



Judicial Conference of Australia

THE 2019 ANNUAL REPORT PRESENTED BY THE PRESIDENT ON BEHALF OF THE GOVERNING COUNCIL

Presented to the Annual General Meeting on 12 October 2019

Introduction

It is an honour to present, on behalf of the Governing Council, the 2019 Annual Report for the year ended 30 June 2019 to members of the Judicial Conference of Australia.

Office bearers and members of the Executive Committee and the Governing Council

The office bearers, the members of the Executive Committee and the members of the Governing Council of the Judicial Conference of Australia as at the date of this report are as follows:

Office bearers

President: The Hon Justice Judith Kelly
Vice President: The Hon Justice Glenn Martin, AM
Treasurer: The Hon Justice Michael Baumann, AM
Intermediate Courts Representative: His Honour Judge Wayne Chivell
Magistrates/Local Courts Representative: His Honour Magistrate Marc Sargent
Secretary: Mr Christopher Roper, AM

Executive Committee

The Hon Justice Michael Baumann, AM, Family Court of Australia
The Hon Chief Justice Alan Blow, AO, Supreme Court of Tasmania
The Hon Justice John Burns, Supreme Court of the Australian Capital Territory

His Honour Judge Wayne Chivell, District Court of South Australia

His Honour Magistrate Brett Dixon, Magistrates Court of South Australia

The Hon Justice Judith Kelly, Supreme Court of the Northern Territory

Her Honour Judge Rachelle Lewitan, AM, County Court of Victoria

The Hon Justice Glenn Martin, AM, Supreme Court of Queensland

The Hon Justice Neil McKerracher, Federal Court of Australia

The Hon Justice Steven Moore, Supreme Court of Victoria

His Honour Magistrate Marc Sargent, Magistrates' Court of Victoria

His Honour Judge Andrew Stavrianou, District Court of Western Australia

The Hon Justice Michael Walton, Supreme Court of New South Wales (co-opted)

Governing Council

Her Honour Magistrate Jennifer Atkinson, Local Court of New South Wales

The Hon Justice Michael Baumann, AM, Family Court of Australia | Treasurer

The Hon Chief Justice Alan Blow, AO, Supreme Court of Tasmania

The Hon Justice John Burns, Supreme Court of the Australian Capital Territory

His Honour Judge Wayne Chivell, District Court of South Australia

His Honour Deputy Chief Magistrate Michael Daly, Magistrates Court of Tasmania

His Honour Judge Graham Dart, Supreme Court of South Australia

His Honour Magistrate Brett Dixon, Magistrates Court of South Australia

The Hon Justice Steven Dolphin, South Australian Employment Tribunal

Her Honour Judge Alexandra Harland, Federal Circuit Court of Australia

Her Honour Magistrate Andree Horrigan, Magistrates Court of Western Australia

The Hon Justice Judith Kelly, Supreme Court of the Northern Territory

The Hon Justice Rene Le Miere, Supreme Court of Western Australia

Her Honour Judge Rachelle Lewitan, AM, County Court of Victoria

The Hon Justice Glenn Martin, AM, Supreme Court of Queensland | Vice President

The Hon Justice Neil McKerracher, Federal Court of Australia

The Hon Justice Steven Moore, Supreme Court of Victoria

Her Honour Chief Judge Elizabeth Morris, Local Court of the Northern Territory

His Honour Magistrate Peter Morrison, Magistrates Court of the Australian Capital Territory

His Honour Judge Garry Neilson, District Court of New South Wales

Deputy President Daniel O'Connor, OAM, Industrial Court of Queensland

Her Honour Deputy Chief Magistrate Leanne O'Shea, Magistrates Court of Queensland

The Hon Tony Pagone, QC, International Association of Judges (co-opted)

The Hon Justice Nicola Pain, Land and Environment Court of New South Wales

His Honour Judge Anthony Rafter, SC, District Court of Queensland

His Honour Magistrate Marc Sargent, Magistrates' Court of Victoria

His Honour Judge Andrew Stavrianou, District Court of Western Australia

The Hon Justice Michael Walton, Supreme Court of New South Wales

His Honour Judge Gerard Winter, the Vice-President of the Judges Association of New Zealand, is an observer at Governing Council meetings.

