

**JUDICIAL REMUNERATION TRIBUNAL  
JUDICIAL ALLOWANCES AND CONDITIONS OF SERVICE:  
REPORT 1 OF 2007  
MAY 2007**

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## 1. Background

### 1.1 Legislative Regime for Judicial Entitlements

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 office holders in Victoria.

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 2004**.

The **Judicial Salaries Act 2004** 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 2004** (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.

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. However, the certificates to date do not cover the range of allowances which judicial office holders currently receive.

### 1.2 Role of the Judicial Remuneration Tribunal

The Judicial Remuneration Tribunal (the Tribunal) was established by the JRT Act, and 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.

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 March 2004. This report was the result of the 2003 review and made recommendations in relation to judicial salaries and a number of specific allowances.

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 recommendations.

In the case of recommendations authorising 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.

### 1.3 Background to the Review

In December 2004, Mr Peter Hanks QC provided advice to the Attorney-General regarding the validity of certain allowances and conditions of service provided to Magistrates in Victoria.

Mr Hanks' advice raised doubt whether some of the allowances and conditions of service for Magistrates were being paid lawfully under the current legislative framework. Mr Hanks noted that only some of the allowances being paid to Magistrates were the subject of certificates pursuant to the JRT Act. He advised that individual Magistrates might have entitlements based on statute or contract that pre-dated the commencement of the Judicial Salaries Act in 2004, but this depended upon the date and circumstances of each Magistrate's appointment. Mr Hanks found that reliance on a regime for judicial entitlements containing such inconsistencies and uncertainty was unsatisfactory.

<sup>1</sup> Supreme Court Act 1986, County Court Act 1980, Magistrates' Court Act 1989

Mr Hanks proposed that the payment of Magistrates' allowances be regularised and given a clear statutory basis through recommendations and certificates pursuant to the JRT Act.

In September 2005, Mr Hanks provided similar advice in relation to allowances and conditions of service for Judges and Masters of the Supreme Court and County Court.

Following the 2004 advice, the Attorney-General, the Hon Rob Hulls MP, requested that the Tribunal conduct a review of all allowances and conditions of service provided to judicial officers, with the intention of establishing a clear and comprehensive regime for the payment of all judicial entitlements.

## **2. 2006 Review**

### **2.1 Method of Inquiry**

When conducting a review, the Tribunal is free to determine its own method of inquiry.

Section 12 of the JRT Act provides that the Tribunal:

- may inform itself in such manner as it sees fit;
- receive written or oral statements;
- is not required to conduct any proceedings in a formal manner; and
- is not bound by the rules of evidence.

Traditionally, in conducting a review, the Tribunal has largely relied on submissions received from the courts and the Victorian Government. However, given the nature and scale of the current review, the Tribunal also undertook a thorough investigation of the status of judicial allowances in Victoria.

#### **Audit and Issues Paper**

In May 2005, the Tribunal circulated its Terms of Review, which provided a framework and scope for the new review process, to the heads of jurisdiction and the Attorney-General.

Throughout June and July 2005, the Tribunal undertook an audit of the current allowances and conditions of service provided to all judicial officers. This was achieved through consultation with members of the judiciary, court staff and Department of Justice staff.

The audit confirmed Mr Hanks' advice that the payment of judicial allowances is both inconsistent and unsatisfactory.

The Tribunal found that some entitlements were paid in accordance with Attorney-General certificates or previous statutory provisions, while others seemed to have developed over many years as a matter of convention. As a result the latter allowances did not appear to be supported by the process set out in the JRT Act, suggesting a need for them to be placed on a transparent basis and brought within the ambit of the JRT Act.

These results, in addition to a detailed analysis of each allowance and condition of service, were distributed to the courts and the Attorney-General in an Issues Paper dated May 2006.

The Issues Paper called for submissions on the current provision of judicial allowances and conditions of service, including their history and how entitlements could be better structured.

#### **Submissions**

The Tribunal received the following submissions in response to the Issues Paper:

- Submission of the Judges and Masters of the Supreme Court, dated 30 June 2006;
- Letter from Judge JK Nixon Acting Chief Judge on behalf of the County Court, dated 3 July 2006;

- Submission of the Council of Magistrates' and Response to Issues Paper, dated 17 July 2006;
- Letter of Mr Tim McDonald, Magistrate, dated 19 July 2006;
- Letter of the Chief Magistrate regarding acting Magistrates, dated 6 September 2006;
- Letter from the Secretary of the Department of Justice on behalf of an Inter-Departmental Steering Committee, dated 24 October 2006; and
- Supplementary submission of the Judges and Masters of the Supreme Court, dated 10 November 2006.

The Tribunal notes that the Issues Paper requested that submissions be received no later than 1 July 2006. Despite this timeframe, the Tribunal granted a number of extensions and was prepared to receive supplementary submissions. The Tribunal considered that it was in the interests of all parties to accept these supplementary submissions and deal with all issues comprehensively, rather than leaving some issues outstanding and requiring consideration at a later time.

#### ***Supreme Court***

The Supreme Court advised that it saw no uncertainty, confusion or ambiguity in the current provisions for judicial allowances and conditions of service and considered that no action was necessary.

In its supplementary submission, the Court requested a number of changes to judicial conditions of service, based on the need to attain broad parity with comparable jurisdictions, such as the Federal Court and the Supreme Courts of New South Wales and Queensland, thus removing the disadvantage that presently operates in respect of its Judges. The Court noted that, given the disparity in allowances provided to it and other jurisdictions, it is not surprising that it may be perceived by suitably qualified candidates for judicial appointment as less attractive than the Federal Court, thus inhibiting the attraction and retention of suitably qualified candidates to the Court.

#### ***County Court***

The County Court accepted that the various allowances and conditions of service set out in the Issues Paper correctly reflect those which are currently accorded to its Judges. The Court noted that it did not see a need to alter the current terms and conditions and that the status quo should be maintained. Furthermore, whether allowances and conditions of service which have developed as a matter of convention over time are officially formulated is a matter for the Government. The Court did not provide comments on individual allowances.

#### ***Magistrates' Court***

The Magistrates' Court provided the Tribunal with both a formal submission and a response to the Issues Paper. The Court submitted that it is essential that the Tribunal make recommendations with respect to those conditions for which there is no existing legislative basis. In providing its view on the various entitlements which relate to Magistrates, the Court requested that the Tribunal make numerous changes and adjustments.

The theme and underlying argument throughout the Court's submission was that Magistrates should be recognised as the third arm of the judiciary, and provided with allowances relative to those applicable to other judicial officers in Victoria and other jurisdictions. The Court noted that it has undergone significant jurisdictional increases over the last ten years and yet the terms and conditions applicable to Magistrates have not altered in any significant way or been brought into line with the rest of the judiciary.

The Court endorsed the adoption of entitlements that relate equally to all judicial officers.

**Department of Justice**

The submission of the Department of Justice on behalf of an Inter-Departmental Steering Committee argued that allowances and conditions of service should be on a basis that ensures certainty and consistency.

**Matters Considered by the Tribunal**

As noted above, when reporting and providing recommendations to the Attorney-General, the Tribunal is not bound by a particular method of inquiry and may inform itself in such "manner as it sees fit". Section 12(1A) of the JRT Act, does however, require 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 Australian 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 of 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 a proposed increase in judicial salaries, allowances and conditions of service;
  - (iv) any other relevant local factors; and
  - (v) relativities between Victorian courts and tribunals.

In developing its recommendations and writing this report, the Tribunal has considered the information and data collected in the audit, the views and comments of the courts and the Department of Justice provided in the submissions, and the allowances and conditions of service provided to executive officers in Victoria and judicial officers in all Australian jurisdictions, as well as the various factors listed in its terms of reference, to the extent that they are relevant.

The Tribunal appreciates the importance of ensuring that Victoria's courts, in particular the Supreme Court, are able to attract and retain appropriately qualified candidates to judicial office. As such, the Tribunal in making its recommendations has attempted to bring Victoria's Supreme Court into line with comparable jurisdictions, thereby increasing its attractiveness for candidates for judicial appointment. The Tribunal is of the view that achieving such parity is appropriate and consistent with the Government's move to achieve salary parity between the Supreme Court and Federal Court Judges, as provided for in the Judicial Salaries Act.

The Tribunal notes the Magistrates' Court's view that allowances should be provided consistently across all jurisdictions. The Tribunal notes that in all Australian jurisdictions, including Victoria, allowances are provided relative to the judicial office held. This is consistent with the provision of salaries on the basis of relativities between the courts. The Tribunal also notes that it is required to give consideration to the relativities between the courts and tribunals under section 12(1A) of the JRT Act. The Tribunal's recommendations are consistent with the approach of considering relativities.

### **3. Allowances and Conditions of Service**

This Part individually addresses the provision of each allowance and condition of service and includes the Tribunal's recommendations. It should be noted that entitlements to allowances for acting Magistrates are considered separately at 3.11.

Appendix 1 contains a list of the Tribunal's recommendations and Appendix 2 contains a list of all entitlements to be provided for each judicial office.

#### **3.1 Structure of Allowances**

The Tribunal considers this review to be an opportunity to provide the Attorney-General with recommendations which will provide a clear and comprehensive regime for the payment of all judicial allowances and covering conditions of service.

The analysis below addresses the status of all existing allowances and conditions of service and provides a range of recommendations for validating allowances and making adjustments.

