



Judicial Conference of Australia

EXECUTIVE COMMITTEE

MINUTES OF MEETING: 2020/1

Held by teleconference on **Thursday 30th January 2020**
commencing at 6.00 pm Eastern Summer Time

Participating

Justice Judith Kelly (President)	in the Chair
Chief Justice Alan Blow, AO	
Judge Wayne Chivell	
Magistrate Brett Dixon	
Judge Rachelle Lewitan, AM	
Magistrate Jan Maclean	
Justice Glenn Martin, AM	Vice-President
Justice Neil McKerracher	
Justice Michael Walton	

Apology

Justice Michael Baumann, AM	Treasurer
Justice John Burns	
Justice Steven Moore	

In attendance

Christopher Roper, AM (Secretary)

1 Minutes of the previous meeting

The minutes of the previous meeting held on 7th November 2019 had been circulated.

Resolved:

That the minutes of the meeting held on 7th November 2019 be approved.

2 Correspondence received since the November 2019 meeting of the Executive Committee

There had been no correspondence apart from letters sent by the President to newly appointed judicial officers and to new members of the JCA.

3 President's report

The President reported in regard to the following matters:

Correspondence with Justice Le Miere in regard to the Federal Circuit Court

The President briefly summarised the correspondence she had had with Justice Le Miere. She said that there would be a President's Letter to Members in the first *JCA News & Media* for this year in which she would say essentially the same to members generally. She noted that it was unfortunate that there might be a perception that the JCA was not supporting Federal Circuit Court judges as fully as might be appropriate. She said that that Court now had a representative on the Governing Council, Judge Harland, and that she had spoken with her and they had agreed that Judge Harland would monitor media commentary on her Court and draw appropriate items to the JCA's attention.

Justice Martin said that he understood that on ABC Radio's *Background Briefing* there would be a story on this and that the ABC had sought access to the court recording of a particular matter heard by Judge Vasta, which had been rejected by the Federal Court.

The President said that it was not the JCA's role to stifle genuine discussion of the work of the courts. There was general consensus that the JCA should not become too involved in this matter.

Law Council's proposal for a protocol on standards of judicial behaviour and conduct in the courtroom

The President referred to the memorandum from the Law Council, which had been circulated. It was noted that the Australian Bar Association's protocol, to which that memorandum referred, in fact had nothing to do with judicial behaviour as such but only proposed a process to facilitate how complaints about judicial behaviour could be made. It was noted that the Law Council was proposing that the Australian Bar Association's protocol be extended to solicitors appearing in federal courts.

There was general agreement that the words in the heading of the Law Council memorandum "Development of a Protocol on Standards of Judicial Behaviour and Conduct in the Courtroom" was misleading as the protocol only extended to a process for making a complaint about judicial behaviour and conduct.

There was general agreement that the JCA take no action in regard to this matter.

Address by Professor Mellinghoff

The President outlined details of the proposed lecture and dialogue by Professor Mellinghoff on Monday 20th April 2020 at the Federal Court in Melbourne. She said it was proposed that all judicial officers be invited, so that it might also be a means of recruiting new members. She noted that there had already been agreement to allocate up to \$3,000 for catering.

The Secretary was asked to seek confirmation from the Chief Justice of the Federal Court that a venue is available, as he had indicated in correspondence with the President.

Proposed change of JCA Rules to incorporate a dispute resolution mechanism

The President referred to the memorandum which had been circulated earlier in the day, which included a draft new rule to incorporate a dispute resolution in the JCA's Rules. After some discussion it was agreed that the following new rule 9A be considered by the Governing Council at its meeting on 14th March 2020, and that a Special General Meeting of the JCA be held immediately thereafter for the purpose of adopting the change in the JCA's Rules by incorporating the following new Rule 9A:

The following rules will apply in relation to any dispute under the *Associations Incorporation Act 1991* (ACT) or these rules between—

- a member and another member; or
 - a member and the Conference.
- a) Each party to the dispute must be given the opportunity to be heard on the matter which is the subject of the dispute.
 - b) The outcome of the dispute will be determined by an unbiased decision-maker.
 - (i) In the case of a dispute between members, the decision-maker will be a person with no interest in the outcome of the dispute appointed by the President (or the Vice President if the President is involved in the dispute).
 - (ii) In the case of a dispute between a member and the Conference, the decision-maker will be a person agreed upon by the parties or, failing that, nominated by the Executive Director of the Australasian Institute of Judicial Administration.
 - c) The decision-maker will notify each party to the dispute, in writing, about the decision and give reasons for the decision.
 - d) A party to a dispute who is not satisfied with the decision of the decision-maker may appeal to the Executive Committee (in the case of a dispute between members) or to the Governing Council (in the case of a dispute between a member and the Conference) provided that any member of the Executive Committee or the Governing Council who has an interest in the outcome of the dispute shall not take part in the appeal process. Should all members of the Executive Committee or Governing Council (as the case may be) have an interest in the outcome of the appeal, the appeal will lie to a person with no interest in the outcome of the appeal, nominated by the person specified in rule (b)(ii).

The Secretary was asked to confer with Justice Rares, the current President of the AIJA, and Professor Greg Reinhardt, the current Executive Director, and seek their agreement to the Executive Director of the AIJA being the person to nominate a decision-maker as proposed in Rule 9A(b)(ii).

