



REMUNERATION TRIBUNAL

MINUTES forming ENCLOSURE to

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DISTRICT COURT MASTERS REVIEW 2015 SUMMARY OF SUBMISSIONS AND OTHER CONSIDERATIONS, 30/06/2015 – PRELIMINARY REPORT

1. BACKGROUND

- 1.1 The Masters of the District Court have made application to the Remuneration Tribunal (“the Tribunal”) seeking a change in salary relativity of the remuneration payable to them. The salary of a District Court Master is equivalent to 88.3% of that of a District Court Judge. The remuneration of a District Court Master was determined with this relativity by Determination 9 of 1999.
- 1.2 The District Court Masters (“the Masters”) propose that the relativity should be set at 95% of the salary of a District Court Judge.
- 1.3 In accordance with the relevant provisions of the Remuneration Act 1990 (“the Act”), on 16 February 2015, the Remuneration Tribunal invited the Attorney-General, the Judicial Remuneration Coordinating Committee (JRCC) and the Masters to make submissions for the purposes of a review of remuneration payable to the Masters in response to their application.
- 1.4 The Tribunal also invited the Premier, as the Minister responsible for the Act, to make submissions in the public interest accordingly.
- 1.5 Coinciding with these invitations, the Tribunal published a notice on the South Australian Remuneration Tribunal website advising that the Tribunal was to conduct a review of the remuneration of the Masters of the District Court.
- 1.6 Determination and Report 5 of 2013 (attached) outlines the current annual salaries and allowances of members of the judiciary.
- 1.7 The Masters are seeking the change in the salary relativity of the remuneration of the office on the following grounds:
 - 1.7.1 A substantial increase in work value; and

1.7.2 Because the Masters do not receive a pension or compensation for a two year post retirement or resignation restriction on legal practice, which compensation is said to be provided to District Court Judges.

2. SUBMISSIONS RECEIVED PRIOR TO HEARING OF 8 APRIL 2015

2.1 The Tribunal received written submissions from the Masters (attached) and the Premier (attached) in preparation for a hearing held on 8 April 2015.

3. DISTRICT COURT MASTERS – 1 DECEMBER 2014 WRITTEN SUBMISSION

3.1 A request for a comparative work value adjustment was received from the Masters on 1 December 2014 (attached). In their submission the Masters requested that the Remuneration Tribunal adjust the annual salary relative to that of a District Court Judge from 88.3% to 95% on the basis of a substantial increase in the value of their work.

3.2 The Masters submitted that the value of work of the Masters was initially assessed by the Tribunal in 1999. In that year the *District Court Act 1991* was amended by repeal of relevant statutory provisions governing the remuneration of the Masters, which provided that, “*a master is entitled to the same remuneration as a Magistrate in Charge*” which provisions were relevantly replaced by, “*judicial officers are entitled to the remuneration determined by the Remuneration Tribunal in relation to the respective offices*”.

3.3 The submission was summarised as follows:

3.3.1 The total cost of the proposal would be \$73,062 per annum,

3.3.2 The Masters are seeking an adjustment of pay relativity for the first time in 15 years.

3.3.3 The changed relativity is justified by the substantial increase in the value of the work of the Masters.

3.3.4 The Masters submit they are adversely affected by two anomalies:

3.3.4.1 The Masters do not receive a pension, unlike District Court Judges.

3.3.4.2 Since 2011 the Masters have been subject to a two year post retirement or resignation limitation on legal practice, without any compensation, such as the pension which is enjoyed by a District Court Judge in similar circumstances.

3.3.5 The Masters are not seeking any increase other than the request for consideration of a relativity adjustment to reflect the substantial increase in work value which they are delivering each day.

4. PREMIER'S SUBMISSION (MARCH 2015)

4.1 The Premier's written submission noted the Tribunal's past approach to setting the remuneration of the Masters.

4.2 The Premier submitted that the existing relativities of the remuneration of Masters and other judicial officers are appropriate and should not be disturbed.

4.3 The Premier submitted that there is no demonstrated increase in work value warranting an increase in the remuneration of the Masters, either at all or relative to the established benchmark salary of a Puisne Judge of the Supreme Court.

4.4 Further, the Premier submitted that the Tribunal should not treat the application of the Masters as a genuine work value case as, in accordance with the principles established by the Industrial Relations Commission of South Australia (the Commission) in the State Wages Case July 2005, there is a significant lack of evidence demonstrating an increase in work value.