The Governing Council has met on three occasions over the past 12 months: in Melbourne on 16 March 2019, in Darwin on 8 June 2019, and by teleconference on 10 October 2019. It will meet again today. Communication involving all members of the Council has taken place, as occasion required, between meetings.

The Executive Committee met four times in the financial year by telephone conference on 2 August 2018, 18 October 2018, 31 January 2019 and 11 April 2019. It has since met in the current financial year on 18 July 2019. As with the Governing Council, communication between members also took place, as occasion required, between meetings.

Tributes to retiring and former members

I wish to pay a tribute to a number of members of the Governing Council who have resigned during the previous year. They are:

- Justice Robert Beech-Jones of the Supreme Court of New South Wales, and the immediate past President of the Judicial Conference of Australia
- Magistrate Karen Fryar, AM of the Magistrates Court of the Australian Capital Territory
- Justice Tim Ginnane of the Supreme Court of Victoria
- Chief Judge John Lowndes of the Local Court of the Northern Territory
- Justice Peter Murphy of the Family Court of Australia
- Justice Terry Sheahan, AO, of the Land & Environment Court of New South Wales
- Justice Joshua Wilson, formerly of the Federal Circuit Court of Australia.

All of these Governing Council members served outstandingly on the Governing Council; in some cases for many years. Their contributions to the discussions at Governing Council enhanced the quality of the decisions made at its meetings. I also pay a tribute to Judge Peter Hannon of the South Australian Employment Tribunal, who until recently served on the Governing Council for a number of years and is retiring as a judge this year.

Changes in the composition of the Governing Council

As a result of these resignations, five new members have joined the Governing Council, and you will be formally advised of these appointments at item 4 of the agenda of the Annual General Meeting. They are Judge Alexandra Harland of the Federal Circuit Court of Australia, Justice Steven Moore of the Supreme Court of Victoria, Magistrate Peter Morrison of the Magistrates Court of the Australian Capital Territory, Chief Judge Elizabeth Morris of the Local Court of the Northern Territory, and Justice Nicola Pain of the Land and Environment Court of New South Wales.

Australian Honours

This year a number of members or former members of the JCA were honoured in the Australia Day and Queen’s Birthday Honours. Letters of congratulation were sent to each of the recipients at the time, but I think it appropriate to further acknowledge their outstanding achievements in this annual report and to extend the warm congratulations of the JCA to all of these serving and retired judicial officers.

Companion of the Order of Australia

The Hon Justice Michelle Gordon, High Court of Australia

The Hon Justice Geoffrey Nettle, High Court of Australia

Officer of the Order of Australia

The Hon Justice Jennifer Coate, Family Court of Australia

The Hon Reginald Barrett, retired

The Hon Neville Owen, QC, retired

The Hon Debra Mullins, Supreme Court of Queensland

The Hon Dennis Cowdroy, QC, retired

Member of the Order of Australia

The Hon Justice Clyde Croft, Supreme Court of Victoria

Judge Sylvia Emmett, Federal Circuit Court of Australia

Judge Christopher O’Brien, District Court of New South Wales

Mr Terry Worthington, QC, retired

Justice Monika Schmidt, Supreme Court of New South Wales

The Hon Justice Michael Slattery, Supreme Court of New South Wales
(Military Division)

Judge Josephine Willis, Federal Circuit Court of Australia

Medal of the Order of Australia

Vice President Daniel O’Connor of the Industrial Court of Queensland

Vice Regal Appointment

The JCA is delighted that one of its continuing members, Her Excellency, the Honourable Margaret Beazley, AO, formerly of the Court of Appeal of the

Supreme Court of New South Wales, has been appointed as the Governor of New South Wales.

