



## Department of Justice

Judicial Remuneration Tribunal

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23 November 2010

Rob Hulls MP  
Attorney-General  
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EAST MELBOURNE VIC

Dear Attorney-General

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### REPORT OF THE JUDICIAL REMUNERATION TRIBUNAL NOVEMBER 2010

In accordance with sections 11 and 13 of the *Judicial Remuneration Tribunal Act* 1995, I hereby submit a Report with Recommendations from the Tribunal, consisting of myself as Chair and Mr Frank Honan, Member.

Yours sincerely

**The Hon Michael Duffy**  
Chairperson



# **Judicial Remuneration Tribunal**

## **Judicial Allowances and Conditions of Service: Report 1 of 2010**

**November 2010**

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## Background

### ***Legislative regime for judicial entitlements***

1. The *Judicial Remuneration Tribunal Act* 1995 (the JRT Act) and the *Judicial Salaries Act* 2004 (the Judicial Salaries Act) establish a legislative regime for the payment of salaries and conditions of service and allowances for all judicial officers in Victoria.
2. The Acts<sup>1</sup> establishing each court state that their judicial office holders shall be paid allowances at such rate or amount or of such kind as are for the time being applicable under the Judicial Salaries Act.
3. The Judicial Salaries Act states that judicial officeholders are entitled to allowances:
  - at such rate or of such amount or of such kind that they were entitled to before the commencement of the Judicial Salaries Act (9 June 2004); or
  - at such rate or of such amount or of such kind as are for the time being applicable pursuant to a certificate under the JRT Act.
4. The Judicial Remuneration Tribunal (the Tribunal) considers the effect of these provisions to be that judicial officers appointed after 9 June 2004 are only entitled to allowances at the rates specified in certificates issued by the Attorney-General in accordance with the JRT Act.

### ***Role of the Judicial Remuneration Tribunal***

5. The Judicial Remuneration Tribunal (the Tribunal) was established by the JRT Act.<sup>2</sup> The Tribunal is responsible for providing the Attorney-General with:
  - recommendations relating to conditions of service and allowances for judicial office holders; and
  - advisory opinions, when requested, on any matter relating to salaries, allowances or conditions of service of judicial office holders, including acting magistrates and acting judges.
6. Section 11 of the JRT Act specifies the conditions of service over which the JRT has jurisdiction as follows:
  - (i) leave, including annual leave, sick leave, parental leave and special leave;
  - (ia) additional annual leave including, but not limited to, leave under arrangements such as 48/52 schemes;
  - (ii) long service leave, including long leave and sabbatical leave;
  - (iii) travelling entitlements and travelling and subsistence allowances;
  - (iv) reimbursement of work related expenses;
  - (iva) library expenses;
  - (ivb) other allowances;
  - (v) provision of motor vehicles for private use;

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<sup>1</sup> *Supreme Court Act* 1986, *County Court Act* 1958, *Magistrates' Court Act* 1989.

<sup>2</sup> Section 4 of the Act: 'There is to be established a tribunal to be known as the Judicial Remuneration Tribunal'.



- (vi) pensions, including any aspect of remuneration beyond salary that should be treated as pensionable; and
  - (vii) superannuation and associated issues, including disability benefits and recognition of prior service.
7. The Tribunal is required to report on recommendations to the Attorney-General at intervals of not less than one year and not more than two years. The Tribunal last reported to the Attorney-General in May 2007.
8. Once a report of the Tribunal is delivered to the Attorney-General, he or she must ensure that it is published in the Government Gazette within 21 days of receipt. The Attorney-General must also cause a copy of the report to be laid before each House of Parliament within 10 sitting days of receipt. If the Attorney-General intends to vary or not accept a recommendation, he or she must cause a statement to be made to the Parliament within 10 sitting days after the tabling of the report, providing reasons for varying or not accepting the recommendation.
9. In the case of recommendations for the adjustment of conditions of service, the Attorney-General must issue a certificate authorising such adjustment and specifying the date on which the adjustment comes into effect, except so far as the Attorney-General varies or does not accept the recommendation.

### ***Matters considered by the Tribunal***

10. Section 12(1)(1A) of the JRT Act requires that the Tribunal consider the following factors when making recommendations:
- (a) the importance of the judicial function to the community;
  - (b) the need to maintain the judiciary's standing in the community;
  - (c) the need to attract and retain suitably qualified candidates to judicial office;
  - (d) movements in judicial remuneration levels in other jurisdictions;
  - (e) movements in the following indicators-
    - (i) the Consumer Price Index;
    - (ii) average weekly ordinary time earnings;
    - (iii) executive salaries, including those of executives within the meaning of the *Public Administration Act 2004* in the Victorian public service;
  - (f) improvements in operational efficiency;
  - (g) work value changes;
  - (h) factors relevant to Victoria, including-
    - (i) current public sector wages policy;
    - (ii) Victoria's economic circumstances;
    - (iii) the capacity of the State to meet the proposed increase in judicial salaries, allowances and conditions of service;
    - (iv) any other relevant local factors; and
    - (v) relativities between Victorian courts and tribunals.