4.5 In respect of superannuation and pension entitlements, the Premier submitted that the Masters have never qualified for the same pension and superannuation benefits as Judges. The Premier's submission noted that a District Court Master does not come within the definition of a "Judge" in section 1 of the *Judges Pension Act 1971*. Pursuant to s10 (2) of the *District Court Act 1991*.

4.6 A Master is also a Magistrate. Further, a Magistrate is an employee within the meaning and for the purposes of the *Superannuation Act 1974* (s 14 of the

Magistrates Act 1983). Masters are therefore subject to the *Superannuation Act 1974* and are not entitled to a Judges pension.

- 4.7 The entitlement of the Masters to superannuation is a matter specific to legislation. The Premier submitted that this is something which the Tribunal lacks jurisdiction to determine.
- 4.8 The Premier submitted that the Tribunal has previously considered whether there should be a monetary component to compensate judicial officers for the differences in leave and pension entitlements between South Australia and other jurisdictions. The Tribunal noted in the report relating to Determination 9 of 1999 that consideration was given to these matters in 1997 and 1998 whereby it was stated "*it is not prepared to set an allowance or provide for any other remuneration for such difference in entitlements over which it has no control*".
- 4.9 The Premier also submitted that any mooted increase in work value would have to be considered against increases in judicial salaries over the past ten years or more including work value increases.

5. DISTRICT COURT MASTERS REPLY

- 5.1 In response to the Premier's submission, the Masters submitted that if the Tribunal chooses to apply principle 8.1 of the 2005 State Wage Case (attached), the merits of the claim satisfy the test of significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification. It was submitted that the work of the Masters has moved closer to that Judges and that the work is no longer exclusively or essentially administrative and is now "judge-like" in nature.
- 5.2 Further, it was submitted, since the Tribunal's review in 1999, there has been a change in the nature, importance, skill level and status of the work performed by the Masters.
- 5.3 The Masters submitted examples of increased complexity and responsibility including:
- 5.3.1 Summary and final judgement powers to conclude an action by reasoned judgements;
 - 5.3.2 The power to force a party to mediation;

- 5.3.3 Approving million dollar compromises for disabled plaintiffs;
 - 5.3.4 Ordering coercive injunctions;
 - 5.3.5 Managing Litigation Action Plans, which involves greater supervisory monitoring and judgements within the unlimited monetary jurisdiction of the District Court.
- 5.4 The Masters submitted that the Masters are the only such officers in an intermediate court in the Commonwealth of Australia – the work has now been upgraded elsewhere in the Commonwealth to Judges or Associate Judges in recognition of the uplift in complexity and responsibility of the work, and, therefore, its judge-like status.

6. FURTHER HEARING

- 6.1 A further hearing was held on Wednesday 8 April 2015.

7. DISTRICT COURT MASTERS ORAL SUBMISSION

- 7.1 The Masters representative, Ms Frances Nelson QC, reiterated the Masters written submission to the Tribunal. Ms Nelson stressed that the request is for a change of relativity (the effect of which would be a salary increase of just under 7.6%, \$24,409 per year).
- 7.2 Ms Nelson also addressed the evolution of the submitted changes to the role, functions and responsibilities of the Masters.
- 7.3 Ms Nelson submitted that the Premier's submission did not challenge the facts presented with regards to the change in role, functions and responsibilities relied upon to establish a "substantial increase in work value" of the Masters.
- 7.4 Ms Nelson further referred to the conditions imposed on the Masters who are subject to a restriction from legal practice for 2 years post retirement or resignation and who are not compensated therefore, as, it was submitted, are District Court Judges. Ms Nelson reiterated that this feature was not canvassed in 1999 when the District Court Masters salary relativity of 88.3% of the salary of a District Court Judge figure was set.
- 7.5 Ms Nelson submitted that there was inadequate rationale in the 1999 determination for the decision that Supreme Court Masters would be entitled

to the specific remuneration rate and relativity of 88.3% of the salary of a Puisne Judge of the Supreme Court.

