

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T Nos 5326 and 5331 of 1995

**IN THE MATTER OF** applications by the  
Minister administering the Tasmanian State  
Service Act 1984 and the Tasmanian  
Salaried Medical Practitioners Society to  
vary the Medical Practitioners (Public  
Sector) Award

re restructuring of award

COMMISSIONER WATLING

HOBART, 16 February 1995

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER WATLING: I'll take appearances please.

**MR D. LOWE:** May it please, commissioner, my name is DOUGLAS ACKERLEY LOWE. I'm an agent for Tasmanian Salaried Medical Practitioners Society. And I'm accompanied by **DR MARGARET WALKER**, secretary of the Tasmanian Salaried Medical Practitioners Society.

COMMISSIONER WATLING: Good, thank you.

**MR I.G.M. GRANT:** Commissioner, my name is I.G.M. GRANT. I appear for the Minister responsible for Public Sector Management in these matters.

COMMISSIONER WATLING: Good, thank you. Right, well after all these years it looks like this is countdown time, is it? So who should we turn to? Mr Grant or Mr Lowe? Mr Grant?

MR GRANT: Well, commissioner, I'm prepared to go first.

COMMISSIONER WATLING: Right.

MR GRANT: May I discard my jacket, by your leave?

COMMISSIONER WATLING: Yes, if you wish to, you may.

MR GRANT: Thank you very much.

Commissioner, we have circulated to all parties and to the commission, draft 16 February 1995, which constitutes the current situation following extensive discussions and negotiations between the parties.

COMMISSIONER WATLING: Right, we'll mark this exhibit G.1. Thank you.

MR GRANT: Commissioner, I propose to outline a brief - very brief history of this matter and then go to the award, which is a consent document, as an overview. And my concluding submission will be that it is within the public interest for the commission to adopt this agreed document as the new Medical Practitioners Public Sector Award.

Commissioner, the former Department of Health and Community, as it was then known, and the Department of Community and Health Services, as it is now known, has been involved in negotiations with the Tasmanian Salaried Practitioners Society, which I'll refer to as the TSMPS hereafter, and the Australian Medical Association, in relation to a new award since 1989.

Throughout the period 1989 to late 1993, the parties were unable to reach agreement on the approach to be taken. The TSMPS elected to pursue work value increases on behalf of its members. Representatives indicated that they expected to achieve significant increases through this process, given the outcomes of similar exercises interstate. It was also emphasised the salaries paid to Tasmanian specialists, for example, were much lower than in other states.

At a number of hearings before the commission, as currently constituted, in late 1993, both parties put submissions on the award. Following extensive discussions, the AMA agreed to accept the classification structure and classification standards, as did the agency. The case did not however progress for a significant period of time until interest from members in 1994 resulted in the AMA reinstating the award discussions with the department.

After a series of negotiations, the AMA agreed to a formally discharge its work value case in favour of phased increases similar to the state service wages arrangement, or SSWA. A heads of agreement incorporating the arrangement was signed by the parties on 30 June 1994. The agreement also provided for a restructured award to be negotiated by the parties. It was determined that the classification structure and standards previously agreed to would provide the basis for the new award salaries.

The phased increases contained in the heads of agreement consisted of two 1.5 per cent increases payable on 1 July 1994 and 1 October 1994, and two 1 per cent increases to be payable on 1 January 1995 and 1 October 1995. As with other SSWA agreements, the two 1 per cent increases were conditional upon medical practitioners agreeing to enter into an enterprise bargaining process. To date the first 1.5 per cent has been paid and a second will be payable when the award is finalised, but will be paid retrospectively to 1 October 1994. Prior to the July 1994 1.5 per cent, medical practitioners had not received any salary increase since August of 1991.

The negotiations continued until late December 1994, when a final draft award was agreed - or should I interpolate here, a penultimate final draft award, was agreed. AMA members did not however support some clauses in the initial drafts and a number of brief meetings were held and industrial action was narrowly averted through negotiations with AMA representatives.