Thanks

I am very grateful for the work done by all of the members of the Governing Council and the Executive Committee for the JCA, all of whom are serving judicial officers with onerous work levels and responsibilities. Of necessity, the work undertaken by the members of the Governing Council and the Executive Committee takes place outside of court hours, mostly at night and on weekends. Much of the work of the Executive and the Executive Committee is undertaken on an urgent basis as issues arise that require a swift decision or response.

Despite the pressures of work on their time, all of the Council and Executive Committee members performed their functions with collegiality, professionalism and good humour. There is clearly a great level of mutual respects between Australian courts and it always on display in the workings of the Governing Council and the Executive Committee.

I would also like to express my gratitude to the various heads of jurisdiction that I have dealt with over the last year. The JCA cannot perform its functions without the support of the heads of jurisdiction and they have been very supportive of the JCA over that period.

I am immensely grateful for the assistance and advice I have received from the Vice President, the Hon Justice Glenn Martin, and the Treasurer, the Hon Justice Michael Baumann, as well as the representatives of the Intermediate Courts, Judge Wayne Chivell, and the Magistrates/Local Courts, Magistrate Marc Sargent. Time and again I have resorted to them for assistance and they have unfailingly provided it on short notice.

I also wish to express my gratitude to our Secretary, Christopher Roper, for his tireless work on behalf of the JCA. Chris has been ably assisted by Anjali Iyer, a Juris Doctor student at the University of Melbourne, who has recently completed her term as administrative assistant, and Anthony Coter, also a JD student at the University of Melbourne, who has recently been appointed in her place.

Membership

As at the time of the preparation of this report there were 765 members of the JCA, comprising 603 serving judicial officers, 149 retired judicial officers, and 13 honorary and life members. The total membership represents a small increase of 1.7% over the previous year. During the year a number of members retired from their courts and did not continue their JCA membership. Of the 765 members, a number have not yet continued their membership. Governing Council members have been invited to contact members of their respective courts who have not renewed and encourage them to resume their membership.

The JCA can most effectively be a representative body for the judiciary in Australia if its membership comprises the majority of serving judicial officers. Throughout the financial year I wrote to 83 newly appointed judicial officers to congratulate them and invite them to join the JCA. It is most important that our membership remains stable and indeed continues to grow so that we can continue our important role on behalf of the Australian judiciary. I also instituted the practice of writing follow up letters to recently appointed judicial officers who did not accept the initial invitation to join the JCA. This has produced some results. We had approximately a 20% take-up rate. A number of new members stated that they appreciated the reminder as the initial invitation to join the JCA was lost amid all of the matters requiring the attention of a newly appointed judicial officer.

Public statements

In the last annual report, my predecessor, Justice Robert Beech-Jones, drew attention to the policy document adopted in 2016 entitled “Policies and Procedures in Regard to the JCA’s Role of Defending the Judiciary”, and to the amendment to the JCA Rules adopted in 2017 which formalised the defence of the judiciary and judicial officers against unwarranted attacks, and the making of responses to such attacks, as principal objectives of the JCA.

During this financial year, in pursuance of that principal objective, and in conformity with the 2016 policy, the JCA has made a number of public statements on matters affecting the judiciary in Australia as follows:

