



Judicial Conference of Australia

## GOVERNING COUNCIL

### MINUTES OF MEETING: 2020/2

Held on **Saturday 13<sup>th</sup> June 2020** by means of Microsoft Teams.

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
Chief Justice Alan Blow AO	Supreme Court of Tasmania
Justice John Burns	Supreme Court of the Australian Capital Territory
Judge Wayne Chivell	District Court of South Australia
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
Judge Alexandra Harland	Federal Circuit Court of Australia
Magistrate Andree Horrigan	Magistrates Court of Western Australia
Judge Fleur Kingham	Land Court of Queensland
Justice Rene Le Miere	Supreme Court of Western Australia
Judge Rachelle Lewitan AM	County Court of Victoria
Magistrate Jan Maclean	Magistrates' Court of Victoria
Justice Glenn Martin AM	Supreme Court of Queensland
Justice Neil McKerracher	Federal Court of Australia
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
Vice President Daniel O'Connor	Industrial Court of Queensland
Justice Nicola Pain	Land & Environment Court of New South Wales
Judge Anthony Rafter SC	District Court of Queensland

Judge Chris Robison  
Judge Andrew Stavrianou

District Court of New South Wales  
District Court of Western  
Australia

Justice Michael Walton

Supreme Court of New South  
Wales

Judge Gerard Winter

Judges Association of New  
Zealand

### **In attendance**

Christopher Roper AM

Secretary

### **Apologies**

Apologies were received from:

Judge Garry Neilson  
Deputy Chief Magistrate Leanne  
O'Shea  
The Hon Tony Pagone QC

District Court of New South Wales  
Magistrates Court of Queensland

International Association of  
Judges

#### Resolved (2020/10)

That the apologies be noted and received.

The President welcomed Chief Judge Fleur Kingham of the Land Court of Queensland, who was attending her first meeting, and Judge Chris Robison of the District Court of New South Wales, who was attending as an alternate to Judge Garry Neilson.

### **1 Confirmation of minutes of the previous meeting of the Governing Council**

The minutes of the meeting of the Governing Council held on 14<sup>th</sup> March 2020 had been circulated.

#### Resolved (2020/11)

That the minutes of the meeting held on 14<sup>th</sup> March 2020 be confirmed.

### **2 Minutes of the meeting of the Executive Committee held since the last meeting**

The minutes of the Executive Committee meeting held on 23<sup>rd</sup> April 2020 had been circulated.

#### Resolved (2020/12)

That the minutes of the meeting of the Executive Committee held on 23<sup>rd</sup> April 2020 be noted.

## President's Business

### 3 President's Report

#### 3.1 *Letter to members who had not renewed for the 2019-20 membership year*

The President reported that a letter had been sent to these members, seeking feedback from them as to whether there was dissatisfaction with the JCA and inviting them to renew. She said that no negative feedback had been received about shortcomings in the JCA's services, but several emails had been received thanking us for the reminder and saying their non-renewal had been an oversight. Some of them had subsequently renewed.

Justice Walton noted that it appeared there was a slower rate of renewals for the forthcoming membership year and suggested that the JCA conduct an exit survey of members who had not renewed, asking them to give feedback on particular aspects of the JCA's service to its members. He suggested this might excite more attention. The President asked that he prepare a draft of that survey.

The Secretary reported that his impression was that the rate of renewal was consistent with the expected rate at this stage in the process.

There was then general discussion and it was agreed that initially Governing Council members would be supplied with a suggested form of words to send to members of their respective courts who had not so far renewed their membership, as well as to non-members, inviting them to renew or join; together with lists of those who had so far renewed and those who had not. After Governing Council members had sent on this message to members of their courts, then in about early August the exit survey would be conducted amongst those members who had not by then renewed.<sup>1</sup>

Deputy Chief Magistrate Daly suggested that Survey Monkey be used for the survey as this would most likely result in a better response, and this was agreed to.

#### 3.2 *Membership by Tasmanian and Victorian magistrates*

The President noted that there was an arrangement with the Tasmanian magistrates whereby they had all agreed to be members of the JCA and their association paid their membership fees on their behalf by means of a single payment. She also noted that a new arrangement was being put in place for Victorian magistrates whereby they would individually continue to have the option of being a member of the JCA or not, but that the annual renewal would be arranged with the Treasurer of the Victorian Magistrates Association and a single invoice issued for their membership fees. Magistrate Maclean said that she was trying to get to the Tasmanian situation but at least the new process would be seamless and simple.

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<sup>1</sup> Under Rule 6(c) of the JCA's Rules, a member ceases to be a member of the JCA only after six months expires from the due date for payment, ie. in this case 31 December 2020.

President Kingham said that these arrangements might be possible in smaller courts, and she had recently spoken to the members of her Court about the benefits of belonging to the JCA. Other members of the Governing Council noted that such an arrangement would be easier in smaller courts but could be difficult in larger courts.

Justice Baumann also pointed out that in national courts, such as his own, the judges do not see each other regularly and so it would be more difficult to encourage membership of the JCA by all members. He noted that if a small number disagreed this could create another dynamic within the court which might be difficult to manage. He said that the aim of increasing membership was not to make money but to have a stronger organisation. He observed that Judge Shanahan had, some time ago, tried to encourage all the judges of his Court to pay *en masse* for their JCA membership out of their judicial allowance but this had not proceeded. Judge Rafter agreed that this had been explored and that he would look at it again. He noted that he did not think the lack of renewals was due to dissatisfaction with the JCA but rather that members were busy and distracted.