### **Background to this Report**

11. Mr Michael Duffy (Chair), Mr Francis (Frank) Honan, and Professor Cheryl Saunders AO were first appointed to the Tribunal from 16 July 2002 until 15 July 2005. Each was re-appointed to the Tribunal from 16 July 2005 until 15 July 2008.



12. The Tribunal members were re-appointed for 12 months until 31 July 2009, and for 12 months until 31 July 2010. Mr Duffy and Mr Honan accepted further re-appointment until 28 February 2011. Professor Saunders AO declined to be re-appointed and to date no third person has been appointed to replace her.
13. In May 2007, the Tribunal delivered a report titled *Judicial Allowances and Conditions of Service: Report 1 of 2007 (Report 1 of 2007)*. This followed a request from the Attorney-General, the Hon Rob Hulls MP, to conduct a review of all allowances and conditions of service provided to judicial officers, in order to facilitate the establishment of a clear and comprehensive regime for the payment of all judicial entitlements. The Tribunal recommended that the Attorney-General's subsequent certificate serve as the basis for a manual or handbook covering the range of conditions and allowances for Victorian judicial officers.
14. On 19 July 2007 and 14 February 2008 the Attorney-General issued certificates pursuant to section 15 of the JRT Act certifying the conditions of service as recommended by the JRT, with the exception of a variation to the recommendation on home telephone allowances and declining to adopt a recommendation that judges have access to up to six months long service leave after five years of service. The Attorney-General supported the proposed handbook or manual as a single repository for all conditions of service which would create a degree of transparency around judicial officers' entitlements.
15. In April 2009 the County Court made a submission to the JRT. The Court raised the following issues:
  - salary relativity between judges of the Supreme and County Court;
  - judicial pensions, specifically eligibility criteria and post retirement employment restrictions; and
  - access to part time work.
16. In a separate letter (dated 17 April 2009) the Chief Judge of the County Court raised the issue of conditions of service for acting judges and noted that the Council of Judges was of the view that 'current conditions of service for acting judges may be inadequate in some cases'. In particular, the Council noted that there appeared to be no provision for annual leave for acting judges.
17. In December 2009 the Magistrates' Court made two submissions to the JRT. The Court raised the following issues:
  - judicial pensions;
  - superannuation;
  - long-term disability entitlements;
  - leave entitlements; and
  - Living Away From Home allowance.
18. In April 2010, the Supreme Court made a submission to the JRT. The Court raised the following issues:
  - pensions;
  - retirement age;
  - library allowance; and
  - associate judges' entitlements.



19. In September 2009 the JRT wrote to the Attorney-General setting out the details of each submission then to hand and noting that a number of the issues raised were outside the jurisdiction of the Tribunal as set out in section 11 of the JRT Act. The Tribunal requested that the Attorney-General advise whether he wished the JRT to provide an advisory opinion on those issues as provided for in section 11A of the Act.
20. In January 2010 the Attorney-General advised that he declined to request the Tribunal to provide an advisory opinion under section 11A.
21. In February 2010 the Tribunal wrote to the Attorney-General seeking an initial Government response on the matters which were still outstanding and falling within the jurisdiction of section 11.
22. In June 2010 the Government provided an initial Government response. In essence, the Government recommended to the Tribunal that, in view of the proximity of the caretaker period in November 2010, the Tribunal confine its attention to clarifying existing judicial allowances.
23. The Tribunal accepted this recommendation. At a meeting on 26 June 2010, the JRT identified a list of seven terms and conditions that it proposed to address and assigned a priority order to those items. The items were chosen and prioritised using a range of criteria including level of complexity, the length of time the issue has been outstanding and the Tribunal's assessment of its capacity to make recommendations, given that its membership will conclude on 28 February 2011.
24. Since the meeting of 26 June 2010, the Tribunal has received an additional submission on the matter of leave entitlements for the Chief Magistrate. By letter dated 26 July 2010, the Chief Magistrate submitted that the JRT consider recommending that the Chief Magistrate have the same leave entitlements as those of a County Court judge, viz 8 weeks annual leave, sabbatical leave and entitlement to pro rata long service leave after seven years.
25. The JRT has decided to include the issue of the Chief Magistrates' leave entitlements in the issues it has considered in this report.
26. The JRT has also become aware that the current entitlement to sabbatical/long service leave for judges is not included in an Attorney-General's certificate and has decided to consider this issue in this report.
27. The amended list of items that the JRT has considered is therefore as follows:
  - (1) living away from home allowance;
  - (2) recognition of prior service;
  - (3) leave entitlements of the Chief Magistrate;
  - (4) sabbatical/long service leave entitlement – Supreme and County Court Judges;
  - (5) magistrates' annual leave entitlements;
  - (6) acting judges' terms and conditions;
  - (7) acting magistrates' terms and conditions;
  - (8) car allowance for associate judges; and
  - (9) post retirement employment restrictions on judicial officers.



