



Attorney-General

Level 26
121 Exhibition Street
Melbourne Victoria 3000
GPO Box 123
Melbourne Victoria 3001
Telephone: (03) 8684 1111
Facsimile: (03) 8684 1100
DX: 210022

Judicial Entitlements Act 2015

RECOMMENDATION STATEMENT PURSUANT TO SECTION 34

The 2018 Own Motion Recommendation Report (Report) of the Judicial Entitlements Panel (Panel) was laid before both houses of Parliament on 20 September 2018. Pursuant to section 34 of the *Judicial Entitlements Act 2015* (JE Act), this recommendation statement sets out my response to the recommendations of the Report.

The Report made nine recommendations concerning the allowances and conditions of service of Victoria's judicial officers, to which I have responded in Part A of this Recommendation statement.

The Report also made three observations, to which I have responded in Part B of this statement.

PART A: RECOMMENDATIONS

After considering the recommendations of the Panel, I intend to accept Recommendations 2, 3, 4 and 7 in full; and to accept with variations Recommendations 1, 5, 6 and 8. In relation to Recommendation 9, I agree that there is a need to protect the health and wellbeing of magistrates and note that the Government will, in partnership with the Magistrates' Court, undertake a welfare and work safety review of magistrates' working conditions. Further details are set out below.

Transfer of accrued annual leave from a Victorian public office (Recommendation 1)

The Panel recommended that the Attorney-General issue a certificate pursuant to section 35 of the JE Act entitling judges of the Supreme and County Courts to the transfer of accrued annual leave from prior service in a Victorian public (including judicial) office, such as currently applies in relation to long service/sabbatical leave.

Attorney-General's response

I intend to accept Recommendation 1 with a variation.

The variation I intend to make is to enable judges of the Supreme and County Courts to transfer annual leave from a prior Victorian public office that is 'pensionable', (i.e. where the holder of that office can become eligible for a pension after retirement, as a result of service in that office) including judicial and non-judicial offices. This will permit the transfer of annual leave from the office of associate judge, Solicitor-General or Director of Public Prosecutions to judge, but not from a magistrate or crown counsel to judge.

Limiting transferability to pensionable offices will ensure that the same conditions are maintained between like (i.e. pensionable) offices. Additionally, as annual leave can affect the calculation of the

term of service for the purposes of determining pension eligibility, allowing transferability from a non-pensionable role would be inappropriate.

Increase the long service leave of associate judges of the Supreme Court (Recommendation 2)

The Panel recommended that the Attorney-General issue an entitlement certificate that increases the entitlement of associate judges of the Supreme Court to long service leave to:

- six months long service leave after seven years of service, with one month able to be accessed after five years of service; and
- 6/7^{ths} of a month for each additional year of service, after seven years of service.

The Panel recommended that the entitlement apply retroactively to persons currently in the office of associate judge.

Attorney-General's response

I intend to accept Recommendation 2.

I note that a recommendation of the Panel relating to the long service leave of associate judges in its 2016 Own Motion Recommendation Report to the Attorney-General (2016 Report) was accepted. The 2016 Report recommendation was that magistrates and associate judges should be entitled to:

- *pro rata* access to long service leave after completing seven years of service;
- further accrual of 3/10th of a month of long service leave for each completed year of service after 10 years of service; and
- access to the additional accrued long service leave after completing 10 years of service.

An entitlement certificate giving effect to this recommendation was issued in January 2018.

There are clear distinctions between the role of associate judge and other judges. For example, an associate judge does not have all the powers of a County Court judge and the functions and jurisdiction of an associate judge of the Supreme Court are limited compared to a County Court judge. Notably, an associate judge of the Supreme Court only works on civil matters.

However, I note the Panel's comments on the effect of the changes to the role of associate judge over time. The changes noted centre on the role of associate judges in conducting mediations and hearing more complex applications with results including saved trial days (and trial preparation and judgment writing along with it) and productivity improvements for the Supreme Court. I also note the impressive average length of service of associate judges.

The proposed increase to the long service leave entitlement of associate judges appropriately recognise that the changes to the role of associate judge over time have increased its responsibilities and complexity and that these should attract additional rest and relaxation time.

Public transport recommendations (Recommendations 3 and 4)

The Panel recommended that associate judges receive an entitlement for the cost of travel on metropolitan and regional Victorian public transport that is equivalent to that of a Supreme or County Court judge (Recommendation 3).

The Panel also recommended that the Attorney-General amend the entitlement certificate dated 19 July 2007, to clarify that the entitlement is to free travel on metropolitan public transport services and regional Victorian train (VLine) services (Recommendation 4).

Attorney-General's response

I intend to accept Recommendation 3 with variation.

Judges of the Supreme Court and County Court have been entitled to free public transport since 2007. There is no compelling case for why associate judges should remain excluded from that entitlement. All Victorians, including judicial officers and associate judges, should be encouraged to utilise public transport, and acceptance of this recommendation in full should see most, if not all, associate judges of the Supreme Court using public transport as much as possible.

