



Judicial Conference of Australia

EXECUTIVE COMMITTEE

MINUTES OF MEETING: 2020/3

Held by Microsoft Teams on **Thursday 23rd July 2020**
commencing at 5.00 pm Eastern Standard Time

Participating

| | |
|----------------------------------|----------------|
| Justice Judith Kelly (President) | in the Chair |
| Justice Michael Baumann AM | Treasurer |
| Chief Justice Alan Blow AO | |
| Judge Rachelle Lewitan AM | |
| Justice Glenn Martin AM | Vice-President |
| Justice Neil McKerracher | |
| Magistrate Jan Maclean | |
| Justice Steven Moore | |

Apology

Justice John Burns
Judge Wayne Chivell
Magistrate Brett Dixon
Justice Michael Walton

In attendance

Christopher Roper AM (Secretary)

1 Minutes of the previous meeting

The minutes of the previous meeting held on 23rd April 2020 had been circulated.

Resolved:

That the minutes of the meeting held on 23rd April 2020 be approved.

2 Correspondence received since the April 2020 meeting of the Executive Committee

A list of the correspondence sent and received by the President since the last meeting had been circulated and was noted.

3 President's report

The President reported in regard to the following matters:

Follow-up of non-renewing members

The President reported that a letter from her to members who had not renewed for the previous year (2019-20) had elicited a number of renewals of membership, and some of those who renewed had written expressing thanks for the follow-up. She said that Justice Baumann had drafted a pro forma email for Governing Council members to use in encouraging members of their own courts to renew their membership for the current year. She also said that Justice Walton had agreed to draft a questionnaire for use in early August, to try to ascertain members' reasons for not renewing.

Judge Lewitan asked if a list of those from her Court who had not renewed could be sent to her. The Secretary said that he would send such lists to all Governing Council members in the next few days.

The Heydon matter

The President noted that a number of courts had sexual harassment policies in place, and that the JCA had issued a media release on the topic. She also noted that more recently there had been articles proposing that Mr Heydon be stripped of his pension. It was agreed that the JCA should not become involved in any further discussion.

Correspondence in regard to alleged institutional racism in Australian courts

The President outlined the chain of correspondence emanating from an article in *The Sydney Morning Herald* and the JCA's subsequent (unpublished) letter to the editor of that paper. She briefly reported on the correspondence from Judge Haesler of the District Court of New South Wales and Magistrate Taylor of the Magistrates Court of the ACT. She said that she had written back to both of them and that Magistrate Taylor had subsequently replied and thanked the President for her email. The President said that she had invited Magistrate Taylor to prepare a message to members as there appeared to be differing understandings of what is meant by 'institutional racism'.

New JCA Discussion Forum

The President said that both judicial officers had agreed to the correspondence being uploaded to the JCA's new Members' Discussion Forum. Justice Martin said that he thought the new Discussion Forum was a good idea and that it would encourage members to engage in useful discussion or debate. Justice McKerracher agreed although he noted that, given the nature of judicial officers, it would be unlikely that there would be much discussion.

Justice Moore said that he was pleased that the President had encouraged a constructive dialogue with Magistrate Taylor, and that the JCA should encourage debate and discussion on issues such as this.

Other media activity

The President referred to a number of articles in *The Australian* which proposed an American style vetting of appointments to the High Court. She said she was particularly disturbed by the illogicality in an article by Joe Kelly but had accepted the counsel not to respond to it.

Commonwealth Magistrates' and Judges' Association

The President raised the question of whether there might be a non-voting attendee at Governing Council meetings to be a 'liaison person' with the CMJA given that Chief Judge Lowndes was no longer a member of the Governing Council. Justice Martin suggested that it first be checked what entitlement the JCA had to sit on any governing body of the CMJA. The Secretary said that he would enquire and circulate the result of his enquiry.

October meeting of the Governing Council and the Annual General Meeting

It was generally agreed that there was continuing doubt as to whether it would be possible to hold the Governing Council meeting and AGM in Sydney in October. Justice Martin reported that the Annual General Meeting needed to be held by the end of November 2020 in order to comply with s. 70AA of the *Associations Incorporation Act 1991* (ACT).

It was agreed that the meeting be held at the Supreme Court in Brisbane on 28th November 2020, and that the Secretary send an email to all Governing Council members to check if that date would be suitable to them.

Resolved:

That the President's report be received.

4 Media releases, letters to the editor or articles issued since the last meeting of the Executive Committee

The Executive Committee noted the two media releases and one letter to the editor which had been issued since the last meeting.

5 Financial matters and Treasurer's report

A profit & loss report for the period 1st April to 30th June 2020 had been circulated, and was noted. It was also noted that the balance in the accounts and term deposits at the bank as at 17th April 2020 totalled \$607,615.16. The Treasurer briefly reported on several items in the report which showed less than budgeted income or expenditure over budget.