28. On 26 July 2010 the Tribunal met with government representatives to ascertain further details of the Government's position on the matters before it. The representatives undertook to provide further information on a range of issues, but no further information has been provided to the Tribunal.

## Living away from home allowance (LAFH)

### Current entitlements

29. In *Report 1 of 2007*, the Tribunal agreed with the Magistrates' Court submission that the amount paid in accordance with the current Living Away From Home Allowance (LAFH allowance) is the minimum required to attract magistrates to sit in country regions and is appropriate to compensate for the expense and inconvenience incurred by such an assignment.
30. The Tribunal also noted that magistrates are expected to sit in regional courts for periods of their career and that this is made clear to candidates on appointment. While magistrates accept these conditions on appointment, it does not mean that the magistrate should be required to bear the financial burden and inconvenience of relocation.
31. The Tribunal made particular note that, given the average age of magistrates, relocation could involve inconvenience to a young family, including requiring the children to move schools. Further, some areas of the public and private sector provide similar allowances.
32. Accordingly in *Report 1 of 2007* the JRT recommended the following:
- “Magistrates required to relocate on a temporary basis to regional areas for extended periods (longer than 21 days and less than 2 years) receive a living away from home allowance in the amount of \$350 a week for up to but not exceeding 2 years (for the period of the relocation) and that adjustment of such allowance be linked to the CPI.
- Magistrates also be reimbursed for reasonable relocation expenses, such as removal and storage of furniture and personal affects and connection fees for essential services.”
33. In his Statement of Reasons, dated 6 June 2007 the Attorney-General accepted this recommendation, but requested the Department to work with the Courts and the JRT to clarify drafting questions of this (and three other) recommendations and to report back before their certification.
34. In particular, the Attorney-General requested that the JRT's recommendation on LAFH allowance be clarified to ensure that the allowance is not only technically correct, but also reflects the understanding and expectation of magistrates on regional assignment.
35. The details of what transpired are unclear. However, on 14 February 2008, the Attorney-General certified that magistrates are entitled to:

“Living away from home allowance for magistrates required to relocate on a temporary basis to regional areas in the amount of \$350 per week for a period of up to but not exceeding 2 years and that adjustment of such allowance be linked to the CPI.





Reimbursement for reasonable relocation expenses.”

36. Explanatory notes to the Certificate state that:

“Magistrates relocating to a regional area are entitled to either a living away from home allowance or reimbursement for reasonable relocation expenses. Relocation expenses will only be reimbursed where a magistrate has relocated to a regional area on a permanent basis”.

37. The Certificate makes clear that Magistrates are entitled to LAFH allowance *or* reimbursement for reasonable relocation expenses, not both as the JRT recommendation proposed.

38. In accordance with the Certificate, LAFH allowance has increased with CPI as follows:

Year	Allowance	% increase
2007/08	\$350 per week	
2008/09	\$365 per week	4.4%
2009/10	\$369 per week	1.2%
2010/11	\$380 per week	3.1%

39. Acting magistrates are not currently entitled to LAFH allowance.

### **Submissions on LAFH**

40. On 30 July 2007, the Chief Magistrate wrote to the Attorney-General and sought an extension of the LAFH allowance from a period of two years to five years on the basis that most relocations of magistrates to country and regional areas are for three years.

41. By letter dated 28 February 2008 the Attorney-General declined to go beyond the JRT recommendation, and referred the Chief Magistrate to the JRT.

42. As described in the Chief Magistrate’s submission to the JRT dated 17 December 2009, the Chief Magistrate made another request to the Attorney-General in late 2009. The Chief Magistrate requested that the LAFH allowance be made available to an acting magistrate, who was to be assigned on a full-time basis to regional Victoria. The Attorney-General declined to go beyond the JRT recommendation and again referred the Chief Magistrate to the JRT.

43. On 17 December 2009 the Council of Magistrates made a new submission to the JRT on the LAFH allowance and on 23 December 2009 the Chief Magistrate made a further submission to the JRT on the same issue.

44. Both submissions sought an extension of the period for which the LAFH allowance could be paid. The Council of Magistrates requested an extension to three years. The Chief Magistrate requested an extension to up to six years.



