

# Australian Judicial Officers Association

## GOVERNING COUNCIL

### MINUTES OF MEETING

Held on **Saturday 13 March 2021** at the Federal Court of Australia Law Courts Building, Sydney. The meeting commenced at 10.00 am.

#### Present in person

Justice Glenn Martin AM (Chair)	Supreme Court of Queensland
Magistrate Jennifer Atkinson	Local Court of New South Wales
Justice Michael Baumann AM	Family Court of Australia
Justice Jenny Blokland	Supreme Court of the Northern Territory
Deputy Chief Magistrate Janelle Brassington	Magistrates Court of Queensland
Justice John Burns	Supreme Court of the ACT
Deputy Chief Magistrate Michael Daly	Magistrates Court of Tasmania
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
Justice Rene Le Miere	Supreme Court of Western Australia
Justice Neil McKerracher	Federal Court of Australia
Justice Steven Moore	Supreme Court of Victoria
Magistrate Peter Morrison	Magistrates Court of the Australian Capital Territory
Judge Garry Neilson	District Court of New South Wales
Vice President Daniel O'Connor OAM	Industrial Court of Queensland
Justice Nicola Pain	Land & Environment Court of New South Wales
Judge Anthony Rafter	District Court of Queensland
Judge Rauf Soulio	District Court of South Australia
Justice Michael Walton	Supreme Court of New South Wales

#### Present by teleconference

Chief Justice Alan Blow AO	Supreme Court of Tasmania
Judge Michael Cahill	County Court of Victoria
Judge Andrew Stavrianou	District Court of Western Australia
Judge Gerard Winter	Judges Association of New Zealand

#### In attendance

Christopher Roper AM	CEO
Lillian Lesueur	CEO

## Apologies

Apologies were received from:

Judge Alexandra Harland	Federal Circuit Court of Australia
Magistrate Andree Horrigan	Magistrates Court of Western Australia
Magistrate Jan Maclean	Magistrates Court of Victoria
President Fleur Kingham	Land Court of Queensland
Chief Judge Elizabeth Morris	Local Court of the Northern Territory

The President welcomed Justice Jenny Blokland, Supreme Court of the Northern Territory, Deputy Chief Magistrate Janelle Brassington, Magistrates Court of Queensland, and Judge Michael Cahill, County Court of Victoria, all of whom were attending their first AJOA meeting.

### **1 Confirmation of minutes of the 28 November 2020 meetings of the Governing Council**

The minutes of the two meetings of the Governing Council held on 28 November 2020 were confirmed.

### **2 Minutes of the 28 January 2021 meeting of the Executive Committee**

The minutes of the Executive Committee meeting held on 28 January 2021 were noted.

### **3 President's Report**

#### **3.1 *Post-Retirement Income and Restrictions on Practice Sub-Committee***

The President reported that a sub-committee has been formed to prepare a response for the Council of Chief Justices with respect to revising Chapter 7 of the Guide to Judicial Conduct:

Justice Walton (Chair)	Supreme Court of NSW
Chief Justice Blow	Supreme Court of Tasmania
Justice Martin	Supreme Court of Qld
Justice Pain	Land and Environment Court NSW
Magistrate Atkinson	Magistrates Court of NSW
Magistrate Maclean	Magistrates Court of Victoria
The Hon Mary Finn	
Wayne Chivell	
Stephen Scarlett	

Justice Martin reported that he and Justice Walton had met with Chief Justice Allsop to discuss the proposed revision of Chapter 7. The review has been instigated as more retired judicial officers are going back into practice once they leave the bench. The circumstances faced by retired judicial officers varies, with some receiving a pension while others receive superannuation. There are no penalties if the guidelines are breached.

*Action: AJOA office holders to appoint a judicial officer from the Commonwealth Courts to the sub-committee. The judge/s need not be on the Governing Council.*

*Action: the sub-committee to prepare a draft report by the end of May 2021 for consideration by the Governing Council at their June 2021 meeting. The AJOA will prepare a redraft of Chapter 7 reflecting the Governing Council's views for consideration by the Council of Chief Justices at their October 2021 meeting.*

*Action: Governing Council members to consult with members of their court to seek their views. It is important to retain confidentiality: Governing Council members can advise their colleagues that the AJOA is considering making recommendations on changes to Chapter 7 to the Council of Chief Justices. Members of Governing Council can be provided with a copy of the discussion points outlining the proposed revision to Chapter 7 as prepared by Chief Justice Grant on behalf of the Council of Chief Justices. The discussion points paper is confidential and not to be further distributed.*

### **3.2 Equality of Outcomes in the Courts Sub-Committee**

Justice Martin reported that Chief Justice Kourakis has agreed to Chair a Sub-Committee to advise on this issue, and was agreeable to the following judicial officers being invited to sit on the Sub-Committee:

Chief Justice Kourakis (Chair)	Supreme Court of South Australia
Judge Nathan Jarro	District Court of Queensland
Magistrate Rose Falla	Magistrates Court of Victoria
Dr John Lowndes	formerly Chief Judge Local Court of the NT
Judge David MacLean	District Court of WA
Magistrate Louise Taylor	Magistrates Court of the ACT

It was noted that some of these judicial officers are not members of the AJOA.