Commissioner, it is the aim of the Department of Community and Health Services to establish a high quality medical service for all patients based around a group of appropriately qualified salaried medical practitioners. In particular the department seeks to attract and retain sufficient numbers of staff specialists to provide effective care in certain specialty areas. This goal was consistent with the department's mission statement, which states, and I quote: Our mission is working together to deliver integrated services for the health and well-being of people in Tasmania. End of quote.

Now for a number of years Tasmanian public hospitals have experienced difficulty in recruiting appropriately qualified medical practitioners to fill vacant positions. And at present, for example, under the pre-existing award arrangements there are a significant number of long term vacant positions. These persist at the Launceston General Hospital with vacant registrar positions in intensive care, emergency medicine and psychiatry, positions in obstetrics and gynaecology have taken quite some time to fill. And the north west region, nine out of 18 junior medical practitioner positions have been filled by individuals with limited registration due to the lack of Australian applicants.

The Royal Hobart Hospital also has had difficulty in attracting staff specialists in several areas, for example, in ophthalmology, medical imaging, haematology, respiratory medicine, and similarly there have been problems recruiting in obstetrics and gynaecology.

The mental health program has, for many years, been unable to attract sufficient numbers of psychiatrists to fulfil its needs, and extensive recruitment exercises were conducted in 1994 with only mixed results.

At present, medical practitioners' salary rates and conditions are drawn from the Medical Practitioners (Public Sector) Award, the Salaried Medical Practitioners (Conditions of employment) Agreement 1988, the General Conditions of Service Award, and the Tasmanian State Service Regulations 1985. The Conditions of Service Agreement, which expired in 1991, has been extended by agreement by the parties.

The current award covers all salaried medical practitioners from first year resident medical officers to specialist medical staff, and it is proposed that the new award apply to the same range of employees. Visiting medical officers or VMOs, as they are more

widely known, are covered by a separate industrial agreement. The new award has been designed to incorporate all conditions of service for medical practitioners into one document. Previously some confusion has existed in relation to the exact conditions which were applicable to medical practitioners. The conditions contained in the new award are similar to those which currently apply. Some changes have been made to address other problem areas, which will be identified.

COMMISSIONER WATLING: Just while you're on that, can I take it then that you won't be award hopping amongst all other awards of the commission, in terms of the awards that the minister is a party to. So this will be a stand alone award.

MR GRANT: Correct. Correct, commissioner. It's the intention of the parties, certainly, that this be a stand alone award.

COMMISSIONER WATLING: Yes. So I might have to think about that in my decision, because I notice in the other sector, in the public - where we're going to get rid of the Public Hospitals, we've actually stated that in the scope.

MR GRANT: I see.

COMMISSIONER WATLING: Yes, we've said no other award of the commission shall apply. So I just put you on notice, I might have to deal with that in my decision.

MR GRANT: Yes, I take note of that, commissioner.

COMMISSIONER WATLING: Because we don't want people then thinking that they can then go to the General Conditions of Service Award when it suits them, or back here when it suits them. Because technically the minister is a respondent to both awards and therefore the employer's the respondent, so the employees could be saying: Oh well, look, I want to go over to that award now.

MR GRANT: Commissioner, it is the clear understanding of the parties to these matters that this will be a stand alone award. And if it so happens that there are some conditions which have a relationship to conditions outside this award, the onus is then on the parties to this award to rectify such matters.

COMMISSIONER WATLING: Yes. Well I just might indicate to you that I might place that standard provision then in the scope clause, that it does stand alone.

MR GRANT: Yes, thank you, commissioner.

The award incorporates for the first time classification standards which prescribe the qualifications and experience, level and responsibility, direction and supervision to be received and the features and characteristics of each level, whereas the standards contained in the current award are brief and lacking in detail. Previously there was also some uncertainty in the current award regarding interpretation of years of experience in the specialist range.

In the new award two new classifications of senior specialist and senior registrar have been introduced in the new award structure. The new structure is designed to enhance the classification ranges for registrars and specialists as these positions provide the basis for future specialist medical services. It will also allow the Tasmanian public sector to compete in the labour market with other states where these positions already exist.