45. Both submissions requested that acting magistrates be entitled to LAFH allowance.

### **Basis for the submissions**

46. The Council of Magistrates submitted the following reasons to extend the maximum period for which the LAFH allowance could be paid from two to three years:

- it would better support the assignment of magistrates to country Victoria;
- it would assist in the smooth administration of the Court;
- magistrates eligible for the LAFH allowance should remain eligible for the period of the assignment. The standard period of assignment in the Court is three years and the Chief Magistrate intends to maintain the three year cycle of assignments including to the country;
- there is currently one magistrate who has served two of her three years in country Victoria. She will lose her eligibility for the LAFH at the end of the year. There will inevitably be more magistrates in this situation; and
- there is very limited financial impact of this allowance as there are only a small number of magistrates on the LAFH allowance at any time ("typically in the order of 3-5"). It is not expected that this number will materially increase in the near future.

47. The Chief Magistrate submitted the following reasons to extend the maximum period for which the LAFH allowance could be paid from two to three years (at a minimum), or alternatively up to 6 years:

- the fact that the LAFH allowance cannot be paid for more than two years to a country magistrate who will be assigned for three years is an obvious problem;
- some magistrates are in fact assigned to country Victoria for longer than one rotation period and a number of magistrates are permanently resident in country Victoria. Magistrates are entitled to relocation expenses when they move residence on a long term or permanent basis;
- there have been examples of magistrates who will not be entitled to the LAFH allowance for the full three year period of a country or regional assignment. This puts them at risk of bearing an unfair financial burden which is solely attributable to their assignment; and
- extending the availability of the LAFH allowance to six years would assist the Chief Magistrate to discharge the assignment responsibility with the necessary degree of flexibility.

### **Extension to acting magistrates**

48. The Council of Magistrates submitted that there is a particular acting magistrate who has been assigned by the Chief Magistrate to country Victoria at the beginning of 2010. The Council notes that the Chief Magistrate expects this magistrate to work in country Victoria for three years. As a matter of equity and principle, it is considered appropriate that she be paid the LAFH allowance.

49. The Chief Magistrate submitted there are two categories of acting magistrates – those appointed after retirement and those appointed as younger magistrates who undertake a full range of responsibilities of a magistrate on a full-time basis during their appointment. There are currently three magistrates in this second category, one who was a country solicitor, and who has now been assigned to another country town. It was submitted that, unless the Chief Magistrate can authorise the payment of the LAFH allowance to a magistrate in these circumstances, the administrative flexibility and operational requirements of the Court are compromised.



50. Further, the Chief Magistrate submitted that there is an ever-pressing need to assign willing magistrates to country Victoria and the LAFH has been a significant aid in the process and the applicability of the LAFH allowance to acting magistrates will assist the administration of the Court in a significant way.

### **Government position**

51. The Government indicated that in principle it had no objection to the extension of the LAFH allowance from two to three years. However, the Government representatives indicated that there may be some taxation implications if the LAFH is extended to three years. Despite a request from the Tribunal for further information on this issue, no additional information was provided.

### **JRT position**

52. The Tribunal has decided not to make a recommendation in respect of acting magistrates and LAFH allowance. This decision is discussed in the later section covering “acting judicial officers terms and conditions”.
53. In relation to the extension of the LAFH allowance, the Tribunal accepts that the payment of the LAFH allowance is an important factor in the capacity of the Chief Magistrate to meet judicial officer requirements for Victorian regional courts.
54. Further, the Tribunal is of the view that the maximum length of time that the allowance is paid should be aligned with the general maximum period that a Victorian magistrate is posted to regional Victoria.
55. Although the Tribunal has been advised that its recommendation may give rise to issues of appropriate tax treatment, the Tribunal has not been provided with the additional information it sought from the Government representatives and has decided to proceed to make a recommendation on this issue without further delay.
56. Consistent with Recommendation 12 of *Report 1 of 2007*, the Tribunal considers that the Magistrates assigned to regional areas on temporary basis for extended periods be also reimbursed for reasonable relocation expenses. It is the Tribunal’s view that, contrary to the current entitlement in the Attorney-General’s certificate dated 14 February 2008, this entitlement should be in addition to the LAFH allowance.

### **Recommendation**

#### **Recommendation 1**

**Magistrates required to relocate on a temporary basis to regional areas for extended periods (longer than 21 days and less than 3 years) receive a living away from home allowance in the amount of \$380.00 a week for a period of up to but not exceeding 3 years (for the period of the relocation) and that adjustment of such allowance be linked to CPI.**

**Such allowance represents assistance with rental and food costs.**

**Magistrates assigned to regional areas on a temporary basis for extended periods**



**be also reimbursed for reasonable relocation expenses, such as removal and storage of furniture and personal effects and connections for essential services.**

### **Consideration of reimbursement for reasonable relocation expenses for magistrates relocating permanently**

57. In *Report 1 of 2007*, the Tribunal noted that the Chief Magistrate may approve reimbursement of expenses when a magistrate is permanently relocated. However, in what appears to be an oversight, the Tribunal did not make a recommendation on this aspect.
58. After discussion with Government representatives, the Tribunal considers that it would be appropriate to recommend that this provision be certified. Accordingly, the Tribunal makes the following recommendation:

