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Judicial Remuneration Tribunal Act 1995

JUDICIAL REMUNERATION TRIBUNAL: REPORT NO. 2 OF 2003

1 Background

1. The Judicial Remuneration Tribunal (JRT) was established by the **Judicial Remuneration Tribunal Act 1995** (the Act) and is responsible for making determinations and recommendations regarding salaries, allowances and conditions of service for judicial officers, and also for non judicial members of the Victorian Civil and Administrative Tribunal (VCAT).
2. The Tribunal is required to report on a determination or recommendation at intervals of not less than one year and not more than two years. A report of a determination or a recommendation by the Tribunal is required to be published in the Government Gazette within twenty one days of receipt by the Attorney-General.
3. The Attorney-General must lay a report of a determination or recommendation before each House of Parliament within ten sitting days of receipt. In addition, if the Attorney-General intends to vary or not accept a recommendation, a statement giving reasons for the variation or non acceptance must be made to Parliament within ten sitting days after tabling of the report containing the recommendation.
4. Either House of Parliament may disallow a determination within fifteen sitting days after the report containing the determination has been tabled. If the determination is not disallowed, it must be given effect in accordance with the terms of the determination.
5. In the case of a report recommending the adjustment of conditions of service, the Attorney-General must issue a certificate authorising such adjustment except so far as the Attorney-General varies or does not accept the recommendation.
6. The Tribunal previously reported on salaries for judicial officers and for non judicial members of VCAT in 2002 (reports Nos. 1 and 2 respectively). The 5% retrospective salary increases then determined took into account significant movements in wages and salaries generally since the previous review in January 2001, including the increases accorded to judicial officers in other jurisdictions. As well, in anticipation of further increases in judicial remuneration federally and in NSW, the Tribunal determined a further 3% increase from the date of its determination, with such increase to be taken into consideration in the next review of judicial remuneration.
7. Since the Tribunal's previous review, significant change has occurred in judicial remuneration elsewhere in Australia, particularly following the Commonwealth Remuneration Tribunal (CRT) determination awarding a three stage increase in Commonwealth judicial salaries in November 2002. The CRT's decision followed a major review of judicial remuneration and has had a significant impact on judicial remuneration throughout Australia. This is the first opportunity the JRT has had to examine the Commonwealth's determination, which is discussed further in section 3.1.2 of the report
8. The 2002 reports identified the need to conduct more comprehensive reviews at a later date. On this basis, submissions were called for, and received, from the judiciary, non judicial members of VCAT, and the Government in relation to both salary and non salary matters and the review commenced in November 2003.
9. This report contains determinations on salaries and allowances and recommendations on conditions of service for judicial officers, and for non judicial members of VCAT.

SPECIAL

2 2003 Review**2.1 Method of Inquiry**

10. The Tribunal is free to determine its own method of inquiry into judicial remuneration, but is required to consider certain factors pursuant to section 12(1A) of the Act.
11. Section 12(1A) states that, in making a determination, recommendation, or providing an advisory opinion, the Tribunal must consider the following:
 - (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 (AWOTE)
 - (iii) executive salaries, including those of executives within the meaning of the **Public Sector Management and Employment Act 1998** in the Victorian Public Service;
 - (f) improvements in operational efficiency;
 - (g) work value changes;
 - (h) factors relevant to Victoria, including —
 - (i) current public sector wages policy;
 - (ii) Victoria's economic circumstances;
 - (iii) capacity of the State to meet a proposed increase in judicial salaries, allowances or conditions of service;
 - (iv) any other relevant local factors; and
 - (i) relativities between Victorian courts and tribunals.
12. In conducting its 2003 review of salary and non salary matters, the Tribunal received submissions from judges, masters, magistrates, non judicial members of VCAT and the Government. The Tribunal also met with representatives from the above parties on an informal basis to discuss issues raised in written submissions and to clarify any outstanding matters.
13. In addition, the Tribunal undertook research and analysis of judicial remuneration policies and decisions in other Australian jurisdictions.

2.2 Submissions

14. Submissions were received from members of the judiciary, the Chief Magistrate, magistrates, non judicial members of VCAT, and the Government. The members of the judiciary and non judicial members of VCAT provided responses to the Government submission and the Government submitted a response to salary and relativity claims, and other issues raised by the parties.
15. Below is a summary of the issues raised in the submissions and responses received by the Tribunal. Issues raised in the submissions are discussed in further detail in the report under the Tribunal's consideration.

2.2.1 Judges and Masters of the Supreme Court

16. The submission on remuneration from the judges of the Supreme Court focussed on the issue of parity with judges of the Federal Court, seeking the backdating of any increase to 1 January 2003. The measure of increase sought was 14%, which would have provided a relativity of 84.79% to the remuneration of a judge of the High Court. The judges also raised the difficulties created by section 13(1) of the

Act, which restricts the frequency at which the Tribunal may report to the Attorney-General. This matter is discussed further at section 4.1.5 of this report.

17. In their submission, the Supreme Court judges also sought an increase in the library allowance, and more flexible access to long leave. Masters of the Supreme Court sought the same long leave entitlements as judges, and recognition of service as a master for pension purposes when appointed as a judge.
18. Masters had also sought to be provided with cars on the same basis as provided to judges of the County Court.