The Tribunal acknowledges, as it did in the Issues Paper, that both the Victorian Constitution and the various pieces of court legislation prohibit the reduction of the aggregate value of allowances payable to a judicial officer upon appointment, throughout their term in office. This principle is intended to protect judicial independence. The Tribunal has not attempted to estimate the cost of the various judicial allowances as it has not recommended the reduction of any allowances that currently exist. As such, the Tribunal considers that none of its recommendations, if accepted by the Attorney-General, will be in breach of the prohibition against the reduction of the aggregate value of allowances.

##### **Adjustment Mechanism**

Historically, the Tribunal's recommendations and the Attorney-General's certificates provide for the payment of allowances to judicial officers either at a set amount or by a link to a government policy. As a result of setting allowances at specific amounts, the rate of an allowance does not increase until such a time as the Tribunal considers that specific allowance again. This has resulted in a situation where some allowances have become stagnant.

The Tribunal considers that allowances should be regularly adjusted in appropriate increments to account for inflation.

The Magistrates' Court raised this issue in its submission and suggested that the Tribunal build into its recommendations an adjustment mechanism to apply annually to allowances. This would ensure that the rates of allowances increase annually by an appropriate amount, without the need for frequent consideration by the Tribunal.

The Tribunal accepts the merit of this suggestion and therefore recommends that specific allowances be linked to the Consumer Price Index (CPI) to ensure that they are adjusted each year. Throughout the following analysis the Tribunal will identify the allowances which should increase in line with this adjustment mechanism.

The Tribunal notes that such automatic increases do not remove its ability to review and adjust allowances.

##### **Individual Allowances vs Expense of Office Allowance**

Judicial officers currently receive a range of allowances, which could be described as "expense of office" allowances. These include home telephone, library, Cabcharge, gold pass, regalia and chambers fitout.



The Tribunal posed the following question in the Issues Paper:

“Should the various allowances and some conditions of service such as the Cabcharge and gold pass be consolidated into a single expense of office allowance? If so, what should it cover?”

In response to this question, the Supreme Court advised that it supports the current arrangement for the payment of individual allowances.

The Magistrates’ Court supported the establishment of a consolidated allowance, noting that it could encompass a component of \$700 per annum for out of chambers access to internet (discussed in detail at 3.4).

The Department of Justice supported the exploration of a consolidated allowance, stating that the elements of the allowance and specific amounts should be clearly established and a review mechanism provided. The Department noted that the Tribunal might consider engaging a consultant to assist with determining the amount of any new allowance.

### **Recommendations**

The Tribunal has reviewed the range of allowances which could be consolidated into one allowance. It has considered the submissions of the parties and reviewed the circumstances that exist in other Australian jurisdictions. The Tribunal understands that all jurisdictions, except Queensland, provide for individual allowances. Queensland has adopted a consolidated allowance (referred to as the Jurisprudential Expense and Expense of Office Allowance) which covers attendance at official functions, conferences and conventions, subscription to personal associations, library books, purchase of newspapers and periodicals, travel and purchase and maintenance of wigs and regalia.

The Tribunal appreciates that it would be convenient for both the Government to provide one single payment and for judicial officers to receive and use a single payment for the purposes which they deem to be the most relevant to them. However, the Tribunal is of the view that there is considerable benefit in retaining the current arrangement of payment of individual allowances.

The allowances which could form part of an “expense of office” allowance are provided to judicial officers as a form of compensation for expenses incurred as a result of their judicial duties. The allowances are set at what are deemed to be reasonable rates to cover those individual expenses. If the set amounts are not required by a judicial officer as the expense has not been incurred, the allowance cannot be put to another purpose. The allowances are not intended to be an addition to the judicial salary. In addition, the Tribunal notes that the Queensland allowance largely covers travel and library expenses, two allowances for which the Tribunal has provided clear recommendations.

The Tribunal considers that the payment of individual allowances is appropriate and therefore does not support or recommend the introduction of an expense of office allowance.

## **3.2 Travel**

### **Current Arrangements**

Overseas travel for Judges of the Supreme Court and County Court is currently set by the Department of Premier and Cabinet’s *Public Sector Overseas and Domestic Travel Policy and Guidelines* (DPC Guidelines) and the Department of Justice’s *Public Sector Overseas and Domestic Travel Policy and Guidelines* (DoJ Guidelines).

The DPC Guidelines provide that before the Chief Justice of the Supreme Court, the Chief Judge of the County Court or the Chief Magistrate may travel, they must obtain approval from the Attorney-General. All Judges and Masters of the Supreme Court must seek approval of the Chief Justice before travelling. Judges of the County Court must seek approval from the Chief Judge before travelling and all Magistrates must seek approval

from the Chief Magistrate. The DoJ Guidelines set out arrangements for airfares and rates of allowances covering accommodation, meals and incidentals.

Interstate travel for Judges of the Supreme Court and County Court is governed by the Attorney-General's certificate dated 28 March 2000 which states:

When the Chief Justice or Chief Judge is satisfied having regard to the costs involved that it is in the interests of the court for one or more Judges to attend an interstate conference, course of instruction or similar occasion lasting more than two days, the business class air fares of that Judge or those Judges, together with their partners, should be paid by the Court.

The current entitlements to travel for Masters, Magistrates and acting judicial officers is unclear given that neither the DPC or DoJ guidelines, nor the Attorney-General's certificate, refer to these offices. The Tribunal is aware however that Magistrates currently travel in accordance with the DoJ guidelines.

### **Submissions**

The Tribunal posed the following question in the Issues Paper:

“On what basis should a judicial officer be entitled to travel overseas on official business and how should approval be provided? Should there be a limit to the number of overseas trips allowed by each judicial officer in a twelve month period?”

### ***Supreme Court***

In relation to overseas travel the Supreme Court advised that it has no difficulty in administering the Court's current travel policy, except that the allocation for the Court's "travel budget" is unrealistically low. The Court noted that, in practice a Judge is entitled to have his or her appropriate costs of attending one interstate conference or seminar a year reimbursed by the Court. The Court noted that approval for judicial officers to travel overseas and be reimbursed for their appropriate costs is only given on rare occasions.

### ***Magistrates' Court***

The Magistrates' Court noted that their travel allowance is currently set by the Chief Magistrate. The allowance is presently \$110 for country accommodation and up to \$170 for accommodation in Melbourne. The Court commented that while Magistrates are currently entitled to four star accommodation, the allowance is an insufficient amount to meet that level of accommodation.

The Court submitted that the travel allowance of Magistrates should not be subject to the discretion of the Chief Magistrate, and proposed the introduction of a judicial travel allowance of \$300 per night for accommodation or reimbursement of expenditure. The Court noted that the allowance for meals and incidentals ought to be adjusted to recognise increased expenses associated with the nature of judicial office and the limitations on the locations at which meals may be eaten. The Court stated that the same rates should be applied to all judicial officers and should be adjusted automatically based on CPI.

The Court also requested that the Tribunal create an entitlement to attend an international conference bi-annually, with provision for spousal attendance.

### ***Department of Justice***

The Department of Justice queried whether travel should be an entitlement or part of the terms and conditions of judicial office. The Department proposed that any judicial travel should be approved by an 'appropriately authorised person' in accordance with the Victorian public service travel policy. Spousal attendance should also be considered against the background of that policy.

### Recommendations

In considering whether to adopt the Departmental travel policy or introduce a travel allowance, the Tribunal reviewed the entitlements of judicial officers in other jurisdictions. In Queensland, Judges receive a Jurisprudential Expense and Expense of Office Allowance that can be used for travel. This policy does not apply to Magistrates. In Queensland, South Australia, the Australian Capital Territory (ACT) (whose Judges are linked to Federal Judges) and the Commonwealth, government travel policies apply to overseas travel for Judges. Governmental or Departmental travel policies apply to Magistrates in all jurisdictions (including Queensland and the ACT).

The Tribunal has also reviewed the current Department of Justice and newly adopted Department of Premier and Cabinet travel policies and guidelines. The Tribunal believes that these policies appropriately provide for judicial travel, setting rates for airfares, accommodation and meals and incidentals, and therefore should continue to apply.

The Tribunal notes the Department of Justice's comment that travel should be approved by an "appropriately authorised person" in accordance with the Victorian public service travel policy. The Tribunal considers that in the case of travel by Judges and Magistrates the "appropriately authorised person" should be the head of jurisdiction. Travel by the heads of jurisdiction should be approved by the relevant Minister, in this case the Attorney-General. This is consistent with the Department of Premier and Cabinet guidelines.

The Tribunal does not support the Magistrates' Court proposal for a biannual entitlement to attend an international conference.

The Tribunal recommends that the current Attorney-General's certificate be adjusted to apply to both interstate and overseas travel for Judges and Masters of the Supreme Court and County Court and for Magistrates. The certificate should provide that judicial officers may travel in accordance with Departmental travel policies and that such travel should be approved by the relevant head of jurisdiction, and in the case of the heads of jurisdiction, the Attorney-General. This adjustment would ensure that all judicial travel is governed by the same policy thereby removing any doubt surrounding the entitlements of Masters and Magistrates.

The Tribunal notes the Magistrates' Court proposal that the allowance be adjusted annually in accordance with CPI. The Tribunal understands that the daily rates listed in the Department of Justice policy for meals and incidentals are adjusted annually in accordance with the annual Australian Taxation Office ruling. As such, the Tribunal sees no need to link this entitlement to any other adjustment mechanism.

