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Judicial Entitlements Act 2015

**CERTIFICATE PURSUANT TO SECTION 35**

**Certificate 1/2019**

I certify that, pursuant to section 35 of the *Judicial Entitlements Act 2015*, the conditions of service set out in the attached schedules are authorised. Unless otherwise provided, the conditions take effect from 1 July 2019.

**Hon Jill Hennessy MP**  
Attorney-General  
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Date: 26 / 8 / 2019

Schedule 1	
Condition of service	Entitlement
Transfer of accrued annual leave – Supreme and County Court judges	(1) A judge of the Supreme Court or the County Court is entitled to have unused annual leave transferred from an immediately prior Victorian public office, if that prior office is pensionable.
Definitions	<p>(2) For the purposes of this schedule:</p> <ul style="list-style-type: none"> <li>(a) an office is <b>pensionable</b> if the holder of that office can, under a relevant Act, become eligible for a pension upon retirement or resignation as a result of service in that office;</li> <li>(b) <b>relevant Act</b> has the same meaning as in section 16A of the <b>State Superannuation Act 1988</b>;</li> <li>(c) leave is <b>unused</b> if the leave has accrued, and has not been paid out, taken or cancelled; and</li> <li>(d) a <b>Victorian public office</b> includes a Victorian judicial office.</li> </ul> <p>(3) This schedule applies to judges of the Supreme Court or the County Court who hold that office on or after 1 July 2019.</p>

**Note to schedule 1:**

1. A reference in this schedule to a judge:
  - a. in relation to the Supreme Court, includes the Chief Justice, the President of the Court of Appeal and a Judge of Appeal;
  - b. in relation to the County Court, includes the Chief Judge;
  - c. does not include an associate judge of the Supreme or County Court; and
  - d. does not include a reserve judge or reserve associate judge of the Supreme or County Court.

Schedule 2	
Condition of service	Entitlement
Long service leave – associate judges of the Supreme Court	<p>(1) An associate judge of the Supreme Court is entitled to long service leave.</p> <p>(2) An associate judge of the Supreme Court:</p> <ul style="list-style-type: none"> <li>(a) accrues and may access six months of long service leave after seven years of service, one month of which can be accessed after five years of service; and</li> <li>(b) accrues and may access 6/7<sup>th</sup> of one month of long service leave for each completed year of service after seven years of service.</li> </ul> <p>(3) If a person is an associate judge of the Supreme Court on 1 July 2019, clause (2) applies to that person from the date that the person was appointed as an associate judge or master of the Supreme Court.</p> <p>(4) This schedule:</p> <ul style="list-style-type: none"> <li>(a) supersedes the entitlements in schedule 2 to Certificate 1/2018, in relation to an associate judge of the Supreme Court, who: <ul style="list-style-type: none"> <li>i. holds office on 1 July 2019; or</li> <li>ii. is appointed on or after 1 July 2019;</li> </ul> </li> <li>(b) does not affect the entitlements of an associate judge of the Supreme Court who ceased to hold office before 1 July 2019; and</li> <li>(c) does not affect the entitlements of an associate judge of the County Court or a magistrate.</li> </ul>
Definitions	<p>(5) For the purpose of this schedule:</p> <ul style="list-style-type: none"> <li>(a) <b>Certificate 1/2018</b> means the certificate issued pursuant to section 35 of the <b>Judicial Entitlements Act 2015</b> and signed by the Attorney-General on 8 January 2018.</li> </ul>

**Note to schedule 2:**

1. The long service leave balance of an associate judge of the Supreme Court after 1 July 2019 must be calculated to include a deduction of all long service leave that was taken by, or paid out to, the associate judge, before and after 1 July 2019.

