



Judicial Conference of Australia

2015 ANNUAL REPORT

Introduction

It is a pleasure to present, on behalf of the Governing Council, the 2015 Annual Report for the year ended 30 June 2015 to members of the Judicial Conference of Australia.

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 preparation of this report are as follows:

Office bearers

<i>President:</i>	The Hon Justice Steven Rares
<i>Vice President:</i>	The Hon Justice Robert Beech-Jones
<i>Treasurer:</i>	His Honour Judge Brian Withers, AM
<i>Secretary:</i>	Mr Christopher Roper, AM

Executive Committee

His Honour Judge Michael Baumann, AM, Federal Circuit Court of Australia

The Hon Justice Robert Beech-Jones, Supreme Court of New South Wales

The Hon Chief Justice Alan Blow, OAM, Supreme Court of Tasmania

Her Honour Judge Elizabeth Bolton, Chief Magistrate, Magistrates Court of South Australia

His Honour Judge Allan Fenbury, District Court of Western Australia

The Hon Justice Timothy Ginnane, Supreme Court of Victoria

His Honour Judge Graeme Henson, Chief Magistrate, Local Court of New South Wales

The Hon Justice Judith Kelly, Supreme Court of Northern Territory

The Hon Justice Glenn Martin, AM, Supreme Court of Queensland

The Hon Justice Hilary Penfold, PSM, Supreme Court of the Australian Capital Territory

The Hon Justice Steven Rares, Federal Court of Australia

His Honour Magistrate Marc Sargent, Magistrates Court of Victoria

The Hon Justice Michael Walton, Industrial Court of New South Wales
His Honour Judge Brian Withers, AM Supreme Court of South Australia.

Governing Council

His Honour Magistrate Richard Bayly, Magistrates Court of Western Australia
The Hon Justice Robert Beech-Jones, Supreme Court of New South Wales
The Hon Chief Justice Alan Blow, OAM, Supreme Court of Tasmania
Her Honour Judge Elizabeth Bolton, Chief Magistrate, Magistrates Court of South Australia
His Honour Magistrate Michael Brett, Magistrates Court of Tasmania
His Honour Judge Wayne Chivell, District Court of South Australia
His Honour Judge Allan Fenbury, District Court of Western Australia
Her Honour Magistrate Karen Fryar, AM, Magistrates Court of the Australian Capital Territory
The Hon Justice Timothy Ginnane, Supreme Court of Victoria
His Honour Magistrate Greg Grogan, Local Court of New South Wales
His Honour Judge Peter Hannon, Industrial Relations Court of South Australia
The Hon Justice Judith Kelly, Supreme Court of the Northern Territory
His Honour Chief Magistrate Peter Lauritsen, Magistrates Court of Victoria
His Honour Chief Magistrate John Lowndes, Magistrates Court of the Northern Territory
The Hon Justice Glenn Martin, AM Supreme Court of Queensland
His Honour Judge Michael McInerney, County Court of Victoria
The Hon Justice Carmel McLure, President, Court of Appeal, Supreme Court of Western Australia
The Hon Justice Peter Murphy, Family Court of Australia
His Honour Judge Garry Neilson, District Court of New South Wales
Deputy President Daniel O'Connor, Industrial Court of Queensland
Her Honour Deputy Chief Magistrate Leanne O'Shea, Magistrates Court of Queensland
The Hon Justice Tony Pagone, International Association of Judges (co-opted)
His Honour Chief Judge John Pascoe, AO CVO, Federal Circuit Court of Australia
The Hon Justice Hilary Penfold, PSM, Supreme Court of the Australian Capital Territory
The Hon Justice Steven Rares, Federal Court of Australia
His Honour Judge Michael Shanahan, District Court of Queensland
The Hon Justice Terry Sheahan, AO, Land and Environment Court of New South Wales
The Hon Justice Michael Walton, Industrial Court of New South Wales

His Honour Judge Brian Withers, AM, Supreme Court of South Australia

The Governing Council has met on three occasions over the past 12 months: in Melbourne (28 March 2015), in Sydney (27 June 2015) and in Adelaide today. Communication involving all members of the Council has taken place, as occasion frequently required, between meetings.

