



Jaclyn Symes MP

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### *Judicial Entitlements Act 2015*

#### RECOMMENDATION STATEMENT PURSUANT TO SECTION 34

The Own Motion Recommendation 2021 Report (Report) of the Judicial Entitlements Panel (Panel) was laid before both houses of Parliament on 18 November 2021. Pursuant to section 34 of the *Judicial Entitlements Act 2015*, this recommendation statement sets out my response to the recommendations of the Report.

The Report made four recommendations regarding the allowances and conditions of service of Victoria's judicial officers, and six observations.

#### **RECOMMENDATIONS**

After considering the recommendations of the Panel:

- I do not accept Recommendations 1a, 1b, 2 and 4.
- I vary Recommendation 3.

#### **Recommendation 1a – Magistrate annual leave be increased from four weeks to six weeks.**

The Panel recommended that annual leave for magistrates be increased from four weeks to six weeks. This increase would provide magistrates with additional leave after the certificate is gazetted and would provide the opportunity for magistrates appointed before the gazettal of the certificate to move to these arrangements at any time after gazettal and have their current leave balance preserved. The additional leave would be used in the year granted and would not accrue if the full six weeks is not used in a 12-month period.

#### **Recommendation 1b – Update entitlement certificate to preserve magistrates' entitlement to purchase additional leave.**

The Panel recommended that if Recommendation 1a was accepted, the entitlement certificate dated 19 July 2007 be updated to preserve magistrates' entitlement to purchase additional leave. The Panel recommended this entitlement be capped at a combined total of eight weeks annual leave.

### Attorney-General's response

I do not accept Recommendations 1a and 1b.

This is a similar recommendation from the 2018 and 2020 Own Motion Recommendation Reports. The new evidence provided to the Panel identifies that judicial officers in summary jurisdictions experience higher levels of stress than judicial officers in higher jurisdictions. However, consistent with 2021 Recommendation Statement, the evidence base linking annual leave increases to improved wellbeing or improved productivity has still not been sufficiently substantiated.

The health and wellbeing of magistrates is important to the functioning of the court and I encourage the court and Court Services Victoria to continue to monitor and review magistrate working conditions.

### **Recommendation 2 – Coroner annual leave be increased from four weeks to five weeks.**

The Panel recommended that annual leave for coroners and the State Coroner be increased by five days. The recommendation provides the additional leave is used within 12 months and will not accrue, be carried forward, paid out, or carried over to another judicial or public office.

### Attorney-General's response

I do not accept Recommendation 2.

Coroners, other than the State Coroner, are currently entitled to four weeks annual leave, as the entitlements are set to that of a Magistrate. The annual leave of Magistrates is discussed in relation to recommendation 1 above. I understand the State Coroner currently grants each coroner an additional five days' time-in-lieu in recognition of their requirement to be on call after hours. This recommendation seeks to formalise the court's current practice as annual leave rather than a formal time in lieu entitlement.

Time-in-lieu reflects the agreement between an employer and employee for an employee who has worked more than their ordinary hours to receive paid time off. I recognise the extra work outside of ordinary hours for judicial officers to ensure the effective running of the court system. This requirement is particularly relevant for coroners working on-call duties, magistrates working in the Bail and Remand Court, and members across the courts who work outside of ordinary hours as required by certain out of hours warrants processes.

There are currently no legislated time-in-lieu entitlements for Victorian judicial officers. The provision of time-in-lieu is an ad-hoc arrangement and is managed at a local level by each jurisdiction consistent with the conditions of that jurisdiction. It is important that courts

continue to have this flexibility to apply time-in-lieu arrangements to meet their jurisdictional needs and adapt to the constantly changing court environment. An ad-hoc time-in-lieu arrangement should be reasonable and recognise the expectation of out of ordinary hours work. This arrangement should not unduly impinge upon a judicial officer's capacity to undertake their duties and should be proportionate and appropriate taking into account judicial salaries and other conditions.

