



Judicial Conference of Australia

GOVERNING COUNCIL

MINUTES OF MEETING: 2020/1

Held on **Saturday 14th March 2020** at the Supreme Court of New South Wales, Sydney.

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
Judge Wayne Chivell	District Court of South Australia
Judge Graham Dart	Supreme Court of South Australia
Deputy Chief Magistrate Brett Dixon	Magistrates Court of South Australia
Justice Steven Dolphin	South Australian Employment Tribunal
Judge Alexandra Harland	Federal Circuit Court of Australia
Justice Rene Le Miere	Supreme Court of Western Australia
Magistrate Jan Maclean	Magistrates' Court of Victoria
Justice Glenn Martin AM	Supreme Court of Queensland
Justice Steven Moore	Supreme Court of Victoria
Chief Judge Elizabeth Morris	Local Court of the Northern Territory
Magistrate Peter Morrison	Magistrates Court of the Australian Capital Territory
Judge Garry Neilson	District Court of New South Wales
Vice President Daniel O'Connor	Industrial Court of Queensland
Deputy Chief Magistrate Leanne O'Shea	Magistrates Court of Queensland
Justice Nicola Pain	Land & Environment Court of New South Wales
Judge Anthony Rafter SC	District Court of Queensland
Justice Robertson Wright	Supreme Court of New South Wales

In attendance

Christopher Roper AM

Secretary

Apologies

Apologies were received from:

Chief Justice Alan Blow AO
Justice John Burns

Supreme Court of Tasmania
Supreme Court of the Australian
Capital Territory

Deputy Chief Magistrate Michael
Daly

Magistrates Court of Tasmania

Magistrate Andree Horrigan

Magistrates Court of Western
Australia

Judge Fleur Kingham
Judge Rachelle Lewitan AM
Justice Neil McKerracher
Judge Andrew Stavrianou

Land Court of Queensland
County Court of Victoria
Federal Court of Australia
District Court of Western
Australia

Justice Michael Walton

Supreme Court of New South
Wales

Judge Gerard Winter

Judges Association of New
Zealand

Resolved (2020/1)

That the apologies be noted and received.

The President welcomed Chief Judge Elizabeth Morris of the Local Court of the Northern Territory, who was attending her first meeting, and Justice Robertson Wright of the Supreme Court of New South Wales, who was attending as an alternate to Justice Michael Walton.

The President also reported that it had recently been noted that the Land Court of Queensland was not represented on the Governing Council. Chief Judge Fleur Kingham of that Court was approached and she had responded that she would like her Court to be represented on the Governing Council and that she would be the representative. However, she was not able to attend this meeting and has sent an apology.

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

The minutes of the meetings of the Governing Council held on 10th and 12th October 2019 had been circulated.

Resolved (2020/2)

That the minutes of the meetings held on 10th and 12th October 2019 be confirmed.

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

The minutes of the Executive Committee meetings held on 7th November 2019 and 30th January 2020 had been circulated.

Resolved (2020/3)

That the minutes of the meetings of the Executive Committee held on 7th November 2019 and 30th January 2020 be noted.

President's Business

3 President's Report

The President reported as follows:

Treatment of pensions paid under defined benefit schemes: cap on benefits paid as pensions

A letter from the Hon David Levine, together with a Fact Sheet from the New South Wales Department of Communities & Justice, had been circulated. The matter was discussed extensively. Members of the Governing Council from jurisdictions other than New South Wales reported that they were not aware of any similar advice to retired judicial officers in their jurisdictions.

Justice Martin reported that he understood that Mr Levine and the Hon Ruth McColl were seeking advice from their accountants.

It was agreed that Governing Council members would contact retired members of their courts and ask whether a similar letter to that received by Mr Levine had been received by them.

Justice Le Miere noted that the JCA had previously obtained advice as to how the scheme would work, and prior to that some form of information from the Australian Taxation Office. He suggested that those documents be considered again before seeking any further advice. [The Advice was received in December 2017 from Bret Walker SC and Perry Herzfeld, and the information from the Australian Taxation Office comprises a number of fact sheets.]