- 7.6 Ms Nelson submitted that, irrespective of the observations above, the true question was whether or not (since 1999) there had been a change in the nature, importance, skill level and status of the work performed by District Court Masters, in respect of which, it was submitted, the answer is yes.
- 7.7 The Masters submitted additional information regarding comparators relied upon in jurisdictions elsewhere in Australia.
- 7.8 The Tribunal requested that the Premier's representative respond to this new material out-of-session by 29 April 2015.

8. CROWN SOLICITORS ORAL SUBMISSION IN REPLY

- 8.1 The Premier's representative, Ms Carly Cooper, Crown Solicitors Office (CSO), responded to the additional information submitted relating to interstate comparators. Ms Cooper reiterated the Premier's position that, although the information provided by the Masters is factually correct, the information does not necessarily assist the Tribunal in making a determination, particularly on the basis of the nexus established in the 1999 determination, between the Masters and a Judge of the District Court and, it was submitted, a Puisne Judge of the Supreme Court. Ms Cooper submitted that in order to justify a change in relativities between the salary of Master and the salary of a District Court Judge (and ultimately the salary of a Puisne Judge of the Supreme Court) the Masters would have to demonstrate, by evidence, that the value of the work of a District Court Master has increased relative to that of a Puisne Judge of the Supreme Court.
- 8.2 Ms Cooper further reiterated the Premier's position that the relativities between District Court Masters and Puisne Judges of the Supreme Court are appropriate and should not be disturbed.

9. PREMIER'S FURTHER SUBMISSION

- 9.1 On 24 April 2015 Crown Solicitors Office, on behalf of the Premier, responded in writing to the additional material provided by the Masters at the hearing held

on 8 April 2015 (attached) which set out information in relation to Associate Judges in other jurisdictions, submitted as comparable with the role and responsibilities of the Masters.

- 9.2 Crown Solicitors Office again reiterated the Premier's position as provided at the hearing, by way of oral submission on 8 April 2015, as follows. The basis of the nexus was established in 1999 between the Masters and a Puisne Judge of the Supreme Court. The Masters have not provided evidence before the Tribunal that their work value has increased relative to that of the relevant Supreme Court Judges. The existing relativities between the Masters and Judges of the Supreme Court are appropriate and should not be disturbed.

10. DISTRICT COURT MASTERS' RESPONSE

- 10.1 On 29 April 2015 the District Court Masters' Solicitor, Mr John Fitzpatrick, responded to the Premier's response dated 21 April 2015. It was submitted that:
- 10.1.1 The factual matters are uncontroversial to both parties.
 - 10.1.2 There is clear and uncontested evidence regarding the significant proportionate increase in the work value of the Masters from that which was in place when the nexus was established in 1999 between the Masters and the District Court Judges.
 - 10.1.3 Contrary to the Premier's contention, the proportionality of work value as between a District Court Judge and a Judge of the Supreme Court is not relevant to the Masters' application as the critical relativity is between the salary of a Master and that of a District Court Judge.
 - 10.1.4 With regard to the above point, Mr Fitzpatrick submitted that paragraph 5.4 of the initial determination of this relativity in DTR 9 of 1999 adverts to the relationship between a Master and a District Court Judge – not a Supreme Court Puisne Judge.
 - 10.1.5 Nevertheless, the Masters also submitted that when compared with that of a Supreme Court Judge, the value of the work has increased substantially since 1999 and referring to the uncontroverted facts in the Masters initial submission and annexures, it was reiterated that no evidence had been presented to the contrary.

10.2 In response to the Premiers' claim that the interstate comparators provided by the Masters at the hearing of 8 April 2015 are factual, however it does not assist the Tribunal in making a determination, the Masters submit that 5.4.4 and 5.4.5 of the Determination Report 9 of 1999 considered and in part relied upon such comparisons when fixing the initial salary relativity of a District Court Master with that of a District Court Judge.

11. PREMIER'S REPRESENTATIVE RESPONSE (30 APRIL 2015) TO THE MASTERS SUBMISSION OF 29 APRIL 2015

11.1 On 30 April 2015 Ms Cooper of CSO responded on behalf of the Premier to the Masters Submission of 29 April 2015.

11.2 Ms Cooper provided clarification that in the Premier's previous submission dated 24 April 2015 "there is nothing factually incorrect with the material provided by the Masters" was in reference to the additional interstate comparative material tendered on behalf of the Masters at the Hearing held on 8 April 2015.