The Executive Committee met in telephone conference on 27 November 2014, 5 February, 30 April, 23 July and 24 September 2015. As with the Governing Council, communication between members also took place, as occasion required, between meetings.

Tributes to retiring members

After holding office for many years, Judge Brian Withers, AM will retire today as Treasurer of the JCA, as well as the representative of the Supreme Court of South Australia on the Governing Council. He has been an outstanding Treasurer for the JCA, and I and my predecessors as President have relied on him with complete confidence to maintain oversight of our finances. We wish him well in his retirement from the bench in South Australia and express sincere thanks to him for his contribution to the work of the JCA.

I also wish to pay a tribute to another South Australian, Judge Elizabeth Bolton, who also has retired as a member of the Governing Council representing the Magistrates Court of South Australia from which she is also to retire today as Chief Magistrate. She has been a highly respected member of the Governing Council for a number of years, and we will miss her wise and perceptive contributions to our discussions.

Changes in the composition of the Governing Council

Justice Philip McMurdo, on the expiration of his term of office as President at last year's Colloquium, resigned from the Governing Council as the representative of the Supreme Court of Queensland. As a former President, he has been appointed an Honorary member of the JCA.

No other persons have resigned from the Council since last October.

During the past twelve months the only person to join the Governing Council has been Deputy President Daniel O'Connor, representing the Industrial Court of Queensland.

Justice Glenn Martin, AM, already a member of the Governing Council as the representative of the Industrial Court of Queensland, was appointed as the representative of the Supreme Court of Queensland.

Thanks

I am very grateful for the dedicated service of each member of the Council over the past 12 months. The work of councillors, including the additional load of those who serve also on the Executive Committee, is performed usually outside working hours and on weekends. The councillors, of course, are all busy judicial officers but they have found time to attend to the business of the JCA, some of which arose on very little notice and required urgent attention.

As a Council member, I have been privileged to experience the collegiality, professionalism and good humour of Council meetings where the strength of the JCA's broad membership across Australian courts of diverse jurisdictions is demonstrated. As the President, I have been very fortunate to have the assistance and encouragement of each member of the Council.

I am especially grateful for the guidance and support which I have received from Justice Robert Beech-Jones, as Vice President. There were very many occasions on which I sought his advice, which was always offered thoughtfully and promptly.

I am also very grateful to Christopher Roper for the work he does seemingly effortlessly as Secretary and for his experienced and sage guidance. He has been the backbone of the JCA for many years and we all value his fine service.

Membership

As at 30th September 2015 the membership of the JCA numbers 624 comprising 508 serving judicial officers and 116 honorary members and retired judicial officers. This membership extends across virtually every court in Australia.

The business of the Governing Council and Executive Committee

The remuneration of judicial officers

The JCA has continued to make representations to the Commonwealth Government concerning several aspects of the taxation of superannuation benefits, judicial pensions and redundancy payments. The recent changes to impose an excess contributions tax has unfairly fallen on Federal Circuit Court, Tasmanian and almost all Territory judges. All other Commonwealth and State judges entitled to pensions are exempt. The JCA has recently made representations to the Commonwealth Attorney-General and Treasurer on this anomaly.

The JCA continues to seek a correction of the anomalous tax treatment of judicial pensions for judges appointed to the Federal and Family Courts and the Supreme Courts of the Australian Capital Territory and the Northern Territory during the period of the so-called superannuation surcharge. To date these representations have not met with any positive responses from the Commonwealth Government.