#### Recommendation 1

Judges and Masters of the Supreme Court and County Court and Magistrates be entitled to travel overseas or interstate in accordance with the Department of Premier and Cabinet and Department of Justice travel policies as amended from time to time. Prior to travelling, Judges, Masters and Magistrates must seek the approval of the relevant head of jurisdiction and the heads of jurisdiction must seek the approval of the Attorney-General. Provided that the entitlement of Business Class interstate air travel of the partner of a Supreme Court or County Court Judge continue in accordance with the Attorney-General's Certificate dated 28 March 2000.

### 3.3 Circuit Allowances

#### Current Arrangements

Judicial officers who are required to travel on circuit receive an allowance paid in accordance with the Department of Justice's *Travel, Accommodation and Personal Expenses Policy* to cover meals and incidentals, and have their accommodation paid for when an overnight stay is required.

**Submissions**

The Supreme Court noted that, save for unrealistically low funding, there is no difficulty in administering the Court's circuit travel policy.

The Magistrates' Court considered this issue in light of the broader travel context and provided no direct comments on the circuit allowance.

**Recommendations**

The Tribunal notes that in all other Australian jurisdictions allowances paid to judicial officers on circuit are governed by either an administrative policy or a remuneration tribunal determination. Such policies and determinations specify the rates which apply for accommodation and meals and incidentals. To ensure a consistent approach to all travel related expenses in Victoria and other jurisdictions, the Tribunal recommends that the relevant Departmental travel policy should also apply to circuit travel. The Tribunal therefore recommends the formalisation of the current practice of a payment for meals and incidentals and accommodation in accordance with the Departmental policy, in an Attorney-General's certificate.

**Recommendation 2**

When travelling on circuit, Judges and Masters of the Supreme Court and County Court and Magistrates be paid a travel allowance to cover accommodation (if an overnight stay is necessary) and meals and incidentals, in accordance with the relevant Department of Justice travel policy as amended from time to time.

**3.4 Library Allowance**

Pursuant to the Attorney-General's certificates dated 18 May 2004 and 29 November 1996, judicial officers receive a library allowance on the following terms. Reimbursement of 80% of actual expenditure to a maximum of:

- \$8,000 per annum for Supreme Court Judges;
- \$2,500 per annum for Supreme Court Masters and County Court Judges;
- \$1,500 per annum for Magistrates based in country regions; and
- \$1,000 per annum for Magistrates based in Melbourne.

**Submissions*****Supreme Court***

The Supreme Court advised that it has assumed that the library allowance may be used not only for books and periodicals but also to meet the cost of acquiring and maintaining electronic facilities. The Court requested that the Tribunal clarify that the library allowance is indeed available for this purpose.

***Magistrates' Court***

The Magistrates' Court submitted that the current library allowance for Magistrates is inadequate and sought an increase in the allowance to the same level as a Judge of the County Court, that is \$2,500. The Court submitted that its jurisdiction overlaps with that of the County Court and therefore Magistrates require the same library resources as a judge of the County Court. The Court also suggested that the allowance should be redefined as an expense of office allowance and be made payable to each judicial officer annually.

The Magistrates' Court also requested that the Tribunal introduce a "internet and technology allowance", to support the research capacity of Magistrates. The Court noted that the Department of Justice no longer provides Magistrates with out of chambers access to internet. To obtain home based access to internet and email through the Department of Justice intranet, Magistrates are required to pay \$700 for the connection and to install and pay for their own server capacity. The Court claims that no other judicial officer in Australia

is required to pay for the capacity to access court based computer systems. The Court considers that an allowance of \$700 per annum be introduced to compensate Magistrates for the costs associated with connection and maintenance of private internet access.

### **Recommendations**

The Tribunal agrees with the Magistrates' Court that the current library allowance is inadequate and therefore recommends that it be increased to a maximum of \$2,500 for all Magistrates.

The Tribunal recognises that the needs of judicial officers have changed over time with the availability of legislation, case law and legal commentaries through electronic resources. While the library allowance was traditionally used exclusively for books and periodicals, the Tribunal appreciates that this no longer meets the needs of judicial officers. The Tribunal supports the view of the Supreme Court that the library allowance can be used for both books and electronic facilities and recommends that the Attorney-General's certificate be adjusted to reflect this position and place the matter beyond doubt.

Throughout the review process the Tribunal has been made aware of the range of information that is available to Judges of the County Court, on the access to which the library allowance can be put and the range of electronic facilities that are available. The Tribunal is also aware that a range of services are available through the Judicial Officers Information Network (JOIN). The Tribunal would like to encourage judicial officers to utilise this valuable service.

The Tribunal has considered the Magistrates' Court's request for the introduction of an internet and technology allowance. The Tribunal has had the benefit of reviewing the Department of Justice's policy on remote access to internet and notes that this applies across all Victorian courts.

The Tribunal has been advised that Judges of the County Court who wish to obtain remote access to the internet from their homes, are required to follow this policy and pay for the connection and maintenance costs personally. The County Court has advised that some Judges opt to use their library allowances for this purpose.

The Magistrates' Court's submission that it is the only court which is required to pay for this service therefore appears inaccurate.

Given the example of the County Court and the increase in the library allowance for Magistrates, the Tribunal is not persuaded that an additional allowance is necessary. The Tribunal would encourage Magistrates to use the library allowance for the purpose of obtaining remote access to the internet, as do the Judges of the County Court.

The Tribunal also notes that the Departmental policy provides for the reimbursement, on application, of some of the costs associated with internet connection, therefore reducing the total amount that judicial officers are required to pay.

To ensure that the library allowance increases appropriately over time with inflation, it should be linked with the relevant CPI.

### **Recommendation 3**

Judges and Masters of the Supreme Court and County Court and Magistrates be provided with a library allowance fixed at 80% of expenditure, up to a maximum of:

- \$8,000 per annum for Supreme Court Judges; and
- \$2,500 per annum for Supreme Court Masters, County Court Judges and Masters and Magistrates.

The allowance may be used for books, periodicals and the costs of acquiring and maintaining electronic facilities (including remote internet access for official purposes only as provided for in the Department of Justice Remote Internet Access Policy).

The allowance increase annually in accordance with CPI from the date of the Certificate.

### 3.5 Home Telephone Allowance

The provision of a telephone allowance seems to have evolved over time as a matter of convention. Currently, the Chief Justice of the Supreme Court and the Chief Judge of the County Court receive reimbursement for the cost of a home telephone and 100% of all calls, while Judges of the Supreme Court and County Court do not receive any telephone allowance. Magistrates are reimbursed for 50% of the cost of the line rental for a home phone and the cost of 50% of calls from that phone.

#### Submissions

##### *Supreme Court*

The Supreme Court noted that its Judges and Masters use their home phones for court purposes on occasions 'that are not insubstantial' without reimbursement, while judicial officers in other jurisdictions receive reimbursement for some of the costs of a home phone and calls.

The Supreme Court submitted that judges of the Federal Court are entitled to be reimbursed for the costs of their home telephone and electronic services at their primary place of residence and like costs at a second home. A number of other states including Queensland and New South Wales have made moves to address the disparity between the allowances of their Judges and those received at the Federal Court level. The Court requested that the Tribunal recommend that its Judges be entitled to recoup the reasonable costs of their home telephone and electronic services up to a maximum of \$1,500 per annum in respect of their primary residence and \$500 per annum in respect of any secondary residence (this is comparable to the Queensland allowance).

##### *Magistrates' Court*

The Magistrates' Court submitted that the current telephone allowance should be retained, and requested that as Magistrates often use personal mobile phones for court purposes, they be permitted to elect to apply the telephone allowance to either a home or mobile phone, with costs compensated for by an allowance of 80% of the actual cost of the nominated device.

#### Recommendations

The Tribunal accepts the submission of the Supreme Court that its Judges should receive reimbursement of telephone related expenses. The Tribunal also accepts the Magistrates' Court submission that the telephone allowance should be available to be applied to either a home or mobile telephone.

However, the Tribunal is not persuaded that the Supreme Court's proposal that its Judges should receive a telephone allowance of \$1,500 per annum for their primary residence and \$500 per annum for any secondary residence is reasonable. Neither does the Tribunal consider that the Magistrates' Court's proposal that the allowance should be increased to 80% of the actual cost of the nominated device is reasonable.

The Tribunal considers that most judicial officers would likely own a home or mobile telephone that is used for both personal and court purposes. The Tribunal therefore considers that reimbursement of 50% of the cost of calls is reasonable. The Tribunal recommends that the telephone allowance be validated in an Attorney-General certificate, which provides for judicial officers to be reimbursed for 50% of the cost of calls from an elected home or mobile telephone and 50% of the cost of line rental, if the elected phone is a home phone.

Given that the Chief Justice of the Supreme Court and the Chief Judge of the County Court currently receive the full cost of a home telephone and 100% of call costs, the Tribunal recommends that this be validated in an Attorney-General's certificate, and be extended to the President of the Court of Appeal and the Chief Magistrate.

As the allowance provides for the reimbursement of a percentage of costs spent it should not be linked to CPI.

**Recommendation 4**

Judges and Masters of the Supreme Court and County Court and Magistrates be reimbursed for 50% of the cost of calls from an elected mobile or home telephone and 50% of line rental costs for a home telephone, if that phone is the elected phone.

**Recommendation 5**

The Chief Justice of the Supreme Court, the President of the Court of Appeal, the Chief Judge of the County Court and the Chief Magistrate be reimbursed for 100% of the cost of calls from an elected mobile or home telephone and 100% of line rental costs for a home telephone, if that phone is the elected phone.