Resolved:

That the Treasurer's report be received.

6 Move of the Secretariat to the ANU College of Law

An Action List had been circulated. Justice Martin proposed that a sub-committee be appointed, comprising the President, himself (as chair) and Justice Baumann, to work through the Action List and implement the decisions to be made, and to report back to the Executive Committee.

Resolved:

That a sub-committee comprising Justices Kelly, Martin and Baumann be appointed to manage the implementation of the Secretariat's move to the ANU College of Law including making all necessary decisions, and that the sub-committee report back to the Executive Committee.

7 Change of name of the Association

The Executive Committee noted that the proposed new name which had received the most votes, and an overall majority, was Australian Judicial Officers Association, abbreviated as AJOA. It was agreed that this name be recommended to the Governing Council and that a special resolution be proposed at the 2020 Annual General Meeting. Justice Martin said that he would prepare the notice for the special resolution.

8 Membership matters

A membership report as at 16th July 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.

Resolved:

That the membership report be received.

9 Secretariat matters

A memorandum prepared by Anthony Coter, the Administrative Assistant, setting out a number of improvements made to work done in the Secretariat, had been circulated and was noted.

10 Requests to the JCA for retired judicial officers to perform certain roles

A memorandum listing all requests received to date had been circulated. The President briefly outlined how this activity worked. The Secretary described the most recent request circulated to retired members which had resulted in some discomfort by some as to its appropriateness. There was some discussion as to whether there should be a policy as to what requests should be circulated.

Resolved:

That the Secretary refer any request that appears to be doubtful to the Executive Committee for approval or otherwise, prior to its circulation to retired members who are on the list to receive such requests.

11 Colloquium

There was nothing to report. The Secretary noted that it was proposed to invite tenders for the future organisation of the JCA's Colloquiums, including from the current conference organisers, AM Meetings Plus.

It was agreed that the Secretary would prepare a job description based on the current agreement with AM Meetings Plus.

12 Member Benefits Scheme

The Secretary referred to clause 1(a) of the agreement with Member Benefits Australia (MBA) which provides for an annual review of the agreement prior to the anniversary of its signing (14th June 2019). He said that he had overlooked doing this but that MBA had agreed to extending the review until shortly after this meeting. He reported that it was not easy to ascertain the extent to which JCA members had taken up offers through the Scheme and that the reports from MBA were difficult to interpret and the advice given by MBA in regard to the taking up of offers was not always particularly helpful.

Justice Baumann proposed that the Scheme be continued for one further year; noting that allowance had already been made for it in the Budget. He said that the Secretariat should bookmark a review of the Scheme at least 90 days in advance of the anniversary of the signing of the agreement (ie. 90 days before 14th June 2021), and should actively seek to obtaining better accounting from MBA.

The President noted that it inevitably takes time for members to become used to the Scheme.

Justice Baumann proposed that the Executive Committee reconsider the Scheme at its first meeting in 2021. He also proposed that there be an invitation in the *JCA News & Media* for members to report on whether they had taken up offers in the Scheme.

13 Judicial Incapacity

A copy of an article “Reforming Responses to the Challenges of Judicial Incapacity” by Andrew Lynch and Alysia Blackham, published in the *Federal Law Review* 2020, Vol 48(2) at pages 214-246, had been circulated. Justice Martin suggested that this was a topic of relevance to the JCA and its members. He suggested that he contact Andrew Lynch and enquire what he had in mind that the JCA might do, with a view to this topic being brought to the November meeting of the Governing Council.

Justice Martin said that governments could easily come up with a knee-jerk reaction in response to a particular situation involving a judicial officer. He said it was better for the JCA to be involved from the beginning: that the best time to decide something is when it does not need to decide.

Judge Lewitan referred to the provisions in the *Judicial Commission of Victoria Act 2016* which had been preceded by extensive discussion with the Government as to whether the Government could demand that a judge be medically examined and what records could be required or provided. She said that she felt that the protections were embodied in that Act.

Justice Martin noted that there was a fund of knowledge in regard to the Victorian judiciary which the JCA could refer to, and there was also the long experience of the Judicial Commission in New South Wales. Justice Martin said that one of the objects of the JCA is to promote and maintain judicial independence and that that principle could apply in situations where judicial incapacity was being dealt with.

It was agreed that Justice Martin would speak to Professor Andrew Lynch and then prepare a proposal for consideration by the Governing Council at its meeting in November.

14 Next meeting

It was noted that the next meeting would be held on Thursday 29th October 2020 at **5.00pm** Eastern Summer Time.