5 th July 2018	Caution should be exercised before commenting on ongoing Court proceedings
5 th July 2018	Letter to the Editor of <i>The Australia</i> regarding comments of the New South Wales Minister for Police
9 th July 2018	Disrespectful [South Australian] conduct legislation opposed by judges' association
2 nd August 2018	Appointment of [Victorian] magistrates should not be part of political crossfire
31 st August 2018	Australian judicial association states its position on restructure of the Family and Federal Circuit Courts
10 th October 2018	Australian judicial association elects new President and Vice President
17 th October 2018	Australian elected as President of International Association of Judges
29 th October 2018	Judicial association welcomes additional support for District Court of New South Wales
30 th October 2018	Judicial association says analysis of Federal Court's work is fundamentally flawed
22 nd November 2018	Article in <i>The Australian</i> : How to measure judicial productivity and how not to measure it
19 th November 2018	Australian judicial association concerned at threats of violence after Asia Bibi decision in Pakistan
18 th February 2019	Letter to the Editor, <i>NT News</i> , in regard to letter to that newspaper from the Chief Executive of the Alice Springs Women's Shelter
19 th February 2019	Comments on judge's sentencing decision are wrong
27 th February 2019	Response to serious allegation against a judge
27 th February 2019	Letter to the Editor, <i>The Australian</i> , re article by Henry Ergas on decision by Chief Judge of the New South Wales Land and Environment Court

The JCA does not respond to every piece of commentary upon judicial officers and judicial decisions. It recognises the rights of others to criticise court decisions. However, unwarranted and unfair attacks on courts and judicial officers, if left uncorrected, have the capacity to undermine the role of the courts

and the rule of law generally and the JCA endeavours to respond robustly to such attacks.

The question of whether to respond and the form of the response is considered by five judicial officers; the President, the Vice President, the Treasurer, the representative of the District and County Courts and the representative of the Magistrates and Local Courts. It is undertaken conscious of the fact that what is said must be completely accurate and that, in a rapidly moving media cycle, an effective response needs to be provided quickly. Sometimes the decision whether to respond to a particular unfair and/or ill-informed piece of reporting is a difficult one and I have been grateful to those office-bearers, Vice President, Justice Glenn Martin, Treasurer, Justice Michael Baumann, Intermediate Courts Representative, Judge Wayne Chivell, Magistrates/Local Courts Representative, Magistrate Marc Sargent and Secretary, Christopher Roper, for their willingness to respond swiftly with suggestions and advice when such matters arise for decision, often on short notice while juggling full caseloads.

A number of times during the year, matters have arisen and a considered decision has been taken not to respond. Sometimes an article that at first blush appears to be an attack upon the judiciary or a judicial officer is actually legitimate reporting of factual matters or criticism of court decisions. At other times, a decision has been taken not to “give further oxygen” to reporting which is not deemed worthy of a considered response from the JCA.

As an example of the process at work, a decision of the NSW Land and Environment Court on the Rocky Hill coalmine, caused a great deal of comment in the press both positive and negative. While that commentary was confined to praise or criticism of the judge’s reasons, the JCA made no comment. However, when an article in *The Australian* made serious and unsubstantiated allegations of impropriety against the judge in question, the office bearers considered the matter swiftly and the JCA responded with a timely letter of protest to the Editor.

In the past I have commented on a rising intemperance over the last few years in the public attacks on the judiciary. I will not repeat those warnings save to say that the most damaging are attacks made by the Executive arm of government. These are also becoming more common and we often decided, in the case of

individual articles, not to dignify them with a response. However, I did write a short article for the *Australian Law Journal* on behalf of the JCA, warning against the potentially damaging effect of such attacks by members of the executive. I quote two paragraphs from that article

A broad theme is discernible in these attacks. It is implied, without citing any evidence, that judges on the whole are left wing, arrogant, and out of touch and, again without evidence, that this is a result of selective appointments by governments on the left.

.....

If these attacks were motivated by the hope of short term political gain, that is bad enough: it is utterly irresponsible to damage public confidence in our courts for personal electoral advantage. More disturbing is the possibility that such comments by senior members of the executive, so far unwarranted, may signal a change of approach: an indication that some of them believe it appropriate to appoint people to judicial office on the basis of their politics. That could cause long term, perhaps irreparable, damage to our system of justice.

