

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 3512 of 1991

IN THE MATTER OF an application by
the Health Services Union of
Australia, Tasmania No. 1 Branch
to vary the Hospitals Award

re Deletion of Divisions B, C
and D

COMMISSIONER WATLING

HOBART, 12 February 1992
Continued from 2/12/91

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I will take appearances, please.

MR R. WARWICK: If the commission pleases, RICHARD WARWICK for the Health Services Union of Australia, Tasmania No. 1 Branch.

COMMISSIONER WATLING: Good, thank you.

MR P. TARGETT: Thank you, Mr Commissioner. TARGETT P.E. I appear on behalf of the Tasmanian Confederation of Industries.

COMMISSIONER WATLING: Good, thank you. Essentially, today the hearing is to consider application 3512 of 1991, however the others were listed just to keep all the matters together so they did not go astray. And application 3512 of 1991 is for the purpose of deleting three divisions in the award, of which we have already deleted two. This matter is to consider the deletion of Division C from the Hospitals Award.

MR TARGETT: I think I might have the first go at this by the sound of it.

COMMISSIONER WATLING: Right.

MR TARGETT: Mr Commissioner, we - since we last met on this particular subject, there has been quite a number of discussions, as I foreshadowed at that time, by the employers on the question raised in T3512 about the deletion of Division C from the Hospitals Award and, if that was to occur, what would be the appropriate mechanism for providing award coverage for people that are currently covered under that division. When I refer to Division C, I refer to the Division C that was Division C and is now division B following the deletion of the other two divisions.

COMMISSIONER WATLING: Yes, that is right.

MR TARGETT: Is that relating to blood bank services?

COMMISSIONER WATLING: Right.

MR TARGETT: Because I also foreshadowed at the last hearing I had some difficulties in trying to finalise things at that time because of the absence of the person responsible for the decision making processes in the blood bank services and, as I am sure the commission is aware, the now Division B of the Hospitals Award really only applies to one employer and, that is, the Red Cross Blood Transfusion Services. I have since had the opportunity to have extensive discussions with the employers on this particular question and involved in those discussions were proposals that were put forward by the HSUA and perhaps at this stage I might tender an exhibit for the assistance of the commission.

COMMISSIONER WATLING: Right. Now is this your first exhibit?

MR TARGETT: I think I am up to -

COMMISSIONER WATLING: In relation to this application - I haven't got one marked here.

MR TARGETT: It would be in relation to this application, I think, Mr Commissioner. There are other TCI exhibits, though.

COMMISSIONER WATLING: Not in relation to 3512, is there?

MR TARGETT: I am not sure.

COMMISSIONER WATLING: We will mark it TCI.1.

MR TARGETT: Mr Commissioner, TCI.1 is a letter written to the Executive Director of the Australian Red Cross Society, Tasmanian Division, and it reads:

Dear Mr Kremzer,

Resolution.

It is the considered view of all H.S.U.A. members employed by Red Cross that:

1. Wages of Blood Bank employees should be matched to the wages of workers performing the same work in the public sector.
2. To that end, We believe that Division C of the Hospitals Award as it currently exists should be absorbed into Division A of that same Award.

In the interests of harmony and co-operation, we request that management give serious consideration to these proposals.

And it is signed (Mrs.) Bronwyn Lawrence, For and on behalf of all H.S.U.A. members employed by Red Cross. I understand, for the sake of the record, Mr Commissioner, that Bronwyn Lawrence is the shop delegate for the H.S.U.A. at the Red Cross Society, but Mr Warwick may be able to confirm that.

MR WARWICK: That is correct, sir.

MR TARGETT: Mr Commissioner, upon receipt of the document TCI.1 by the Red Cross Society or by the Red Cross Blood Transfusion Service, I met with Dr Tom Kennedy, who is the person responsible for the decision making processes in the blood transfusion service and discussed this correspondence, plus the discussions that had taken place between myself and

the H.S.U.A., as well as those things that were discussed in the conferences that took place at the commission in previous hearings on this particular matter.

And in those discussions with Mr Kennedy, we canvassed - or I canvassed all of the available options which I perceived to be appropriate in response to this particular application. Following those discussions - and these did go for some time - I now have instructions from the blood transfusion service as to what they believe to be the appropriate course of action. And those instructions are that the blood transfusion service believes that it is appropriate for the people employed by them to remain within the Hospitals Award and, because of the mechanisms and the way that this particular service employs staff and the commercial realities of the way they employ staff, that Division A and the now Division B be combined so that they would not be separate divisions and that the blood transfusion services would be incorporated into the body of the one award.