2.2.2 Judges of the County Court

19. The judges of the County Court made submissions seeking an increase in the salary relativity between a judge of the County Court and a judge of the Supreme Court, with any adjustment to salary relativity to be effective from 1 January 2003, which will incorporate the flow-on effect of any increase in Supreme Court judges' entitlements.
20. Submissions were also made regarding more flexible access to sabbatical or long leave, unvouched travel allowance, the replacement of the library allowance with an 'expense of office allowance', a telephone allowance, and improved car provisions.

2.2.3 Magistrates

21. The magistrates submitted that the salary of a Supreme Court judge should be maintained at approximately 85% of the salary of a judge of the High Court and that the salaries of County Court judges and magistrates be adjusted accordingly.
22. It was further submitted that adjustments to bring judicial salaries to the 85% threshold should be made as follows:
 - 4% from 29 October 2002 to be consistent with the Commonwealth Tribunal's increases and the JRT's previous decision;
 - 10.2% from 1 July 2003, which is when the last increase was made in the Commonwealth jurisdiction.
23. Submissions were also made regarding increasing the salary relativity of magistrates, additional annual leave, the extension of the judicial pension scheme to magistrates, review of the provision of motor vehicles, including the motor vehicle allowance, and adjustments to other allowances.

2.2.4 The Chief Magistrate

24. In addition to supporting the magistrates' submission, the Chief Magistrate sought a review of the retirement age, leave entitlement and library allowance of the Chief Magistrate, as well as staff resourcing.

2.2.5 Non Judicial Members of VCAT

25. The non judicial members of VCAT sought a 4% increase in salary or the same percentage increase as provided to the judiciary, whichever is the greater.
26. A submission was made in 2002 seeking an increase in the salary relativity of a Deputy President of VCAT to the salary of a County Court judge from 80% to 91%. That matter was deferred to the 2003 review for consideration.
27. Other matters on which the members submitted included consideration of an appropriate car allowance and a review of the total remuneration packaging by which members are paid.

2.2.6 Victorian Government

28. The Government submitted that judicial salaries should not increase by more than 3% in line with Government wages policy.
29. A recommendation was also sought from the Tribunal regarding recognition of prior service in public office for individuals who later receive a judicial appointment.

30. The Government also requested that in reviewing judicial salaries, the Tribunal consider the decision in *Austin & Anor v Commonwealth of Australia*¹ and its impact on salary relativity between the Victorian and Commonwealth jurisdictions.
31. The High Court in *Austin v Commonwealth* found that superannuation surcharge legislation enacted by the Commonwealth Parliament was invalid insofar as it applied to state judges, on the basis that the legislation interfered with the state's ability to determine how to remunerate its own judges.
32. A consequence of that decision is that federal judges continue to pay the surcharge, whereas state judges are now exempt.

3 Tribunal's Consideration: Salary Matters

3.1 Salaries

33. In addition to consideration of written and oral submissions, the Tribunal took into account factors as required under section 12 (1A) of the Act and outlined in paragraph 11 of this report. The following factors were given particular attention in this salary review.

3.1.1 Government Wages Policy

34. The Government submitted that the Tribunal should make a salary determination consistent with the Victorian Government's wages policy, which is that salaries should not increase by more than 3% per annum unless supported by real and sustainable productivity improvements and cost savings.

3.1.2 Movements in Judicial Remuneration Levels in Other Australian Jurisdictions

35. There has been considerable movement in judicial remuneration in other jurisdictions since the Tribunal's report in October 2002 as the following table illustrates.

3.1.2.1 Comparison of Judicial Salary Adjustments July 2002-December 2003²

	CWTH	WA	NSW	SA	QLD	TAS	ACT	NT	VIC
Amount	\$258,920	\$264,872	\$258,960	\$258,140	\$215,775	** \$238,970	\$258,920	\$258,920	\$227,100
Date of Operation	1 July 2003	1 Jan. 2004	1 Oct. 2003	1 Nov. 2003	*1 July 2002	1 July 2003	1 July 2003	1 July 2003	29 Oct. 2002
Previous Salary and Date of Operation	\$237,100 1 July 2002	\$234,100 1 Jan. 2003	\$231,880 1 Oct. 2002	\$229,500 1 Nov. 2002	n/a	\$225,192 June 2003	\$237,100 1 July 2002	\$237,100 1 July 2002	\$220,500 1 Jan. 2002

¹ [2003] HCA 3

² Salary of Supreme Court Puisne Judge and Judge of the Federal and Family Court.

Note that the salary of Supreme Court Judges in the NT and ACT are tied to Commonwealth decisions.

* 2003 decision unavailable at the time of writing.