International Association of Judges and Commonwealth Magistrates' and Judges' Association

The JCA is a member of the International Association of Judges (IAJ), the pre-eminent international association of judges, bringing together almost 90 national associations of judges from all parts of the world. In 2018, The Hon G Tony Pagone, QC, a former Federal Court judge (and a co-opted member of the Governing Council of the JCA) was elected as the President of the IAJ, the first Australian to hold this office. Tony Pagone's involvement on the Governing Council, at which he presents regular reports on the activities of the IAJ, has brought the JCA into closer connection with the judiciary in other parts of the world and focused greater attention on problems being faced in other jurisdictions.

During this year the JCA continued its participation in the work of the IAJ. As advised last year, a small group of JCA members, who have previously been

involved in the work of the IAJ, now act as the representatives of the JCA on the IAJ. The Annual Meeting of the IAJ was held in Nur-Sultan, Kazakhstan this month and was attended by representatives from the JCA, who attend at their own expense.

In the past the JCA has issued statements expressing concern about threats to judicial independence (and to judges) in Turkey, Poland and Timor Leste. This year we issued a media release expressing the JCA's concern at death threats by Muslim extremists directed against the judges of the Supreme Court of Pakistan who decided the controversial Asia Bibi case, as well as Asia Bibi herself, her family and her lawyer.

The JCA is also a member of the Commonwealth Magistrates' and Judges' Association (CMJA). As its name implies, the CMJA is an association of magistrates and judges in Commonwealth countries whose aim is

- to advance the administration of the law by promoting the independence of the judiciary;
- to disseminate information and literature on all matters of interest concerning the legal process within the various countries comprising the Commonwealth;
- to advance education in the law, the administration of justice, the treatment of offenders and the prevention of crime within the Commonwealth.

The Immediate Past President of the CMJA, Chief Judge John Lowndes of the Local Court of the Northern Territory, has recently retired as Chief Judge and has been a member of the JCA's Governing Council.

The Judges Association of New Zealand

We have continued our close association with the Judges Association of New Zealand. Unfortunately, Judge Gerard Winter, its Vice President, is not able to join us at this Annual General Meeting. He has been attending, and will continue to attend, our Governing Council meetings, as an observer. As reported below, we plan to conduct our 2020 Colloquium in Auckland, New Zealand in conjunction with the Judges Association of New Zealand.

Colloquium

This year's Colloquium in Darwin was another success and is the result of the great work of the organising committee of Justice Glenn Martin, Justice Graham Hiley, Chief Judge John Lowndes and Magistrate Marc Sargent. I know how much work is required to organise a colloquium. I thank them for their efforts in securing an outstanding program of speakers and array of venues. I also extend my thanks to the members who attended this year's colloquium in the beautiful, but (it must be said) out of the way, city of Darwin and helped to make it such a success.

Next year's colloquium is to be held in Auckland in conjunction with the recently formed New Zealand Judges' Association. Vice-President, Justice Glenn Martin, will report more fully on these matters at the Governing Council meeting.

Proposed Restructure of the Family Court and Federal Circuit Court

This is an issue which has generated and continues to generate a great deal of public comment and debate.

In August last year, then president Justice Robert Beech-Jones, announced that the JCA did not propose to enter the debate on the merits of the proposed restructure, but urged interested parties not to make unfounded criticism of the judges or groups of judges of any of the affected courts. He also reiterated that any restructure and the appointments that follow should respect the tenure of existing judicial appointments, since a critical component of the rule of the law is the independence of the judiciary and that, in turn, depends upon the guarantee of tenure afforded to judges.

The JCA's position remains unchanged.

Earlier in this financial year, the JCA received a rather cryptically worded invitation to participate in a public hearing by the Senate Legal and Constitutional Affairs Legislation Committee on this issue, which we declined.

Federal Judicial Commission

The issue of whether there should be a Federal Judicial Commission, and the appropriate model for such a Commission, has been much debated in the press during the last year. The Law Council of Australia, through its President Mr Arthur Moses QC, has been particularly vocal on the subject.

