



Judicial Conference of Australia

THE 2020 ANNUAL REPORT

PRESENTED BY THE PRESIDENT ON BEHALF OF THE GOVERNING COUNCIL

Presented to the Annual General Meeting on 28 November 2020

Introduction

It is an honour to present, on behalf of the Governing Council, the 2020 Annual Report to members of the Judicial Conference of Australia for the year ended 30 June 2020.

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: vacant
Magistrates/Local Courts Representative: Her Honour Magistrate Jan Maclean
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 Deputy Chief 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

Her Honour Magistrate Jan Maclean, Magistrates' 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

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

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 Deputy Chief Magistrate Michael Daly, Magistrates Court of Tasmania

His Honour Judge Graham Dart, Supreme Court of South Australia

His Honour Deputy Chief 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 Andrée Horrigan, Magistrates Court of Western Australia

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

Her Honour President Fleur Kingham, Land Court of Queensland

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

Her Honour Judge Rachelle Lewitan AM, County Court of Victoria

Her Honour Magistrate Jan Maclean, Magistrates’ Court of Victoria |
Intermediate Courts Representative

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

His Honour Judge Anthony Rafter SC, District Court of Queensland

His Honour Judge Rauf Soulio, District Court of South Australia

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 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
Sydney on 14 March 2020, virtually on 13 June 2020, and will meet again both
virtually and in Canberra on 28 November 2020. In addition, three matters
were dealt with by means of a flying minute on 11 September 2020, 5 October
2020 and 2 November 2020. Communication involving all members of the
Council has taken place, as occasion required, between meetings.

The Executive Committee met three times in the financial year by telephone
teleconference or Microsoft Teams on 7 November 2019, 30 January 2020, 23
April 2020, and since then in the current financial year on 23 July 2020 and 29

October 2020. As with the Governing Council, communication between members also took place, as occasion required, between meetings.

Tribute to retiring member

I wish to pay a tribute to Judge Wayne Chivell, formerly of the District Court of South Australia, who has served for a number of years as a member of the Governing Council, the Executive Committee and as the Intermediate Courts Representative. He has served outstandingly in these roles and his contributions to the discussions at Governing Council and the Executive Committee are highly valued.

Change in the composition of the Governing Council

The Land Court of Queensland has not, until recently, been represented on the Governing Council. An invitation was extended to that Court to nominate a representative to the Governing Council and, as a result, President Fleur Kingham has joined the Governing Council. We are very pleased to have her participation.

As a result of Judge Chivell's retirement Judge Rauf Soulio of the District Court of South Australia has recently joined the Governing Council, and we value his presence.

Australian Honours

This year a number of 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 Chief Justice Catherine Holmes, Supreme Court of Queensland

Officer of the Order of Australia

The Hon Justice Derek Price, District Court of New South Wales

Member of the Order of Australia

The Hon Justice Peter Applegarth, Supreme Court of Queensland

The Hon Hartley Hansen QC

The Hon Justice Susan Kenny, Federal Court of Australia

The Hon Shane Marshall

Deputy Chief Magistrate Jane Mottley, Local Court of New South Wales

Medal of the Order of Australia

Dr John Lowndes

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 respect 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, initially Magistrate Marc Sargent and later Magistrate Jan Maclean. 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 Anthony Coter, a Juris Doctor student at the University of Melbourne.

Membership

As at the time of the preparation of this report there were 737 members of the JCA, comprising 592 serving judicial officers, 132 retired judicial officers, and 13 honorary and life members. The total membership represents a small decrease of 3.7% over the previous year. During the year a number of members retired from their courts and did not continue their JCA membership. Of the 737 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 have also continued the practice of writing follow up letters to recently appointed judicial officers who did not accept the initial invitation to join the JCA.