#### **Recommendation**

##### **Recommendation 2**

**Where a magistrate is required to permanently relocate, the magistrate be reimbursed for expenses including:**

- **removal of furniture and personal effects;**
- **storage of furniture and personal effects for a maximum period of 12 months;**
- **costs associated with sale and acquisition of residence; and**
- **connection fees for essential services.**

### **Consideration of CPI**

59. In addition to the LAFH allowance, the following allowances are adjusted annually in accordance with CPI:
- library allowance for judicial officers
  - car allowance for magistrates.
60. The Tribunal seeks to clarify that the CPI figure to be used for the purpose of calculating the annual adjustment is the average all groups Melbourne index for the June quarter compared with the previous year's June quarter, as published by the Australian Bureau of Statistics.

61. Accordingly, the Tribunal makes the following recommendation:



## Recommendation

### Recommendation 3

An explanatory note be included in the certificate to the effect that the CPI figure to be used for the purpose of calculating the annual adjustment in respect of any eligible judicial entitlement is the average all groups Melbourne index for the June quarter, compared with the average all groups Melbourne index for the previous year's June quarter, as published by the Australian Statistician.

## Recognition of prior service

### Current entitlement- judges

62. Recommendation 18 of the JRT Report 1 of 2007 stated that:

"A Judge of the Supreme Court or County Court who served a minimum of four years in public office immediately prior to judicial appointment but who had not accrued a long service leave entitlement in that public office shall be paid a pro-rata amount based on the length of service in the public office and on the rate of remuneration for that office prevailing at the time of payout once the officer's length of combined service in public office and the judicial office equals the length of service that would have provided a long service leave entitlement in the public office. This payout provision also applies, irrespective of length of service in the judicial office, where the officer leaves the judicial office as a result of death or disability.

The long service leave provisions for Judges operate separate from this provision."

63. In the Attorney-General's Statement of Reasons, dated 6 June 2007, the Attorney-General accepted this recommendation but requested consultation between the Department of Justice and the JRT to clarify aspects of the drafting.

64. On 14 February 2008, the Attorney-General issued a Certificate which included the following entitlement to prior recognition of service:

"A Judge of the Supreme Court or County Court who has served a minimum of four years in public office immediately prior to judicial appointment but who had not accrued a long service leave entitlement in the public office shall be paid a pro-rata amount based on the length of service in the public office and on the rate of remuneration for that office prevailing at the time of payout once the officer's length of combined service in the public office and judicial office equals the length of service that would have provided a long service leave entitlement in the public office. This payout provision applies, irrespective of length of service in the judicial office, where the officer leaves the judicial office as a result of death or disability.

The long service leave provisions for Judges operate separate from this provision."

65. An Explanatory Note to the Certificate states:



“Judges who have previously served a minimum of four years in public office are to be paid a pro rated long service leave benefit once the public office and judicial office combined service totals a period equivalent to the time when a minimum entitlement would have accrued had the person remained in public office.”

### **No current entitlement for magistrates and associate judges**

66. In *Report 1 of 2007*, the JRT made recommendation 19 as follows:

“A Master or Magistrate who served in public office immediately prior to judicial appointment is entitled to have that service recognised for the purposes of long service leave entitlement as a Master or Magistrate, with such entitlement to apply to all serving Masters and Magistrates from the operative date of the Attorney-General’s Certificate.”

67. Although this Recommendation was accepted in the Attorney-General’s Statement of Reasons, dated 6 June 2007, further consultation between the Department of Justice and the JRT was requested to clarify aspects of the drafting of this Recommendation.

68. However the Attorney-General’s Certificates of 19 July 2007 and 14 February 2008 made no reference to the issue of prior recognition of service for long service leave purposes for magistrates and masters (associate judges).<sup>3</sup> The JRT is aware that this issue is of concern to the Magistrates’ Court of Victoria.

### **Submissions before the Tribunal**

69. In a letter dated 16 June 2010, the Attorney-General indicated that recognition of prior service for judges required ‘resolution of policy and interpretation’ issues and asked the JRT to review the entitlement.

70. In a letter to the Attorney-General dated 8 July 2010, the JRT requested the Government provide details of the ‘policy and interpretation’ issues which the Government considers still remain.

71. The JRT also asked the Government for the reason why the entitlement was not extended to masters (associate judges) and magistrates, despite this being recommended by the JRT, and accepted by the Government in 2007.

72. On 26 July 2010, the JRT met with representatives of the Government. Government representatives informed the JRT that the failure to certify recommendation 19 of *Report 1 of 2007* was due to an oversight.

73. The JRT and Government representatives discussed clarifying that any pay out for time in the public office needs to be at the rate payable in the public office (and not the judicial office). The JRT further stressed that it would be desirable to certify recognition of prior service for magistrates and masters (associate judges). The JRT also indicated its intention to consider clarifying that public office includes service in public entities, such as Victorian Legal Aid as well as service in Commonwealth and other State public services.