Schedule 3	
Condition of service	Entitlement
Public transport – a judge or associate judge of the Supreme Court and a judge of the County Court	<p>(1) A judge of the Supreme Court, an associate judge of the Supreme Court and a judge of the County Court are entitled to travel on Victorian public transport (trains, trams and buses) at no personal cost.</p> <p>(2) The reference to 'gold pass', in the condition of service entitled 'Acting Judges' in schedule 1 to the 2007 Certificate, is amended to read 'public transport';</p> <p>(3) This schedule:</p> <p>(a) supersedes the condition of service entitled 'gold pass' in schedule 1 to the 2007 Certificate; and</p> <p>(b) takes effect on 1 July 2019.</p>
Definitions	<p>(4) For the purposes of this schedule:</p> <p>(a) <b>2007 Certificate</b> means the certificate signed by the Attorney-General on 19 July 2007, under section 15 of the <b>Judicial Remuneration Tribunal Act 1995</b>.</p>

#### Notes to schedule 3:

1. Section 43 of the **Judicial Entitlements Act 2015** provides that any certificate issued under section 15 of the **Judicial Remuneration Tribunal Act 1995**, as in force immediately before its repeal, is taken to be an entitlement certificate under the **Judicial Entitlements Act 2015**.
2. Until the issue of this certificate, the entitlement to free travel on public transport for a judge of the Supreme or County Court was provided under the certificate signed by the Attorney-General on 19 July 2007, under section 15 of the **Judicial Remuneration Tribunal Act 1995**. That certificate referred to a 'Gold Pass', which is an obsolete historical reference.
3. This certificate expands the class of judicial officers who are entitled to this public transport condition of service to include associate judges of the Supreme Court. The certificate signed by the Attorney-General on 19 July 2007, under section 15 of the **Judicial Remuneration Tribunal Act 1995**, did not provide this entitlement to associate judges of the Supreme Court.
4. The entitlement to free travel on public transport includes V/Line services, but does not include taxis.

Schedule 4	
Condition of service	Entitlement
Long service leave – reserve judges of the Supreme and County Courts	<p>(1) A reserve judge is entitled to long service leave.</p> <p>(2) The long service leave entitlement of a reserve judge accrues at the following rates:</p> <ul style="list-style-type: none"> <li>(a) six months of long service leave after the completion of seven years of service, one month of which can be accessed after five years of service; and</li> <li>(b) after the completion of seven years of service, 6/7<sup>ths</sup> of one month of long service leave for each completed year of service after seven years of service.</li> </ul> <p>(3) For the purpose of clause (2), a reserve judge:</p> <ul style="list-style-type: none"> <li>(a) only accrues long service leave: <ul style="list-style-type: none"> <li>i. on or after 6 February 2019; and</li> <li>ii. when the reserve judge is engaged to undertake the duties of a judge of the court on a full-time basis;</li> </ul> </li> <li>(b) does not accrue any long service leave: <ul style="list-style-type: none"> <li>i. when he or she is engaged to undertake the duties of a judge of the court on a sessional basis; or</li> <li>ii. when he or she is not engaged to undertake the duties of a judge of the court; and</li> </ul> </li> <li>(c) does not accrue any long service leave for service that was undertaken before 6 February 2019, which was undertaken when he or she was a reserve judge.</li> </ul> <p>(4) A reserve judge may, if there is any long service leave that has accrued and is accessible, take or be paid out long service leave in the following manner:</p> <ul style="list-style-type: none"> <li>(a) the reserve judge may, with the approval of the relevant head of jurisdiction (i.e. the Chief Justice or Chief Judge, as applicable), take long service leave while the reserve judge is engaged to undertake the duties of a judge of the court on a full-time basis;</li> <li>(b) the reserve judge may take long service leave while the reserve judge is engaged to undertake the duties of a judge of the court on a sessional basis; and</li> <li>(c) the reserve judge may be paid long service leave at any time that the reserve judge is not engaged to undertake the duties of a judge of the court.</li> </ul> <p>(5) If, at the time that a person ceases being a reserve judge, there is any long service leave that has accrued and is accessible, the person is entitled to be paid out at the cessation of the person's appointment as a reserve judge.</p> <p>(6) The payment under clause 4(c) and (5) is based on:</p>