The reason that - or the prime reasons that Dr Kennedy has taken this decision goes to a number of issues. Firstly, there are a number of different classifications employed within the blood transfusion service, for example, clerical staff, technical staff, et cetera. Even though not all of the classifications that are actually employed at the blood transfusion service are currently contained within the existing Division B of the award, because of the changes in circumstances within the service over the years, they have adopted a position whereby because of the area from which they employ staff or the - and that is that they actually - the majority of their staff actually come out of the public sector by the very nature of the positions and the work that they do, they are forced by commercial reality to have to meet the similar wages and conditions that those people enjoy within the public sector to be able to attract staff to work at the blood transfusion service.

Hence, there is certainly some sympathy by Dr Kennedy for the position contained in TCI.1, in item 1, and that is that the employee should be matched to the wages of workers performing the same work in the public sector. Bearing that in mind with the nexus that has now been agreed to between the TCI and the HSUA and has been formalised by this commission by decision between the Hospitals Award and the Public Hospitals Award, the Hospitals Award will, after it is all sorted out, contain the same wages and classification structures as are contained within the public sector.

So that which is being in some way foisted upon the blood transfusion service by commercial reality, would be catered for in that they would then have matching wages and classifications in this award to enable them to continue to be able to attract staff under wages and

classification structures that are compatible with those from which the people are coming.

COMMISSIONER WATLING: With respect, no one has forced them to pay those rates.

MR TARGETT: Oh, no - I am not saying that they are actually being forced in any real sense other than commercial reality. I mean -

COMMISSIONER WATLING: They have chosen to pay those rates.

MR TARGETT: Yes, for commercial reasons - to get the staff that they wanted -

COMMISSIONER WATLING: Yes, but just the way that you put it as though -

MR TARGETT: Certainly no intention to create that illusion - no.

COMMISSIONER WATLING: They have chosen to go down that path -

MR TARGETT: They have chosen to go down that -

COMMISSIONER WATLING: - and they are entitled to choose that course.

MR TARGETT: Oh, a free decision of their own making, but for commercial reasons in attracting staff only and I am not trying to suggest anything other than that.

COMMISSIONER WATLING: Yes, right.

MR TARGETT: By taking the decision that they have as far as where they believe it appropriate for the blood bank services to be incorporated into this award, they believe that it will enable them to properly continue the current practices that have been adopted by the blood bank service as far as wages and classification structures are concerned. As I have already said, with the nexus that has been established it would then formalise, I guess, those current practices into the award and that the nexus when in flowing the classifications and wages into this award would suit their circumstances to a very substantial degree.

I think it is also reasonable to say, without attempting to speak on behalf of Mr Warwick, that the proposal that I am suggesting is in fact agreed to by the HSUA and, I guess, TCI.1 would tend to suggest that by the words that are contained within it. Having said all of that and, obviously, based on the discussions that have taken place previously and the matters that have been discussed in conference at these

proceedings on previous hearing days, it is a substantially changed position from that which was originally being envisaged and we, or I have, I guess, adopted the position that I have not come to the commission today with a whole series of draft orders enabling me to present to you the way I believe the award should finish up.

What I believe, considering the different position that is now being put to you on this particular issue, that we would ask the commission for either a decision in principle on this particular issue and if the decision in principle was to agree to the proposal, the parties would then prepare draft orders for the combination of Division A and Division B to then be presented to the commission and then explained to the commission for approval or otherwise, assessing all of the different things that need to be assessed.

If the commission is not of a mind to agree to the proposal that I am putting forward, then we would have to obviously reconvene at a later time following further discussions to try and sort out where we would then go because the commission was not of a mind to agree to this particular - of this particular proposal.

Now based, I guess, it is to some way not attempting to finalise the whole thing today but certainly to get a very clear position put to the commission as to what the parties see as being appropriate and also, I guess, based on the hearing notice that it was, to a degree, a report back but also an attempt to try and finalise the whole thing. Obviously, there is a substantial amount of work involved in drafting orders for the combination of Division A and Division B and I am quite happy to undertake that work for the commission, but I believe that following the course that I have in seeking an in principle decision, subject to draft orders, et cetera, would be the most appropriate mechanism on this particular occasion.