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<sup>3</sup> Since the passage of the *Courts Legislation Amendment (Associate Judges) Act 2008*, the office of Master of the Supreme Court and Master of the County Court has been replaced by the office of Associate Judge.



74. Further, the Tribunal sought, and the Government undertook to provide further advice on the Government position in relation to these proposals. However, no further information has been provided.
75. As the Tribunal has not been provided with the additional information it sought from Government representatives, the Tribunal has decided to proceed to make recommendations on this issue without further delay.

### **JRT position**

#### *Judges of the Supreme Court and County Court*

76. The JRT seeks to clarify how the recognition of prior service for Judges is intended to operate. To iterate *Report 1 of 2007*, the intention of the entitlement to recognition of prior service for judges is to ensure that a judge who has served in public office immediately prior to accepting a judicial appointment is not disadvantaged by moving from one long service leave scheme to another. The intention of the entitlement is that it would operate as follows:
- A judge, who immediately prior to his or her appointment served in a public office for at least four years but did not accrue a long service leave entitlement, is entitled to a payout on a pro rata basis of that entitlement in accordance with the relevant long service leave accrual rules for the public office which was current at the time of appointment.
  - This payout should occur once the judge serves in the judicial office the balance of time which would have been required to provide a long service leave entitlement in the public office.
  - The pro-rata payout is to be calculated at the level of remuneration for the former public office prevailing at the time of payout.
77. The entitlement is to a payout of leave for the time served in the public office and does not count towards judicial long service/sabbatical leave which accrues from the date of judicial appointment.

#### *Masters and magistrates*

78. As described above, in *Report 1 of 2007*, the JRT made recommendation 19 as follows:

“A Master or Magistrate who served in public office immediately prior to judicial appointment is entitled to have that service recognised for the purposes of long service leave entitlement as a Master or Magistrate, with such entitlement to apply to all serving Masters and Magistrates from the operative date of the Attorney-General’s Certificate.”

79. Prior public service for masters and magistrates was intended to be recognised and count towards calculating long service leave as a master or magistrate. This in contrast to judges, who are entitled to a lump-sum benefit and then begin to accrue long service from the time of appointment to judicial office. As explained in *Report 1 of 2007*, “a master or magistrate who has served eight years in a public office need only serve another two years as a master or magistrate and their long service leave entitlement will accrue. The Tribunal considers that this is appropriate given that the long service leave schemes for public office and masters and magistrates operate on the same terms.”



80. Further, the JRT notes that notes that:

- the office of master is now the office of associate judge;
- the Government supports a national judiciary;
- the need to attract and retain suitably qualified candidates to judicial office includes consideration of those who, immediately prior to judicial appointment, were employed in a public office or a different judicial office;
- Victorian Public Service Executives may have the following types of service recognised as service in the Victorian Public Service for the purposes of long service leave:
  - any service within a State, Commonwealth or Territory of Australia Government Department or Public Service authority; and
  - any service with a public entity under the *Public Administration Act 2004* (Vic); and
  - any service with a local governing body that is established by or under a law of Victoria.

#### *Conclusion*

81. After consideration of the issues above, the JRT has formed the opinion that:

- associate judges and magistrates should be entitled to have prior service in public office recognised for the purposes of accruing long service leave as an associate judge or magistrate;
- this entitlement should be backdated to 14 February 2008, being the date of the Attorney-General's certificate;
- 'public office' should be clarified and include service in other Australian and State jurisdictions as well as within public entities and local government; and
- judicial officers moving between jurisdictions or offices should have their prior service recognised for the purposes of long service leave in their new judicial office.

82. Accordingly, the Tribunal recommends as follows:

### **Recommendation**

#### **Recommendation 4**

**An Associate Judge (formerly Master) or Magistrate who has served in public office immediately prior to judicial appointment is entitled to have that service recognised for the purposes of long service leave entitlement as a Master or Magistrate.**

#### **Recommendation 5**

**The entitlement in Recommendation 4 to apply to all serving Associate Judges and Magistrates, effective from 14 February 2008 [being the date of the Attorney-General's Certificate certifying this entitlement for a Judge of the Supreme or County Court].**

#### **Recommendation 6**

**For the purposes of recognition of prior service (long service leave), 'public office' be defined to include:**

- service within a State, Commonwealth or Territory of Australia Government Department or Public Service authority; and
- service with a public entity under the *Public Administration Act 2004* (Vic); and





- **service with a local governing body that is established by or under a law of Victoria.**

#### **Recommendation 7**

**A judicial officer who has served in a judicial office within a State, Commonwealth or Territory of Australia immediately prior to judicial appointment is entitled to have that service recognised for the purposes of long service leave entitlement in the current judicial office.**

83. The Tribunal has been advised that Victorian Public service employees are now entitled to a pro-rated long service leave benefit after 7 years service. However, no specific submission has been made in relation to this, or any indication of a Government position.