	<p>(a) if the person is a reserve judge of the Supreme Court, the salary that would be payable if the judge were engaged, on a full time basis, to undertake the duties of a Judge of the Court (other than a Judge of Appeal); or</p> <p>(b) if the person is a reserve judge of the County Court, the salary that would be payable if the judge were engaged on a full time basis to undertake the duties of a judge of the County Court.</p> <p>(7) If a reserve judge, immediately prior to appointment to that office, served as a judge of the Supreme Court, a judge of the County Court, an interstate judge, a reserve judge or the Chief Magistrate:</p> <p>(a) the years of service in the prior office are recognised as if they had been served as a reserve judge; and</p> <p>(b) the balance of any long service/sabbatical leave entitlement accrued or accruing in the prior office (other than entitlements accrued as an interstate judge) (which has not been taken or paid out) can be carried over to the office of reserve judge.</p> <p>(8) A person who was appointed as a reserve judge shortly after the commencement of the <i>Courts Legislation Amendment (Reserve Judicial Officers) Act 2013</i> is taken, for the purposes of this schedule, to have served as a judge of the Supreme Court immediately prior to their appointment as a reserve judge.</p> <p>(9) This schedule takes effect on 6 February 2019.</p>
Definitions	<p>For the purposes of this schedule:</p> <p>(10) A reserve judge is not <b>engaged to undertake the duties of a judge of the court</b> when the person is:</p> <p>(a) engaged under section 81GA of the <b>Constitution Act 1975</b>; or</p> <p>(b) engaged under section 12H of the <b>County Court Act 1958</b>; or</p> <p>(c) a serving judge of a court of another State, the Northern Territory or the Australian Capital Territory or of the Commonwealth, who receives a salary in relation to his or her office in that other State or Territory or the Commonwealth; or</p> <p>(d) not otherwise paid a Victorian salary for their service as a reserve judge of the Supreme Court or reserve judge of the County Court.</p> <p>(11) A <b>reserve judge</b>:</p> <p>(a) is a reserve judge of the Supreme Court or a reserve judge of the County Court; and</p> <p>(b) is <u>not</u> a reserve associate judge of the Supreme Court or a reserve associate judge of the County Court.</p>

#### Notes to Schedule 4:

1. If a reserve judge takes the one month of long service leave under clause (2), after five years of service, the reserve judge will only be able to access five months of long service leave if the reserve judge completes seven years of service.
2. The reference to 'immediately prior' in clause (7) reflects the wording in Certificate 2/2014, which was issued pursuant to section 35 of the **Judicial Entitlements Act 2015** and signed by the Attorney-General on 30 June 2014. Consistently with the examples in Certificate 2/2014:
  - a. the requirement for the previous position to be immediately prior would permit a short interval between the end of the appointment as a tenured judge and the start of the appointment as a reserve judge, but the service periods must not be disjointed in time by the holding of another office or position or unreasonably lengthy amount of time; and
  - b. examples of circumstances in which an acceptable interval between appointments might occur would be to enable leave to be taken, travel for personal purposes, or where there was a delay in the reserve appointment occurring.

An interval between appointments that would not meet the requirement of 'immediately prior' would be where:

- the person worked in a non-judicial role during the interval, such as in private legal practice; or
- there was a significant period between the ending of the former appointment and the commencement of the appointment of reserve judge, even if no other office or position was held during that period.

#### Examples for Schedule 4:

##### Example 1:

- Dr Ng served four years and nine months as a tenured judge before retiring.
- Dr Ng retires after 6 February 2019, when schedule 4 of this certificate takes effect.
- Dr Ng is immediately appointed as a reserve judge.
- After the two years service as a reserve judge, Dr Ng takes one month of LSL (when engaged on a full time basis – with the approval of the head of jurisdiction).
- Dr Ng then serves an additional:
  - three months of service as a reserve judge (engaged on a full time basis)
  - five months as a reserve judge (engaged on a sessional basis).
- In total, as a reserve judge, Dr Ng serves a total of two years and four months (engaged on a full time basis).
- Applying the terms of this schedule:
  - When Dr Ng retired as a tenured judge, she was not entitled to any LSL (because she served less than 5 years)
  - The **four years and nine months** of service as a tenured judge are counted as service, for LSL purposes, as a reserve judge