*Action: A judicial officer from South Australia to be invited to join the sub-committee.*

*Action: Justice Martin to write to each of the judicial officers to invite them to join the sub-committee.*

### **3.3 Discussions with the Association of Australian Magistrates**

Justice Martin reported that he has spoken with the current Chair of the Association of Australian Magistrates, Magistrate Chris Webster, with regard to a possible merger of the AJOA and the AAM. Magistrate Webster advised that Magistrate Roger Prowse, Local Court of NSW, will become Chair of the AAM in mid-March, and that the issues should be raised with the new AAM Executive. It is expected that the new President will view favourably holding discussions with the AJOA.

The AJOA needs to consider how to attract magistrates to join. A number of magistrates consider the AJOA membership fee to be too high.

### **3.4 Federal Court and Family Court representation on the Governing Council**

Justice Martin noted that the legislative changes to merge the two courts will come into effect on 2 September 2021. The intention is that there will be one court with two divisions, with Chief Justice Alstergren becoming Chief Justice of the Federal Circuit and Family Court of Australia.

It is desirable to continue to have a representative from each division on the Governing Council. If Chief Justice Alstergren prefers to have only one representative from his court on the Governing Council the AJOA may co-opt a member from the other division as judicial officers from the two divisions will have different membership interests.

*Action: Justice Martin to seek the views of Chief Justice Alstergren prior to the June Executive Committee meeting.*

### **3.5 ALRC – Apprehended Bias report**

A sub-committee has been formed:

Justice Neil McKerracher	Federal Court of Australia
Justice Ann Ainslie-Wallace	Family Court of Australia
Justice Mark Livesey	Supreme Court of SA
Judge Julia Baird	Federal Circuit Court
Magistrate Jan Maclean	Magistrates Court of Victoria

One further judicial officer will also be invited.

The ALRC will be releasing a consultation paper on 30 April with submissions to be received by 30 June 2021. The ALRC will issue its final report by 30 September 2021. Justice McKerracher reported that the sub-committee will meet shortly with a view to producing a paper within the next two months.

A case currently before the High Court may result in a refinement of the law, although the ALRC review is broader than the issue being considered by the High Court. It was agreed that specific legislation on this topic could encourage more court users to seek disqualifications. It is preferable for developments to be determined through common law.

*Action: Justice McKerracher to invite one further judicial officer to join the sub-committee.*

### **3.6 One Day Conference on Judicial Appointments and Judicial Incapacity**

Justice Martin noted that the AJOA does not have a policy on judicial appointments, and raised the question as to whether we should have one.

It was agreed that the AJOA should hold a one day conference in February/March 2022 to discuss the topics of judicial appointments and judicial incapacity: “getting on and off the bench.” A number of academics have done significant research on both topics and they should be asked to present. It would be informative if a retired Attorney-General could be prevailed upon to also present.

The issue of judicial incapacity is faced by heads of jurisdiction and ties in with current discussions on judicial wellness. Judicial incapacity impacts all judicial officers in the court. It would be helpful to have an agreed procedure to facilitate judicial retirement because of physical or mental incapacity, providing a respectful way for a judicial officer to leave the court. It was noted that discussion of judicial incapacity can't be separated from the topics of judicial pensions and superannuation.

It was agreed that judicial appointments are currently a topic of discussion and controversy. It would be helpful for the AJOA to have an agreed policy on some minimum standards for judicial appointment. This could then be drawn upon if required.

The AJOA has in the past taken steps to develop policies in these two areas. The conference will facilitate formulation of AJOA policies.

*Action: The Executive Committee be asked to set up a sub-committee to develop a one day conference on judicial appointments and judicial incapacity.*

### **3.7 AJOA Policy on Change of Title for Magistrates**

Since 2007 it has been AJOA policy for magistrates to have their title changed to judge. Previous AJOA Presidents have written to Attorneys-General expressing AJOA's position, but the AJOA position has been rejected.

It was agreed that it may be more effective if the members of Governing Council met with their respective Attorney-General to put forward the AJOA position.

The Attorneys-General may be concerned that if magistrates become judges they will want to receive a pension rather than superannuation. Governing Council agreed that the AJOA should not seek this change.

The South Australian Magistrates Association meets with their Attorney General once a year. The SA Attorney-General is not expected to support the move until other states adopt the change.

A former Victorian Attorney-General was supportive of the idea but was reluctant for the State to make the change on its own.

It could be good time to request the change in Tasmania as there is a jurisdictional transfer of functions to the Magistrates Court currently underway.

It was agreed that it is important to seek to ensure the Chief Justice in each State/Territory is in favour of the change as the Attorney-General is most likely to seek the views of their Chief Justice.

A focus on this issue may encourage more magistrates to join the AJOA.