Vice President O'Connor said that he would seek information from a source known to him and would provide that if it were forthcoming.

The Secretary was asked to advise Mr Levine that the JCA was making further enquiries and would report back to him as soon as information was available.

Land Court of Queensland

The President reported that it had been recently noted that the Land Court of Queensland was not represented on the Governing Council, and that Chief Judge

Fleur Kingham, the Chief Judge of that Court, had been approached to nominate a representative and that she had nominated herself.

Justice Martin noted that in the past not all members of that Court had been lawyers, although at present all members were lawyers. He said it would be important to ensure that, for the future, those seeking JCA membership were qualified lawyers.

Address by Professor Mellinghoff in April

The President reported that Professor Mellinghoff's visit to Australia in April had been cancelled, due to the coronavirus pandemic, and accordingly the event planned for Monday 20th April had been cancelled.

Responding to criticism of judges in the media, particularly the judges of the Federal Circuit Court

The President noted that the JCA already has a policy in regard to responding to criticisms in the media and that part of that was that the JCA did not involve itself in political matters. She noted that, however, several judges of the Federal Circuit Court in particular have been constantly pilloried in the press, which was very demoralising for them and their fellow judges of that Court. She said that the JCA should be seen as the body to which judges could go when they experienced this type of criticism.

There was general discussion as to how the JCA could best and most appropriately act in these circumstances.

Judge Dart noted that it was impossible to engage with criticisms which were ignorant and ill-informed; however, the JCA might be able to submit articles which informed some readers.

Judge Rafter reported that two judges of his Court were happy with a letter which the President had sent to the press in regard to them some time ago.

Judge Harland noted that many of the articles reported accurately what the Court of Appeal had said in regard decisions of judges of her Court, but then went on to make very personal criticisms of the judges, which leads to disheartenment and disrespect for the judiciary generally.

Justice Baumann agreed with this observation. He said that family law was a highly political area in Australia because of the place of families in society. He agreed that parts of the media picked up on specific cases in order to run an agenda.

Justice Dolphin enquired whether it might be possible to make a complaint to the Australian Press Council, but it was observed that that Council is very slow to deal with matters and the outcome is likely to be no more than a retraction in very small font many months after the event.

The Secretary noted that recently the JCA has submitted articles for the Legal Affairs section of *The Australian*, and both had been accepted for publication. He also reported that some time ago an article had been submitted to the *Herald-Sun* in Victoria and, contrary to expectations, it was accepted and published. He

suggested that, therefore, the JCA could seek to educate the public by submitting such articles from time to time to both the serious and populist parts of the media. He noted, however, that probably only a minority of the public read newspapers.

Justice Martin suggested that members should be regularly advised in *JCA News & Media* of anything the JCA had submitted to the media in the previous week.

Justice Baumann suggested that whenever the JCA submitted an article or letter to the editor to the media it should also be sent to all heads of jurisdiction with a request that they circulate it to all members of their court.

Justice Martin noted that it was also necessary to acknowledge that there were some things which just cannot be defended.

Resolved (2020/4)

That the President's report be received.

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

The following media releases have been issued and articles and letters to the editor sent since the last meeting of the Governing Council.

15 th November 2019	Media release	Unfounded criticism of judges' decisions ignores essential facts
18 th November 2019	Letter to Editor	<i>Courier-Mail</i> , re article by Peter Gleeson
19 th November 2019	Follow-up letter	<i>Courier-Mail</i> , re article by Peter Gleeson
2 nd January 2020	Letter to Editor	<i>NT News</i> , re editorial unfairly criticising decision by Judge Bruxner
7 th January 2020	Media release	Re editorial in <i>NT News</i> unfairly criticising decision by Judge Bruxner
28 th February 2020	Article	<i>The Australian</i> . No place for politics in anointing judges to the High Court

5 Distribution of JCA media releases

A memorandum had been circulated. The President introduced this item by enquiring whether the JCA's media releases should be more widely circulated, including to heads of jurisdiction and to law schools. The matter was discussed.