** See footnote 3 for information regarding the calculation of the salary of a Supreme Court judge in Tasmania.

3.1.3 Commonwealth Remuneration Tribunal: Major Review of Judicial and Related Offices' Remuneration

36. The Commonwealth Remuneration Tribunal (CRT) conducted a major review of judicial remuneration in November 2002 and, as a result, a determination was made that foreshadowed salary increases for the next three years. The reason for the decision was based on the conclusion by the CRT that, in light of work value changes, increased workload, and increased complexity of cases, judicial officers were underpaid.
37. The determination awarded the following adjustments:
 - 7% increase from 1 July 2002;
 - 5% increase from 1 July 2003; and
 - 5% increase from 1 July 2004.
38. The three step increase did not include economic adjustments which will be determined as part of the CRT's annual review. The CRT subsequently determined an economic adjustment of 4% from 1 July 2003.
39. The effective cumulative salary increase for a judge of the Federal Court in the period July 2002 — July 2003 has been 16.9%. For a judge of the NSW Supreme Court in the period October 2002 — October 2003 it has been 17.3%.
40. The CRT also broke the nexus between judicial remuneration and the remuneration of tribunal members on the basis that the nature of judicial responsibilities and the constitutional protection of judicial officers meant that there was a significant difference between judicial office and tribunal membership. It therefore concluded that it was no longer 'necessary or appropriate' to retain a link between the remuneration of the two offices.
41. The JRT has not had the opportunity to consider the Commonwealth Tribunal's 2002 decision until now because of the reporting restriction imposed by the operation of section 13(1) of the **Judicial Remuneration Tribunal Act 1995**. The impact of section 13(1) on the Tribunal's ability to perform its functions has been raised in previous reports and is further discussed at section 4.1.5 of this report.

4 Determination

42. The Tribunal has determined the following salary increase for judicial officers and non judicial members of VCAT:
 - 4% increase from 1 January 2003;
 - 5% increase from 1 July 2003; and
 - 4% increase from 9 December 2003.

4.1 Reasons

43. The Tribunal's determination is consistent with the increases awarded by the Commonwealth Tribunal, and takes into account this Tribunal's 2002 determination, which included a 3% prospective increase. The effective cumulative salary increase for a Victorian Supreme Court judge (including the 3% prospective increase) in the period October 2002 — December 2003 would be 17%. This determination provides a cumulative increase of 13.6% as compared to the 14% increase sought by the Supreme Court judges.
44. The dates of operation for the increases are similar to those in the Commonwealth and NSW jurisdictions and avoid the substantial and unjustifiable retrospectivity sought by the Supreme Court.
45. The Tribunal noted in its 2002 report the importance of addressing the salary lag that had occurred in Victoria as a result of falling behind movements in judicial remuneration in other jurisdictions. The Tribunal reiterates the need to prevent

salary lag particularly in relation to the NSW and federal jurisdictions, which are comparable to Victoria in terms of jurisdiction, nature and complexity of cases and workload.

4.1.1 Salary Parity

46. A consequence of the determination is to bring the salary of a Victorian Supreme Court judge close to parity with that for a Federal Court judge.
47. The issue of parity with the federal jurisdiction was raised by the judges of the Supreme Court in their submission to the Tribunal and is raised again as a result of the Tribunal's determination. The Government had not responded on salary parity between the Victorian and federal jurisdiction. However, it appears that it should be addressed as a matter of priority in the next remuneration review.

4.1.2 The '85% Rule'

48. The determination will also bring the salary of a Supreme Court judge closer to 85% of the salary of a judge of the High Court. As noted in previous reports, there has been general agreement between governments since 1990 that the remuneration of state Supreme Court judges and Federal Court judges should not exceed 85% of the salary of a High Court judge. The purpose of the agreement is to prevent both 'leap frogging' and salary lag in judicial remuneration which could create substantial disparity in salaries amongst the various jurisdictions.

4.1.3 Jurisdictional Comparisons

49. The Government noted in its response to the judicial submissions that NSW (and ACT and NT by default) had been the only jurisdiction that had passed on the Commonwealth increases and that there appeared to be a fragmentation of judicial salaries since the 2002 Commonwealth determination. However, since the Government's response, Western Australia and South Australia have both awarded similar increases to the Commonwealth and NSW as illustrated in the table in section 3.1.2 of the report.
50. Queensland is now the only jurisdiction that has yet to fully implement the Commonwealth increases³, although this may change when the Queensland Salaries and Allowances Tribunal publishes its most recent determination which is expected in early 2004.
51. The Tribunal is aware of the decision in *Austin v Commonwealth* and is also aware that the Commonwealth Government has requested that state governments collect the superannuation surcharge on its behalf. At the time of writing, the Victorian Government was still considering the Commonwealth's proposal. The Tribunal is unable to examine the impact of the *Austin* decision until the uncertainty surrounding the superannuation surcharge has been resolved. As a result, the superannuation surcharge issue was not considered by the Tribunal in its determination on salary.

4.1.4 Economic Factors and Recruitment and Retention

52. The Government submitted that Victorian judicial officers should not receive similar increases awarded in other jurisdictions on the basis that the state's capacity to meet the proposed increases has been affected by a slowed economy and would '...impede the State's capacity to continue to deliver high quality court services to Victorians'.

³ In Tasmania, the remuneration of a Supreme Court judges is set at 90% of the salary of the Chief Justice. The salary of the Chief Justice is determined by calculating the average of the salaries of the Chief Justices of South Australia and Western Australia. This is determined on an annual basis by the Auditor-General.