11.3 In response to Mr Fitzpatrick's submission, whereby it was submitted that paragraph 5.4 of DTR 9/1999 adverts to the relationship between a District Court Master and a District Court Judge (not a Supreme Court Judge), Ms Cooper drew the Tribunal's attention to paragraph 5.4.7 thereof as follows: "... the relationship of the Masters of the District Court to a District Court Judge is very similar to that of the Master of the Supreme Court to a Puisne Judge"

11.4 Ms Cooper submitted that, since 1999, the salary of a District Court Master has depended on the benchmark salary of a Puisne Judge of the Supreme Court; based on the Masters remuneration being set at a relativity of 88.3% of the salary of a District Court Judge, since 1992 (DTR 3/1992) the salary of a District Court Judge, was set at ratio of 88% of the salary of a Puisne Judge of the Supreme Court.

11.5 Ms Cooper submitted that the Masters have failed to present evidence to establish that their work value has changed relative to either a District Court Judge or a Puisne Judge of the Supreme Court and that the onus is on the applicant in this regard.

- 11.6 Further, Ms Cooper submitted, it is not sufficient to only establish that there has been an increase in workload or duties on one-side of the relativity equation without examining the extent of such increases on the other side of the equation, being the change in work value of District Court Judges and Puisne Judges of the Supreme Court.
- 11.7 Ms Cooper referred to Mr Fitzpatrick's submission in relation to interstate comparators in paragraphs 5.4.4 and 5.4.5 of DTR 9/1999, which when submitted was considered, and in part relied upon, by the Tribunal when fixing initial relativities in DTR 9/1999. Ms Cooper submitted that paragraphs 5.4.4 and 5.4.5 refer to the submission of the JRCC and that the information submitted by the JRCC was not necessarily being relied upon by the Tribunal.

12. DISTRICT COURT MASTERS CLOSING SUBMISSIONS

- 12.1 In response to Ms Cooper's submissions of 29 April 2015, Mr Fitzpatrick and Ms Nelson QC submitted the following points for the Tribunals' attention:
- 12.1.1 The email from Ms Cooper of 30 April 2015 constitutes an additional submission, in circumstances where leave was not sought to make that submission. It is submitted the validity of the submission and whether or not it should have been received is questionable.
- 12.1.2 The District Court Masters submitted that the information provided to the Tribunal, both in written submission and oral submission, has been comprehensive, candid and transparent factual material, with a view to assisting the Tribunal with its deliberations.
- 12.2 It is not expected that the Tribunal will receive further submissions from either party.

13. REMUNERATION TRIBUNAL'S MOST RECENT DECISION

- 13.1 On 12 May 2014 the Commonwealth Remuneration Tribunal issued a statement that there would be no annual adjustment for judicial officers in its jurisdiction from 1 July 2014.

- 13.2 In his budget speech delivered on 19 June 2014, the Treasurer of South Australia announced that Public Sector Executive salaries would be frozen in 2014 -15.
- 13.3 The South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2014 provided a 2.5% pay increase to non-executive employees effective 1 October 2014.
- 13.4 The South Australian Remuneration Tribunal has conducted a 2014 review of judicial remuneration, which concluded on 12 December 2014.
- 13.5 The Tribunal continues to be satisfied that the approach of setting judicial salaries in a national framework continues to be appropriate and in the public interest.
- 13.6 Having considered all the material before it, and having received no submissions from any party that an adjustment in remuneration should be made, the Tribunal decided not to vary judicial salaries.
- 13.7 The salaries and allowances payable to Members of the Judiciary, Members of the Industrial Relations Court and Commission, the State Coroner, and Commissioners of the Environment, Resources and Development Court pursuant to Determination No 5 of 2013 continue to apply.

14. QUESTION FOR DETERMINATION

- 14.1 The Tribunal is required to determine whether the salary relativity of a District Court Master should be varied so as to be an amount equivalent to 95% of the salary of a District Court Judge for the reasons advanced on behalf of the Masters.

