

Recommendations to the Attorney-General

October 2016

**Judicial Entitlements Panel
Own Motion Recommendations to the Attorney-General**

October 2016 Report

Recommendations to the Attorney-General

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Summary of Recommendations

Recommendation 1 – see page 11

The Panel recommends that Victorian judicial officers, including Judges and Associate Judges of the Supreme and County Courts, and Magistrates be entitled to a biennial comprehensive and confidential medical assessment from a dedicated service provider. The Panel recommends that such an arrangement can be negotiated through Court Services Victoria, on behalf of the Judiciary.

The results of the assessments should be confidential to the individual and, subject to their consent, the individual's health practitioners.

Recommendation 2 – see page 14

The Panel recommends that the Attorney-General amend the long service leave provisions for Magistrates and Associate Judges to provide that:

- Magistrates and Associate Judges are entitled to *pro rata* access to long service leave after completing seven years of service;
- Magistrates and Associate Judges are entitled to further accrual of 3/10^{ths} of a month of long service leave for each completed year of service after 10 years of service; and
- Magistrates and Associate Judges are entitled to access the additional accrued long service leave after completing 10 years of service.

Recommendation 3 – see page 16

The Panel recommends that the Attorney-General amend annual leave provisions to clearly provide that:

- Reserve Judges of the County and Supreme Courts, and Reserve Magistrates engaged on a non-sessional (full-time for a defined period) basis be entitled to annual leave as other Judges or Magistrates of the relevant Courts on a *pro rata* basis, during the period of their non-sessional engagement.

Recommendation 4 – see page 18

The Panel recommends that the Attorney-General amends the conditions of the Library Allowance, to enable the allowance to be used for:

- the purchase of books and periodicals;
- the cost of acquiring and maintaining electronic facilities including internet access;
- the subscription costs to relevant online resources; and
- the expenditure incurred in relation to professional development activities.

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A judicial officer's attendance at professional development activities should be subject to the approval of the relevant head of jurisdiction.

Recommendation 5 – see page 19

The Panel recommends that the 80 per cent reimbursement cap of the Library Allowance be removed.

Recommendation 6 – see page 21

the Panel recommends that:

- Judges of the County Court be entitled to a Professional Development Allowance equivalent to **86.64 per cent** of the amount of Professional Development Allowance available to a Supreme Court Judge;
- Magistrates be entitled to the a Professional Development Allowance equivalent to **69.29 per cent** of the amount of Professional Development Allowance available to a Supreme Court Judge;
- An Associate Judge of the Supreme Court who is the Senior Master be entitled to a Professional Development Allowance equivalent to **89 per cent** of the amount of Professional Development Allowance available to a Supreme Court Judge;
- Associate Judges of the Supreme Court and Associate Judges of the County Court be entitled to a Professional Development Allowance equivalent to **84.65 per cent** of the amount of Professional Development Allowance available to a Supreme Court Judge;
- An Associate Judge of the Supreme Court who is or was a Specialist Supreme Court Master be entitled to a Professional Development Allowance equivalent to **80.50 per cent** of the amount of Professional Development Allowance available to a Supreme Court Judge; and
- Reserve Judges, Reserve Associate Judges, and Reserve Magistrates that are engaged on a non-sessional (full-time) basis be entitled to the Professional Development Allowance, on a *pro rata* basis.

Recommendation 7 – see page 23

The Panel recommends that the overseas travel approval requirement of heads of jurisdiction be replaced by the obligation for the heads of jurisdiction to notify the Attorney-General of overseas travel, and to further recommend to the Attorney-General who can be acting in their position during their periods of absence.

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Background

Legislative Background of Judicial Entitlements

The *Judicial Entitlements Act 2015* (JE Act) established a legislative scheme for the salaries, allowances, and other conditions of service for Victorian judicial officers. The JE Act repealed and replaced the *Judicial Salaries Act 2004* and the *Judicial Remuneration Tribunal Act 1995* (JRT Act) to consolidate legislative provisions relating to judicial salaries and entitlements into a single piece of legislation.

Section 5 of the JE Act establishes that the salary of a Victorian Supreme Court Judge is entitled to the same rate of salary as a Federal Court Judge, payable from time to time. The section further provides the relative salaries of Victorian judicial officers, as compared to a Victorian Supreme Court Judge, represented as percentages.

Section 11 of the JE Act provides that the conditions of service of a Victorian judicial officer is determined by any entitlement certificate applicable to that office. The Attorney-General issues these entitlement certificates under section 35 of the JE Act.

Some judicial entitlements are established under certificates issued under section 15 of the JRT Act, which has been repealed by the JE Act. Section 43 of the JE Act provides that any certificate issued under section 15 of the JRT Act as in force immediately before its repeal is taken to be an entitlement certificate under the JE Act.