**3.6 Senior Magistrate Co-ordinating Function**

The Attorney-General's Certificate of 29 April 1996 authorised an allowance equivalent to 2% of salary for a Co-ordinating Magistrate. The Attorney-General's Certificate of 24 August 1998 authorised an increase in the allowance to 4% and noted that the role of Senior Magistrate replaced that of Co-ordinating Magistrate. The Tribunal considers it appropriate to continue the allowance equivalent to 4% of salary for Senior Magistrates for the Co-ordinating function.

**Recommendation 6**

An allowance equivalent to 4% of salary be paid to Senior Magistrates for the Co-ordinating function.

**3.7 Other Matters – Gold Pass, Cabcharge, Car Park, Chambers Fitout, Regalia**

Judicial officers also receive a range of miscellaneous allowances and conditions of service, which have not been validated or clearly provided for. These allowances are:

- **Cabcharges** – Cabcharges are provided to Judges of the Supreme Court and County Court for use for official purposes. Access to Cabcharges is also available for Magistrates.
- **Gold passes** – Gold passes (travel cards for rail, bus and tram travel within Melbourne) are provided to Judges of the Supreme Court and County Court, covering zones 1 and 2 depending on the judicial officer's home address.
- **Regalia** – Judges of the Supreme Court and County Court are provided with wigs and robes as required.
- **Chambers fitout** – Judicial chambers are fitted out for judicial officers across the courts at varying standards.
- **Car Parks** – most Judicial officers are provided with car parking.

**Submissions*****Supreme Court***

The Supreme Court supported the continuation of the current arrangements in relation to gold passes and cabcharges. The Court also submitted that it has no difficulty with the supply of regalia or chambers fitout for its Judges, other than budgetary constraints.

***Magistrates' Court***

The Magistrates' Court submitted that Magistrates do not have access to gold passes and rarely use cabcharges due to uncertainty surrounding when they can be used. The Court also noted that as cabcharge facilities are largely only available in Melbourne, they do not accommodate Magistrates who sit in country courts. The Court supported consolidating the entitlements into one allowance applied proportionately across the jurisdictions and subject to regular adjustment.

The Court submitted that chambers fitout is a significant issue for Magistrates, and identified the difficulties it faces in ensuring that Magistrates have appropriate facilities. For example, the Court noted that it is common for one or two printers to be shared between thirty Magistrates. The Court also noted that chambers allocation to Magistrates is inadequate, citing the example of Magistrates sitting at the State Coroner's Office who are located in portables without adequate heating, cooling and toilet facilities. The Court requested that the Tribunal set minimum standards and entitlements to chambers fitout to ensure that adequate facilities are provided to all judicial officers.

The Court advised that car parking should not be considered a benefit for any judicial officer, as it is a security and safety measure.

#### **Recommendations**

The Tribunal notes the submission of the Supreme Court in relation to gold passes and agrees that this entitlement for Judges of the Supreme Court and County Court should be retained and validated in an Attorney-General's certificate.

The Tribunal considers that the provision of cabcharges, car parking, regalia and appropriate chambers are matters for the internal management of the Court and should not be deemed to be allowances or conditions of service. Consequently the Tribunal will not make recommendations on these issues.

#### **Recommendation 7**

Judges of the Supreme Court and County Court receive a gold pass for the duration of their term in judicial office.

### **3.8 Motor Vehicles**

#### **Current Arrangements**

Judges of the Supreme Court and County Court and the Chief Magistrate are currently provided with motor vehicles in accordance with the terms and conditions of the Judicial Car Scheme set out in the *Department of Justice Fleet Management Policies and Guidelines 2001* (the Fleet Policy). Judges are required to pay a nominal contribution of \$837 per annum towards the running costs of the vehicle. In addition to receiving a vehicle, the Chief Justice of the Supreme Court, the President of the Court of Appeal and the Chief Judge of the County Court are also provided with a driver.

The Chief Justice of the Supreme Court is also provided with a car on a novated-leasing basis for private use.

While Masters of the Supreme Court and County Court and Magistrates are not provided with a car on these terms, they are entitled to a car allowance of \$5,400 per annum pursuant to the Attorney-General's certificate dated 29 November 1996. The allowance may be offset against the cost of a car to be provided through the Executive Officer Car Scheme set out in the Fleet Policy. Masters and Magistrates are then required to fund the remaining amount required for providing the car.

The Attorney-General's certificate dated 18 May 2004, adjusted the car allowance for Masters of the Supreme Court to provide that the allowance of \$5,400 may be incorporated into "salary for all purposes".

A judicial officer who uses his or her personal vehicle for official purposes is entitled to reimbursement of mileage in accordance with the rates specified in the Fleet Policy.



**Submissions**

In relation to motor vehicles and related allowances, the Tribunal posed the following question in the Issues Paper:

“Should Judges and Magistrates be provided with a car allowance instead of a car (in the case of Judges) to allow some choice in the type of vehicle purchased? Or should the current provisions be retained?”

**Supreme Court**

The Supreme Court noted its preference for the retention of the current arrangements, rather than converting the entitlement to a vehicle into an allowance.

**Magistrates' Court**

The Magistrates' Court submitted that the same scheme regardless of what the Tribunal determines should apply across all levels of the judiciary. The Court argued that Magistrates should receive a motor vehicle on the same basis as Judges of the Supreme Court and County Court, seeing no reason for the distinction between the offices.

The Court submitted that, if they are not provided with a car, the current car allowance should be increased and provided in accordance with the Judicial Car Scheme and not the Executive Officer Car Scheme. The Court provided the following arguments to support this submission:

- The current allowance has not been adjusted since it was introduced in 1996.
- Magistrates regularly travel between the various Magistrates' Court locations, essentially “funding the travel arrangements of the court” as they are excluded from the financial benefits of the Judicial Car Scheme.
- VicFleet, the Victorian Government authority, which provides vehicles to Magistrates under the Executive Officer Car Scheme, has unilaterally increased charges to Magistrates without reference to the Tribunal. In June 2005, VicFleet sought to increase charges but deferred this action pending the outcome of the Tribunal's review, after the intervention of the Attorney-General and protest of the Court.

The Court also noted that Magistrates, other than acting Magistrates, do not receive a mileage allowance when using a private vehicle for official purposes.

**Department of Justice**

The Department of Justice submitted that the range of motor vehicles available under the current scheme is considered appropriate and that the range of options available for car allowances or the provision of vehicles would require expert assistance to consider the Fringe Benefits Tax, superannuation and salary packaging implications of each option.

**Recommendations**

In considering whether judicial officers should be entitled to a motor vehicle or car allowance, the Tribunal has reviewed the entitlements of judicial officers in other jurisdictions, considered the terms of the Fleet Policy and relied on the submissions of the courts.

The Tribunal considers that the current arrangements for the Judges of the Supreme Court and County Court and the heads of jurisdiction should be retained. The Tribunal agrees with the Department of Justice that the Fleet Policy is appropriate and meets the needs of these judicial officers. The Tribunal also notes the Supreme Court's preference for the current arrangements to be maintained.

The Tribunal recommends that the current arrangement for the provision of a motor vehicle to these judicial officers be formalised in an Attorney-General certificate.

The Tribunal accepts the position presented in the Magistrates' Court submission that Magistrates are disadvantaged by the current motor vehicle entitlements. While the Tribunal is not persuaded that Magistrates should be entitled to a motor vehicle on the same basis as Judges of the Supreme Court and County Court, it does agree that the current car allowance should be adjusted.

The Tribunal has considered the entitlements of judicial officers in other jurisdictions referred to in the Magistrates' Court submission and has conducted its own interstate comparison. At the time of writing, the Tribunal understands that these entitlements are as follows:

- Commonwealth: Private plated vehicle or \$9,060;
- New South Wales: Conveyance allowance of \$15,840;
- Queensland: \$6,675 added to salary to compensate for lack of vehicle;
- South Australia: Conveyance allowance of \$11,440 (the Tribunal notes that this allowance was \$5,400 in 1996 when the allowance in Victoria was introduced and has been adjusted over time);
- Western Australia, Tasmania, Northern Territory and the Australian Capital Territory: Fully funded vehicle.

The Tribunal understands that under the Executive Officer Car Scheme, a judicial officer will pay approximately \$10,500 to \$12,500 per annum for a vehicle (non prestige class). The Magistrates' Court submission notes that a Magistrate will pay \$10,987 for a Ford Fairmont. Once the current car allowance is deducted from this amount, the Magistrate is required to personally contribute \$5,587 towards the motor vehicle.

The Tribunal considers that it would be appropriate to adjust the car allowance by \$3,660, increasing it to \$9,060 which is the amount provided to federal Magistrates. This would decrease a Magistrate's personal contribution for a Ford Fairmont to \$1,927 per annum.

The Tribunal also recommends that this increase and recommendation be adopted for Masters of the Supreme Court and County Court and that the allowance be linked to CPI to allow for annual adjustments.

Having regard to the previous authorisation under the Attorney-General's certificate of 8 May 2004 for the car allowance payable to Masters to be incorporated into salary for all purposes, the Tribunal considers that it is appropriate that the allowance payable to Magistrates be similarly incorporated.

The Tribunal is of the view that under the current Fleet Policy all judicial officers should be reimbursed for mileage when using a private vehicle for official purposes. However the Tribunal notes the Magistrates' Court submission which states that this does not occur other than for acting Magistrates. Therefore the Tribunal recommends that the entitlement to reimbursement be made clear and formalised under an Attorney-General's certificate.

**Recommendation 8**

Judges of the Supreme Court and County Court and the Chief Magistrate be provided with a motor vehicle in accordance with the Judicial Car Scheme set out in the *Department of Justice Fleet Management Policies and Guidelines 2001* (or any other Departmental policy that is adopted from time to time), and be required to contribute a nominal contribution of \$837 per annum towards the running costs of the vehicle.

