, which they had been doing for over 20 years. He said they had published a number of reports in this period. He referred to work they did in conjunction with the Australian Association of Magistrates (AAM), when they provided regular drafts of chapters to the AAM. He said he had found them to be very professional.

Justice Baumann said that the JCA could support the survey without necessarily being seen to support the conclusions. He said the JCA should not be shy of saying that judicial officers should be provided with support.

Judge Lewitan enquired what the position of the Supreme Court of Victoria was on this project. Justice Moore said that the Chief Justice generally was supportive of research in this area. He said that he thought it was a worthwhile line of enquiry and he thought it would get wider support from the JCA membership.

Resolved:

To indicate to the researchers that the project had the in-principle support of the JCA.

Judge Lewitan indicated that she did not support the resolution.

13 Next meeting

It was noted that the next meeting would be held on Thursday 11th April 2019 at 6.00pm Eastern Standard Time.