It was agreed that in future the JCA's media releases should be sent to the media officers of all courts (or if there is no media officer then the head of jurisdiction) with a request that they circulate them to all members of their courts.

There was a brief discussion in regard to the monitoring of social media. Justice Martin noted that an online article might be different, usually longer, than the same article in the print media. The Secretary noted that the JCA had considered, a year or so ago, whether its media monitoring service should be extended to include monitoring of social media, and the decision was made that, for several reasons, not to do so.

6 Vice President's matters

Accommodation for the Secretariat

A memorandum had been circulated and the Vice President briefly outlined the proposal that the JCA take up an offer from the ANU College of Law to move the Secretariat to that law school. He noted that a room would be provided rent free, as would the provision of support such as computer support, telephone, etc. He also noted that the National Judicial College of Australia was also housed at the ANU College of Law, and the JCA's Secretariat would be in the same corridor.

Justice Martin reported that the new Dean at the ANU College of Law was proposing to establish a judicial studies institute and he suggested that it would be good for the JCA to be involved from the beginning in the formation of that institute. He noted that judicial research was also being undertaken at other universities, such as the University of New South Wales and Flinders University, and that the JCA had, from time to time, been involved in one way or another in that research.

The Vice President noted that such a move would affect the Secretary. The Secretary said that he was, in any event, moving towards a time when he would retire, and that it could be convenient, for all concerned, for it to coincide with a move of the Secretariat to Canberra. He said he thought such a move would be good for the JCA and he fully supported it. The President said that she envisaged there should be a reasonably extended period of time for the handover, during which Chris Roper would continue to provide support and assistance to the new Secretary.

Resolved (2020/5)

That the offer from the ANU College of Law, to house the Secretariat at that law school, be taken up and discussions should continue with the ANU College of Law to work out the details.

That the Executive Committee be given responsibility for filling the position of Secretary.

Change of name for the JCA

A memorandum had been circulated. There was general discussion as to the desirability of changing the name of the JCA and what name might be adopted.

Resolved (2020/6)

That:

- 1 The proposal to change the name of the Judicial Conference of Australia be pursued.
- 2 Members of the Governing Council consider and propose possible new names for the JCA.
- 3 Those proposed names be considered at the next meeting of the Governing Council in June, and that a new name be agreed upon at that meeting.
- 4 At the Annual General Meeting in October a special resolution be sought to change the name of the JCA to that agreed upon at the June Governing Council meeting.

Administration and Membership

7 Secretary's report

The Secretary had nothing to report.

8 Treasurer's report

The profit and loss statement up to 31st December 2019, which had been circulated, and the bank balances, were noted.

Resolved (2020/7)

That the Treasurer's Report be received.

9 Membership report

A membership report had been circulated, and was noted.

10 Amendment to the JCA's Rules

A memorandum had been circulated.

Resolved (2020/8)

That the following resolution be submitted to a Special General Meeting of members of the JCA to be held at 12 noon immediately after this meeting:

That the following Rule 9A be added to the Rules of the Judicial Conference of Australia Inc.:

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).

Activities, projects and matters of concern

11 2020 Colloquium

Justice Martin circulated a copy of the list of topics and speakers for the Colloquium. He briefly outlined the arrangements including:

- the choice of the Pullman Hotel as the venue
- that the Dinner would be at the Northern Club, across the road from the Pullman Hotel
- there would be an excursion to Waiheke on the Friday afternoon
- the Friday night would be a free night.

He said that consideration had been given as to whether the JCA should register for GST in New Zealand but that the cost involved would outweigh any savings arising from an exemption from GST.

Justice Martin reported that the New Zealand judges would register with and pay to the Judges Association of New Zealand, and the receipts would be remitted to the JCA in a single payment.

Justice Martin said that Judge Winter had raised the question as to whether academics should be able to attend. It was agreed that the Governing Council was not in favour of this idea.