- The **two years** (engaged on a full time basis) as a reserve judge are counted as service for LSL purposes
- Dr Ng is able to take the one month of LSL, whilst engaged on a full time basis, because:
  - Dr Ng was, at that stage, taken to have undertaken six years and nine months service for LSL purposes (and can therefore access one month of service)
  - The head of jurisdiction approved the taking of LSL during an engagement on a full time basis
- Dr Ng is taken to be undertaking one month's service for LSL purposes during the period that she took LSL (i.e. LSL accrued whilst Dr Ng took LSL, since she was engaged on a full time basis during that month)
- The **additional three months** of service as a reserve judge (engaged on a full time basis) also counts as service for LSL purposes
- The **five months** of service as a reserve judge (engaged on a sessional basis) are **not** counted as service for LSL, because a reserve judge does not accrue LSL when he or she is engaged on a sessional basis
- At the expiration of the term as a reserve judge, Dr Ng is taken to have served **seven years and one month** and is entitled to be paid out **five months of LSL** (i.e. six months after seven years, less the one month that has already been taken).

#### Example 2:

- Ms Smith, served three years as a tenured judge before retiring.
- Ms Smith is immediately appointed as a reserve judge, two years prior to 6 February 2019, when schedule 4 of this certificate takes effect.
- Ms Smith completes two years of full-time engagement as a reserve judge, after 6 February 2019.
- Ms Smith's first appointment as a reserve judge expires.
- Ms Smith is appointed (for the second time) as a reserve judge.
- During the second term as a reserve judge, Ms Smith serves a further two years of full-time engagement.
- Ms Smith does not take any LSL during either of her appointments as a reserve judge
- Applying the terms of this schedule:
  - When Ms Smith retired as a tenured judge, she was not entitled to any LSL
  - The **three** years of service as a tenured judge are counted as service for LSL as a reserve judge
  - Any service as a reserve judge that occurred before 6 February 2019, when schedule 4 of this certificate takes effect, does **not** count as service for LSL
  - The **two years** of service as a reserve judge that occurred after 6 February 2019, when schedule 4 of this certificate takes effect, are counted as service for LSL purposes
  - At the expiration of the first term as a reserve judge, Ms Smith is taken to have served **five years** and is entitled to access one month of long service leave. Ms Smith is paid out one month of LSL
  - The **five years** of prior service (as a tenured judge and a reserve judge) are recognised for the purposes of Ms Smith's second term as a reserve judge
  - The **further two years** of service as a reserve judge count as service for LSL purposes



- At the expiration of the second term as a reserve judge, Ms Smith is taken to have served seven years and is entitled to be paid out **five months of LSL** (i.e. six months after seven years, less the one month that has already been paid out).

Example 3:

- Mr Ali served 12 years and 4 months as a tenured judge before retiring.
- At the time of Mr Ali's retirement, all the accessible LSL is paid out (i.e. Mr Ali has taken or been paid out  $6 + (6 \times 6/7)$  months).
- Mr Ali is immediately appointed as a reserve judge, which occurs after 6 February 2019, when schedule 4 of this certificate takes effect.
- Mr Ali undertakes nine months of service as a reserve judge (engaged on a full-time basis).
- Applying the terms of this schedule:
  - Mr Ali's 12 years and 4 months of service as a tenured judge are counted as service for LSL as a reserve judge
  - Mr Ali has served an additional nine months of service as a reserve judge for LSL purposes
  - At the expiration of his term as a reserve judge:
    - Mr Ali is taken to have served 13 years and one month
    - the LSL associated with 12 of those years was paid out or taken when Mr Ali was a tenured judge, or upon his retirement as a tenured judge
    - the LSL for the additional 12 months of service (i.e.  $6/7$  of one month LSL) is paid out.