Promotion to the position of Specialist Class 4 will be limited to a small number of specialists who are to satisfy the strict eligibility criteria and demonstrate excellence in their discipline.

The new award also contains a provision which rolls up the current on call rate to a percentage payment. The current award clause prescribes five separate hourly rates for being on call.

At present, specialists are paid different rates from registrars and resident medical officers. The uniform percentage rate recognises that the disturbance and social inconvenience factor is the same for all medical practitioners who are required to participate in on call coverage.

The new award also creates uniform conditions for medical practitioners. Currently there are differences in areas such as hours of work and sick leave with some medical practitioners still being covered by the triennium system which existed in the old public service as it was known.

Under the new award all medical practitioners will work 30 hours a week as ordinary hours of work and will have 20 days per year sick leave. This will result in the Medical Practitioners Award being consistent with the Community & Health Services (Public Sector) Award in these areas.

The new award also standardises annual leave provisions. Under the current award all medical practitioners are entitled to 5 weeks annual leave. An extra week is available for staff members who attend out of hours meetings. All medical practitioners will receive 4 weeks annual leave under the new award, and an additional week is available if an individual performs work on 20 Saturdays, Sundays or public holidays. There are savings associated with that award change.

Commissioner, I should add that through the recent award negotiations the department has managed to create a cooperative working relationship with the AMA and this has been reciprocated.

COMMISSIONER WATLING: Yes - but actually the AMA are not registered here so we take it that -

MR GRANT: And the TSMPS -

COMMISSIONER WATLING: Well that's the only one that we're worried about.

MR GRANT: Yes. An agreed award document represents a significant achievement given that many medical practitioners were considering resigning because of the dissatisfaction with the current situation. It is hoped that this relationship can be maintained throughout the duration of the Heads of Agreement and into the future.

The cost of the new award is within acceptable limits. There are provisions in the award which will result in savings for the agency. For example, the award provides for a 4 week limit to be placed on time off in lieu for specialists. The current award specialist - the current award allows specialists to accumulate time off at single time in lieu of overtime payments.

The accumulated time should where possible be taken by the individual. It is not always - it is not however always possible for medical practitioners to obtain leave particularly when there are staff shortages, and patient demands on the services are high. The award allows the untaken to accumulate without limitation and the balance is paid at the end of the year.

The new award limits the accumulation of time in lieu to a maximum of 4 weeks. There are savings estimated to accrue in relation to that provision as well.

Commissioner, it's our contention that the - the document as presented to you sits well within the structural efficiency principle of the commission and that the requirements stipulated in section 36 of the act would clearly be met. Section 36 requires that before the commission makes an award under the act, the commission shall be satisfied that the award or agreement is consistent with the public interest and in determining that, the commission shall, a) consider the economic position of any industry likely to be affected by the proposed award or proposed agreement. In this particular instance, commissioner, I've already submitted to you that the increases that ensue from the implementation of this award - from this award - are within limits and the provisions also provide for some cost savings.

In addition, the commission is required to consider the economy of Tasmania and the likely effect that the proposed award would have on the economy with particular reference to the level of employment. It is our contention, commissioner, that implementation of the provisions of this document will not have any adverse effect upon the level of employment whatsoever.

In addition, the commission must take into account any other matter considered by the commission to be relevant to the public interest.

Commissioner, I've already submitted to you - provided you with information of difficulties in recruiting appropriately qualified staff and providing an adequate career structure as the new award will do. We submit, with respect, that that is a matter the commission may take into account to be relevant to the public interest.

In closing my submission, commissioner, I'd like to make special mention here of the cooperative working spirit between the parties which, as we know, often requires diligence, determination and darn hard work to ensure good working arrangements are maintained and fostered.

For our part we would like to commend the assiduous representation provided to the TSMPS members by Mr Lowe and - and officers of the TSMPS. Their approach has been most businesslike in their dealings with - with the department - and cordial at the same time.

In addition, I believe mention should be made of senior officers and staff of the agency, notably Mr Martin Jarman, Director of Corporate Services, and Miss Kate Pammenter, the latter who until recently was with the department and carried a significant amount of work involved in this matter.