**Recommendation 9**

The Chief Justice of the Supreme Court, the President of the Court of Appeal and the Chief Judge of the County Court be provided with a motor vehicle in accordance with the Judicial Car Scheme set out in the *Department of Justice Fleet Management Policies and Guidelines 2001* (or any other Departmental policy that is adopted from time to time), and be required to contribute a nominal contribution of \$837 per annum towards the running costs of the vehicle. These judicial officers should also be provided with a driver.

**Recommendation 10**

Masters of the Supreme Court and County Court and Magistrates be provided with a car allowance in the amount of \$9,060, which may be offset against the cost of a car to be provided through the current Executive Officer Car Scheme, set out in the *Department of Justice Fleet Management Policies and Guidelines 2001* (or any other Departmental policy that is adopted from time to time). This allowance be adjusted annually in accordance with CPI.

The allowance provided to Masters of the Supreme Court and Magistrates is to be incorporated into salary for all purposes.

**Recommendation 11**

A Judge, Master or Magistrate who uses his or her private vehicle for official purposes be reimbursed for mileage in accordance with the rates outlined in the *Department of Justice Fleet Management Policies and Guidelines 2001* (or any other Departmental policy that is adopted from time to time).

**3.9 Living Away from Home Allowance****Current Arrangements**

Under section 13 of the **Magistrates' Court Act 1989**, the Chief Magistrate is able to assign duties to Magistrates and as such can assign a Magistrate to sit in country Victoria.

Where a Magistrate relocates on a temporary basis to fulfil such an assignment (for a period not less than 21 days) and intends to return to his or her former location, he or she is paid a "living away from home allowance" (LAFH allowance). Currently Magistrates receive a weekly allowance of \$350 which represents \$215 rental assistance and \$135 for food, for a period of up to two years. In addition, the Court meets reasonable costs associated with the removal of furniture and personal effects and connection fees for essential services.

Where a Magistrate permanently relocates, the Chief Magistrate may approve 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.

Where a Magistrate permanently relocates to a county region and maintains a residence in the assigned region for at least three years prior to retirement, upon retirement the Magistrate is paid reasonable expenses for the removal of furniture and personal effects if the Magistrate relocates to a location in Victoria outside the assigned region.

In addition, due to local practice and convention, some country Magistrates are provided with certain goods and services, such as whitegoods, payment of school fees, payment of removal expenses and payment of rent.

**Submissions**

The Magistrates' Court submitted that the amount paid in accordance with the current LAFH allowance is the minimum required to attract Magistrates to sit in country regions and is appropriate to compensate for the numerous expenses and inconveniences incurred by such an assignment. The Court submitted that the amounts outlined in its submission (noted above) represent the minimum provision for executives in the public and private sectors.

The Court submitted that Magistrates should be entitled to the allowances as a minimum standard, subject to the capacity of the Chief Magistrate, by agreement with an individual Magistrate, to vary the details of the entitlement to the prescribed matters to accommodate particular circumstances. The Court submitted that the allowance should be formalised by the Tribunal to ensure that its validity is beyond doubt.

**Recommendations**

The Tribunal is aware that Magistrates are expected to sit in regional courts for periods of their career and that this is made clear to candidates upon appointment. While Magistrates accept these conditions upon appointment, it does not mean that the Magistrate should be required to bear the financial burden and inconvenience of relocation. The Tribunal in particular notes that, given the average age of Magistrates, relocation could involve inconvenience to a young family, including requiring children to move schools.

In some areas of the public and private sectors, employers provide employees with living away from home allowances and costs for relocation, where an employee agrees to or is required to relocate for work purposes.

The Tribunal agrees with the submission of the Magistrates' Court and recommends the validation of the existing living away from home allowance and relocation expenses for Magistrates who relocate to regional areas for extended periods.

**Recommendation 12**

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 a period of 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 effects and connection fees for essential services.

### 3.10 Leave Entitlements

#### Current Arrangements

The current leave arrangements for judicial officers are outlined in the table below:

Type of Leave	Supreme Court	County Court	Magistrates' Court
Annual Leave/ Court Vacation	8 weeks	8 weeks	4 weeks
Sick Leave	Sick leave provided at the discretion of the head of jurisdiction		
Sabbatical/Long Service Leave	6 months 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 is accrued for every additional year of service completed		3 months after 10 years of service
48/52	Not available	Not available	Access to additional annual leave through 48/52*
Parental Leave	No provisions		

\* This entitlement allows Magistrates to reduce their salary throughout the year in return for an additional four weeks of annual leave. The reduced salary thereby pays for the additional four weeks of leave. The entitlement has been available since at least 2001 and approximately 25% of Magistrates utilise it each year.

#### Submissions

In relation to the various types of leave outlined above, the Tribunal posed the following question in the Issues Paper:

“Should judicial officers be entitled to [these] various types of leave?”

#### Supreme Court

The Supreme Court noted that the reference to annual leave in the Issues Paper is incorrect as Judges take leave during the court vacation period which is determined by the Court as part of its control over its own process. Further, while Judges generally do not sit during this period, many continue to work. The Court submitted that no action is required by the Tribunal in relation to leave and the court vacation period.

In relation to sick leave, the Court noted that as judicial salaries cannot be reduced, it is not helpful to put artificial limits on the amount of time a Judge may stay away due to illness on “full pay”. The Court noted that very few court days are lost to illness and Judges with prolonged illness ordinarily retire.

In its supplementary submission, the Court noted that the current entitlement for Judges to six months long service leave after seven years of service is of less benefit than that available to Judges of the Federal Court and the New South Wales Supreme Court who are entitled to such a benefit after five years of service. The Court further noted that in Queensland, rather than leave, the Judges receive a compensatory allowance of 2.86% of the salary component, representing the value of the difference between the respective entitlements to long service leave.

***Magistrates' Court***

The Magistrates' Court submitted that Magistrates should receive the same leave entitlements applicable to other judicial officers. While noting that remuneration cannot be reduced throughout a leave period, the Court requested that the following leave provisions be formalised for Magistrates:

- 8 weeks annual leave;
- 6 months long service leave after 7 years of service;
- access to 48/52 leave (the court noted that this should not result in a reduction of other allowances payable to Magistrates who take advantage of the scheme); and
- access to maternity leave, paternity leave, adoption leave, bereavement leave and special leave (the court noted the terms and arrangements pursuant to the repealed Public Service Act have traditionally continued to apply to Magistrates).

While discussing leave arrangements the Court also noted the lack of disability entitlements for Magistrates (considered further at 4.3).

The Court supported the application of public service parental leave arrangements to Magistrates. The Court advised that a number of Magistrates have taken full time maternity leave or are working on a part time basis as part of their maternity leave.

***Department of Justice***

The Department of Justice submitted that the review should establish a consistent position on the leave entitlements of judicial officers, providing flexible arrangements that accommodate family responsibilities. The Department noted that sick leave should continue to be identified as a specific type of leave as, while it may not affect remuneration, it is important from a management perspective that the Court has information about sick leave that is being taken. The Department noted that consideration should also be given to supporting a more general recording of leave arrangements to ensure greater transparency in the application of entitlements.

***Recommendations***

While the Tribunal appreciates that judicial salaries cannot be reduced while a judicial officer is on leave, it is important that formal entitlements to leave for judicial officers be recognised.

The Tribunal supports the position of the Department of Justice that measures should be put in place to ensure the appropriate recording of leave by judicial officers, thereby ensuring greater transparency in the application of the entitlement. The Tribunal considers that leave should be appropriately recorded.

The Tribunal does not accept the Magistrates' Court submission that Magistrates should be entitled to the same leave arrangements as Judges of the County Court.

The Tribunal notes that this matter was raised during the 2003 review when the Magistrates' Court requested an increase in annual leave from four to eight weeks. At that time the Tribunal was not persuaded by the Court's arguments and considered that the cost to the Government of such an increased entitlement would be too significant. The Tribunal maintains this view.

With the exception of long service leave which will be discussed below, the Tribunal accepts that the current leave arrangements are appropriate and recommends their formalisation in an Attorney-General's certificate, on the following terms.

- **Annual leave (court vacation)** – 8 weeks for Judges and Masters of the Supreme Court and County Court and 4 weeks for Magistrates.
- **Sick leave** – The Tribunal agrees with the Supreme Court that to provide a limit on sick leave would be inappropriate, and therefore recommends the formalisation of the current procedure whereby leave is provided at the discretion of the head of jurisdiction. However, such absences should be recorded.
- **48/52** – The Tribunal accepts the submission of the Magistrates' Court that Magistrates should be entitled to 48/52 leave. Given that the Judges and Masters of the Supreme Court and County Court are entitled to an eight week annual leave period, access to 48/52 need not be made available to them.

- **Parental, bereavement and other forms of leave** – The Tribunal recommends that these types of leave be available to all judicial officers on the same terms as set out in the Victorian Public Service agreement.

***Long Service Leave/Sabbatical Leave***

In relation to long service leave, the Tribunal accepts and agrees with the submission of the Supreme Court that Judges should accrue leave on the same terms as Judges in the Federal Court and other jurisdictions. The Tribunal has considered the terms of the allowance in Queensland and the operation of the equation.