53. The Government also argued that Victorian judicial salaries should be lower than other jurisdictions as most candidates for judicial office are drawn from the Bar, and a recent survey by the Australian Bureau of Statistics found that Victorian barristers tend to earn less than barristers in other jurisdictions. Therefore, judicial salaries do not have to be as high as other jurisdictions in order to attract candidates.
54. Although the Government referred to the effect of a slowed economy, the December 2003 edition of the Victorian Economic News⁴ indicated economic growth in Victoria was expected to increase from 2.8% in 2002–03 to 3.25% in 2003–04. The submission did not specifically address the capacity of the state to meet the claimed increases in judicial salaries, other than a general comment that such an increase would impede the delivery of high quality court services.
55. The argument that there should be a discount on Victorian judicial salaries on the basis that Victorian barristers are paid less than barristers in other jurisdictions is not persuasive. Attraction and retention of high quality candidates depends on more than a comparison between a candidate's current salary and their potential salary as a judicial officer. Other factors including the importance of judicial function to the community and maintaining the standing of the judiciary are equally important.
56. It would be difficult to attract high quality candidates if Victorian judicial officers were amongst the lowest paid in Australia no matter what their current earnings are.
57. In its submission, the Government has accepted that salaries and allowances must be sufficient to reflect the importance of the judicial function, and the status of the judiciary. However, the Government has failed to provide any argument why Victorian judicial officers should be paid less than their counterparts in other jurisdictions, despite performing similar duties and at a comparable standard.
58. The Government's position that increases in the salary of judicial officers should be consistent with public sector wages policy and should therefore not increase by more than 3% does not take into account specific factors relevant to judicial office.

4.1.5 Retrospectivity

59. The determination contains a retrospective component because of the reporting restrictions placed on the Tribunal by section 13(1) of the Act.
60. Section 13(1) restricts the Tribunal reporting on judicial remuneration to the Attorney-General. The Tribunal must report at least every two years, but no more frequently than annually.
61. As stated by the Tribunal in previous reports, and by the judges of the Supreme Court in their most recent submission, the restriction on reporting limits the Tribunal in performing its functions. It is understood that a review of section 13(1) is due to commence in the near future. It is nevertheless important to emphasise that, until amendments are made to section 13(1), the Tribunal may be prevented from conducting reviews when it is appropriate and necessary to do so.
62. Whilst the Tribunal is forced to report up to twelve months after major jurisdictions have completed their reviews, retrospectivity in JRT determinations is likely to be required in order to prevent judicial salaries in Victoria falling behind other jurisdictions.

4.2 Internal Salary Relativities

63. Judges of the County Court, magistrates and non judicial members of VCAT made submissions to increase internal salary relativities within Victoria.

⁴ A quarterly publication produced by the Department of Treasury and Finance.

County Court

64. In their submission, the judges of the County Court stated that their salary relativity with that for judges of the Supreme Court should be increased from 87% to 90% to reflect the narrowing of difference in jurisdiction and nature of the work undertaken by that Court in comparison to that of the Supreme Court.
65. The submission also provided information on the salary relativity of comparable courts to the Supreme Court in other state jurisdictions.
66. The Government submitted that the work value of judges in the County Court relative to the Supreme Court has not substantially changed since 1998 when the salary relativity between the County and Supreme Courts was last reviewed.
67. Taking account of the increases proposed by the Tribunal for the Supreme Court judges, the adjustment of the salary relativity sought by the County Court judges would result in an effective salary increase of 17.9% (not including the prospective 3% salary increase of October 2002).
68. The salary relativity was raised from 85% to 87% in 1998. In view of this and the very substantial increases now determined for all judicial officers, the Tribunal has not determined any adjustment in salary relativity.

Magistrates' Court

69. The magistrates submitted that the relativity of the salary of a magistrate to the salary of a county court judge should be adjusted from 80% to 85% and that the relativities within the magistrates' jurisdiction, save for the Chief Magistrate, should be correspondingly adjusted (Coroner from 90% to 95% and Deputy Chief Magistrate from 85% to 90%).
70. The justification for the adjustment included consistency with the relativity of the Supreme Court to the High Court and the County Court to the Supreme Court, jurisdictional changes, change in work practice and responsibilities, and the salary differential between magistrates and the Chief Magistrate.
71. The salary relativity for the magistrates was set in 1996. If a new salary relativity were accorded, the effective cumulative increase would be 20.6% (not including the prospective 3% increase of October 2002), and 25.3% if also based on an adjusted salary relativity for the County Court judges. As with the County Court judges, the Tribunal is not persuaded to adjust the salary relativity for magistrates.

Non Judicial Members of VCAT

72. The non judicial members of VCAT sought a review of the relativity of a Deputy President to a County Court judge in their submission to the JRT in the 2002 review. It was agreed at that time that consideration of salary relativity would be deferred to the 2003 review due to time constraints and the confinement of the 2002 review to salary adjustments only.
73. The VCAT submission sought a movement away from the current total remuneration packaging as follows:

Officer	Present Basis	Sought
Deputy President	80% of the total of the rate for a County Court judge plus 14%	91% of the County Court rate, plus 15% for superannuation
Senior Member	80% of the Deputy President rate	83% of the Deputy President rate plus 15% for superannuation
Member	70% of the Deputy President rate	76% of Deputy President rate plus 15% for superannuation