I'd also like to take this opportunity to thank the commission as currently constituted and support staff whose guidance and forbearance and good humour in this matter have been most appreciated.

That is the end of my submission. If the commission pleases.

COMMISSIONER WATLING: Thanks, Mr Grant. Just on the document itself, on page 33 - you might have a look at - I've got a query in relation to the headings. Keep in mind I haven't had a good chance to flip through. It says: Within Tasmania - and on the right hand side it says: Tasmania - what does that mean?

DR WALKER: It should read Sydney. That's what it read in the old - previous one, I think.

MR GRANT: Oh, I believe that's a typographical error, commissioner. That should read Sydney. The parties have acknowledged that though this document is fairly well complete, there may be some smaller matters which need rectification in the final production and we've undertaken to exchange information between each of the parties

and - prior to contacting the commission with any suggested changes to - of a typographical nature.

COMMISSIONER WATLING: Anything else?

MR GRANT: I've nothing further.

COMMISSIONER WATLING: Mr Lowe.

MR LOWE: Thank you, commissioner. At the outset I'd like to express my appreciation to Mr Grant for his lucid outline of the history of events pertaining to the document now before you and I will have some further points to say later in my submission.

On behalf of the Tasmanian Salaried Medical Practitioners Society I wish to commend to you, sir, the final draft of the Medical Practitioners (Public Sector) Award for ratification by the commission.

The formal preparation of this document followed the signing of Heads of Agreement between the Department of Community and Health Services and the TSMPS on the 30th June 1994 as outlined by Mr Grant, which provided a framework for a two stage process which would continue to streamline the - streamline health services provided through the Tasmanian public hospital system and at the same time develop a career structure across the full range of medical practitioner services which would provide for the long term requirements of the public hospital system.

An integral part of the Heads of Agreement was the formulation of a more efficient staffing structure at all levels which encouraged a career commitment to the public health care system and at the same time develop qualities in service and levels of accountability which today are expected in a modern high quality public hospital system. Under the Heads of Agreement document the TSMPS and the Department of Community and Health Services were committed to finalising a process of award restructuring which had been an ongoing component of the society's special case before the Tasmanian Industrial Commission. This process has now delivered a new single classification structure and associated position classification standards which are included within the definitions of the award.

Included in the new award structure are new classifications of senior specialist in the specialist medical practitioner scale and for senior registrar in the medical practitioner in training scale.

For the first time there is included for career medical officers serving in the public hospital system a coherent scale of classifications and rates of remuneration which are appropriately benchmarked at the junior and senior levels with the medical practitioner in training and the specialist medical practitioner scales. Included in the new award is a comprehensive scale of classifications and rates for remuneration for those medical practitioners who choose to undertake a career in medical administration commencing with the classification of Deputy Medical Administrator Class 1 and progressing through to the senior position of Medical Administrator Class 4. There are provided a range of position classification standards which has simply outlined the prerequisite experience and qualification appropriate for each individual progression.

Much of the groundwork in establishing the new staffing structure for medical practitioners involved in the public health care system at all levels has been facilitated through the previous hearings before this commission concerning the special case negotiations between the parties to this award in the form of applications T.2652 of

1990 incorporating TA.66 of 1990 in the name of the TSMPS and T.3995 of 1992 in the name of the minister administering the Tasmanian State Service Act.

In the final analysis it was considered - the considered judgment of both parties that this special case referred to above had been superseded to an extent by industrial relations reforms and moves towards structural efficiency and so the process of establishing Heads of Agreement followed by negotiations which have led to the establishment of this new Medical Practitioners (Public Sector) Award was seen as a more appropriate course in the circumstances.

At this point the membership of the Tasmanian Salaried Medical Practitioners Society and indeed all medical practitioners providing salaried service in the Tasmanian public health care system were invited and encouraged to participate in a series of meetings which have resulted in the membership itself very much assuming ownership of the negotiation process and the judgments required to arrive at its conclusions.

Firstly, during the month of June meetings were held in all major public hospitals employing salaried medical practitioners providing recommendations concerning the adoption of the Heads of Agreement document and inviting any recommendations for the change which were forthcoming from the membership.