The Tribunal notes that the current legislative scheme for conditions is governed by its recommendations and subsequent Attorney-General's certificates. The Tribunal also notes that section 11(c)(ii) of the JRT Act specifically gives the Tribunal jurisdiction to provide recommendations on the provision of long service/sabbatical leave (including long leave and sabbatical leave) to judicial officers. Further the current provision for long service leave is under an Attorney-General's certificate. The Tribunal is therefore of the view that it has jurisdiction to recommend an adjustment of the certificate.

As such the Tribunal recommends that the current certificate be amended to provide that Judges of the Supreme Court and County Court be able to access six months of long service/sabbatical leave after five years of service, thereby bringing Victoria into line with other jurisdictions.

The Tribunal appreciates that the adjustment of this condition will impose a financial burden on the Government as well as having an operational impact on the Court. However, the Tribunal considers it appropriate that the Supreme Court of Victoria remain comparable with other jurisdictions, to ensure that suitably qualified candidates for judicial office are attracted to and remain at the Court.

The Tribunal does not support the extension of this entitlement to Magistrates and Masters, and considers that the current entitlement to 3 months leave after 10 years of service should continue and be formalised in an Attorney-General's certificate. The Tribunal notes that this matter was raised by the Masters and Magistrates during the 2003 review and the proposed increase was opposed by the Government.

**Recommendation 13**

Judges and Masters of the Supreme Court and County Court be entitled to eight weeks of annual leave per annum.

Magistrates be entitled to four weeks of annual leave per annum.

**Recommendation 14**

Judges and Masters of the Supreme Court and County Court and Magistrates have access to sick leave at the discretion of the relevant head of jurisdiction, with such leave being recorded.

**Recommendation 15**

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 long service leave after 10 years of service.

**Recommendation 16**

Magistrates be able to access 48/52 leave.

**Recommendation 17**

Judges and Masters of the Supreme Court and County Court and Magistrates have access to parental, bereavement and other special leave on the terms set out in the Victorian Public Service Agreement as amended from time to time.

### 3.11 Recognition of Prior Service

#### Current Arrangements

Recognition of prior service is recognised for Supreme Court and County Court Judges in the form of a pay out of partially accrued long service leave entitlements.

The Attorney-General's certificate dated 18 May 2004, which came into effect on 1 July 2004 allows Judges of the Supreme Court and County Court to have their prior service recognised and subsequently paid out. The certificate states:

A Judge of the Supreme or County Court who served in public office immediately prior to judicial appointment and had not accrued a long service leave entitlement is to be paid on a pro rata basis an amount that could have accrued under the long service leave accrual rules for the Victorian Public Service. This is to apply when the Judge completes the balance of that period in judicial office or leaves office as a result of death or disability.

There is currently no entitlement for Masters or Magistrates to have their prior service recognised.

#### Submissions

The Magistrates' Court noted that prior public service has been recognised for Magistrates as time spent in the public service is counted towards magisterial long service leave.

The Court submitted that it should be entitled to the same long service leave arrangements as the Supreme Court and County Court. The Court noted that if such leave is provided for, prior service should not be recognised for the purposes of calculating the entitlement to long service leave. In the absence of this change, the current arrangements with respect to recognition of prior public service should continue.

#### Recommendations

In the Issues Paper, the Tribunal identified a number of issues that have been raised in relation to the entitlement to prior recognition of service, including whether:

- the condition of service only applies to Judges appointed after 1 July 2004 (date of certificate);
- the rate of the entitlement should be equal to the remuneration level of the public office the Judge held before his or her appointment, or the remuneration level of the judicial office the Judge holds;
- the entitlement can be taken as leave instead of money; and
- the effect of the Victorian Public Sector Agreement in relation to long service leave on the condition of service.

#### Operation of Current Certificate

The Tribunal is aware that there has been a range of issues with interpreting this entitlement and as such proposes to clarify its operation.

The intention of the entitlement to recognition of prior service is to ensure that a Judge who has served in the public service 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 was that it would operate in the following way.

A Judge, who immediately prior to his or her appointment served in the public service 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 service which are 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 current long service leave accrual rules for the public service state that a person is entitled to three months leave after ten years of service. So, for example, if a person is appointed after serving 5 years in public office, that person will be entitled to a payment of 1.5 months of their annual salary, once they have served 5 years as a Judge. The payout is to be based on the years of service in public office provided that a minimum of 4 years has been served in that office (this being the minimum period of service giving rise to a long service leave payout under public service conditions in case of leaving a public office because of disability or death).

The payout is to be calculated at the level of remuneration for the former public office prevailing at the time of payout.

The date of the certificate is 1 July 2004 and therefore applies only to Judges of the Supreme Court and County Court appointed after that date.

Further, the Tribunal notes that though the certificate specifies that the Judge is to receive a payout, it does not allow for prior service to be used towards judicial long service leave. The Tribunal therefore clarifies that the entitlement is to a payout of leave and does not count towards judicial long service/sabbatical leave which accrues from the date of judicial appointment.

#### **Adjustments**

The Tribunal recommends that the certificate continue to operate.

In the case of Masters and Magistrates, the Tribunal recommends that the entitlement to have prior public service recognised for the purpose of long service leave as a Master or Magistrate be formalised in an Attorney-General's certificate. This means 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, and also for this reason recommends that it apply to all serving Masters and Magistrates from the operative date of the Attorney-General's Certificate.

#### **Recommendation 18**

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.

#### **Recommendation 19**

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.

### **3.12 Acting/Reserve Judges**

#### **Current Arrangements**

The Tribunal notes that acting/reserve Judges receive benefits of office on a pro-rata basis. Such benefits are a motor vehicle, judicial library allowance, travel allowances, travel card and gold pass.

**Recommendation**

The Tribunal recommends that acting/reserve Judges continue to receive the benefits of office available on a pro-rata basis as set out above.

**Recommendation 20**

Acting/reserve Judges continue to receive the benefits of office available on a pro-rata basis for the following allowances: motor vehicle; judicial library; travel; travel card and gold pass.

**3.13 Acting Magistrates****Current Arrangements**

Currently acting Magistrates receive a daily sitting fee and are not entitled to the range of allowances that judicial officers receive as discussed above. Acting Magistrates are however entitled to have their mileage paid for in accordance with the *Department of Justice Fleet Management Policies and Guidelines 2001*.

**Submissions**

The Tribunal posed the following question in the Issues Paper:

“Are there circumstances where it is unreasonable or impractical for part-time, reserve and acting judicial officers to receive pro-rated allowances and conditions of service?”

The Magistrate Court submission noted the current travel allowance received by acting Magistrates and requested that this be endorsed.

In a letter to the Tribunal by the Chief Magistrate on behalf of the acting Magistrates, the acting Magistrates requested that the Tribunal consider their position in the context of the current review.

The acting Magistrates sought a recommendation for adjustment of their daily fee, asking that the absence of leave and other allowances and the fact that they perform the same duties as full time Magistrates be taken into account.

In addition, the acting Magistrates requested that in the interest of flexibility a half daily sitting fee be made available. The reason being an acting Magistrate could often be released from court after half a day when there has been a substantial clearance of the day's caseload. Currently however, there is no provision for a half daily fee to be paid when this occurs.

A representative of the acting Magistrates has also requested that the Tribunal recommend that acting Magistrates receive all of the allowances that Magistrates receive on a pro rata basis, or alternatively a separate overall allowance. It has also been requested that the Tribunal make any allowance retrospective, thereby covering the last 12 months of service when no allowances were provided. Alternatively the Tribunal may consider providing an overall allowance to cover the last 12 months.

**Recommendations**

While the Tribunal recognises that acting Magistrates perform the same functions as Magistrates, it is not persuaded that acting Magistrates should be provided with the same level of allowances on a pro rata basis. For example it is arguable that an acting Magistrate would not have a need for a library allowance in the same way as a full time Magistrate, nor a need to travel.

The Tribunal recognises that many acting Magistrates use personal vehicles for official purposes and accepts the Court's submission on this issue. As such the Tribunal recommends that acting Magistrates be entitled to reimbursement of mileage when using a vehicle for official purposes in accordance with the *Department of Justice Fleet Management Policies and Guidelines 2001*. In addition the Tribunal recommends that Acting Magistrates be entitled to travelling allowances in accordance with the relevant departmental policy.

In relation to the request that the Tribunal recommend an increase in the rate of the daily sitting fee and provision for a half daily fee, the Tribunal notes that it has no jurisdiction to make such recommendations as they relate to salaries. Salaries are currently governed by the **Judicial Salaries Act 2004** and therefore any change to the daily sitting fee would require legislative amendment.

**Recommendation 21**

An acting Magistrate who uses his or her private vehicle for official purposes be reimbursed for mileage in accordance with the rates outlined in the *Department of Justice Fleet Management Policies and Guidelines 2001* (or any other Departmental policy that is adopted from time to time). Acting Magistrates also be entitled to travelling allowances in accordance with the relevant departmental policy.

**4. Other Matters**

Both the Supreme Court and the Magistrates' Court requested that the Tribunal consider specific issues which were not raised in the Issues Paper.

**4.1 Raising the Retirement Age**

The Supreme Court requested that the Tribunal recommend that the retirement age for Judges be raised from 70 to 72 years of age. The Court argued that a balance must be struck between ensuring experienced Judges are not compelled to retire where they wish to continue to act as judicial officers, and ensuring that Judges do not remain in office beyond an arbitrary date when judicial work may be perceived as unduly burdensome. The Court argued that increasing the retirement age to 72 years would achieve such a balance, be in line with the circumstances in New South Wales and reflect community thinking. As this matter is outside the jurisdiction of the Tribunal, it is brought to the attention of the Attorney-General.