The Judicial Entitlements Panel

The Judicial Entitlements Panel (Panel) was established by the JE Act. Under the JE Act, the Panel is responsible for:

- making own motion recommendations to the Attorney-General in relation to leave entitlements, accrued leave, allowances and benefits provided to or on behalf of judicial officers;
- providing advisory opinions in relation to entitlements of judicial officers, judicial registrars and non-judicial members of the Victorian Civil and Administrative Tribunal (VCAT), when requested by the Attorney-General, and;
- providing advisory opinions in relation to any matter relating to leave entitlements, accrued leave, allowances and benefits provided to or on behalf of judicial officers, judicial registrars, and non-judicial members of VCAT, when requested by the Attorney General.

The Governor in Council, on the recommendation of the Attorney-General, appoints the members of the Panel. Under the JE Act, the Attorney-General must consult with the Chief Justice of the Supreme Court before making a recommendation for appointment of a Panel member. The inaugural Panel was appointed on 15 June 2016, for a period of 4 years.

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The Panel's members are:

- Mr Bruce Charles Hartnett AM, Chair of the Panel;
- Ms Kathleen Carmel Townsend, Member of the Panel; and
- Ms Ilona Bronwyn Charles, Member of the Panel.

The JE Act requires the Panel to report any own motion recommendations it makes to the Attorney-General, at least once every 4 years, with the first report provided to the Attorney-General by 3 October 2016.

When the Attorney-General receives a report of an own motion recommendation or advisory opinion of the Panel, the Attorney-General, subject to personal or confidential information, must table the report before each House of the Parliament within 10 sitting days.

The Attorney-General must table a recommendation statement before each House of the Parliament no later than the first sitting day after 4 months from the tabling of a report of own motion recommendation. The recommendation statement must specify whether the Attorney-General intends to vary or accept the Panel's recommendations, either in part or in full, supported with reasons.

The Report

There have been no requests from the Attorney-General for the Panel to provide an advisory opinion, and the capacity for the Panel to make an advisory opinion has therefore not yet been enlivened.

Under section 46 of the JE Act, the first report of an own motion recommendation of the Panel must be submitted to the Attorney-General by 3 October 2016. This report was provided to the Attorney-General on 3 October 2016.

The Panel notes that as a result of tight timelines, this report is restricted to a limited number of issues that are of concern to the Judiciary and are capable of expeditious resolution. The Panel is intending to provide a second, more substantive report to the Attorney-General in 2017, which will involve a more thorough consultation process.

Methodology

Section 16(3) of the JE Act provides that, when carrying out its functions, the Panel is required to act in an independent, impartial and timely manner.

Section 16(4) of the JE Act further provides that The Panel may inform itself in any manner it sees fit, and is not bound by the rules of evidence.

In drafting this report, the Panel consulted with the Supreme, County, and Magistrates' Courts, Court Services Victoria, the Judicial College of Victoria, and the Department of Justice and

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Regulation. The Panel also met with the representatives of the Courts and the Department of Justice and Regulation to discuss their pressing issues.

The Supreme Court, County, and Magistrates' Courts, Court Services Victoria, Judicial College of Victoria, and the Department of Justice and Regulation provided information relevant to judicial entitlements to the Panel.

The Panel invited the Secretary to the Department of Treasury and Finance (DTF) to make a submission.

The Panel also invited written submissions from the five Victorian Courts and Court Services Victoria in August 2016. The summary of these submissions is set out in the next section.

Submissions Received

The Panel invited submissions and comments from the Supreme, County, Magistrates', Children's, and Coroners Courts, Court Services Victoria, and the Secretary to DTF. The Panel received written submissions from the Secretary to DTF, and the Supreme, County, Coroners, and Magistrates' Courts:

- Supreme Court's submission, dated 5 August 2016;
- County Court's submission, dated 3 August 2016;
- Coroners Court's submission, dated 13 September 2016;
- The Secretary to DTF's submission, dated 29 September 2016;
- Magistrates' Court's submission, dated 8 August 2016; and
- Magistrates' Court's supplementary submission, dated 17 August 2016.

The Children's Court did not provide a written submission.

Supreme Court's submission

In the submission dated 5 August 2016, the Supreme Court proposed a number of amendments to judicial conditions of service. Specifically, the Supreme Court proposed that:

- the scope of the Library Allowance be expanded, and the 80 per cent reimbursement rule be removed;
- the conditions of service of an Associate Judge of the Supreme Court be made equivalent with those of a Judge of the County Court; and
- leave entitlements of full-time Reserve Judges be clarified, so that they are entitled to annual leave on the same basis as other Judges on a *pro rata* basis.