74. The bases for the requested adjustment included increased complexity of matters, short term tenure and restriction on post term employment, as well as a review of work value and relativities undertaken by Mercer Human Resource Consulting in 2002, based on its earlier report of 1996. This review made comparisons with West Australian judicial positions. With respect to a number of comparative salary and work value assessments in the report, there is a waiver that Mercer Human Resource Consulting had not performed work value assessments on the majority of the roles.
75. The current salary relativities within VCAT are based on a report by Hewitt Associates commissioned by the Department of Justice in 2001–02. This report covers interviews with VCAT members, senior officers in a number of departments, the then Chief Magistrate and senior barristers appearing before VCAT.
76. Neither report comments upon the differing evaluations arising from the other's assessment.
77. Acceptance of the varied relativities sought by VCAT (inclusive of the 15% superannuation claim) would result in effective cumulative increases of 30% to 40%.
78. In view of the differing assessments by the external consultants, the Tribunal is not persuaded to support altered relativities for the VCAT positions.
79. The nature, complexity and volume of judicial work has changed for all judicial officers and the acknowledgement of this is reflected in the increase awarded to Supreme Court judges, which will be passed on to the other jurisdictions as a result of internal relativities. However, the Tribunal considers current relativities within Victoria to be appropriate and there is insufficient evidence to justify an alteration of the relativities at this time.

4.3 Total Remuneration Packaging

80. The Government raised the issue of total remuneration packaging in relation to judicial salaries, including a review of current pension and superannuation arrangements. It did not, however, make a submission on the issue. The Tribunal therefore has not considered total remuneration packaging for judicial officers in this review. It notes also that, given the complexity and magnitude of the issues involved in total remuneration packaging, a separate inquiry would probably be necessary. The Tribunal is ready to consider this matter further, should any of the parties wish this to be done.

5 Tribunal's Consideration: Non Salary Matters

5.1 Leave Provisions

5.1.1 Long Service Leave

Judges of the Supreme and County Court

81. Judges of the Supreme and County Court sought to access up to one month of long leave after five years of service within their long leave entitlement.
82. The judges submitted that this is similar to judicial long service leave in other jurisdictions and that earlier access to a portion of long leave would provide judges with the opportunity to take leave without creating any additional cost to the Government.
83. The long leave entitlement for judges is currently six month's leave after seven years of service. The request increases flexibility in accessing long leave rather than creating a further entitlement and is supported by the Government.
84. In the view of consensus between the Government and judges, the Tribunal recommends that judges of the Supreme and County Court be entitled to access up to one month's long leave after five years of service.

Masters and Magistrates

85. Submissions from the masters of the Supreme Court, the Chief Magistrate and magistrates requested an increase in long service leave entitlement from three months after ten years to six months leave after seven years service. This is consistent with the entitlements of the judges of the Supreme and County Courts.
86. Increased long service leave is sought primarily on the basis of increased workload. The masters noted in their submission that the previous Tribunal had recommended that masters be entitled to the same long service leave as judges on the basis that 'masters exercise judicial and quasi judicial functions close to the level of the County Court'. The then Attorney-General rejected this recommendation on the basis that the entitlement for such extensive leave is anachronistic and no longer appropriate or necessary.
87. The previous Tribunal declined to make a recommendation when masters made further submissions on the matter in 1997. It was noted by the Tribunal in its 1997 report that there was no 'useful purpose in raising the question again given the Attorney-General's position on the matter'.
88. The Tribunal has considered the previous decisions made regarding the masters' request for increased long service leave in addition to the current submissions put forward by the masters of the Supreme Court and the magistrates.
89. The Government's submission to the 2003 review opposed any increase in long service leave entitlements, arguing that the proposed increase exceeds industry standards and that such an increase would be costly.
90. The Tribunal has not been persuaded that a recommendation to increase long service leave entitlements is appropriate for masters and magistrates (including the Chief Magistrate) and therefore declines to make such a recommendation.

5.1.2 *Magistrates' Annual Leave*

91. Magistrates, including the Chief Magistrate, requested the same leave entitlements as those provided to the judges of the Supreme and County Court, that is, eight weeks. The current entitlement is four weeks annual leave and the magistrates submitted detailed information as to why their leave entitlement should be increased. The basis for the claim for increased leave was that magistrates are the third tier of the judiciary and should therefore be treated in the same manner as other judicial officers. Moreover, an additional four weeks leave was justified because of the impact on the health and wellbeing of magistrates of a substantial increase in workload.
92. The Government did not support the request for additional leave on the basis that the proposed increase is too generous, exceeds the standard leave entitlement and would involve considerable cost.
93. Having regard to general standards, the Tribunal does not consider an additional four weeks annual leave for magistrates is justified, particularly in light of the additional cost to Government, and therefore makes no recommendation on this matter.

5.1.3 *Recognition of Prior Service*

94. The Government submitted that recognition of prior service in public office should be recognised for the purposes of calculating long leave for judges of the Supreme and County Court. This would apply in situations where a judge held public office immediately prior to appointment to judicial office and has left judicial office as a result of death or disability before qualifying for judicial long leave.
95. Under the proposal, where a judge with a minimum of four years' prior service in public office does not have a current entitlement immediately prior to appointment

to judicial office, the judge should receive payment on a pro rata basis where the judge completes the balance of the period in judicial office, or leaves office as a result of death or disability at the remuneration level of their former public office.