Deputy Chief Magistrate Daly raised the possibility of a discount, of say 10%, being provided where all members of a court were members of the JCA *en bloc*. The President suggested that the Governing Council resolve that should any court wish to organise an arrangement similar to that in place for Tasmanian magistrates, all members of that court could pay the initial \$60 membership fee and thereafter would be given a 10% discount so long as the whole court were members *en bloc*.

Several members suggested that this would not be worth pursuing so far as their own court was concerned. Justice Baumann suggested that the proposal be put on hold and that first feedback be obtained, as is proposed, from non-renewing members. The President agreed that the matter be deferred to the October meeting.

Magistrate Morrison observed that one of the benefits of having the JCA is its willingness to engage with the media in defence of a member of the judiciary even if that person is not a JCA member. He asked whether it was JCA policy to defend a judicial officer even if that person were not a JCA member. There was agreement that the JCA did not confine itself to defending only JCA members. The Secretary observed that even if a judicial officer were personally attacked, such an attack also was an attack on the concept of judicial independence and was therefore within the JCA's objectives and was worth responding to.

### 3.3 *Feedback on recent media releases*

The President referred to the recent media releases, which had been circulated. She said that feedback from judicial officers was universally positive, except for a response from Sir Anthony Mason who took issue with a statement made in the media release relating to the aliens case, and referred her to an article by the Hon Michael McHugh. She said she had written to Sir Anthony apologising and had received a courteous response. In regard to the media release relating to the Pell case, the feedback from laypersons had been universally negative. She said she had responded to one person whose comments were thoughtful and he had subsequently responded and thanked her for her response. Feedback had also been received from Fr Frank Brennan SJ who felt the media release had impugned the honour of the journalist concerned. The President said that she had responded saying that the JCA had not impugned the honour of the journalist, but simply

defended the honour of the judges of the Court of Appeal who had been accused of prejudice and dishonourable conduct.

Resolved (2020/13)

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.

20 <sup>th</sup> March 2020	Article	<i>The Australian</i> . No place for politics in anointing judges to the High Court
16 <sup>th</sup> April 2020	Media release	Inaccurate and unfair media commentary on the High Court decision in the Pell case
17 <sup>th</sup> April 2020	Article	<i>The Australian Online</i> , "Media commentary on the High Court decision in the Pell case" but published under the heading "Cardinal George Pell: media bays for blood of judges on Court of Appeal"

### **Administration and Membership**

#### **5 Accommodation for the Secretariat**

Justice Martin, the Vice President, reported that the accommodation at the ANU College of Law was still available, and at no cost. He suggested that a move towards the end of the year or early in the new year would be desirable. It was agreed that the specific arrangements be considered further at the October meeting of the Governing Council.

#### **6 Proposed change of name of the Association**

A number of suggested names had been circulated, and there was extensive discussion of them. It was agreed that any new name for the Association should include the words 'judicial officers' and 'Australia' not 'Australasia', and that the abbreviation should not confuse the Association with the AJJA.

It was agreed that a draft resolution would be circulated by flying minute containing up to three alternative names, and that the name thereby agreed upon would be submitted to the 2020 Annual General Meeting. Justice Martin said

that he would prepare the proposal for consideration by the Governing Council and voting upon by flying minute.

## **7 Secretary's report**

A report from the Secretary had been circulated and was noted.

## **8 Treasurer's report**

The profit and loss statement up to 31<sup>st</sup> March 2020, which had been circulated, and the bank balances, were noted.

Resolved (2020/14)

That the Treasurer's Report be received.

## **9 Membership report**

A membership report had been circulated, and was noted.

## **Activities, projects and matters of concern**

### **10 Colloquium**

Justice Martin reported that nothing further needed to be done at this stage. He said he had written to all the speakers who continued to be committed, although he noted that some of the topics may need to be revisited but this would be done later.

### **11 International Association of Judges**

Justice Martin reported that the 2020 Annual Meeting had been deferred until September 2021 and would be held in Costa Rica.

He observed that the IAJ's Constitution did not allow for holding an AGM virtually and that this was also the case with the JCA's Rules. Justice Martin said that he would prepare a proposed amendment to the JCA's Rules to permit this, which could also be considered at the Annual General Meeting to be held in October 2020.

Judge Chivell said that there was also a need to have in place a better platform for voting when meetings are held virtually. The Secretary said that he would investigate what was available and possible.

**12 Commonwealth Magistrates' and Judges' Association**

There was no report from this Association.

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

Justice Martin said that he had recently spoken to Andrew Lynch at the University of New South Wales, who had then contacted James Lee at the University of London. He said he was particularly interested to know what costs would be involved, but that James Lee was reticent to advise the costs of the UK project. Justice Martin said that the costs would be the time of the academics who would create the subject matter of the course, and the creation of the video content. The extent of these costs would depend on a number of factors, including the length and format of the Australian course. He noted that the English course had five sessions; but this number may not be needed for Australia.

Justice Martin said he would meet with Andrew Lynch to try to ascertain the cost of the academics' input. He observed that the University of New South Wales has inhouse video production facilities. He said that when the JCA's Secretariat was based at the ANU College of Law there would also be access to its facilities.

Justice Martin said that after speaking to Andrew Lynch he would prepare a report for the next meeting.

**14 General business**

The Secretary advised the meeting that he had been told that on this day Chief Justice Blow would have been a judge for 20 years. The meeting warmly congratulated Chief Justice Blow on this achievement.

**15 Next meeting**

It was noted that the next meeting would be held at the Federal Court of Australia, Melbourne on Saturday 10<sup>th</sup> October 2020, to be followed by the Annual General Meeting.

Judge Lewitan suggested that future meetings of the Executive Committee be held using Microsoft Teams, and it was agreed that this be done.

There being no further business, the meeting concluded at about 11.30 am.

Signed as a true record:

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President