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County Court's submission

The County Court proposed three changes to judicial conditions of service, relevant to the officers of the County Court, namely:

- the scope of the Library Allowance be expanded, and the 80 per cent reimbursement rule be removed;
- a judicial wellbeing entitlement be established for judicial officers to receive up to \$500 each year for a comprehensive health check; and
- the judicial car entitlement be updated, and all judges be entitled to vehicles on par with the upper reaches for the Victorian Public Sector executive remuneration band.

Coroners Court's submission

The Coroners Court supports each of the submissions made by the County and Magistrates' Courts.

The Secretary to DTF's submission

The Secretary to DTF provided information about relevant economic and remuneration factors in Victoria.

Magistrates' Court's submission

The Magistrates' Court provided a written submission on 8 August 2016, and subsequently a supplementary submission on 17 August 2016. The Magistrates' Court's submissions outlined a number of proposals, including:

- a comparative analysis to be undertaken of the various judicial salaries across the federal and state jurisdictions;
- the annual leave entitlement of Magistrates be increased;
- the long service leave entitlement of Magistrates be increased;
- a conference leave entitlement of five days per annum to be established for Magistrates to attend professional development activities;
- the Library Allowance of Magistrates be increased to the equivalent of a Supreme Court Judge;
- the scope of the Library Allowance be expanded to cover conference attendance and professional development;
- Magistrates be allowed to elect to receive the car allowance in cash, but have access to benefit of fuel card and vehicle maintenance;

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- Magistrates be allowed to have access to “premium vehicles” under the judicial car scheme;
- Magistrates be entitled to Cab Charge Cards and E-tags, or reimbursement of E-Tag related expense;
- Magistrates be entitled to receive Goldpass/Myki for public transport expenses; and
- Reserve Magistrates be entitled to a professional development/Library Allowance.

Issues addressed in this report

Due to the tight timelines available to the Panel, this report only addresses a limited number of issues raised by the Courts. The remaining issues will be considered in the Panel’s subsequent own motion recommendations.

The issues covered in this report include:

- Judicial Wellbeing Entitlement;
- long service leave entitlement clarification for Magistrates and Associate Judges;
- annual leave clarification for Reserve Judges and Reserve Magistrates;
- Library Allowance/Professional Development Allowance; and
- overseas travel approval process.

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Judicial Health and Wellbeing Entitlements

This issue was raised in the submission from the County Court, and during the Panel's discussions with the Chief Magistrate.

It also features in the "Induction Video" provided to newly appointed members of the Victorian Judiciary.

The issue of stress and mental health was also highlighted by the decision of the former Police Minister to stand down from that role because of the impact of the daily briefings of the horrors that some members of our community wreak upon their fellow citizens.

Issues

The exposure to stress, and its impact to mental health, is part of the working day of many of Victoria's judicial officers. Due to their high workload, and the nature of their work, the stress faced by judicial officers can be more significant than people in other professions. The Panel notes that some judicial officers are exposed to distressing stories and traumatic experiences of litigants on a daily basis. The submissions from the County and Magistrates' Courts demonstrated that continuous exposure to high level of stress can lead to health issues and reduce a judicial officer's decision making quality.

Ongoing health issues of Judicial Officers caused by continuous exposure to stress may also lead to higher turnover rate of the Bench. The Panel acknowledges that various programs and initiatives have been established by the Courts, and the Judicial College of Victoria, to help judicial officers to cope with these issues. For instance, a free, confidential counselling service exclusively for Victorian judicial officers is available 24/7.

Employers throughout the private and public sectors provide services to assist employees to cope with stress. The Panel is aware that many private sector entities provide senior executives and board members with an entitlement to an annual comprehensive and confidential medical check. There is a rich network of private healthcare providers that provide these services.

This entitlement is both an expression of the duty of care provided to personnel in stressful and demanding roles, and is also an investment in the continued health of key people occupying these roles where a preventable, but unexpected, absence due to a health condition may occur. These unexpected absences can lead to significant costs for an organisation.

The Panel recommends that, in addition to the programs and initiatives currently provided to judicial officers, a further wellbeing entitlement be established to allow judicial officers to receive a comprehensive health check biennially. The Panel notes that this service is important in the context of the duty of care owed to significant employees of the State of Victoria. The Panel is of the view that a wellbeing entitlement could not only have a significant benefit to the members of the Judiciary, who elect to avail themselves of this entitlement, but could have significant financial

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benefits to the State of Victoria in avoiding the costs of matters being aborted and having to be re-heard as the result of the illness of a member of the Judiciary.