96. The Government informed the Tribunal that the purpose of the proposal is to reflect the fact that a judge in such a situation should not be disadvantaged in moving from one long service leave scheme to another.
97. The Tribunal supports the Government's proposal, and there have been no objections from the judiciary. Therefore, the Tribunal recommends that the proposal be adopted.

5.1.4 Portability of Service for Masters

98. Masters of the Supreme Court sought a recommendation that legislative amendments be made to allow the period served as a master to be counted for pension and other relevant purposes when a master is appointed as a County or Supreme Court judge.
99. The masters' submission is consistent with the Government's submission regarding recognition of prior service. Given that the Government is supportive of such a proposal, the Tribunal is of the opinion that the masters' request should be given effect.

5.2 Pensions and Superannuation

5.2.1 Magistrates' Non Contributory Pension Proposal

100. The magistrates submitted that the judicial pension scheme should be extended to magistrates in order to obtain financial security in retirement. Magistrates are currently entitled to superannuation under three different schemes, which deliver different benefits. The magistrates argued that a particular deficiency of some of the current provisions is the lack of adequate disability cover.
101. The Government opposed the proposal and submitted that the provision of a judicial pension to magistrates would have a significant budgetary impact. The Government also advised the Tribunal that it is an objective of the Government to eliminate all unfunded liabilities, of which the judicial pension scheme is one, by 2035.
102. As judicial officers, magistrates enjoy tenure and security of remuneration in the same manner as the rest of the judiciary. This is because the independence of judicial officers is paramount to the functioning of the justice system and the community must have confidence in the impartiality of all judicial officers.
103. However, the entitlement to a non contributory pension upon retirement is grounded in past history rather than a cornerstone of judicial independence. The cessation of a non contributory pension scheme has occurred in at least one other jurisdiction, and has been under consideration in another. At this time, the Tribunal is unable to justify the significant financial burden such extension to magistrates would place on the State.
104. In a meeting with the Tribunal, Government representatives agreed to discuss the matter of disability entitlements with the Chief Magistrate in order to assist the Court to manage the issue of magistrates on extended sick and disability leave. If discussions with the Government are unsuccessful, the matter may be brought before the Tribunal in a future review.
105. It must be noted that it is not the Tribunal's intention to pre-empt the outcome of any future review of judicial pensions with this decision.

5.2.2 Retirement Age of Chief Magistrate

106. The Chief Magistrate sought a recommendation from the Tribunal that the retirement age of the Chief Magistrate, and indeed, the Chief Justice and the Chief Judge, should be reduced from 65 to 60 years of age. The submission argued that,

in the future, Chief Magistrates are likely to be appointed at an earlier stage in their work life and that the pressures and responsibilities of the position would make it difficult for an appointee to serve in the position in excess of ten years.

107. Moreover, it was argued that the Chief Magistrate, Chief Justice and Chief Judge should have access to the pension earlier than judges in recognition of the additional burden and requirements of heads of jurisdiction.
108. The Government stated that the retirement age should remain at 65 on the basis that the increase in the retirement age to 65 was made in 1996 in order to encourage the judiciary to remain on the bench for a longer period of time.
109. The Government noted that the issues raised by the Chief Magistrate may have identified the need to review the judicial pension scheme on the basis that it is less attractive to those appointed at a younger age.
110. The Tribunal considers the current retirement age appropriate and that the additional responsibility of being a head of jurisdiction is adequately acknowledged through remuneration.

5.3 Allowances

5.3.1 Travel Allowance

111. The judges of the County Court sought an unvouched travel allowance of \$250 per day, including accommodation expenses. Judges' travelling expenses are currently reimbursed to a maximum \$135.60 with receipts. Accommodation expenses are billed directly to the Department of Justice.
112. The Government opposed the proposal for an increased and unvouched travel allowance on the basis of the additional cost to Government and that it is inconsistent with established levels of accountability for the expenditure of allowances.
113. The County Court judges have subsequently advised they did not wish to proceed further with this aspect of their submission.

5.3.2 Library Allowance

Supreme Court

114. The Judges of the Supreme Court requested an increase in library allowance from 80% of expenditure up to a maximum of \$7,000 a year to a maximum of \$8,000 on the basis that the library allowance has not increased since 1996 whilst the cost of maintaining a library has increased significantly.

County Court

115. The judges of the County Court requested a \$5000 'expense of office allowance' to replace the existing library allowance. Judges of the County Court are currently reimbursed 80% of expenditure on library material up to a maximum of \$1450. The expense of office allowance would be used to cover costs such as library books, subscriptions, travel and attendance at official functions and conferences, and equipment such as laptop computers.
116. In a meeting with the Tribunal, the judges noted that the current library allowance had little flexibility as to how it may be used. The Government has agreed to discuss the library allowance and the inadequacy of the current arrangements regarding laptop computers with the judges.

Magistrates

117. The magistrates, including the Chief Magistrate, sought the same library allowance provided to judges of the County Court, that is, 80% of expenditure, to a maximum of \$1450. This is on the basis that magistrates do not have access to associates or researchers and are therefore required to conduct their own research,

often at home, due to the lack of time available during working hours. The cost of maintaining a library has also significantly increased since the last adjustment in 1996.