## Schedule 5

Condition of service	Entitlement														
Professional development allowance	<p>(1) A judicial officer who is specified in column 1 of the table in clause (4) below, is entitled to a professional development allowance.</p> <p>(2) The professional development allowance of a Supreme Court judge is, immediately before 1 July 2019, \$10,347 per annum.</p> <p>(3) The professional development allowance is to increase annually (on 1 July of each year, including 1 July 2019) in accordance with the Consumer Price Index (All Groups Melbourne), comparing the relevant June quarters.</p> <p>(4) A judicial officer who is specified in Column 1 of the following table is entitled to the percentage of the professional development allowance of a judge of the Supreme Court, specified in Column 2 of the following table:</p> <table> <tr> <th>Column 1</th><th>Column 2</th></tr> <tr> <td>Supreme Court judge (including the Chief Justice, the President of the Court of Appeal, a Judge of Appeal, and the Chief Judge (where the Chief Judge is a dual commission holder))</td><td>100.00%</td></tr> <tr> <td>Associate judge of the Supreme Court who is the Senior Master</td><td>89.00%</td></tr> <tr> <td>Associate judge of the Supreme Court who is a Specialist Supreme Court Master</td><td>80.50%</td></tr> <tr> <td>Associate judge of the Supreme Court (other than an Associate Judge referred to in item 2 or 3 of this table)</td><td>84.65%</td></tr> <tr> <td>Judge of the County Court (including the Chief Judge (where the Chief Judge is not a dual commission holder))</td><td>86.64%</td></tr> <tr> <td>Magistrate (including the Chief Magistrate, a Deputy Chief Magistrate, and the Deputy State Coroner)</td><td>69.29%</td></tr> </table>	Column 1	Column 2	Supreme Court judge (including the Chief Justice, the President of the Court of Appeal, a Judge of Appeal, and the Chief Judge (where the Chief Judge is a dual commission holder))	100.00%	Associate judge of the Supreme Court who is the Senior Master	89.00%	Associate judge of the Supreme Court who is a Specialist Supreme Court Master	80.50%	Associate judge of the Supreme Court (other than an Associate Judge referred to in item 2 or 3 of this table)	84.65%	Judge of the County Court (including the Chief Judge (where the Chief Judge is not a dual commission holder))	86.64%	Magistrate (including the Chief Magistrate, a Deputy Chief Magistrate, and the Deputy State Coroner)	69.29%
Column 1	Column 2														
Supreme Court judge (including the Chief Justice, the President of the Court of Appeal, a Judge of Appeal, and the Chief Judge (where the Chief Judge is a dual commission holder))	100.00%														
Associate judge of the Supreme Court who is the Senior Master	89.00%														
Associate judge of the Supreme Court who is a Specialist Supreme Court Master	80.50%														
Associate judge of the Supreme Court (other than an Associate Judge referred to in item 2 or 3 of this table)	84.65%														
Judge of the County Court (including the Chief Judge (where the Chief Judge is not a dual commission holder))	86.64%														
Magistrate (including the Chief Magistrate, a Deputy Chief Magistrate, and the Deputy State Coroner)	69.29%														
	<p>(5) The professional development allowance may be used for:</p> <ul style="list-style-type: none"> <li>(a) the purchase of books and periodicals;</li> <li>(b) the cost of acquiring and maintaining electronic facilities for official purposes;</li> <li>(c) the subscription costs to relevant online resources; and</li> </ul>														