Public statements

During this financial year the JCA has made a number of public statements on matters affecting the judiciary in Australia as follows:

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| 5 November 2019 | Unfounded criticism of judges' decisions ignores essential facts |
| 18 November 2019 | Letter to the Editor of <i>Courier-Mail</i> regarding open justice in courts |

19 November 2019	Further Letter to the Editor of <i>Courier-Mail</i> regarding open justice in courts
2 January 2020	Letter to the Editor of the <i>NT News</i> regarding a NCAT decision
7 January 2020	Improper and unfair attack on judicial officer
24 February 2020	No place for politics in anointing judges to the High Court
25 March 2020	Article for “Legal Affairs”, <i>The Australian</i> regarding High Court’s decision in the Aliens Power case
15 April 2020	Media commentary in the High Court decision in the Pell case
16 April 2020	Inaccurate and unfair media commentary on the High Court decision in the Pell case
22 June 2020	Letter to the Editor, <i>Sydney Morning Herald</i> , regarding alleged institutional racism in courts
23 June 2020	Article in regard to appointments to the High Court

The letter to the Editor of the *Sydney Morning Herald* of June 2020 generated the most feedback from members. The letter referred to a statement in an article by a young lawyer: “We need systemic change to eliminate institutional racism within the courts”, and took issue with the assumption behind this statement – that there is, in fact, institutional racism within the courts in this country. The majority of the feedback was positive, but three members expressed extremely negative views about the letter, and with the approval of the other Office Bearers, I engaged in correspondence with these members.

As a result, it appeared to the Executive that questions of disadvantage and inequality of outcomes for indigenous people in our Courts was an issue that

many JCA members were vitally interested in and one that warranted further investigation and discussion within the JCA. As a result, this correspondence generated two initiatives within the JCA.

First, we established a Members' Forum on the JCA website on which members could discuss this topic and also add other topics for discussion.

Second, the Executive resolved to propose to the next Governing Council meeting that we form a sub-committee to be chaired by Chief Justice Chris Kourakis to examine and report to the Governing Council on whether there is anything in the structural way courts operate, in their administrative and judicial aspects, which can be improved in an effort to eliminate inequality of outcomes for indigenous people. This proposal is to be considered by the Governing Council at the meeting in Canberra (attended by some via teleconference) on 28 November 2020. The proposal arose out of a suggestion made by Chief Justice Chris Kourakis and we are grateful that he has agreed to chair the sub-committee should it be formed.

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 was elected as the President of the IAJ, the first Australian to hold this office. Justice Glenn Martin, one of Australia's representatives to the IAJ, has presented regular reports on the activities of the IAJ, which 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. A small group of JCA members act as the representatives of the JCA on the IAJ. The 2019 Annual Meeting of the IAJ was held in Nur-Sultan, Kazakhstan in September 2019 and was attended by representatives from the JCA, who attend at their own expense. The 2020 Annual Meeting was not able to be held due to the COVID-19 pandemic.

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 Judges Association of New Zealand

We have continued our close association with the Judges Association of New Zealand. Judge Gerard Winter, its President, is able to join us at this Annual General Meeting by teleconference. He has been attending, and will continue to attend, our Governing Council meetings, as an observer. As reported below, we plan to conduct our 2021 Colloquium in Auckland, New Zealand in conjunction with the Judges Association of New Zealand.

Colloquium

This year's Colloquium, which had been planned for Auckland, New Zealand, could not be held because of the COVID-19 pandemic but our present intention is that the Colloquium will be held in Auckland in October 2021 in conjunction with the Judges Association of New Zealand. Vice-President, Justice Glenn Martin, is chairing the planning committee for that Colloquium.

The contract with AM Meetings Plus as conference organisers has now expired and it was resolved to invite tenders from other conference organisers, as well as AM Meetings Plus. Justice Michael Walton has taken charge of the tender process with the assistance of Chris Roper. The question of choice of conference organiser will be discussed at the Governing Council meeting on 28 November 2020.

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 or other bodies seeking expressions of interest from retired judicial officers for appointment under various pieces of legislation. During the financial year four such requests were made:

- 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*.
- Request from the Australian Taxation Office for an independent reviewer of compensation matters under the Commonwealth Scheme for Compensation for Detriment Caused by Defective Administration.
- Request from the Centre for Animal Industry Studies for a retired judicial officer to serve on an independent oversight panel.

And in the current financial year:

- Request, via the Commonwealth Attorney-General's Department, from the Republic of Kiribati for the position of Chief Justice.
- Request from the Office of the Communications Access Coordinator of the Commonwealth Department of Home Affairs for the position of Public Interest Advocate under the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* (Data Retention Act).

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 Scheme

The JCA continues to offer members a significant members' benefits package under the Members Benefits Scheme which was put in place last year. The

scheme offers discounted prices on a range of benefits and prices and can be accessed through the JCA website.