118. The magistrates made further submissions that country magistrates should receive a larger library allowance to compensate for lack of access to similar library resources available in urban areas.
119. The Government supported an increase of 13% in the library allowance for judges and magistrates. The Tribunal recommends the following amounts be paid for library allowances:
- Supreme Court judges: 80% of expenditure to a maximum of \$8,000;
 - County Court judges: 80% of expenditure to a maximum of \$2,500;
 - Magistrates: 80% of expenditure to a maximum of \$1,000; and
 - Country magistrates: 80% of expenditure to a maximum of \$1,500.

5.3.3 *Car Allowances and Entitlements*

Masters and Magistrates

120. The masters of the Supreme Court and magistrates made separate submissions seeking a recommendation to be included in the judicial motor vehicle scheme. The scheme allows for the provision of a car, including petrol and servicing, for a nominal fee paid by the judicial officer. Both masters and magistrates currently receive a \$5,400 per annum car allowance, which is superable for magistrates.
121. Magistrates made alternative submissions for an increase in the car allowance to \$9,500 or to increase the car allowance for country based magistrates to \$10,000.

County Court Judges

122. The judges of the County Court sought the option of receiving a \$15,000 per annum car allowance or remaining in the current judicial motor vehicle scheme.
123. Moreover, they argued, the following changes should be made to the current motor vehicle scheme:
- the cost of fuel and servicing of cars during the vacation period should be met by the Department of Justice;
 - changeover of cars to occur at 2 years/40,000 kms rather than the current changeover at 3 years/60,000 kms; and
 - the option to pay a higher annual contribution fee for a better vehicle.

Non Judicial Members of VCAT

124. Non judicial members of VCAT sought a recommendation that they be entitled to a car allowance, but did not specify an amount.
125. The Government did not support any variation to the provisions relating to motor vehicle. However, it suggested that the \$5,400 allowance be incorporated in the salaries for Supreme Court masters and magistrates.
126. The Tribunal has considered all submissions on the provision of cars and car allowances and does not consider any of the changes outlined above to be justified at this stage. It does however, recommend that the car allowance of \$5,400 for masters (including the Registrar of the Court of Appeal) be incorporated into salary for all purposes.

5.3.4 *Telephone Allowance*

County Court Judges

127. The judges of the County Court sought a telephone allowance of \$1,000 per annum to cover work related telephone expenses.

Chief Magistrate

128. The Chief Magistrate requested that the current telephone allowance be increased to 100% of telephone rental and 75% of the cost of phone calls.

Magistrates

129. The magistrates sought the following:

- the abolition of allowance if magistrates treated in a like manner to judges (excluding country magistrates); or
- a review of the allowance which currently excludes mobile phones; and
- an increase in current telephone allowance for country based magistrates from 50% to 80% of rental and calls including mobile phones.

130. The Tribunal does not consider it necessary to extend or increase the current provision of telephone allowances. However, the Tribunal notes that the Government has agreed to have discussions with judges from the County Court regarding the provision of mobile phones.

5.4 Staffing for the Chief Magistrate

131. The Chief Magistrate had also requested the Tribunal to make a recommendation regarding additional resourcing of the Office of the Chief Magistrate, if the Tribunal considers it has the jurisdiction to do so. The Tribunal does not have the jurisdiction to make recommendations regarding what is an essentially administrative matter, which would be more appropriately addressed with the Government.

6 Recommendations

132. The following table lists the recommendations made by the Tribunal in relation to non salary matters:

Condition of Service	Claim	Tribunal Recommendation
Pension and Superannuation	<i>Masters of the Supreme Court:</i>	Recommends that service as a master is to be taken into account for pension purposes when a master is appointed as a judge of the Supreme or County Court.
	<i>Chief Magistrate:</i>	No recommendation
	<i>Magistrates:</i>	No recommendation. However, the Tribunal notes the Government has agreed to discuss disability cover issues with the magistrates.
	<i>Non judicial members of VCAT:</i>	No recommendation
Long Service Leave:	<i>Supreme Court Judges:</i>	That Supreme Court judges have access to 1 month of long leave after 5 years of service.
	<i>County Court Judges:</i>	That County Court judges have access to one month of long leave after 5 years of service.

Condition of Service	Claim	Tribunal Recommendation
	<i>Supreme Court Masters:</i>	No recommendation
	<i>Chief Magistrate:</i>	No recommendation
	<i>Magistrates:</i>	No recommendation
Annual Leave	<i>Chief Magistrate:</i>	No recommendation
	<i>Magistrates:</i>	No recommendation
Library allowance	<i>Supreme Court:</i>	That the allowance be increased to 80% of cost to a maximum of \$8,000.
	<i>County Court:</i>	That the allowance be increased to 80% of cost to a maximum of \$2,500.
	<i>Magistrates' Court (including Chief Magistrate):</i>	That the allowance be increased to 80% of cost to a maximum of \$1,000. Country magistrates to receive an allowance of 80% of cost to a maximum of \$1,500.
Car Allowances and Provisions	<i>Supreme Court Masters:</i>	That the current car allowance of \$5,400 be retained and incorporated into salary.
	<i>County Court:</i>	No recommendation
	<i>Magistrates:</i>	No recommendation
	<i>VCAT:</i>	No recommendation
Prior Recognition of Service	<i>Government:</i>	Recommends that a judge who was in public office immediately prior to appointment and had not accrued a long leave entitlement is to be paid on a pro rata basis of an amount that could have accrued under the long service leave accrual rules for the Victorian Public Service. This is to apply when: <ul style="list-style-type: none"> – the judge completes the balance of that period in judicial office; or – leaves office as a result of death or disability.