The JCA has also become concerned about the Remuneration Tribunal's continuing freeze on Commonwealth judicial salaries. This has, of course, a spillover effect on the way in which most other jurisdictions fix their judicial salaries. I wrote to the President of the Remuneration Tribunal in this regard on 3 July 2015. The President replied on 17 July 2015 acknowledging the need to maintain judicial remuneration at a level commensurate with the scale and scope of the responsibility of judicial office and sufficient to retain and attract competent people to undertake this role. He also recognised that "judges perform important public functions and are committed to a life of public service". On 21 September 2015 the Tribunal announced that it was commencing a review of remuneration and allowances for holders of judicial and related offices. It indicated that it would seek submissions from the Government, each relevant Federal court and other Federal bodies as well as from relevant State bodies.

International Association of Judges

During this year the JCA has, for the first time, participated in the work of the International Association of Judges (IAJ) as a member of that organisation. Until recently, the Australian judiciary was represented in the IAJ by a group of judges described as the Australian Section of the IAJ. That group now acts as the representatives of the JCA. They are all members of the JCA.

The JCA's principal focus will remain matters which affect the judiciary in Australia. But the objects of the JCA provide a role, where appropriate, in contributing to the independence and standing of the judiciary outside this country. In participating in the IAJ, the JCA can better contribute to the international judicial community. It also benefits JCA members by providing to the JCA direct access to the work of this longstanding prestigious international organisation with a membership drawn from 81 countries.

The JCA is particularly grateful for the assistance of Justice Tony Pagone of the Federal Court, a Vice-President of the IAJ, as the JCA has assumed its role within the IAJ. Justice Pagone has been co-opted as a member of the Governing Council in order to be a point of contact between the JCA and the IAJ.

A sub-committee of the Governing Council has been formed to act as the liaison between the IAJ and the JCA. It comprises Justice Pagone as its chair, Magistrate Michael Brett, Justice Glenn Martin, Justice Peter Murphy and Justice Roslyn Atkinson.

Judicial Appointments Comparative Survey

During the year the JCA published a comparative survey of the processes for appointment of judicial officers, both throughout Australia and in several other comparable jurisdictions. The survey reported on the situation in each Australian jurisdiction in respect of authority to appoint, eligibility for appointment, criteria for appointment and the selection process.

The report has been uploaded to the JCA's website, and has also been widely distributed, in electronic form, to all members of the JCA, to heads of jurisdiction throughout Australia, to attorneys-general and to shadow attorneys-general.

Social Media and the Courts and Judicial Officers

The issue of social media and judicial officers has been the topic of discussion at the Governing Council. Concerns have been expressed by a number of Governing Council members in regard, particularly, to the use of social media to denigrate and even defame judicial officers. A committee of the Governing Council has been formed to consider further this matter. Discussions are now taking place with the Australasian Institute of Judicial Administration as to whether a joint conference might be held with that body to examine this issue further. Planning for that conference is in its early stages.

The Productivity Commission's Report in regard to Access to Justice Arrangements

The Productivity Commission released its final report, *Access to Justice Arrangements* on 3 December 2014. It dealt with various matters, a number of which are of concern to the JCA. The Commission's proposal that court fees should be used to recover the cost of providing the courts to resolve disputes is the one of greatest concern to the JCA, but it also has some reservations in regard to the Commission's proposals concerning self-represented litigants, the use of "McKenzie friends", early case management, litigation funding and legal aid.

On 4 December 2014 the JCA issued a media release expressing concerns in regard to some aspects of the report.

The JCA issued a further media release "Justice Should Not Be For Sale" on 25 June 2015 which received some coverage in the media. A copy is on the JCA's website.

On 26 June 2015 as President of the JCA, I presented a paper entitled "Is Access to Justice a Right or a Service?" at a conference on the Commission's Report at Monash University. This paper was a critique of the report. The paper has been uploaded to the JCA's website.

Judges providing advice to holders of vice-regal office

Another subject being considered is the role of judges, if any, in providing advice to the holders of vice-regal office. The completion of this work had to await the paper as already discussed, upon the related subject of judges in vice-regal roles.