Cost Implications

The Panel expects that the entitlement will be modest in its cost impact. The Panel notes that there are a number of providers of these services, and the cost depends on the extent to which individuals in the Courts avail themselves of these services.

Under a typical employee health assessment scheme, the employees would receive health assessment services from a dedicated service provider, with an arrangement between the employer organisation and the service provider. The cost of providing the Judiciary with access to a biennial comprehensive Medical Assessment would depend on the extent of the Assessment offered and the take-up by the Judiciary. It would likely be at its highest in the first year when take-up would be higher and then fall away as some judicial officers might only use the service scarcely, if at all.

A comprehensive medical check would involve, *inter alia*, optical, audiometry, physical, blood pathology, bone density and heart/circulatory stress checks. These would normally be followed up with consultations with physiotherapists, dieticians and doctors. Healthcare providers that provide these services can draw on their data bank and provide the individual and their medical practitioners with a confidential and comprehensive report and recommendations to address any underlying physical and mental health issues identified. Any subsequent treatment would be at the individual's cost.

Typical costs of a comprehensive executive health assessment are around \$1,500 per assessment. The Panel notes that this amount can vary based on gender, age, and the different pricing of healthcare providers. Large organisations, such as Court Services Victoria, may be able to negotiate discounts from healthcare providers.

As at August 2016, there are 290 serving Victorian judicial officers, including Associate Judges. If it is assumed that there is an 80 per cent take up rate by the 290 Members of the Victorian Judiciary, the annual cost would be of the order of \$174,000. This amount would depend on the contract agreed with the service provider.

In the Victorian judiciary, the costs of delaying, re-scheduling or rehearing of matters due to the unexpected ill health of a judicial officer can be very significant. The Panel believes that this entitlement can help offset these costs.

Recommendation 1 - Wellbeing Entitlement

The Panel recommends that Victorian judicial officers, including Judges and Associate Judges of the Supreme and County Courts, and Magistrates be entitled to a biennial comprehensive and confidential medical assessment from a dedicated service provider. The Panel recommends that such an arrangement can be negotiated through Court Services Victoria, on behalf of the Judiciary.

The results of the assessments should be confidential to the individual and, subject to their consent, the individual's health practitioners.

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Long Service Leave Clarification for Magistrates and Associate Judges

The issue of long service leave entitlement of Magistrates was discussed in the Panel's meeting with the Magistrates' Court, and was subsequently raised in the Magistrates' Court's submission.

The issue of long service leave entitlement of Associate Judges was raised in the Supreme Court's submission.

Background of the Entitlement

The long service leave entitlements of Magistrates and Associate Judges are set out in Certificate issued under section 15 of the JRT Act, dated 19 July 2007. The relevant section of the Certificate provides that Masters (applies to Associate Judges) and Magistrates are able to access three months of long service leave after 10 years of service.

Section 13 of the JE Act sets out the payment of accrued annual leave and long service leave entitlements of Magistrates. The section provides that upon resignation, retirement or the death of the Magistrate (other than a Reserve Magistrate), the Magistrate is entitled to payment out of any accrued annual and long service leave entitlements.

Section 12 of the JE Act sets out the payment of accrued sabbatical and long service leave entitlements of Associate Judges. The section provides that upon resignation, retirement or death of the Associate Judge, the Associate Judge is entitled to payment out of accrued sabbatical and long service leave entitlements, not exceeding a period of 12 months.

The long service leave entitlements of Magistrates and Associate Judges are not specified in other Certificates or legislation.

Issues

The relevant Certificate and legislation do not specify any early access to leave or accrual rules beyond the initial 10 years of service.

The absence of early access and accrual rules creates a number of inequitable outcomes or uncertainties. As noted by the Magistrates' Court's submission, a strict interpretation of the conditions set out in the Certificate and the JE Act means that a Magistrate or an Associate Judge:

- must complete 10 years of service before accruing an entitlement to long service leave; and
- does not have a right to access any long service leave prior to the completion of 10 years of service.

It is also unclear whether a Magistrate or an Associate Judge:

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- must complete a further 10 years of service before any additional long service leave is accrued; and
- is only entitled to payment of accrued entitlements upon resignation, retirement or death.

A strict interpretation of the current conditions may create inequitable outcomes where, for example, a Magistrate or an Associate Judge with 19 years of service would only be entitled to a payout based on any residual accrual remaining from the first 10 years of service. This approach has no analogies in the rest of the judiciary, nor in the Victorian public sector.