Resolved:

That the President's report be received.

4 Media releases and letters to the editor issued since the last meeting of the Executive Committee

The Executive Committee noted the media releases and letters to the editor issued since the last meeting.

5 Financial matters and Treasurer's report

A profit & loss report for the period 1st October to 31st December 2019 had been circulated, and was noted. It was also noted that the balance in the accounts and term deposit at the bank as at 23rd January 2020 totalled \$535,372.50. There was no decision that the JCA should invest its funds otherwise than in term deposits with a bank.

Resolved:

That the Treasurer's report be received.

6 Membership matters

A membership report as at 22nd January 2020 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 Executive Committee noted a report in regard to members who had not renewed their membership for the 2019-20 financial year. It also noted that follow-up letters from the President had been sent to judicial officers newly appointed in the period December 2018 to September 2019, and that 17% of those judicial officers had subsequently joined the JCA.

Resolved:

That the membership report be received.

7 Secretariat matters

A memorandum had been circulated in regard to the following matters:

Insurance for cyber security fraud

The Executive Committee noted that insurance was available for the situation where the JCA was the victim of cyber crime. It was agreed that the JCA would not take out insurance for cyber crime. The Secretary was asked to check that the JCA's membership database is backed up securely and regularly.

Requests for assistance from retired judicial officers

The Executive Committee noted that a list was maintained by the Secretariat of JCA members who might be interested in a range of opportunities, and that several approaches had been received from several Commonwealth Government entities. The Secretariat's practice in dealing with these enquiries was outlined in the memorandum. It was agreed that this should be publicised to members generally.

Analysis of readership of the JCA News & Media

The Executive Committee noted the report on the extent to which JCA members opened the weekly email sending the *JCA News & Media* and thus presumably read it. The Secretary reported that the analysis would be continued over the next month to identify a more reliable trend.

Possible future arrangements for the Secretariat

Justice Martin reported that, as a member of the Council of the National Judicial College of Australia which is based at the Australian National University's College of Law, he became aware that the ANU would be interested in having the JCA's Secretariat based at the College of Law, with a room, furniture and telephone and internet access provided free. He said that the ANU College of Law was proposing to establish an Institute of Judicial Studies. He noted that whilst some law schools had pockets of interest in judicial studies, this would be a national institute, and that it would be good for the JCA to be involved with a presence on campus: and that it would also be good for the JCA's profile to be on the ground floor of this development.

Justice Martin reported that he and the President had spoken to the Dean and chief executive of the law school who had said there was no rush in setting up this arrangement; the end of this year would be suitable.

The Secretary stated that he had sent to the President and Vice President a draft succession plan for his position, so that he was already anticipating that he would retire at some point. He said that, if it would facilitate this development, he would be happy to retire at a time to coordinate with this move. The President said that she thought a reasonably lengthy transition period would be necessary with the new person in Canberra as an under-study to the Secretary.

Justice Walton asked if it was known when the proposed Institute of Judicial Studies would be established, as this would be relevant for the JCA's planning

8 Colloquium*2020 Colloquium*

Justice Martin reported that the program was nearly fully planned and would be by the middle of February. He said the Colloquium would be at the Pullman Hotel and the dinner at the nearby Northern Club. He said he proposed that a reminder email be sent out next week, and registrations to commence in a few months' time.

Justice Martin said that the contract with AM Meetings Plus expires this year; presumably after the Colloquium. He said he was concerned how slow AM Meetings Plus were in producing final financial reports and that he considered the JCA should seek expressions of interest from other providers.

Justice Martin outlined the proposed speakers, which included Richard Susskind who would speak by video link; however, it was decided that he should not be invited given his very high fee.

9 Australian National Judicial Survey

The Executive Committee noted that the researchers' application to the Australian Research Council had been unsuccessful. This raised the question as to whether the JCA should initiate a project whereby a version of the United Kingdom survey would be conducted in Australia. Chief Justice Blow said that this had been considered by the Council of Chief Justices which was concerned at the cost and questioned what purpose it would serve. Justice Martin said that any survey would not be successful unless it was supported by all the courts, and that as this was very unlikely this proposal should not be pursued. It was agreed that the JCA not pursue this proposal.

Later in the meeting there was some discussion of the changes which have been made to the pension schemes for judges in England. Justice Martin said that there were several judicial review cases which will go to the Supreme Court of the United Kingdom. The President also noted the very unfortunate process for recruitment and selection of judges in England and Wales.

10 Member Benefits Scheme

A memorandum had been circulated. The Executive Committee noted that there had been a number of positive responses from retired judicial officers to the proposal that a tour might be arranged for them, but which could also include serving judicial officers, and accompanying persons. The Executive Committee considered that this would be a worthwhile activity, and the Secretary was authorised to invite Member Benefits Australia to develop proposals for several tours.

11 International Association of Judges – monitoring survey

The Executive Committee noted the letter from the IAJ forwarding a questionnaire for completion by the JCA. There was some brief discussion. Justice Martin said that he would complete the questionnaire on the JCA's behalf.

12 Next meeting

It was noted that the next meeting would be held on Thursday 23rd April 2020 at **5.00pm** Eastern Standard Time.