Mr Commissioner, I believe that in adopting this course I would have to say that there is an obvious question mark over the whole issue and that is that it has been the position, I guess, of at least the employers from the beginning that we wanted to see a hospitals award which applied to hospitals - a specific award - and that was certainly our position initially, based on the structural efficiency principle in trying to tidy up what we believed to be an award which was in a substantial amount of difficulty because it had not been addressed properly over time.

Having said that, I now come to you obviously with a position which is not totally in accord with that. Even though the blood bank services are not seen to be a hospital or a hospital service, there is, to a degree, some linking between the two - the blood bank services - the services provided by

the blood bank are primarily provided for hospitals in that they do provide blood to the hospitals as they are required.

COMMISSIONER WATLING: Are they State servants?

MR TARGETT: They are not State servants, no.

COMMISSIONER WATLING: Is it a private operation - they fit within the private sector and not the public sector?

MR TARGETT: Yes, we do submit that it does fit within the private sector and not the public sector, even though there is - the Red Cross Society and the Red Cross Blood Transfusion Service does have a substantial amount of government funding, it is in fact a private sector organisation.

COMMISSIONER WATLING: And the employer is the Australian Red Cross Society?

MR TARGETT: My understanding is that it is the Australian Red Cross Society, Tasmanian Division.

COMMISSIONER WATLING: Right. And the blood transfusion service is one part of that employer's business?

MR TARGETT: That is correct, yes. That is the way I understand it to be. I mean, it is a very complex arrangement with the Red Cross Society and all the funding arrangements that apply to it but, certainly, that is the way I understand it to be.

So acknowledging that there is perhaps that question mark over the proposal that I am putting to you on the difference between the blood bank services and the hospitals and the intentions of trying to sort this award out, because the blood bank services applies to only one employer and it is not creating an adverse impact or difficulties for a substantial number of employers in knowing where they fit and all of those sorts of questions, we do not believe that the difficulties that would arise are of any substantial weight and should not, in our submission, delay or prevent the commission from approving of the proposal.

COMMISSIONER WATLING: Right. Do you agree that we gave the 2.5 per cent increase to Division A on the basis that they were going to accept full bench decision and put the new stream in and - which also was coupled with the making of purely a hospitals award?

MR TARGETT: Yes, I do acknowledge that. The 2.5 per cent was paid on the basis of putting the full bench decision from the State Services decision into this award and, certainly, as I have already acknowledged, that our original intention was to attempt to have just the hospitals within this award.

But, having examined this award - and we have gone a substantial way in our view or in our submission to achieving the end of just having the Hospitals Award - but, having examined the issue specifically on the basis of just the blood bank services in relation to this award, having already removed those other issues that needed to be addressed, we have come to the view that despite that was the original intention there is some reasonable grounds for a slight backtrack on that.

And we also submit that the amount of the backtrack is only minimal in real terms - it is - in substantial terms the proposal we are putting forward creates a hospitals award primarily. It is only a small ancillary part which is in the award other than a private hospitals award and even though, yes, it is slightly outside the original position, we would submit to you that the amount that it is changed is not that great that it should create difficulties for the commission within the structural efficiency principle and with the position that was being put forward by the parties originally in attempting to sort this award out from a structural and an efficiency point of view.

It will not, in our submission, have separate divisions - it will - the conditions component of the award will be just one set of conditions, taking into account the various areas, but there will be just one set of conditions. Within the wages component, there would not be separate divisions. We would look at drafting orders in such a way that there would only be one series of classifications and when the State Services decision flows into this award, obviously there would be, say, for four streams of classifications within this award then and both the private hospitals and the blood bank services would then pick up the areas that they need from within that one set of four streams.

So it is certainly, in our view, a substantial achievement in rationalising the award and creating a simple and user friendly award, albeit there is that one slight, if I could perhaps say, pimple on a pumpkin.

COMMISSIONER WATLING: Have the private hospitals started to redesign jobs and broadband jobs and draw new job descriptions?

MR TARGETT: They are not very far down the track. Yes, they have addressed the question. Yes, they have the decision of the full bench and they are looking at those sorts of issues. They have attempted to make a start but I must say that they have not got very far down the track, but it has not been ignored, they have started looking at it, yes.

COMMISSIONER WATLING: So, in essence, you are saying that you want me to delete Division B from the current award, which

is blood bank services, which was old C, and the employees covered by that would automatically - if you left the scope the same - be swallowed up by Division A.