COVID-19

The COVID-19 pandemic forced a number of changes on the JCA this year.

- The June 2020 Governing Council meeting could not be held in person because of travel restrictions due to the virus and was, instead, held by Microsoft Teams. We are indebted to Justice Neil McKerracher and his PA, Deborah Edmonds, for facilitating the meeting and conducting a tutorial to help us to use the technology.
- The date for the third Governing Council meeting for the year, along with the AGM, was changed to 28 November 2020, in the hope that travel restrictions would have eased by then and the venue for those meetings was changed from Melbourne to Sydney to Brisbane and finally to Canberra as a result of changes in the COVID-19 status of those cities and changing travel restrictions imposed by various States.
- Travel restrictions also forced the postponement of the Auckland Colloquium until October 2021. This is the first year since the JCA was formed in which there has been no colloquium.
- The JCA had agreed to host an event in conjunction with the Konrad Adenauer Stiftung (KAS) at which a visiting German judge, Professor Mellinghoff, would speak on the topic of judicial integrity. The event was to be held in Melbourne on Monday 20 April 2020 followed by a reception. Due to the pandemic, Professor Mellinghoff's visit was cancelled.

Momentous changes

The year 2020 has been a year of significant change for the JCA.

- **Change to the constitution**

At a Special General Meeting held on 14 March 2020, after the Governing Council meeting, a special resolution was passed adding a new Rule 9A to the constitution dealing with dispute resolution. This was required by ACT legislation, the ACT being where the JCA is incorporated.

- **Change of name**

At its meeting on 13 June 2020 the Governing Council discussed a proposal that the JCA should change its name, and agreed that a flying minute be circulated containing up to three alternative names, and that the name thereby agreed upon be submitted to the 2020 Annual General Meeting. On 23 July 2020 the Executive Committee, noting the votes received for the proposed names in response to the flying minute, agreed to propose to the Governing Council that the Association change its name to Australian Judicial Officers Association Inc (AJOA). This proposal will be put to the AGM to be held on 28 November 2020. The reasons behind the proposed change of name were twofold: widespread confusion as to what is meant by a “Judicial Conference” and what the function of such an association might be; and equally widespread confusion between the JCA and the NJCA. That proposed resolution will be proposed as a special resolution at the 2020 Annual General meeting.

- **Change of home**

Earlier this year, the JCA received an offer from the ANU College of Law to move the JCA Secretariat to that law school. The proposal was that a room would be provided rent free, as would the provision of support such as computer, telephone, etc. The National Judicial College of Australia (NJCA) is also housed at the ANU College of Law, and the JCA’s Secretariat would be in the same corridor. In reporting to the Governing Council meeting on 14 March 2020, Vice-President Justice Glenn Martin advised that the new Dean at the ANU College of Law is proposing to establish a judicial studies institute and 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. A sub-committee was formed to investigate that offer and report back to the Governing Council. Negotiations have proceeded and it will be recommended to the Governing Council meeting on 28 November 2020 that the offer be accepted. It is envisaged that the Secretariat would move to its new home at the Australian National University in the New Year.

- **Chris Roper retiring and appointment of new CEO**

Chris Roper has been the Secretary of the JCA throughout most of its existence. He has served the organisation efficiently, tirelessly and faithfully. As Chris is based in Melbourne, the Secretariat's move to ANU would affect Chris's ability to function as Secretary. In discussions, Chris advised 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.

Moving the office to the ANU meant that we should look for someone in Canberra to take over from Chris. We were fortunate that the timing allowed us to interview, and then engage, Lillian Lesueur as Chris' successor. Lillian is currently the Chief Executive Officer of the National Judicial College of Australia. Lillian holds the degrees of BA (Econ) from Macquarie University and a Master of Business Administration from the Australian Graduate School of Management. She has held the position of Chief Executive (or similar) at Australian Science Innovations, Australian Institute of Management NSW and ACT Pty Ltd, and Hudson Global Resources. The more than four years she has spent at the NJCA has given her a detailed understanding of the Australian judiciary. She will commence as CEO of the JCA early next year. (It was determined that CEO was a less confusing title than Secretary.) It is envisaged that there will be period of transition for the handover.

Justice Judith Kelly
President