It was noted that the International Association of Women Judges was considering postponing its Conference, to be held in New Zealand earlier this year, to the week commencing 3rd October. It was further noted that this might be fortuitous as some may decide to remain in New Zealand and attend the JCA's Colloquium. Justice Pain said that about 300 judges were expected at that Conference. Justice Martin said he would liaise with Justice Pain and Judge Robyn Tupman, who is in charge of arranging the Conference.

Justice Baumann raised the question as to when a decision should be made as to whether the Colloquium would proceed or be cancelled or postponed.

Justice Martin noted that the contract with AM Meetings Plus expires at the conclusion of this year's Colloquium. He proposed that the provision of conference management for the JCA should be put out to tender, but that no decision would be made until after the Colloquium.

Resolved (2020/9)

That the Office Bearers be delegated the authority to pursue this matter and to make a decision as to the JCA's conference organisers for the next four years.

The Vice President noted that the Annual General Meeting would be held during the Colloquium and that his research indicated that there was nothing prohibiting the AGM being held outside Australia.

12 International Association of Judges

Justice Martin reported that the 2020 Annual Meeting of the IAJ would be held in Costa Rica. He said that he would not be able to attend.

13 Commonwealth Magistrates' and Judges' Association

There was no report from this Association.

14 Member Benefits Program

Reports on this Program for the months of December 2019 and January 2020 had been circulated and were noted.

15 Online course: The Modern Judiciary: who they are, what they do, and why it matters

Justice Martin introduced this item by reporting that he had watched about 80% of this online course and had found it very good and intriguing. He said it was easy to access and engage with. He said he saw it directed towards inquisitive lay people but would also be of interest to high school students studying legal studies, and first year law students. He said it made the point that judges were doing a good job.

Justice Martin said he had contacted Andrew Lynch at the University of New South Wales, who knows James Lee, the creator of the English online course. He had asked what it would cost to produce a similar course in Australia, noting that the British course involved filming only in London and Cardiff whereas a wider range of judges and magistrates would need to be filmed in Australia.

Justice Martin said that the online course had the complete support of the judiciary in England and Wales, and that it was launched by the Lord Chief Justice. It was a venture of the judiciary of England and Wales and Kings College London.

Judge Harland said that the comments on the course were very positive and she saw it as a useful educative way to put out a positive message about the judiciary. Justice Pain said that she found it was not pitched at a 'spoon feeding' level but was quite sophisticated.

Justice Martin observed that its content would be time-sensitive and some parts of an Australian course may need to be changed over time.

Chief Judge Morris said that the District Court of New Zealand had a pared down version of this course on its website, which would be worth looking at.

Justice Baumann noted that the English course would probably be evaluated at some stage, and it would be interesting to look at that evaluation. He suggested that the ANU College of Law might be involved. He thought it was an exciting opportunity.

The President said that the JCA might undertake this project as a joint venture with others, such as some courts.

Justice Martin said that departments of education might be amenable to supporting its development given that the audience would include school children. He said he would pursue the question of costs with Andrew Lynch. He

said it could only go ahead if it had the endorsement of the Council of Chief Justices, Council of Chief Judges and Council of Chief Magistrates.

16 General business

Judge Dart reported that he had attended a course offered by the CMJA in London, which he had found very interesting. Three things he noted were the quite common use of justices of the peace in criminal matters, that no transcript is prepared even in the Supreme Court, and that the Westminster Magistrates Court dealt with a very high number of extraditions.

The President reported that she had received a letter from the Chief Justice of the Supreme Court of Queensland which reported that the judges of that Court continued to support the establishment of a judicial commission in that State. Justice Martin noted that the resolution to renew this support, made originally ten years ago, was to forestall the possibility of a disciplinary body only being established; not an educational one also. He said the decision has not been publicised in case it were seen as being political.

17 Next meeting

It was noted that the next meeting would be held in Melbourne on Saturday 13th June 2020.

There being no further business, the meeting concluded at 11.50 am.

Signed as a true record:

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President