The Judiciary

The sabbatical/long service leave entitlements of Judges of the Supreme Court and Judges of the County Court provide for early access to leave, and accrual after the initial leave entitlement. Certificate issued under section 15 of the JRT Act, dated 24 February 2012 provides that Judges of the Supreme and County Courts are entitled to:

- six months of sabbatical/long service leave after seven years of service;
- early access of sabbatical/long service leave of one month, after five years of service; and
- 6/7^{ths} of a month of sabbatical/long service leave to accrue, for every additional year of service completed after seven years of service.

Public sector

The current approach is also inconsistent with the practice in the Victorian public sector.

The long service leave entitlement of public sector employees is set out in the Fair Work Commission's *Victorian Public Service Enterprise Agreement 2016* (VPS Agreement). The VPS Agreement provides that a Victorian public sector employee is entitled to:

- three months of long service leave for each 10 years of full-time continuous service (Clause 54.1);
- access to long service leave entitlement, on a pro-rata basis, after an initial seven years of paid continuous service (Clause 54.3); and
- payment of an amount equal to the unused long service leave entitlement, upon retirement, resignation, or termination of employment (Clause 54.4).

It is the Panel's view that the conditions of long service leave entitlements of Magistrates and Associate Judges should be clarified, so that these officers can access *pro rata* long service leave after completing seven years of service, and can further accrue 3/10^{ths} of a month of long service leave for each completed year of service after 10 years of service.

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Cost Implications

The Magistrates' Court advised that the custom and practice within the Court has been to provide further accrual of long service leave to Magistrates (beyond the initial 10 years of service) after completing a further period of five years and every five years thereafter.

Although the overall amount of Magistrates' and Associate Judges' long service leave would not be altered under this recommendation, providing early access to long service leave and further accrual of leave for each completed year of service after 10 years of service would increase the long service leave entitlement of these officers in some cases. For example, a Magistrate who has served for 13 years would be entitled to 3 months plus 9/10^{ths} of a month of long service leave, instead of just 3 months.

The Panel expects the additional costs would be moderate, and it is in the interest of fairness that Magistrates and Associate Judges be entitled to a long service leave accrual practice that is consistent with the standards in the public sector.

Recommendation 2 - Long Service Leave Clarification

The Panel supports the Magistrates' Court's view that the long service leave entitlement of Magistrates should be clarified. The long service leave entitlement of Associate Judges should also be clarified to the similar effect. The Panel recommends that the Attorney-General amend the long service leave provisions for Magistrates and Associate Judges to provide that:

- Magistrates and Associate Judges are entitled to *pro rata* access to long service leave after completing seven years of service;
- Magistrates and Associate Judges are entitled to further accrual of 3/10^{ths} of a month of long service leave for each completed year of service after 10 years of service; and
- Magistrates and Associate Judges are entitled to access the additional accrued long service leave after completing 10 years of service.

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Annual leave of Reserve Judges and Reserve Magistrates

The issue of annual leave entitlements of Reserve Judges was raised by the Supreme Court. Currently, it appears that the annual leave entitlements of Reserve Judges are not clearly defined.

The annual leave entitlement of Reserve Magistrates is similarly unclear.

Background of the Entitlement

Reserve Judges

The office of Reserve Judge substituted the office of Acting Judge, through the introduction of the *Courts Legislation Amendment (Reserve Judicial Officers) Act 2013*.

The entitlements of Acting Judges are set out in Certificate issued under section 15 of the JRT Act, dated 19 July 2007. The relevant section of the Certificate provides that Acting Judges of the Supreme and County Courts are entitled to a number of benefits of office on a *pro rata* basis. These entitlements continue to apply to reserve judges, and they include:

- motor vehicle entitlement;
- judicial Library Allowances;
- travel allowances;
- travel card; and
- gold pass.

Reserve Magistrates

The office of Reserve Magistrate substituted the office of Acting Magistrate, through the introduction of the *Courts Legislation Amendment (Reserve Judicial Officers) Act 2013*.

The entitlements of Acting Magistrates are set out in Certificate issued under section 15 of the JRT Act, dated 19 July 2007. Entitlements of Acting Magistrates applies to Reserve Magistrates. Under that Certificate, Acting Magistrates are entitled to:

- travel allowance; and
- private vehicle reimbursement for official use.

Issues

The relevant Certificate does not provide for any annual leave entitlements for Reserve Magistrates and Supreme and County Court Reserve Judges.

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Historically, Acting Judges were engaged on sessional basis. The Panel understands that Acting Judges were paid with a daily rate of remuneration.

With the introduction of the office of Reserve Judge, both sessional and non-sessional (i.e. full-time for a defined period) engagements were allowed. The Panel notes that the Courts and the Government at the time agreed that Reserve Judges engaged on a non-sessional basis should be entitled to annual leave on the same conditions as a serving judge on a *pro rata* basis.