Since there are no associate judges of the County Court, it is inappropriate to extend the allowance to that office at this stage.

I intend to accept Recommendation 4 in full.

The current certificate contains a historical reference to a pass that provided free transport on public transport for judges. Making the entitlement neutral in relation to the mode of public transport would clarify the entitlement and reduce or eliminate any need for further changes based on the approach to ticketing used.

Give long service leave pro rata to reserve judges who are engaged on a full-time basis (Recommendation 5)

The Panel recommended that the Attorney-General create an entitlement for reserve judges of the Supreme and County Courts, who are engaged on a full-time basis, to accrue long service leave on the same basis as their respective, non-reserve counterparts, *pro rata*. The Panel recommended that such entitlement recognise prior service in, and allow for the ongoing accrual of, the long service leave from previous appointments to the office of a reserve judge, where the appointment is on a full-time basis.

The Panel recommended that the entitlement should apply retroactively to persons currently in the office of reserve judge, engaged on a full-time basis.

Attorney-General's response

I intend to accept Recommendation 5 with variation.

I intend to accept the Panel's recommendation to create an entitlement for reserve judges of the Supreme and County Courts, who are engaged on a full-time basis, to accrue long service leave on the same basis as their respective, non-reserve counterparts, *pro rata*. However, I intend to accept it with the variation that the entitlement will not apply retroactively.

Reserve judges are appointed after retiring from the office of a judge. They have considerable experience that it is appropriate to retain for as long as possible for the benefit of the courts and our community.

Reserve judges are appointed for five years, or until attaining 78 years of age, whichever occurs first. During the period of appointment, no period of engagement may exceed a period of 6 months. The *pro rata* element will apply to the period of engagement and not the period of appointment.

The Chief Justice or the Chief Judge may engage a reserve judge to undertake duties in, respectively, the Supreme or County Courts. Such an engagement must not exceed six months. However, the head of jurisdiction may commence a separate engagement with the reserve judge for further periods of up to six months, thereafter.

The Panel's recommendation, made in the Panel's 2016 Report, for annual leave for reserve judges engaged on a full-time basis (*pro rata* in relation to their non-reserve counterparts who receive eight weeks per year) was accepted. As the Panel notes in its 2018 Report, this change gave parity to reserve judges engaged on a full-time basis with their non-reserve counterparts in relation to remuneration and entitlements except for long service leave. The Panel noted that Recommendation 5 would provide reserve judges engaged on a full-time basis with an equivalent entitlement to their non-reserve counterparts, *pro rata*.

I do not intend to accept retroactive application of the entitlement, as I do not consider it is justified, particularly as reserve judges are usually in receipt of a judicial pension.

Recommendations in relation to library allowance (Recommendations 6, 7 and 8)

Expand the scope of the library allowance to cover professional development activities
(Recommendation 6)

The Panel recommended changes to the conditions of the library allowance, including renaming it to 'professional development allowance' to reflect its intention for a broader conception of professional development, 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
- expenditure incurred in relation to professional development activities, for example conferences (attendance to be subject to the approval of the head of jurisdiction).

Remove the 80 per cent cap reimbursement for library expenditure (Recommendation 7)

The Panel recommended that the 80 per cent reimbursement cap on the library allowance be removed.

Make the library allowance for each judicial office relative to that of a Supreme Court judge, consistent with salary differences (Recommendation 8)

The Panel recommended that the following judicial offices should be entitled to a professional development allowance equivalent to the following, specified percentage of the current value of the library allowance available to a Supreme Court judge:

- Judges of the County Court – 86.64 per cent;
- Magistrates – 69.29 per cent;
- Associate judge of the Supreme Court who is the senior master – 89 per cent;
- Associate judges of the Supreme and County Courts – 84.65 per cent;

- Associate judge of the Supreme Court who is or was a specialist master of the Supreme Court – 80.50 per cent; and
- Reserve judges, reserve associate judges, and reserve magistrates that are engaged on a (non-sessional) full-time basis – *pro rata* in relation to their respective non-reserve counterparts.

Attorney-General's response

I intend to accept Recommendations 6 and 8 with variation and to accept Recommendation 7 in full.

Recommendations 6, 7 and 8 mirror Recommendations 4, 5 and 6 of the Panel's 2016 Report. The Panel notes it has re-stated these recommendations because:

- the jurisdictions gave unanimous support; and
- it considers that expanding the allowance to include professional development activities overcomes the decreasing relevance of the uses to which the allowance can presently be put.

I am supportive of Recommendations 6, 7 and 8 because professional development is a critical component of supporting the judiciary. Professional development activities can enhance the expertise of our judicial officers, ensuring that they have the necessary skills and up to date knowledge to navigate highly technical areas of law. Professional development also assists judges to improve their court craft and their ability to manage proceedings in an efficient, fair and lawful manner. The Judicial College of Victoria currently provides an impressive range of professional development to judicial officers and Court Services Victoria also supports the judiciary's professional development.