Public commentary in regard to issues affecting the judiciary

Where appropriate the JCA must respond to public controversies affecting the judiciary and the courts. The extent to which serving judicial officers are able to participate in public debates of this kind is limited. But it is essential that, within proper bounds, the JCA is heard on these subjects. The JCA is mindful of the distinction between the functions of the judiciary and those of the other branches of government. But on occasions where the actions of governments have the potential to affect the independence or the core functioning of courts, it is incumbent on the judiciary, particularly through this organisation, to speak.

In deciding whether to make a submission or a public statement on a subject of controversy affecting a particular jurisdiction, the JCA is always guided by the judicial officers who represent it on the Council.

During the year the JCA has issued a number of media releases on matters affecting the judiciary in Australia.

Social media attacks on a judicial officer – on 17 December 2014 the JCA issued a media release in the wake of the siege at the Lindt Café in Sydney, defending the actions of the judicial officer who had earlier granted bail to the killer in this distressing event.

Accountability of the judiciary – on 11 March 2015 the President had a letter to the editor published in the *Courier Mail* in which he responded to the *Courier Mail*'s earlier editorial on the accountability of the judiciary.

Support for the change of title for Northern Territory magistrates to 'judge' – in light of the Northern Territory Government's review of this matter, the JCA reaffirmed its position that the title for magistrates should be that of 'judge'. A statement was released on 15 May 2015. Subsequently legislation has passed through the Northern Territory Legislature to enact this change.

Concerns in regard to infringements on the independence of the judiciary in other countries

The JCA also acted on concerns as to impacts on the independence of the judiciary in two other countries. This was in accordance with one of the JCA's objectives that it "maintain, promote and improve the quality of the judicial system, as an instrument of the rule of law, in Australia and internationally".

Timor-Leste

On 28 November 2014, as President, I wrote to the President and the Prime Minister of Timor-Leste, in English and Portuguese, expressing concern in regard to the treatment of members of the judiciary of Timor-Leste, and emphasising the need to protect the independence of the judiciary in a democracy under the rule of Law. I also wrote to the President of the Court of Appeal in Timor-Leste expressing support for the independence of the Court's members. A media release to the Australian media was also issued at the same time. No response was received to these letters.

Turkey

The JCA issued a media on 9 June 2015 expressing grave concern about the detention of two judges in Turkey after they ordered the release from pre-trial detention of police officers and journalists. The JCA called for their release.

Copies of the letters referred to above, and the media releases, are on the JCA's website.

Honorary and life membership of the JCA

Since its inception, the JCA has had a provision in its Rules for appointment of Honorary Members. This category of membership is open for all former Presidents and those others whom the Governing Council may appoint. At this Annual General Meeting members of the JCA will be invited to amend the Rules to provide that former Presidents will be appointed to a new category of Life Members, with full rights and privileges to participate in the JCA, and the category of Honorary Member will be open to others, who will not have the rights and privileges of membership otherwise available to members.

Possible extension of membership of the JCA to New Zealand judges

During the year the Governing Council considered whether membership of the JCA might be extended to New Zealand judges. The matter remains under consideration

but the Governing Council resolved that I write to the Chief Justice of New Zealand, the Rt Hon Dame Sian Elias, and invite her to nominate a judge to attend Governing Council meetings as an observer. I am delighted that Justice Rebecca Ellis is attending this year's Colloquium and the Governing Council meetings being held during the Colloquium.

Colloquium

This year's colloquium in Adelaide is very well attended and is the result of a vast amount of work by the organising committee of Justice Robert Beech-Jones, Judge Julie McIntyre, Justice Peter Murphy Justice Hilary Penfold and Judge Brian Withers, AM. I thank them for their efforts in securing an outstanding program of speakers and other events. A JCA colloquium not only provides the occasion for a meeting of judicial officers from across the Australian judiciary. It also results in a collection of papers and materials of ongoing value to the JCA and its members.

Steven Rares