However, at the time that the office of Reserve Judge was introduced, the terms of the members of Judicial Remuneration Tribunal had lapsed. As a result, this change was not formalised through a recommendation from the Judicial Remuneration Tribunal. The Panel understands that Reserve Magistrates are currently engaged on a sessional basis, but a similar issue would arise should the Chief Magistrate decide to engage Reserve Magistrates on a non-sessional basis.

The Panel is of the view that the annual leave entitlements of non-sessional Reserve Judges and non-sessional Reserve Magistrates should be formalised.

Cost Implications

The Panel understands that Reserve Judges who have been engaged on a non-sessional basis have been afforded *pro rata* annual leave in accordance with the understanding established with the Government, and Reserve Magistrates are currently engaged on sessional basis.

This recommendation seeks to clarify the entitlement. As such, it is not expected to have any cost implications for the Government.

Recommendation 3 – Annual Leave Clarification

The Panel supports the Supreme Court's view that the leave entitlement of Reserve Judges engaged on a non-sessional basis should be clarified. Leave entitlements of non-sessional Reserve Magistrates should also be clarified to similar effect. The Panel recommends that the Attorney-General amend annual leave provisions to clearly provide that:

- Reserve Judges of the County and Supreme Courts, and Reserve Magistrates engaged on a non-sessional (full-time) basis be entitled to annual leave as other Judges or Magistrates of the relevant Courts on a *pro rata* basis, during the period of their non-sessional engagement.

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Expanding the Library Allowance

The Supreme, County and Magistrates' Courts have proposed amendments to the conditions of the Library Allowance. The issues in relation to the Library Allowance were raised during the Panel's meetings with the Courts, and were also discussed extensively in the Court's written submissions.

Background of the Entitlement

The current conditions of the Library Allowance are set out in the Certificate issued under section 15 of the JRT Act, dated 19 July 2007. The relevant Certificate provides that:

- Judges of the Supreme Court are entitled to a Library Allowance, fixed at 80 per cent of expenditure, up to a maximum of \$8,000 per annum; and
- Judges of the County Court, Supreme Court Masters (applies to Associate Judges), County Court Masters (applies to Associate Judges), and Magistrates are entitled to a Library Allowance, fixed at 80 per cent of expenditure, up to a maximum of \$2,500 per annum.

The Library Allowance may be used for:

- books;
- periodicals; and
- costs of acquiring and maintaining electronic facilities, including remote internet access for official purposes, as provided for by the Department of Justice Remote Internet Access Policy.¹

The relevant Certificate also provides that the allowance is to increase annually in accordance with the Consumer Price Index (CPI). The Panel understands that the relevant CPI to be used is the Melbourne All Groups CPI, as published by the Australian Bureau of Statistics. As at 1 July 2015, the CPI adjusted maximum allowance is:

- \$9,742 for Supreme Court Judges; and
- \$3,044 for County Court Judges, Supreme and County Court Associate Judges, and Magistrates.

The model of the Library Allowance has not been changed since 1996. The purpose of the Library Allowance is to allow judicial officers to maintain a functioning legal library, and to assist judicial officers to be informed about the developments of the law. Materials purchased through the Library Allowance would become the possessions of the judicial officer.

¹ In the relevant certificate, references to the "Department of Justice" are taken to be references to Court Services Victoria.

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Issues

Expanding the Scope of the Allowance

The Supreme, County and Magistrates' Court have all proposed that the scope of the allowance be expanded.

The Supreme Court submitted that the scope of the allowance should reflect the nature of the modern judiciary, and the resources required for them to perform their role efficiently and effectively. As the reliance on online legal resources is increasing, and there is a greater need for Judges to be informed of the developments in international law, it is timely to consider expanding the scope of the allowance. The Supreme Court submitted that the allowance should cover professional development programs, such as relevant conferences, seminars and trainings. This view is shared by the County and Magistrates' Courts.

The Panel acknowledges that the judiciary actively encourages professional development of judicial officers. The Panel also acknowledges the various programs and training offered by the Judicial College of Victoria.

The Panel also understands that the Judicial College of Victoria is not designed to be the sole provider of judicial education for Victorian judicial officers and that there are many valuable programs run by other organisations that can enhance the capabilities of the Victorian Judiciary.

The Panel therefore supports the expansion of the scope of the allowance.

Recommendation 4 – Professional Development Allowance

The Panel supports the replacement of the Library Allowance by a more comprehensive and contemporary Professional Development Allowance.