Following the formal signing of the Heads of Agreement on the 30th June 1994, officers of the Department of Community Services representing the minister administering the Tasmanian State Service Act 1984 and officers and representatives of the Tasmanian Salaried Medical Practitioners Society have embarked on the principal negotiations which have arrived at the point where this new award is now being formally presented for ratification.

The Medical Practitioners (Public Sector) Award presented here today is intended to be a definitive document. It addresses issues which had previously formed the basis of an agreement registered with the commission in 1988 between the parties relating to conditions of service. It also includes conditions of service which have been the basis - which have the basis for their establishment established through the Tasmanian State Service Act and regulations arising therefrom. Mr Grant did in fact enumerate those specifically during the course of his submission.

It also contains parental leave provisions which are consistent with the community standard and now established as a result of earlier decisions of both this industrial commission and other jurisdictions. The provisions include maternity, paternity and adoption leave which are considered important - to be important in providing circumstances which will encourage salaried medical practitioners to remain within the public service, notwithstanding commitments to family and related factors.

Most important of all however is the fact that this new award document is consistent with the most positive initiatives on the part of those associated with public sector activity to ensure that public sector delivery - service delivery is now provided on the basis of a high level of quality of care, optimum efficiency and unit cost of service provision and a basis whereby medical practitioners involved within the service have an unambiguous understanding of their roles and responsibilities in relation - and relationship to management.

In the detailed consideration of the award document through the stages of several drafts which have preceded this final document being presented before you today, sir, working groups of members of the Tasmanian Salaried Medical Practitioners Society at both the Royal Hobart Hospital and the Launceston General Hospital were established and have contributed positively to this process. There is among salaried medical practitioners serving in the public health care system a high level of ownership in this new award recognised as a result of this process which will greatly facilitate the



continual pursuit of structural efficiency and workplace reform which is today a continuing part of striving for providing services at the lowest optimal cost particularly from public sector agencies.

Sir, at this point I would like to add my appreciation and commendation of the TSMPS, sir, for yourself and your support staff for the patience that you have shown through this very long process and particularly, sir, in facilitating the change of direction that was inherent in the development of a Heads of Agreement document and then in the enterprise bargaining process that has followed.

Secondly, sir, I would like to place on record today appreciation for Mr John House, an agent for the TSMPS and a participant in hearings before you, sir, right from its inception and he is of course from the AMA's federal industrial department and he's been of enormous assistance to us on a continuing basis.

COMMISSIONER WATLING: They were pretty rough times in those early - early days of this case.

MR LOWE: As I understand. I must say he's weathered the storm well, sir -

COMMISSIONER WATLING: Yes.

MR LOWE: - and was in good spirits at 9.30 this morning anyway, I can assure you, commissioner.

I'd also like to particularly add my personal appreciation to Mr Martin Jarman, director of Corporate Services. My relationship on behalf of the society with Mr Jarman has been a pleasure and with his representatives both in the person of Kate Pammenter and more recently Mr Gordon Grant, has been a most harmonious and fruitful association between myself representing the society and the department. I'd also like to express very sincere appreciation to the executive of TSMPS and particularly to Mr David Smart and Dr Margaret Walker who have played a direct role in the latter stages of the negotiation process and through their personal experience in the medical profession, have been of great assistance.

It's therefore, sir, with confidence that I formally present to you on behalf of the TSMPS the final draft of the Medical Practitioners (Public Sector) Award and it is submitted, sir, that it will provide staffing guidelines for salaried medical practitioners involved in Tasmania's public health care system well to the conclusion of this 20th Century, sir, and indeed into the early stages of the 21st Century. May it please you, commissioner.

COMMISSIONER WATLING: Just one question - or a couple that I might direct to both parties: I take it that the start of this decision - the start of this new award will be the beginning of the datum point for any future work value cases; does this discharge any past work value - I take it that it does - discharge any past work value cases up to this date?

MR LOWE: That would be my understanding of the situation, sir.

MR GRANT: That is our understanding as well, commissioner.