It is important that the professional development allowance complements existing resources and that the expenditure on professional development provides value for money for the courts and the State of Victoria.

I therefore intend to accept Recommendation 6 with a variation that clarifies that the professional development activities must be directly relevant to the duties (or proposed duties) of the judicial officer; and that provides that the head of jurisdiction must consider, when determining whether to approve professional development:

- whether the professional development activity represents value for money, having regard to the needs of the court;
- whether a similar professional development activity is available at the Judicial College of Victoria and, if so, whether there are special reasons why the College's activity would not be used; and
- where the professional development activity is to take place overseas, whether there are special circumstances justifying attendance at the activity overseas.

In relation to Recommendation 7 specifically, the purpose of the 80 per cent reimbursement cap on the allowance reflected the fact that the judicial officers who purchase library material, in accordance with the library allowance, owned the material upon their retirement, and the unreimbursed 20 per cent reflected the residual value to the judicial officer. That rationale will be diminished once the allowance is converted to a professional development allowance. Unlike hard copy print materials, such as books or reports, professional development activities such as courses or training do not retain any residual value.

In relation to Recommendation 8 – the quantum of the allowance and the relativities between judicial officers of the respective courts – the previous Attorney-General did not accept this change in circumstances where the allowance remained limited as a library allowance, as there was no compelling case for change. If the allowance is converted to a professional development allowance, it is appropriate for the amounts available to the officers to reflect the salary relativities. This will result in an increased allowance for magistrates and County Court judges.

Since there are no associate judges of the County Court, it is inappropriate to extend the allowance to that office at this stage. It is also unnecessary to extend the professional development allowance to reserve judicial officers.

Increase magistrates' annual leave entitlement from 4 to 6 weeks (Recommendation 9)

The Panel recommended that the annual leave entitlement for magistrates be increased from four weeks to six weeks.

Attorney-General's response

Recommendation 9 reflected a need to safeguard the health and wellbeing of magistrates. I agree that it is important to demonstrate adequate care for the health and wellbeing of magistrates and support staff.

Magistrates are currently entitled to four weeks annual leave. In addition, a magistrate is able to purchase additional leave through salary sacrifice arrangements. I acknowledge the challenges of the role of a magistrate and support staff and that there have been increases in pressures on the Magistrates' Court over a significant period, in particular due to reforms across the criminal justice system.

To ensure that the health and wellbeing of magistrates is holistically considered and addressed, the Government, in partnership with the Magistrates' Court, will undertake a welfare and work safety review of magistrates' working conditions. The review will consider:

- the implementation of the 2018-19 budget measures and other investments in the courts system; and
- additional measures to address magistrate workload and mental health and wellbeing concerns.

The recommendations of the welfare and work safety review will be considered by the Government.

The Government will continue working with the Magistrates' Court to ensure that its environment and conditions properly support its operations, including with the health and wellbeing of magistrates and support staff.

PART B: OBSERVATIONS

The Panel made three observations in the Report, in relation to issues that the Panel considers require attention and consideration by a relevant authority. As the JE Act makes no provision for me to respond to observations, I intend formally to refer them to Court Services Victoria (CSV) for consideration.

Provide income protection for magistrates for 'no fault' loss of capacity (Observation 1)

In its Report the Panel urges Court Services Victoria (CSV) to engage with relevant stakeholders to establish a scheme for magistrates similar to that which exists to protect judicial officers in the higher courts from loss of income, whether through loss of capacity, ill health, or disability. The scheme should ensure its cognisance of the inherent requirements of the magistrates' role.

Attorney-General's response

A Supreme or County Court judge appointed before the age of 60 years has early access to a judicial pension if he or she incurs a 'permanent incapacity disabling him or her from the due execution of his or her office'. There is no entitlement to income protection for magistrates. It is appropriate for this work to be initiated by CSV because of its central administrative function for the Courts.

Compile and maintain current information about judicial entitlements in a handbook (Observation 2)

In its Report, the Panel observes that there is no existing entitlement to a document that serves as a single, current source of information about all judicial entitlements. The Panel urges that it be compiled and maintained with current information by an appropriate body, such as CSV.

Attorney-General's response

I encourage CSV to prepare and maintain such a document, and to make it available on the register maintained in accordance with s 37 of the JE Act, which is accessible online, hosted on the Department of Justice and Community Safety website at www.justice.vic.gov.au/justice-system/courts-and-tribunals/judicial-salaries-and-entitlements.


Review living away from home allowance for magistrates (Observation 3)

In its Report, the Panel urges CSV to undertake a review of the issue of the costs associated with the court assignments of magistrates, noting that magistrates should not be put at a financial disadvantage due to the cost of relocating or living away from home where it is required for their work, and where such costs can amount to thousands of dollars that are not adequately covered by the entitlement.

Attorney-General's response

It is appropriate for this work be initiated by CSV because of its central administrative function for the Courts.

I thank the Panel for its Report.



.....

HON JILL HENNESSY MP
Attorney-General

DATE:

5/2/19