The JCA has been approached for comment by the press. Our response has been to refer journalists to the comprehensive paper prepared in 2010 by a sub-committee of the Governing Council consisting of (then) Justice Alan Blow Chief Magistrate Ian Gray, Justice David Harper (Chair), Chief Justice Wayne Martin, Justice Peter McClellan, Justice Philip McMurdo, Judge Geoff Muecke Justice Margaret Stone, Chief Federal Magistrate John Pascoe, Justice Trevor Riley, Justice Michael Walton and Judge Jon Williams.

That paper, which was adopted by the Governing Council, expressed support for the establishment in each jurisdiction of a system of handling complaints against judicial officers, and favoured the establishment of such commissions as independent statutory corporations, forming part of the judicial arm of government, and independent of the executive, along the lines of the successful New South Wales Judicial Commission.

I was approached by the President of the Law Council of Australia for a meeting to discuss a proposal by the Law Council advocating for a Federal Court/Justice Roundtable at Parliament House, with particular reference to advocating for a Federal Judicial Commission. After consultation with the other office bearers, I replied that the JCA Executive did not think it appropriate to become involved in discussions with the Law Council about such a proposal.

Eligibility for membership of judicial registrars

At the Governing Council meeting in October 2018, it was confirmed that the Judicial Registrars of the Supreme Court of Victoria were eligible to be members of the JCA under rule 4(a) of our Rules, as they are “members” of a State court. Although the issue arose in relation to the Judicial Registrars of the Supreme Court of Victoria, the same eligibility criterion applies to all judicial registrars who are members of their respective courts.

Judicial Research Project

The JCA has provided in-principle support for a research project which, subject to funding from the Australian Research Council, will be conducted through Flinders University to investigate a range of judicial attitudes, perceptions and experiences of judicial officers' everyday work. The project, to be conducted with the Australasian Institute of Judicial Administration, will expand on recent work done on these topics in Australia and the United Kingdom. The JCA is not providing funding for the project but will, if requested, assist with distribution of a questionnaire.

Retired Judicial Officers

Over 120 of the JCA's members are retired judicial officers. From time to time the JCA receives requests from government departments or authorities seeking expressions of interest from retired judicial officers for appointment under various pieces of legislation. During the year four such requests were made:

- Request from the Solomon Islands Justice Program for a judge to be appointed to the Solomon Islands High Court for a specified period.
- Requests (two) from the Department of Home Affairs for assessors under the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018*.
- Request from the Attorney-General's Department for reviewing authorities under the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019*.

The policy of the JCA (which was carried out on each of these occasions) is to notify all retired members of the details of the request and provide those members with the relevant contact details of the requesting party.

Member Benefits Program

This year, thanks to the hard work and time expended by our Vice-President, Justice Glenn Martin, (ably assisted by Treasurer Justice Michael Baumann), we have been able to offer our members a significant members' benefits package. This scheme offers discounted prices on a wide range of products and services.

Members have been advised individually of the benefits available and how to register for them, so I will not repeat the information here.

In case any member has any qualms at all about the propriety of the scheme, I wish to reassure you all that there is no question of any judge (or the JCA) being beholden to any commercial organisation for the benefits provided.

The benefits scheme is an arms-length commercial arrangement in which:

- a. the JCA has purchased for its members a package which offers discounts on various goods and services;
- b. this was purchased from a commercial benefits company which in turn negotiates those discounts with the suppliers based on the purchasing power of the large number of members of the organisations that buy its packages.

Judicial officers are no more compromised by having access to this commercially purchased discount arrangement than they are by (say) owning a Toyota car or a Singer sewing machine or belonging to the Qantas Club or Velocity Lounge and being entitled to the benefits that that entails.

Most (if not all) of the law societies and bar associations have purchased similar benefits packages for their members. (Our Vice-President, Justice Glenn Martin, negotiated such a package for the ABA when he was President of that organisation.)

Judith Kelly