COMMISSIONER WATLING: Because I think we need to record it somewhere in the decision that this has incorporated all work value changes plus special case arrangements up to this date.

MR LOWE: Yes.

MR GRANT: Yes, that is the situation, commissioner.

COMMISSIONER WATLING: So at least next time when you come back you know that this is the date we're starting from.

MR LOWE: Yes.

COMMISSIONER WATLING: The other thing too, the rates of pay contained in this document do not contain the 5% arising out of the Heads of Agency agreement I take it - or - sorry, the Heads of - or that agreement that's registered with the commission. I'm not too sure of the full title of that. Is it called Heads of Agency -

MR GRANT: Heads of Agreement.

COMMISSIONER WATLING: Heads of Agreement, is it?

MR GRANT: Mm.

COMMISSIONER WATLING: Is that the full title of it?

MR GRANT: I don't have the document here with me, commissioner, I can't -

COMMISSIONER WATLING: Yes, anyway I'll check that anyway. So that amount of money - that 5% phased in over a period of so many years is not included in this document.

MR GRANT: No, my understanding, commissioner, is - well your statement on that is correct.

COMMISSIONER WATLING: Right. Because I was just thinking I did see - and I wasn't involved with that case - but I understand that that agreement refers to 'X' percent over and above the award rate; so those amounts even the 1.5 was included in this document, it would be in fact double counting.

MR LOWE: It - it was really on the - on the basis that we were not included that I think that the original acceptance of the - the development of the Heads of Agreement that progressively implemented a series of increases that were outlined by Mr Grant was adopted on that very clear understanding.

COMMISSIONER WATLING: So what happens at the end of the day when you get this 5% over a period of so many years for which you've already got 1.5 - what happens to that at the end of the day - does it go in the award, or does it stay separate?

MR LOWE: My understanding would be that it would stay separate at this stage and it would be a matter of at the time of any review of this award at that stage bringing the scale up to date with what is then applying by the inclusion of those increases.

COMMISSIONER WATLING: Yes. But I understand those agreements have a life and people can withdraw from those agreements by giving 30 days notice.

MR LOWE: That's probably a good reason to be pursuing the course that we are through enterprise bargaining, sir, with respect.

MR GRANT: Commissioner, I have regret to advise you that I am not briefed on that separate document.

COMMISSIONER WATLING: That agreement, yes. But I forget how long it goes for, but just say, for example, the agreement goes for, say, 3 years, someone could withdraw from that agreement at the end of the time by giving notice. So it wouldn't be reflected in the award then.

MR LOWE: Yes, that is one of the reasons why we have pursued a course even in relation to our own agreement with the department to have it incorporated in this document and actually seek a retirement of the existing agreement.

COMMISSIONER WATLING: Yes. I understand that. That is probably a good move. Right, any further submissions?

MR GRANT: Nothing further to add, thank you, commissioner.

COMMISSIONER WATLING: Okay. Well, I can indicate to the parties that I'll hand down a written decision in due course, but to put you out of your misery it will be one supportive of your submissions and the draft order number being G.1.

Now, I haven't taken a close look at G.1 and I'm sure it is pretty well up to the mark, but if there is anything wrong with it, then I'll - and I don't think there will be - but all I say is that before I put my moniker on it I'll sort of call one or both of you and you can have a discussion about it. But we wouldn't be looking at changing the thrust at all. It might just be picking up something like we saw on page 33.

Now, we might just go off the record for a moment.

#### **OFF THE RECORD**

COMMISSIONER WATLING: Right, well this matter is now closed, and I have to say that I am thankful that it is closed, too, because I've had this since '89 and in those early days even getting things up and running and getting even the department to look at classification standards rather than the public sector management office just dictating the terms was a big thing. That was a big hurdle to get over - that the award should have some classification standards in, even if they were minimal - because that was heavily opposed in the early days.

I can understand that management saw it encroaching on their prerogative to place people where they thought appropriate, but anyway, we have got a long way since then.

I congratulate you on your efforts and, as I say, the award will be endorsed by the commission, but I'll take a closer look at the order.

This matter is now closed. Thank you.

#### **HEARING CONCLUDED**