The Panel supports the view of the Courts that expanding the scope of the allowance is timely and appropriate. The Panel recommends that the Attorney-General amends the conditions of the allowance, to enable the allowance to be used to contribute to:

- the purchase of books and periodicals;
- the cost of acquiring and maintaining electronic facilities, including internet access;
- the subscription costs to relevant online resources; and
- the expenditure incurred in relation to professional development activities.

The Panel recommends that a judicial officer's attendance at professional development activities should be subject to the approval of the relevant head of jurisdiction.

This recommendation does not concern the quantum of the allowance. However, expanding the scope of the allowance may increase the utilisation rate of the allowance.

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Reimbursement Basis

The Supreme and County Courts have expressed concerns in relation to the 80 per cent expenditure reimbursement rule of the Library Allowance.

The Supreme Court submitted that the underlying basis of the rule appears to be based on the residual asset value of hard copy purchases made to a judge's personal library.

The Panel notes that since 1996, the reliance on hard copy resources in the judiciary has diminished and the reliability and availability of online resources have improved considerably. In the modern judiciary, these legal resources are usually acquired through online subscriptions and resources, which have little to no residual asset value.

Further, the County Court submitted that the effect of the 80 per cent reimbursement model is to require judicial officers to personally contribute 20 per cent of purchases. As the function of the Library Allowance is to provide judicial officers with up to date legal resources and knowledge, which are work-related, there is no basis that the allowance should not cover the full costs of the purchases.

The Panel agrees with the Supreme and County Courts that the underlying basis for the 80 per cent reimbursement model is no longer appropriate, and should be removed.

Recommendation 5 – Reimbursement Basis

The Panel supports the Supreme and County Courts' view in relation to the 80 percent reimbursement model. The Panel recommends that the 80 percent reimbursement cap of the allowance be removed.

This recommendation does not concern the quantum of the Library Allowance, and is not expected to have any cost implications to the State.

Quantum of the Allowance

The County and Magistrates' Courts submitted that the quantum of the allowance should be increased.

As at 1 July 2015, Supreme Court Judges are entitled to a maximum allowance of \$9,742 per annum, while County Court Judges and Magistrates are entitled to a maximum allowance of \$3,044 per annum. The amounts of the Library Allowance are adjusted annually in accordance with the Consumer Price Index.

The Supreme Court submitted that, in general, Associate Judges of the Court should also be entitled to the same conditions of service as County Court Judges. Currently, Associate Judges are not entitled to the Library Allowance.

The County Court submitted that there should not be such a substantial difference in the amounts payable as between the two Courts, noting that both are significant trial courts. Significantly, the County Court noted that the difference does not mirror the salary relativity as between the two Courts.

Recommendations to the Attorney-General

October 2016

The Magistrates' Court submitted that the amount of Library Allowance for Magistrates, as currently set, is no longer relevant to the professional development requirements of judicial officers, and should be increased to the equivalent of a Supreme Court Judge. The Magistrates' Court also noted that Reserve Magistrates, are currently not entitled to the Library Allowance.

Cost Implications

The Panel is of the view that the allowance should reflect the actual remuneration differences of the offices. Increasing the quantum of the allowance and expanding its scope will have cost implications to the State. The following table illustrates the Library Allowance entitlements of the relevant offices as at 1 July 2015, and the increase of cost under the proposal, if the Professional Development Allowance is fully utilised by judicial officers.

Office	Library Allowance Entitlement	Recommended Professional Development Allowance Entitlement	Differences	Number of officers as at August 2016
Supreme Court Judge	\$9,742	\$9,742	\$0	63
County Court Judge	\$3,044	\$8,440	\$5,396	70
Supreme Court and County Court Associate Judge	\$3,044	\$8,247	\$5,203	8
Associate Judge of the Supreme Court who is the Senior Master	\$3,044	\$8,670	\$5,626	1
Magistrates	\$3,044	\$6,057	\$3,013	127

The Supreme Court advised that the utilisation rate of the Library Allowance by Judges and Associate Judges of the Supreme Court was 48 per cent in financial year 2015-16. The Panel understands that allowance has always been made to the Court's special appropriations budget for **full utilisation** of the Library Allowance, and as such, the potential increased utilisation rate of the allowance will not require an increase to the funding envelope already committed by the Government.

The Panel has also requested the current utilisation rates of the Library Allowance in the County and Magistrates' Courts, but at the time of drafting, these had not been provided.

If it is assumed that the allowance would be fully utilised by judicial officers, the increase of cost to the State will be in the order of \$800,000.