Consistent with this approach, heads of jurisdiction may wish to consider whether the judiciary should be notified of a reasonable expectation of out of ordinary hours work upon appointment, so that shared expectations are established.

For these reasons, I do not accept Recommendation 2.

### **Recommendation 3 – Professional development allowance for reserve magistrates.**

The Panel recommended that reserve magistrates receive a percentage of the professional development allowance, proportionate to the number of sitting days undertaken by the reserve magistrate in the previous financial year. The recommendation also provides that the time spent by reserve magistrates attending professional development days approved by the Chief Magistrate, be treated as sitting days for remuneration purposes.

#### Attorney-General's response

I agree with the intent of Recommendation 3 but will vary the recommendation to ensure that the new entitlement operates effectively and fairly.

I recognise the importance of reserve magistrates and the significant role they play when filling in for magistrates on leave. This recommendation will provide reserve magistrates with access to a professional development allowance so they can continue their ongoing training.

The recommendation provides for the professional development allowance for reserve magistrates to be proportionate to the number of sitting days they have undertaken in the previous financial year. This reference to the 'previous financial year' is appropriate for reserve magistrates who have already served as reserve magistrates for at least one full financial year. However, the reference to the 'previous financial year' is not appropriate for a reserve magistrate who:

- was appointed for the first time as a reserve magistrate during that financial year, and for whom there was no 'previous financial year'; or
- was appointed for the first time as a reserve magistrate part way through the previous financial year (e.g. 1 June) and the previous financial year was therefore not an indicator of the extent of engagement that the reserve magistrate would undertake in the current financial year.

For reserve magistrates in the above situation, their proportionate professional development allowance will be based on the average number of sitting days of reserve magistrates in the previous financial year. Consistent with the current operation of the professional development allowance, this allowance will be able to be accessed by reserve magistrates from the commencement of each financial year.

In relation to their attendance at professional development days. The reserve magistrate should be remunerated if the Chief Magistrate determines that it is appropriate for the reserve magistrate to be paid for the sitting day, having regard to the nature of the training.

**Recommendation 4 – Recognise judges’ prior service as a judicial registrar for long service leave purposes.**

The Panel recommended that when a judicial registrar is appointed as a judge, their prior service as a judicial registrar is recognised for long service leave purposes. The intent of this recommendation is to update entitlement certificates to be consistent with the treatment of long service leave for other judicial officers.

Attorney-General’s response

I do not accept Recommendation 4.

This recommendation proposes judges’ prior service as a judicial registrar is recognised for long service leave purposes. Whilst judicial registrars provide a valuable contribution to the courts, their roles are distinct from judicial officers. There are many public service roles that could equally be recognised in the interests of fairness. Wider recognition of prior public service would be costly for the courts.

The entitlement certificate dated 30 June 2014 recognises the prior service of judicial registrars when they are appointed as an associate judge or magistrate. The recognition of prior service of judicial registrars is historical and should not be extended given the cost of broadening long service leave recognition.

The entitlement certificate dated 26 August 2019 recognised annual leave accrual and transfer for judges, but only from pensionable positions. This recognises the distinct position of the judicial officer, and particularly of judges of the Supreme and County Courts.

For the three judicial registrars that have been appointed as a judge in the last five years, the additional salary, allowances and other entitlements of a judge represent a significant increase in their effective remuneration. Given this increase, recognition of prior service as a judicial registrar is not necessary to incentivise the appointment.

For these reasons, I do not accept Recommendation 4.

## OBSERVATIONS

The Panel made six observations in the Report. The *Judicial Entitlements Act 2015* makes no provision for me to respond to observations. I ask Court Services Victoria and the Department of Justice and Community Safety to consider the observations and, where appropriate, undertake further analysis.

I thank the Panel for its Report.

A handwritten signature in blue ink, appearing to read 'Jaclyn Symes', with a stylized flourish at the end.

**Jaclyn Symes MP**  
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21 / 03 / 2022