MR TARGETT: In general terms, yes, although we would be saying that in doing that there may be the necessity for a couple of adjustments in some of the conditions areas if there are a couple of specific things that need to be transferred across. But, in essence, what you are saying is, yes, that is correct.

COMMISSIONER WATLING: How does that sit with the principles, because prima facie we are going from a minimum rates award to a paid rates award?

MR TARGETT: Prima facie, yes. By the very nature of what has evolved within the blood bank services it could be argued that the now Division B has become a minimum rates award but the rates of pay that are being paid within the blood bank services equate to those being - for similar classifications to those being paid within Division A.

COMMISSIONER WATLING: Well, that is because the employer is entitled under a minimum rates concept to pay as much over the award as she or he desires.

MR TARGETT: Yes, I -

COMMISSIONER WATLING: And that could be seen as nothing more than an overaward payment. But as it stands at the moment it could be argued that the wage rates appearing in the award for the blood transfusion service are minimum rates and I, by accepting your proposal, would convert them to a paid rates award.

MR TARGETT: Yes, that is correct. And I accept that the principles, in essence, say that the commission would not be predisposed to creating paid rates awards unless there would good and cogent reasons for doing so and our submission is that, based on the reasons that I have given to the commission and the fact that the rates that are currently being paid and observed - by choice - by the employer, equate to that paid rates award that it is not against the principles in real terms to comply with the proposal being put forward.

I acknowledge that the paid rates award within the principles is not something that is sought after by the commission, but I think with the special circumstances of this particular case and the small area of coverage which is - or a number of employees that is covered by the blood bank services, that it is not an area or an issue which should create great difficulty.

COMMISSIONER WATLING: Well, what are these special circumstances?

MR TARGETT: Well, as I have already stated to the commission

COMMISSIONER WATLING: That the different classes apply in the area and also the formalisation of current practices.

MR TARGETT: Well, it is certainly those. It is a small number of employees and we would submit that in - if we took them out of the Hospitals Award and created another award for these employees, it is a very small number of employees in overall terms and we do not believe that that - well, in these circumstances, that would necessarily be the best way to go when, in real terms, the provisions of the Hospitals Award from within which these people are already covered, are what is going on at this point in time. If we went down the path of creating a new award, under the principles, prima facie, existing wages and conditions would apply -

COMMISSIONER WATLING: That is right.

MR TARGETT: - and we would in reality then be mirroring, because of what is actually going on, the rates and conditions with the Hospitals Award. Be it paid rates or minimum rates as a separate issue, the actual wages and conditions that are applying mirror the Hospitals Award Division A in some areas and also the State Services in other areas, because of some classifications that are not contained. Whereas, by keeping it within the Hospitals Award and not creating a separate award for a small number of people and a small area, the - once the four streams are put into this award as a result of the nexus, what will apply is just the same as what would have to be moved across to a separate award.

COMMISSIONER WATLING: Right. Now, I take it that this employer is covered by a number of awards?

MR TARGETT: This employer overall - yes, that is correct.

COMMISSIONER WATLING: Yes, right. Now, why should we create a paid rates award for certain employees within the employ of the employer and minimum rates awards for all the others?

MR TARGETT: I would - I understand the point you are trying to make there, Mr Commissioner. The only - I guess, the only thing I would really say is because of the way the employer operates the blood bank services operates as a very separate entity within the overall employer operation and -

COMMISSIONER WATLING: But I have got to look at the employer, though, don't I?

MR TARGETT: Yes, I understand that.

COMMISSIONER WATLING: Like, if I was looking at another award, I just would not look at the work the transport worker does or the work the bricklayer does, I would probably look at the overall operation of the employer.

MR TARGETT: Yes, but we are not proposing that the overall operations of the employer be within one award. We are looking at an employer which is covered by a number of awards, at this point in time -

COMMISSIONER WATLING: All minimum rates awards.

MR TARGETT: Well, I have not conceded that Division B is or is not a minimum rates award - I have not sort of tried to argue that point out. But, excluding the Hospitals Award -

COMMISSIONER WATLING: Well, I would be very interested in the argument that it is not.

MR TARGETT: Well, I do not want to go down that path, quite frankly. But, excluding that, all of the other awards, yes, are minimum rates awards; that is correct.

COMMISSIONER WATLING: Right. So, should I reconsider the 2.5 in the hospitals area then if we are changing the program?