	<p>(d) the cost of attending professional conferences, courses, tuition, or other activities that are similarly directed towards the professional development of the judicial officer.</p> <p>(6) An activity to which clause (5)(d) applies, must be:</p> <p>(a) directly relevant to the duties, or the proposed duties, of the judicial officer; and</p> <p>(b) approved by the head of jurisdiction of the judicial officer.</p> <p>(7) A judicial officer must seek prior written approval from the head of jurisdiction of the judicial officer to use the professional development allowance for the cost of an activity to which clause (5)(d) applies.</p> <p>(8) When determining whether to approve a request to use the professional development allowance for the cost of an activity to which clause (5)(d) applies, the head of jurisdiction of the judicial officer must consider:</p> <p>(a) whether the professional development activity represents value for money, having regard to the needs of the court;</p> <p>(b) whether a comparable professional development activity is offered by the Judicial College of Victoria and, if so, whether there are special reasons to justify why the similar activity offered by the Judicial College of Victoria is not to be chosen; and</p> <p>(c) if the professional development activity is to take place overseas, whether there are special circumstances to justify attendance at the activity overseas.</p> <p>(9) The reference to 'judicial library allowance', in the condition of service entitled 'Acting Judges' in schedule 1 to the 2007 Certificate, is amended to read 'judicial professional development allowance'.</p> <p>(10) This schedule:</p> <p>(a) commences on 1 July 2019;</p> <p>(b) supersedes the entitlement entitled 'Library Allowance' in schedule 1 to the 2007 Certificate; and</p> <p>(c) does not affect the entitlements of an associate judge of the County Court.</p>
Definitions	<p>For the purposes of this schedule, <b>2007 Certificate</b> means the certificate signed by the Attorney-General on 19 July 2007, under section 15 of the <b>Judicial Remuneration Tribunal Act 1995</b>.</p>

**Notes to Schedule 5:**

1. Section 43 of the **Judicial Entitlements Act 2015** provides that any certificate issued under section 15 of the **Judicial Remuneration Tribunal Act 1995**, as in force immediately before its repeal, is taken to be an entitlement certificate under the **Judicial Entitlements Act 2015**.

### ***Explanatory notes for the certificate***

1. This certificate implements Recommendations 1 to 8 of the *Judicial Entitlements Panel Own Motion Recommendations to the Attorney-General August 2018 Report* (Panel Report) as accepted or varied by the Attorney-General in her Recommendation Statement (made pursuant to section 34 of the **Judicial Entitlements Act 2015** and laid before both Houses of Parliament on 6 February 2019).
2. This certificate:
  - (a) Introduces a new entitlement for a person appointed to the office of judge of the Supreme Court or County court to transfer the unused annual leave that the person accrued in a prior, pensionable, Victorian public office.
  - (b) Introduces a new entitlement for an associate judge of the Supreme Court who is engaged on a full time basis to potentially receive long service leave.
  - (c) Introduces a new entitlement for an associate judge of the Supreme Court to receive the same public transport travel entitlement as a judge of the Supreme or County Court.
  - (d) Restates the entitlement of a judge of the Supreme or County Court to free travel on public transport as a means of clarifying the reference to a 'Gold Pass' in the certificate that was signed by the Attorney-General on 19 July 2007.
  - (e) For the purposes of judges, associate judges and reserve judges of the Supreme Court, judges and reserve judges of the County Court and magistrates - replaces the library allowance provided under the certificate signed by the Attorney-General on 19 July 2007 with a professional development allowance. The professional development allowance:
    - (i) retains all uses to which the library allowance could have been put and provides for an additional use, which is professional development activities. Professional development activities might be, for example, conferences and seminars;
    - (ii) abolishes the condition of the library allowance that the allowance only covered 80 per cent of the cost of a purchase – and required the judicial officer to pay for 20 per cent of the cost. Under the new terms, the allowance will cover 100 per cent of the cost up to the annual limit on the allowance, provided the requirements of the allowance are met; and
    - (iii) retains the quantum of the library allowance for Supreme Court judges (including the Chief Justice, the President of the Court of Appeal, and a Judge of Appeal) and provides that the amount that all other entitled judicial officers receive is a specified percentages of the quantum a Supreme Court judge is to receive.
3. As a result of clause (2) of schedule 3 and clause (9) of schedule 5 of this Certificate, the condition of service entitled 'Acting Judges' in schedule 1 to the 2007 Certificate, should now be read as follows:

*"Acting/reserve Judges of the Supreme and County Courts continue to receive the benefits of office available on a pro-rata basis (where appropriate) as set out below:*

  - *motor vehicle;*

- *judicial professional development allowance;*
- *travel allowances;*
- *travel card; and*
- *public transport.'*