### **Leave entitlements of the Chief Magistrate**

84. While the Chief Magistrate has the same remuneration and pension entitlements as a Judge of the County Court, he or she has significantly different leave entitlements.
85. The Chief Magistrate is entitled to four weeks annual leave per annum and long service leave of 3 months after 10 years of service (Attorney-General's Certificate dated 19 July 2007).
86. In contrast, as County Court Judges, the State Coroner and the President of the Children's Court are entitled to 8 weeks annual leave per annum and six months sabbatical/long service leave after seven years of service. One month of leave can be accessed after five years of service. It should be noted that this entitlement has not been regularised in a certificate, and is discussed in paras 94-98 below.

### **Submission to the JRT**

87. On 26 July 2010, the Chief Magistrate wrote to the JRT and requested that it consider making a recommendation to extend the leave entitlements of the office of Chief Magistrate to provide for parity with the offices of State Coroner and President of the Children's Court.
88. In summary, the Chief Magistrate noted that both the Coroners Court and the Children's Court of Victoria draw their judicial membership from the general magistracy and are institutions that are smaller than the Magistrates' Court of Victoria. The Chief Magistrate submitted that the difference between the leave entitlements of the Chief Magistrate, State Coroner and President of the Children's Court cannot be justified in terms of:
- institutional responsibility;
  - workload;
  - work pressure;
  - importance of the public role and level of responsibility.
89. The Chief Magistrate further submitted that leave is a vital source of refreshment for those in an office which involves considerable pressure and importance.

### **JRT position**

90. The JRT has formed its position on leave entitlements of the office of Chief Magistrate after considering the issues listed at section 12(1A) of the JRT Act. In particular, the JRT notes:



- the submission of the Chief Magistrate;
- the difference in entitlement between the Chief Magistrate, the State Coroner and the President of the Children's Court;
- the importance of the office of Chief Magistrate;
- the need to maintain the Chief Magistrate's standing in the community;
- the need to attract and retain suitably qualified candidates for the office of Chief Magistrate; and
- the considerably higher workload, level of institutional responsibility and level of pressure attached to the office of Chief Magistrate compared with the office of magistrate.

91. After considering the above, the JRT has formed the opinion that the Chief Magistrate should be entitled to the same leave entitlements as the State Coroner and President of the Children's Court.

92. The JRT is therefore of the view that the Chief Magistrate should be entitled to:

- eight weeks recreation leave per annum
- 6 months sabbatical/long service leave after 7 years of service, one month of which may be accessed after 5 years of service and 6/7th of a month's leave to accrue for every additional year of service completed.

93. It is the Tribunal's view that the Chief Magistrate's current service as Chief Magistrate should be recognised for the purpose of this new entitlement.

## **Recommendation**

### **Recommendation 8**

**The Chief Magistrate be entitled to eight weeks of annual leave per annum.**

### **Recommendation 9**

**The Chief Magistrate be entitled to 6 months sabbatical/long service leave after 7 years of service, one month of which may be accessed after 5 years of service and 6/7th of a month's leave to accrue for every additional year of service completed.**

## **Sabbatical/Long Service Leave entitlement – Supreme and County Court Judges**

### **Current entitlement**

94. At the time of the JRT Report 1 of 2007, judges of the Supreme and County Courts were accessing 6 months sabbatical/long service leave after 7 years of service, with one month being able to be accessed after 5 years of service and 6/7th of a month's leave accruing for every additional year of service completed.

95. In *Report 1 of 2007*, the JRT considered long service leave entitlements in the context of Federal Court judge entitlements. At the time, the JRT considered that there should be parity of



entitlement with judges of the Federal Court. The Tribunal accordingly made recommendation 15 as follows:

“Judges of the Supreme Court and County Court be able to access 6 months of long service leave after 5 years of service. Masters and Magistrates be able to access 3 months of long service leave after 10 years of service”

96. In his statement of reasons, dated 6 June 2007, the Attorney-General did not accept recommendation 15 as it related to Supreme Court and County Court judges for the following reasons:
- the significant cost without productivity off-sets;
  - negative operational impact;
  - unreasonableness of the recommendation given the other conditions of judicial office and level of long service leave available to other members of the workforce.
97. Accordingly, only the recommendation in respect of masters and magistrates was certified in the Attorney-General's certificate dated 19 July 2007. No provision was made for the existing entitlement of Supreme and County Court judges to 6 months leave after 7 years with one month being able to be accessed after 5 years.
98. The JRT considers it desirable for the existing entitlement to be certified as part of the consolidation of judicial entitlements.