*Action: Justice Martin to ask Magistrate Maclean if the current Victorian Attorney-General is likely to support the idea.*

*Action: Magistrates on the Governing Council to prepare a set of generic talking points by the end of April for consideration by the Governing Council to ensure a consistent message is delivered. The paper prepared by Dr John Lowndes on this issue will provide a good basis for the development of the talking points.*

*Action: A magistrate and a Supreme Court justice will seek to meet with their Attorney-General to advance AJOA's policy. The discussion will focus on the generic talking points supplemented by state specific points.*

### **3.8 Judges' Pensions Amendment (Pension Not Payable for Misconduct) Bill 2020**

Justice Martin advised the Council that the AJOA did not make submission on the proposed bill to the Senate Committee.

## **4 Media releases issued since the last meeting of the Governing Council**

The media releases were noted.

It was agreed that the AJOA would not prepare a media release expressing concern over the comments made recently by the Chief Justice of India as the issue was not related to the rule of law.

## **5 Chief Executive Officer's report**

Lillian advised that she has been in the CEO role for almost three weeks. She thanked Chris Roper and Anthony Cotter for their instructive handover.

The AJOA name change took effect on 1 March. Quotes are being sought from two firms to redesign the AJOA logo. The website and member benefits information has been updated to reflect the new name. The email address has been updated to [secretariat@ajoa.asn.au](mailto:secretariat@ajoa.asn.au).

The AJOA office has moved to the ANU College of Law in Canberra. An MOU has been signed with the ANU.

It has been agreed that the 2021 Colloquium will be held in Brisbane at the Emporium Hotel. The 2022 Colloquium has been pushed back one week to 14 to 16 October 2022. A "save the date" notice was placed in the weekly newsletter issued on 12 March 2021.

## **6 Treasurer's report**

The Treasurer had nothing to report. A profit and loss statement for the period 1 July to 30 December 2020 had been circulated and was noted.

## **7 Membership report**

Governing Council agreed to assign the task of managing the AJOA membership to the Vice-President. The Vice President will be responsible for bringing ideas to support and grow membership to the Governing Council. While increasing the number of members will be beneficial financially, it is most important to grow the number of members to give increased weight to the views of the AJOA. The possibility of setting percentage targets for membership by court was discussed.

*Action: Each Governing Council member to consider how to make the AJOA more relevant to their colleagues.*

*Action: Lillian to prepare a report for each court with the names of AJOA members in that court.*

## Projects and Activities

### 8 Colloquiums

The 2021 Colloquium will be held at the Emporium Hotel in Brisbane on 8 to 10 October.

The 2022 Colloquium will be held at the Pullman Hotel in Auckland on 14 to 16 October 2022.

Conference Design are handling the logistics and administration for both Colloquiums.

Justice Walton reported that the Planning Committee for the 2021 Colloquium will be meeting shortly to review the program as some of the sessions planned for the deferred 2020 Auckland Colloquium will need to be altered to reflect the change in location. As the 2021 Colloquium is being held in a High Court sitting week we will not be able to have a serving High Court justice as a keynote speaker.

Judge Winter reported that the Judges Association of New Zealand will be focusing this year on increasing the range of member services and increasing the number of retired judges who remain members. They are holding after work functions for retired judges and they have been well attended. There is a focus on the families of judicial officers, recognising the importance of families with respect to judicial wellness.

Retired judges will be encouraged to return to work in the courts in the post Covid-19 era to help deal with backlogs. How retired judges are appointed and remunerated and the cases they can work on is a topic of discussion.

The Judges Association of New Zealand are extending each members membership by one year because of Covid-19.

Judge Winter reported that they are having an informal gathering on Friday 24 to Sunday 26 September, and invited Australian judges to attend.

### 9 International Association of Judges

Justice Martin reported that the annual IAJ meeting will probably be cancelled this year. The Asian, North American and Oceania group are planning to hold a virtual meeting in May 2021.

### 10 Online Course: The Modern Judiciary

Justice Martin reported that he has spoken with Professor Andrew Lynch, Head of School and Deputy Dean of UNSW Law, with regard to the online course. It has been run three times in the UK with a total of about 9,000 high school students, undergraduate law students and members of the public registering to participate.

Professor Lynch has a connection with the author of the England and Wales course, James Lee of Kings College London. Professor Lee is happy to assist the Australian project team. The course was run in England and Wales through Future Learn, who also operate in Australia. Future Learn did not charge users the first time they participated in the course. They charged users who enrolled a second time, and advertised other courses they deliver to participants.

The Chief Justices are generally supportive of the concept, and it is expected that the Council of Chief Justices will endorse the development of the course.

Justice Martin advised that one option is to retain a five week program. Five teams (one for each week) of judicial officers and academics could be given responsibility for the review and development of the material for their week. It was agreed that a project manager will need to be engaged to support the work of the teams, and that the AJOA will need to pay them. Justice Martin would like to run the course for the first time in 2022.

*Action: Justice Martin to seek approval by flying minute for the expenditure required to engage a project manager.*

## **11 Next meeting**

The next meeting will be held on Saturday 19 June 2021 in Melbourne.

*Action: Justice Moore to advise by 30 April 2021 if a court in Melbourne can be used for the meeting. If a court cannot be used the Executive Committee will decide on a venue for the meeting.*

There being no further business, the meeting concluded at 11.35 am.

Signed as a true record:

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President