**4.2 Entitlement to a Judicial Pension upon Obtaining the Age of 60 years**

The Supreme Court requested that the Tribunal recommend that the pre-1995 entitlement to retire on a full pension after having served 10 years and attained the age of 60 be reinstated. Currently, a judicial officer may retire on a full pension after having served 10 years and attained the age of 65.

The Court argued that the change in 1995 marked a deterioration in judicial conditions of service. The higher retiring age is in contrast to the pension provisions of other jurisdictions and is discriminatory, particularly towards female Judges who are generally appointed at a younger age than their male counterparts. The Court suggests the discrepancy is yet another reason why the Court is seen as less attractive than other comparable jurisdictions to suitable candidates for judicial office.

The Magistrates' Court also requested, as it did in the 2003 review, that the Tribunal recommend that the Chief Magistrate be able to retire on a full pension at the age of 60 after 10 years of service.

The Tribunal considers that this issue is outside the scope of the current review given that the Issues Paper noted that pensions would not be considered at this time. As such the Tribunal has not had the opportunity to consider comments from other jurisdictions or the Government, for which this proposal would have a significant financial impact.

**4.3 Judicial Pensions for Magistrates****Judicial Pensions**

The Magistrates' Court requested that the Tribunal recommend that Magistrates receive a judicial pension comparable with that enjoyed by Judges of the Supreme Court and County Court. The Court submitted that this would recognise Magistrates as the third tier of the judiciary and strengthen their judicial independence.

The Tribunal notes that the Magistrates' Court raised this issue in the 2003 review. At that time the Government opposed the proposal, submitting that the provision of a judicial pension to Magistrates would have a significant budgetary impact.

As noted at 4.2, the Issues Paper stated that pensions would not be considered at this time and as such the Department of Justice has not provided comments on this issue. Given the financial impact of this request, the Tribunal will not make a recommendation without first receiving the views of the Government.

#### **Disability Benefits**

The Court also submitted that Magistrates should receive disability benefits equal to that received by all other judicial officers. Currently Judges of the Supreme Court or County Court who resign or retire as a result of becoming afflicted with some permanent incapacity disabling them from the due execution of office are entitled to a full pension payable fortnightly at the rate of 60% of the annual salary applicable to the office held, immediately prior to retirement.

The disability benefits which a Magistrate receives are determined by the superannuation scheme to which the individual Magistrate belongs. The Court argued that the adoption of a disability benefits scheme would provide Magistrates with a reasonable degree of financial security in sickness and ill health which has been recognised as a necessary precondition for an independent judiciary.

The Court notes that the Federal Government has legislated to give federal Magistrates a disability pension of 60% of their salary to the age of 65 should they retire as a result of disability. The Court proposes that a similar arrangement should be adopted in Victoria.

Once again, the Tribunal notes that a recommendation on this issue would have a considerable financial impact on the Government and as such will not provide a recommendation without first receiving the views of the Government.

The Tribunal notes for the sake of accuracy that at the time of writing, the Federal Government is yet to enact legislation which provides federal Magistrates with an entitlement to a disability pension. The Bill which proposes to introduce such an entitlement is the Federal Magistrates Amendment (Disability and Death) Benefits Bill 2006 (the Bill). The Bill was introduced into the House of Representatives on 29 March 2006 and was referred to the Senate Legal and Constitutional Legislation Committee (the Committee) on 30 March 2006. The Committee has since delivered its report, however the Bill is yet to be reconsidered by the House.

#### **4.4 Salary Relativities**

The Magistrates' Court submitted that the appropriate salary relativity between Magistrates and County Court Judges should be 85%. The Magistrates Court advise that the relativity is currently 80% and was determined in 1986. The Court argued that this adjustment would reflect the appropriate relativities having regard to the extensive exercise of concurrent jurisdiction by the Magistrates' Court and County Court, and the various jurisdictional increases which have occurred in the Magistrates' Court.

The Tribunal notes that it has no jurisdiction to make recommendations in relation to salaries and therefore will not consider or provide comment on the issue of salary relativities.

#### **5. Legislative Anomalies**

The Issues Paper identified a number of legislative anomalies and suggested that the Government consider introducing amendments to remedy them. The Tribunal notes that neither the Department of Justice nor the courts made submissions on these issues.

### 5.1 Conditions of Service and Allowances

The JRT Act makes no clear distinction between what constitutes an “allowance” as opposed to a “condition of service”. The distinction is important in terms of legal appropriation of revenue to pay for allowances as well as to protect them. The Issues Paper noted that there appears to be little judicial guidance in this area. The Tribunal has been provided with a copy of an advice dated 1 April 1996 from Crown Counsel (as he then was), Dr Len Hallett. The advice stated that, although it would be difficult to predict the finding of a court, judicial consideration of the meaning of allowances would be likely to be confined to monetary sums that have been paid to judicial officers.

While the JRT Act is silent on the definition of allowances and conditions of service, section 11 appears to categorise allowances as a sub-set of conditions of service.

As the definition concern appears to relate only to the matter of appropriations, this seems not to be a matter for the Tribunal.

### 5.2 Jurisdiction over Coroners

The JRT Act provides the Tribunal with the jurisdiction to make recommendations on allowances and conditions of service for the State Coroner and the Deputy State Coroner but contains no reference to coroners.

Traditionally coroners held dual appointments as Magistrates and so the Tribunal has been able to ensure they are adequately provided for through their entitlements as a Magistrate. However, the Tribunal is aware of one coroner who is not a Magistrate and another who has been appointed on an acting basis, and recognises that similar appointments may be made in the future. If this is the case, those who are appointed as coroners but not Magistrates will not enjoy the same security as judicial officers, as their conditions and allowances must be made on a case by case basis by the Governor in Council.

The Tribunal suggests that the Attorney-General consider amending the JRT Act to include coroners within the Tribunal’s jurisdiction. This would be consistent with the Tribunal’s role in advising on the allowances and conditions of service of the State Coroner, Deputy State Coroner and all judicial officers. This would also comply with section 9 of the **Coroners Act 1985** which provides:

“A coroner holds office on the terms and conditions in the instrument of appointment and is entitled to be paid the salary at the rate specified in the instrument or at such higher rate as is for the time being applicable under the JRT Act, together with allowances so specified, as adjusted from time to time under that Act.”

### 5.3 Jurisdiction over Non-Judicial Members of VCAT

While the Tribunal has jurisdiction under the JRT Act to make recommendations to the Attorney-General regarding allowances and conditions of service for Victorian Civil and Administrative Tribunal (VCAT) non-judicial members, there appears to be an inconsistency between the JRT Act and section 17 of the **Victorian Civil and Administrative Tribunal Act 1998**, which provides that the remuneration and allowances of VCAT members may be fixed by the Governor in Council.

The Tribunal considers that it is impractical and inconsistent with the aim of improving transparency and clarity of entitlements to have conflicting provisions. The Tribunal therefore suggests that the Attorney-General consider clarifying whether the allowances and conditions of service of VCAT non-judicial members fall within the Tribunal’s jurisdiction or are a matter for the Governor in Council.

## 6. Conclusion

The Tribunal feels this report contains a comprehensive list of recommendations, which if adopted, will provide a clear and concise regime for the payment of judicial allowances and conditions of service in Victoria. The Tribunal is confident this regime will provide clarity and certainty, removing the concerns surrounding the legality of some allowances arising out of the advice of Mr Hanks, referred to above.

The recommendations largely validate the current arrangements and provide for some adjustments. The recommendations also incorporate the use of an adjustment mechanism to ensure that allowances increase over time to take account of inflation, without need for reconsideration by the Tribunal.

The Tribunal has given appropriate consideration to the level of entitlements across the judiciary, and the circumstances that exist in other Australian jurisdictions, arriving at levels of entitlements which are fair and appropriate for judicial office.

The Tribunal would like to thank all stakeholders who provided comments and information to assist with formulating this report and recommendations.

**Recommendation 22**

That the Attorney-General's Certificate serve as the basis for a Manual or Handbook covering the range of conditions of employment (conditions and allowances) of Victorian Judicial Officers.

**7. Retrospectivity**

Because of the prevailing uncertainty about the authority for a range of allowances and conditions and the length of time taken to review such matters, the Tribunal considers these factors constitute exceptional circumstances and that therefore it would be appropriate for the certificate certifying whichever of the Tribunal's recommendations are approved by the Attorney-General to have 12 months retrospective effect.

**Recommendation 23**

That the Attorney-General's Certificate certifying the Tribunal's recommendations have 12 months retrospective effect.

Dated 17 May 2007

THE HON MICHAEL DUFFY  
Chairperson

**Appendix 1****Recommendations**

1. Judges and Masters of the Supreme Court and County Court and Magistrates be entitled to travel overseas or interstate in accordance with the Department of Premier and Cabinet and Department of Justice travel policies as amended from time to time. Prior to travelling, Judges, Masters and Magistrates must seek the approval of the relevant head of jurisdiction and the heads of jurisdiction must seek the approval of the Attorney-General. Provided that the entitlement of Business Class Interstate travel of the partner of a Supreme Court or County Court Judge continue in accordance with the Attorney-General's Certificate dated 28 March 2000.
2. When travelling on circuit, Judges and Masters of the Supreme Court and County Court and Magistrates be paid a travel allowance to cover accommodation (if an overnight stay is necessary) and meals and incidentals, in accordance with the relevant Department of Justice travel policy as amended from time to time.
3. Judges and Masters of the Supreme Court and County Court and Magistrates be provided with a library allowance fixed at 80% of expenditure, up to a maximum of:
  - \$8,000 per annum for Supreme Court Judges; and
  - \$2,500 per annum for Supreme Court Masters, County Court Judges and Masters and Magistrates.