## **Recommendation**

### **Recommendation 10**

**Judges of the Supreme Court and County Court be entitled to 6 months sabbatical/long service leave after 7 years of service, one month of which may be accessed after 5 years of service and 6/7th of a month's leave to accrue for every additional year of service completed.**

## **Magistrates annual leave entitlement**

### **Current entitlements**

99. Magistrates are entitled to four weeks annual leave, as per the Attorney-General's Certificate dated 19 July 2007.
100. In its submission dated 23 December 2009 the Council of Magistrates and the Magistrates' Court sought an increase in annual leave for Magistrates from 4 weeks to 8 weeks.
101. With the exception of the Chief Magistrate, the Tribunal has not been persuaded to depart from earlier decisions not to recommend the extension in annual leave sought by the Council of Magistrates.



## **Acting judicial officers' terms and conditions**

102. In a letter dated 17 April 2009, the Chief Judge of the County Court requested that the Tribunal examine the terms and conditions of acting judges, particularly annual leave. The Magistrates' Court also sought an extension of the LAFH allowance to acting magistrates.
103. The Tribunal notes that the position of acting judicial officers was created in order to enable the various courts to meet the peaks and troughs in demand for judicial resolution of cases. The provision of allowances to acting judicial officers significantly diminishes the differences between tenured and acting judicial officers and has the capacity to undermine the rationale for the creation of the position in the first place.
104. Further, the Tribunal has been informed that there are expected difficulties in calculating pro rata allowances where judicial officers sit spasmodically throughout the year.
105. The submissions therefore raise wide and significant policy issues which require further consideration. The Tribunal sought additional information on this issue from Government representatives at its meeting on 26 July 2010. However, as no further information has been provided, the matter remains unresolved and the Tribunal makes no recommendations in relation to acting judicial officers.

## **Car allowance for Associate judges**

106. The Supreme Court requested that the Tribunal review the provision of car allowances to associate judges (formerly masters).
107. In 2004, and at the Government's request, the car allowance of associate judges (then known as masters) was incorporated into their remuneration package. In 2007 a Queens Counsel provided legal advice to the effect that the Tribunal did not have jurisdiction under section 11 of the JRT Act 1995 over this issue, as it now fell under the term 'salary' and accordingly was not specifically included under any of the heads of jurisdiction contained in section 11. Nor can the car allowance be updated beyond the ordinary salary increases, linked through the Judicial Salaries Act to those of Federal judges.
108. Representatives of the Government indicated that they would identify options available to the JRT to increase the car allowance for associate judges. However, these were not received within the requested time and the Tribunal is therefore unable to make any further comment or recommendations.

## **Post retirement employment restrictions on judicial officers**

109. The submission of the County Court requested that the Tribunal examine and make recommendations on the post retirement restrictions on judicial officers contained in the *County Court Act 1958*.
110. Any change in this area would require legislative amendment and has significant policy implications. However, the Tribunal notes that an increasing number of judicial officers seek to take up judicial positions in other jurisdictions post retirement, and that the current legislation appears to present a major hurdle to the effective use of these significant Victorian judicial skills and experience post retirement.



111. Representatives of the Government agreed to provide the JRT with the Government response to lifting the post retirement restrictions. However, to date, there has been no formal response from the Government on this request. While there may be some doubt as to the jurisdiction of the Tribunal in this matter, it considers that the issue is of sufficient importance to warrant a Government review. The Tribunal accordingly makes the following recommendation:

## **Recommendation**

### **Recommendation 11**

**That the Government conduct a review of the post retirement employment restrictions on judicial officers as a matter of priority with a view to enabling retired Victorian judicial officers to contribute their judicial skills and experience in other Victorian contexts, and in interstate and federal forums.**

## **Form of the certificate**

112. If these recommendations are accepted, the Attorney-General will need to issue a new certificate pursuant to section 15 of the JRT Act.
113. This certificate may supersede entitlements provided for in previous certificates. Further, if the recommendations are accepted, the new certificate will clarify entitlements in previous certificates.
114. The Tribunal is also aware of a number of developments since the certificates dated 19 July 2007 and 14 February 2008, including:
- masters are now known as associate judges;
  - eligible allowances have increased annually in accordance with CPI; and
  - departmental policies referred to in the certificate have changed.
115. The Tribunal also notes that the handbook or manual covering the range of conditions and allowances for Victorian judicial offices which it recommended in its 2007 Report has not yet been settled and issued.
116. For the purposes of clarity, the Tribunal considers that the certificates dated 19 July 2007 and 14 February 2008 should be rescinded and a new certificate should be issued which:
- reflects any accepted recommendations following this report;
  - provides for the continuation of the entitlements that have not been impacted by the recommendations within this report;
  - makes minor and consequential amendments required necessary to provide for the developments noted above.



## Recommendation

### Recommendation 12

**That the Attorney-General rescind the certificates dated 19 July 2007 and 14 February 2008 and issue a new certificate consolidating and updating judicial terms and conditions.**

**The Hon Michael Duffy**  
Chairperson

Dated : 23 November 2010