15. ISSUES FOR CONSIDERATION

- 15.1 The submissions before the Tribunal raise the following issues for consideration:
- 15.1.1 The nature and extent of any changes in the work of Masters of the District Court;

- 15.1.2 The relationship between the salaries of the District Court Masters with those of a District Court Judge and a Puisne Judge of the Supreme Court and a Master of the Supreme Court;
 - 15.1.3 The relationship of superannuation entitlements of District Court Masters and the application of the provisions and entitlements prescribed by the *Judges Pension Act 1971* to Judges of the District Court and any implications thereof for the determination of the salary of a District Court Master;
 - 15.1.4 The relevance of restrictions on legal practice by a former Master of the District Court; and
 - 15.1.5 The relevance of changes in the nature of judicial offices elsewhere in Australia said to be comparable to the role and function of Masters of the District Court.
 - 15.1.6 The relevance of changes in the level of judicial salaries over time, having regard to work value increases, including changes in the work value of Judges of the Supreme Court and the District Court.
 - 15.1.7 The lack of information and material establishing the nature of the work and changes in the work (and relative work value) of District Court Judges.
- 15.2 Salary Relativity:
- 15.2.1 The Tribunal considers that the primary and operative salary relativity for the purposes of the application is between the salary of a District Court Master and the salary of a District Court Judge.
- 15.3 Work Value:
- 15.3.1 On the basis of the information before the Tribunal, outlining changes in the role, responsibilities, skills and attributes of the work of a District Court Master since Determination 9 of 1999, the Tribunal is satisfied that there has been an evolution of changes in the work of the Masters since 1999.
 - 15.3.2 The Tribunal notes that the salaries of judicial officers, including District Court Judges and District Court Masters have been adjusted since 1999 on work value grounds on occasions as follows:

- 15.3.2.1 Determination 4 of 2010 by 3%; and
- 15.3.2.2 Determination 6 of 2011 - In response to the Federal Judicial remuneration determination, DTR 6 of 2011 included a total increase of 4.3% with 1.3% of the total amount being work value related.

15.3.3 On all of the material before it, the Tribunal is not satisfied that the changes in the work of the District Court Masters is sufficient in all the relevant circumstances to warrant the change of salary relativity sought.

15.4 Superannuation - Judges Pension:

15.4.1 The Tribunal considers that the superannuation entitlements of District Court Masters and the Pension entitlements of Judges of the District Court are not matters relevant to a review of the role, responsibilities, skills and attributes of the work of a District Court Master.

15.4.2 The Tribunal considers that these respective entitlements are features of benefits conferred by legislation, for diverse reasons, having regard to the different history of the relevant judicial offices and for different purposes than the salary paid for the performance of the work of different judicial officers.

15.4.3 Accordingly, the Tribunal considers it would be inappropriate to determine the relative salary of a judicial office within the order of judicial salaries on the basis of differences in these statutory entitlements. On what is before it, the Tribunal determines that there is no basis to conclude other than that such entitlements are appropriately considered to have been fixed by the legislature and should be subject to variation by the legislature.

15.5 Restriction on Legal Practice:

15.5.1 The Tribunal notes that the relevant restriction on legal practice arises from regulatory arrangements applicable to judicial officers who retire or resign from a Court and as such exists to support solicitors to act ethically and in accordance with appropriate principles of professional

conduct. The Tribunal does not consider that such regulatory imposts are appropriate as a discrete consideration in relation to the determination of remuneration for the work to be performed by District Court Masters.

15.5.2 District Court Masters are not the only judicial officers affected by the relevant restriction. If a review of judicial remuneration taking such restriction into account were justified it would be on a broader basis than the circumstances of a District Court Master and on a different basis than changes in the work performed by a holder of a particular judicial office.

15.6 Comparative Material - Other Jurisdictions:

15.6.1 The Tribunal is unable to be satisfied, on the material before it, that the work of a District Court Master is directly comparable with the judicial officers in other jurisdictions referred to in the material submitted.

15.6.2 In order for the Tribunal to give sound consideration to the material it would have needed to be appraised in much greater detail of the roles, responsibilities, skills and attributes of the relevant judicial officers in the other jurisdictions referred to, sufficient to enable a detailed comparison of the work of the Masters and those judicial officers.

16. CONCLUSION

16.1 On all of the material before it and taking all of the submissions into account, the Tribunal it is unable to be satisfied that the relativity of the salary of the office of District Court Master prescribed by Determination 9 of 1999 should be 95% of the salary of a District Court Judge.



John Lewin
PRESIDENT



Nicola Vincent
MEMBER



Peter Alexander
MEMBER

7 September 2015