The allowance may be used for books, periodicals and the costs of acquiring and maintaining electronic facilities (including remote internet access for official purposes only as provided for by the Department of Justice Remote Internet Access Policy).

The allowance increase annually in accordance with CPI from the date of the Certificate.
4. Judges and Masters of the Supreme Court and County Court and Magistrates be reimbursed for 50% of the cost of calls from an elected mobile or home telephone and 50% of line rental costs for a home telephone, if that phone is the elected phone.
5. The Chief Justice of the Supreme Court, the President of the Court of Appeal, the Chief Judge of the County Court and the Chief Magistrate be reimbursed for 100% of the cost of calls from an elected mobile or home telephone and 100% of line rental costs for a home telephone, if that phone is the elected phone.
6. An allowance equivalent to 4% of salary be paid to Senior Magistrates for the Co-ordinating function.
7. Judges of the Supreme Court and County Court receive a gold pass for the duration of their term in judicial office.
8. Judges of the Supreme Court and County Court and the Chief Magistrate be provided with a motor vehicle in accordance with the Judicial Car Scheme set out in the *Department of Justice Fleet Management Policies and Guidelines 2001* (or any other Departmental policy that is adopted from time to time), and be required to contribute a nominal contribution of \$837 per annum towards the running costs of the vehicle.
9. The Chief Justice of the Supreme Court, the President of the Court of Appeal and the Chief Judge of the County Court be provided with a motor vehicle in accordance with the Judicial Car Scheme set out in the *Department of Justice Fleet Management Policies and Guidelines 2001* (or any other Departmental policy that is adopted from time to time), and be required to contribute a nominal contribution of \$837 per annum towards the running costs of the vehicle. These judicial officers should also be provided with a driver.
10. Masters of the Supreme Court and County Court and Magistrates be provided with a car allowance in the amount of \$9,060, which may be offset against the cost of a car to be provided through the current Executive Officer Car Scheme, set out in the *Department of Justice Fleet Management Policies and Guidelines 2001* (or any other Departmental policy that is adopted from time to time). This allowance should be adjusted annually in accordance with CPI.

The allowance provided to Masters of the Supreme Court and Magistrates is to be incorporated into salary for all purposes.

11. A Judge, Master or Magistrate who uses his or her private vehicle for official purposes be reimbursed for mileage in accordance with the rates outlined in the *Department of Justice Fleet Management Policies and Guidelines 2001* (or any other Departmental policy that is adopted from time to time).
12. 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 a period of 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 effects and connection fees for essential services.
13. Judges and Masters of the Supreme Court and County Court be entitled to eight weeks of annual leave per annum.  
Magistrates be entitled to four weeks of annual leave per annum.
14. Judges and Masters of the Supreme Court and County Court and Magistrates have access to sick leave at the discretion of the relevant head of jurisdiction, with such leave being recorded.
15. 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 long service leave after 10 years of service.
16. Magistrates be able to access 48/52 leave.
17. Judges and Masters of the Supreme Court and County Court and Magistrates have access to parental, bereavement and other special leave on the terms set out in the Victorian Public Service Agreement as amended from time to time.
18. 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 division.
19. 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.
20. Acting/reserve Judges continue to receive the benefits of office available on a pro-rata basis as set out below:
  - motor vehicle;
  - judicial library allowance;
  - travel allowances;
  - travel card; and
  - gold pass.



21. An acting Magistrate who uses his or her private vehicle for official purposes be reimbursed for mileage in accordance with the rates outlined in the *Department of Justice Fleet Management Policies and Guidelines 2001* (or any other Departmental policy that is adopted from time to time). Acting Magistrates also be entitled to travelling allowances in accordance with the relevant departmental policy.
  22. That the Attorney-General's Certificate serve as the basis for a Manual or Handbook covering the range of conditions of employment (conditions and allowances) of Victorian Judicial Officers.
  23. That the Attorney-General's Certificate certifying the Tribunal's recommendations have 12 months retrospective effect.
- Please note that where the recommendation relates to judicial officers of a particular court, this is taken to include the head of that jurisdiction unless the recommendation specifically provides for the head of jurisdiction.

**Appendix 2****Consolidated Conditions/Allowances**

<b>Allowance/ Condition of Service</b>	<b>Judicial Office</b>	<b>Terms of Allowance</b>
Travel Allowance	Judges and Masters of the Supreme Court Judges and Masters of the County Court Magistrates	Overseas or interstate in accordance with the Department of Premier and Cabinet and Department of Justice travel policies as apply from time to time. Provided that the entitlement of Business Class Interstate travel of the partner of a Supreme Court or County Court Judge continue in accordance with the Attorney-General's Certificate dated 28 March 2000.
Circuit Allowance	Judges and Masters of the Supreme Court Judges Masters of the County Court Magistrates	Travel allowance to cover accommodation and (if an overnight stay is necessary) meals and incidentals, in accordance with the relevant Department of Justice travel policy as applies from time to time.
Library Allowance	Judges of the Supreme Court	80% of expenditure, up to a maximum of \$8,000 per annum. Increased annually in accordance with CPI.
	Masters of the Supreme Court Judges and Masters of the County Court Magistrates	80% of expenditure, up to a maximum of \$2,500. Increased annually in accordance with CPI.
Co-ordinating Function Allowance	Senior Magistrate Co-ordinating function	An allowance equivalent to 4% of salary be paid to Senior Magistrates for the Co-ordinating function
Home Telephone Allowance	Judges and Masters of the Supreme Court Judges and Masters of the County Court Magistrates	Reimbursement for 50% of the cost of calls from an elected mobile or home telephone and 50% of line rental for a home telephone (if that phone is the elected phone).
	Chief Justice of the Supreme Court Chief Judge of the County Court President of the Court of Appeal Chief Magistrate	Reimbursement for 100% of the cost of calls from an elected mobile or home telephone and 100% of line rental for a home telephone (if that phone is the elected phone).
Gold Pass	Judges of the Supreme Court Judges of the County Court	Gold pass for the duration of their term in judicial office.
Motor Vehicles	Judges of the Supreme Court Judges of the County Court Chief Magistrate	Provided with a motor vehicle in accordance with the Judicial Car Scheme set out in the <i>Department of Justice Fleet Management Policies and Guidelines 2001</i> (or any other Departmental policy that is adopted from time to time), and be required to contribute a nominal contribution of \$837 per annum.

	Chief Justice of the Supreme Court President of the Court of Appeal Chief Judge of the County Court	Provided with a motor vehicle in accordance with the Judicial Car Scheme set out in the <i>Department of Justice Fleet Management Policies and Guidelines 2001</i> (or any other Departmental policy that is adopted from time to time), and be required to contribute a nominal contribution of \$837 per annum, and a driver.
Motor Vehicle Allowance	Masters of the Supreme Court Masters of the County Court Magistrates	Car allowance in the amount of \$9,060, which may be offset against the cost of a car to be provided through the current Executive Officer Car Scheme, set out in the <i>Department of Justice Fleet Management Policies and Guidelines 2001</i> (or any other Departmental policy that is adopted from time to time). Adjusted annually in accordance with CPI. Allowance provided to Masters of the Supreme and County Court and Magistrates is to be incorporated into salary for all purposes.
Mileage	Judges and Masters of the Supreme Court Judges and Masters of the County Court Magistrates Acting Magistrates	Judicial officers who use a private vehicle for official purposes are entitled to be reimbursed for mileage in accordance with the rates outlined in the <i>Department of Justice Fleet Management Policies and Guidelines 2001</i> (or any other Departmental policy that is adopted from time to time).
Pro-rata benefits of office	Acting/Reserve Judges	Acting/Reserve Judges continue to receive the benefits of office available on a pro-rata basis as set out below: <ul style="list-style-type: none"> <li>● motor vehicle;</li> <li>● judicial library allowance;</li> <li>● travel allowances;</li> <li>● travel card; and</li> <li>● gold pass.</li> </ul>
Travelling Allowance	Acting Magistrates	Travelling allowance provided to Acting Magistrates in accordance with the relevant departmental policy
Living away from home allowance	Magistrates	Living away from home allowance for Magistrates required to relocate on a temporary basis to regional areas in the amount of \$350 a 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.

Annual Leave	Judges and Masters of the Supreme Court Judges and Masters of the County Court	Eight weeks of recreation leave per annum.
	Magistrates	Four weeks of recreation leave per annum.
Sick Leave	Judges and Masters of the Supreme Court Judges and Masters of the County Court Magistrates	Sick leave at the discretion of the relevant head of jurisdiction, with such leave being recorded.
48/52	Magistrates	Access to 48/52 leave.
Parental, bereavement and other special leave	Judges and Masters of the Supreme Court Judges and Masters of the County Court Magistrates	Access to parental, bereavement and other special leave in the terms set out in the Victorian Public Service Agreement as amended from time to time.
Sabbatical/Long Service Leave	Judges of the Supreme Court Judges of the County Court	6 months of sabbatical/long service leave after 5 years of judicial service.
	Masters of the Supreme Court Masters of the County Court Magistrates	3 months of long service leave after 10 years of service.
Recognition of Prior Service	Judges of the Supreme Court Judges of the County Court	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.
	Masters of the Supreme and County Court and Magistrates	Service in the public office immediately prior to judicial appointment is recognised for the purposes of long service leave as a Master or Magistrate.