Condition of Service	Claim	Tribunal Recommendation
Telephone Allowance	<i>County Court:</i>	No recommendation but the Tribunal notes that there will be discussion between the judges and the Government regarding the provision of mobile phones.
	<i>Chief Magistrate:</i>	No recommendation
	<i>Magistrates:</i>	No recommendation

7 Conclusion

133. The 2003 review of salary and non salary matters represents the most significant inquiry into judicial remuneration in Victoria since the Tribunal's inaugural report in 1996.
134. Nevertheless, several issues were raised in submissions to this review that require consideration in the future.

Salary Parity

135. The Tribunal's salary determination and the submission from the judges of the Supreme Court raised the matter of salary parity with judges of the Federal Court. All relevant parties may wish to give the matter further consideration, and, if desirable, make submissions to the Tribunal for consideration in the 2004 review of judicial remuneration.

Total Remuneration Packaging

136. The Government has also raised total remuneration packaging for judicial officers although it did not submit on the matter. If the Government intends to include the matter for consideration in the 2004 review, it is recommended that consultation with the judiciary commence prior to the review to allow all parties to be well aware of the issues to be addressed.

Relocation Expenses for Magistrates

137. The magistrates have indicated an intention to make submissions in the 2004 review on reimbursement of magistrates relocating to the country as part of their requirements to work in the country for a period of time.

2004 Review

138. The next review of judicial remuneration will commence in November 2004 unless amendments are made to section 13(1) of the Act to allow for an earlier review. Submissions to the Tribunal on matters to be considered in 2004 should be submitted electronically no later than 1 October 2004. Further information can be obtained from the Tribunal's Secretary, Ms Sandra Friel, tel. 9603 9231.
139. The Tribunal also encourages the three tiers of the judiciary to make a combined submission to enable the review to be conducted more expediently.

DETERMINATION OF THE JUDICIAL REMUNERATION TRIBUNAL

The Judicial Remuneration Tribunal has made the following determination pursuant to section 11(1) of the **Judicial Remuneration Tribunal Act 1995**.

1. Scope of Determination

The determination applies to the annual salaries and where appropriate, daily rates, of the judicial officers mentioned below.

2. Terms of Determination

The following annual salaries and daily rates will apply from the dates specified:

Judges and Masters of the Supreme Court and Court of Appeal

	With Effect From 1 January 2003	With Effect From 1 July 2003	With Effect From 9 December 2003
Chief Justice	\$266,600	\$279,900	\$291,100
President, Court of Appeal	\$251,500	\$264,100	\$274,700
Judge, Court of Appeal	\$244,000	\$256,200	\$266,400
Supreme Court Judge	\$236,200	\$248,000	\$257,900
Senior Master, Supreme Court	\$204,700	\$214,900	\$223,500
Registrar, Court of Appeal	\$204,700	\$214,900	\$223,500
General Master, Supreme Court	\$194,500	\$204,200	\$212,400
Specialist Master, Supreme Court	\$184,700	\$193,900	\$201,700

Judges and Masters of the County Court

	With Effect From 1 January 2003	With Effect From 1 July 2003	With Effect From 9 December 2003
Chief Judge	\$236,200	\$248,000	\$257,900
County Court Judge	\$204,700	\$214,900	\$223,500
County Court Master	\$194,500	\$204,200	\$212,400

Magistrates and Coroners

	With Effect From 1 January 2003	With Effect From 1 July 2003	With Effect From 9 December 2003
Chief Magistrate	\$204,700	\$214,900	\$223,500
State Coroner	\$184,300	\$193,500	\$201,200
Deputy Chief Magistrate	\$174,000	\$182,700	\$190,000
Deputy Coroner	\$174,000	\$182,700	\$190,000
Magistrate	\$163,800	\$172,000	\$178,900

Non Judicial Members of VCAT

	With Effect From 1 January 2003	With Effect From 1 July 2003	With Effect From 9 December 2003
Deputy President	\$186,700	\$196,000	\$203,800
Senior Member	\$149,300	\$156,800	\$163,100
Ordinary Member	\$130,700	\$137,200	\$142,700
Senior Sessional Member (per day)	\$635	\$667	\$694
Ordinary Sessional Member (Presiding) (per day)	\$614	\$645	\$671
Ordinary Sessional Member (Non Presiding) (per day)	\$555	\$583	\$606

3. Operation of Determination

In accord with section 14A of the **Judicial Remuneration Tribunal Act 1995**, this determination is subject to disallowance by resolution of a House of Parliament within 15 sitting days of tabling, and, if not disallowed, will take effect in accordance with the terms of the determination at the end of the period specified for disallowance.

Dated 16 March 2004

M. DUFFY
Chairperson

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