Recommendations to the Attorney-General

October 2016

Recommendation 6 – Quantum of the Allowance

The Panel agrees that the substantial differences in the amounts of allowance between the Courts are not justified. Accordingly, the Panel recommends that:

- Judges of the County Court be entitled to a Professional Development Allowance equivalent to **86.64 per cent** of the amount of Professional Development Allowance available to a Supreme Court Judge;
- Magistrates be entitled to the a Professional Development Allowance equivalent to **69.29 per cent** of the amount of Professional Development Allowance available to a Supreme Court Judge;
- An Associate Judge of the Supreme Court who is the Senior Master be entitled to a Professional Development Allowance equivalent to **89 per cent** of the amount of Professional Development Allowance available to a Supreme Court Judge;
- Associate Judges of the Supreme Court and Associate Judges of the County Court be entitled to a Professional Development Allowance equivalent to **84.65 per cent** of the amount of Professional Development Allowance available to a Supreme Court Judge;
- An Associate Judge of the Supreme Court who is or was a Specialist Supreme Court Master be entitled to a Professional Development Allowance equivalent to **80.50 per cent** of the amount of Professional Development Allowance available to a Supreme Court Judge; and
- Reserve Judges, Reserve Associate Judges, and Reserve Magistrates that are engaged on a non-sessional (full-time) basis be entitled to the Professional Development Allowance, on a *pro rata* basis.

Recommendations to the Attorney-General

October 2016

Travel Approval Process

The issue of the approval process where heads of jurisdiction are required to seek the Attorney-General's approval for overseas travel was not raised in the Panel's meetings with the heads of jurisdictions and was not mentioned in the Courts' submissions to the Panel. The issue arose in the Panel's deliberations in the process of reviewing the relevant entitlement certificates. The Panel recommends the process be amended.

Background of the Process

The relevant approval process is set out in Certificate issued under section 15 of the JRT Act, dated 19 July 2007. The relevant section provides that prior to traveling overseas or interstate in an official capacity, a head of jurisdiction must seek the approval of the Attorney-General.

Issues

The Panel is of the view that to require the Chief Justice of the Supreme Court, the Chief Judge of the County Court, and the Chief Magistrate of the Magistrates' Court to seek approval from the Attorney-General to undertake travel overseas in an official capacity is inconsistent given the boundaries separating the Executive from the Judiciary. It is perhaps a minor matter, but it has symbolic importance.

There are no analogies in public sector employment that provide guidance or justification for this provision.

Ministers need to seek the approval of the Premier for overseas travel. However, Ministers are appointed by the Governor on the recommendation of the Premier, and their commission can be similarly terminated on the recommendation of the Premier. Further, their appointment is from one election until the next, where even if the Government is re-elected, their appointment is subject to a new recommendation by the Premier and appointed by the Governor in Council. When Ministers travel overseas, the Premier needs to make recommendations to the Governor in Council to appoint Acting Ministers to assume responsibility for the relevant Minister's portfolios during their absence.

Similarly, Secretaries of Government Departments require the responsible Minister's approval for overseas travel. But Secretaries of Government Departments are the direct employees of their relevant Government Agencies. The relevant Government Agencies can revoke their appointment, which is for a fixed term, at any time.

Similar appointment and revocation situations arise with other Public Sector Body heads, for example, Chairs and Chief Executive Officers of Statutory Corporations and their overseas travel is subject to relevant Ministerial or Authority approval.

In contrast, the Governor, on the advice of the Executive Council, appoints the Judiciary. These appointments are tenured, and they typically continue beyond the term of the Government, until the death, resignation, incapacity, or retirement of the appointed judicial officer.

Recommendations to the Attorney-General

October 2016

The requirement for the Attorney-General's approval of overseas travel of heads of jurisdiction creates an inappropriate linkage to other roles where such approval is justified. The Panel therefore recommends that the requirement be amended.

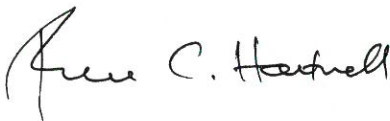
Cost Implications

This recommendation is not expected to have cost impacts to the State.

Recommendation 7 – Travel Approval Process

The Panel recommends that the approval requirement be replaced by the obligation for the heads of jurisdiction to notify the Attorney-General of overseas travel, and to further recommend to the Attorney-General who can be acting in their position during their periods of absence.

Judges of the Supreme and County Courts, and Magistrates should continue to seek approval of their respective Heads of Jurisdiction for overseas and interstate travels, as this is necessary for the proper administration of the justice system, and the efficient scheduling of business in the Courts.



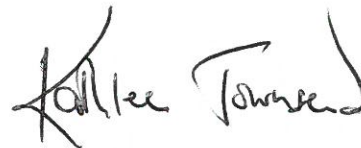
Bruce C Hartnett AM

Chair



Ms Ilona Charles

Member



Ms Kathleen Townsend

Member

3 OCT 2016
Judicial Entitlements Panel