MR TARGETT: Well, I do not know that it is a matter of the proposal that is being put forward today is one which within itself should jeopardise the 2.5 - that has already applied. As I have already stated and acknowledged that the original program was for a particular path and substantially we have kept to that program. In our submission, the proposal -

COMMISSIONER WATLING: Yes, but if I was to carry out your request, I would be granting these people substantial increases?

MR TARGETT: Well, no, we do not accept that.

COMMISSIONER WATLING: Well, you must -

MR TARGETT: It is 2.5 per cent -

COMMISSIONER WATLING: - you must do by the award because, let us face it, unless you put the new rates into the award which contain the 3 per cent and the 2.5 to the existing rates, there would be substantial increases, not only in rates of pay, but conditions of employment.

MR TARGETT: Well, there is a 2.5 per cent difference between Division B rates and Division A rates at this point in time. The nexus that exists between Division A and the public sector

will move the Division A rate substantially in some areas and at varying degrees. The rates that are contained within Division B of the Hospitals Award for the classifications that are within there, are identical to the rates contained within Division A for the same classifications, except for the 2.5 per cent. So by agreeing to our proposal, the wage movements in the combination of Division A and Division B would be 2.5 per cent, which is the national wage increase.

As to the question of the conditions, the - I have done a reasonable analysis of the conditions - I have not got all the differences, et cetera, but we have a situation within the conditions that Division A has 49 clauses and Division B 35, of which 10 within Division A are identical to Division B, which leaves a substantial number of clauses that are different and there are some clauses within Division A which are not in Division B and also some in Division B which are not in Division A.

Now, the variations between the two - there are some variations in the wording of the clauses but the intent of those variations does not create a substantially different condition. And that is why, when I said that in drafting the orders and fitting together Division A and Division B, there would be a necessity to make some transitional - make some changes because there are some clauses specifically applying to Division B which would need to be incorporated into the combined document. And there are some variations which may or may not need to be made based on the degree of change.

But we would submit that, even though there are some changes necessary to the conditions to get them together, the degree of change is not substantial. There are some changes, yes, but we would submit that they are not overly substantial. I also make the comment that we still have not - and we are working our way down the path - completed all of the restructuring component of the conditions section of this award, that is something that the employers are currently putting together a document for the union to look at on the changes to the conditions that we perceive need to be made under the continuing structural efficiency process, as we have already put to the commission.

COMMISSIONER WATLING: Right, if you're looking at the blood bank technical assistant under Division B of the award, where would you see that lining up with Division A of the award?

MR TARGETT: Well there isn't a classification within Division A that equates to the technical assistant.

COMMISSIONER WATLING: Yes, well you said to me that the wage rates in Division C were exactly the same as the wage rates in Division A except for the 2.5 per cent.

MR TARGETT: Yes, the classifications that are the same -

COMMISSIONER WATLING: Right.

MR TARGETT: - between the two divisions.

COMMISSIONER WATLING: So what are you talking about -

MR TARGETT: And I think you'll find that there are only two classifications within Division B, from memory, aren't there? Two classifications within Division B, there's technical assistant and there's office assistant.

COMMISSIONER WATLING: That's right.

MR TARGETT: Now the technical assistant, there is no similar classification within Division A. Office assistant, the second classification, there is a similar classification within Division A.

COMMISSIONER WATLING: Which is what?

MR WARWICK: Office assistant.

MR TARGETT: I'm just trying to find it, I think it is office assistant.

COMMISSIONER WATLING: Right, clause 8 - subclause (8).

MR TARGETT: Yes, that's right, office assistant. And the rates of pay, the difference between them is the 2.5 per cent national wage increase.

COMMISSIONER WATLING: So are you seeking to put just those two classifications into Division A?

MR TARGETT: At this point in time, yes, because with the four streams coming in as a result of the full bench decision, that will then cater for the other variations that exist and the whole thing has to be redone anyway. The technical assistant within Division B would be incorporated into the one set of classifications that would come within Division A after the combination of the two divisions. But that particular technical assistant classification, we would submit, would be subject to a 2.5 per cent national wage increase. And the office assistant classification from Division B could just be ignored because there is already one within Division A and they would get the 2.5 per cent as a result of that combination.

COMMISSIONER WATLING: Right. Well I'd certainly want to be convinced in argument that the Division B, the current Division B is a paid rates concept before I did anything. And if I came down the side that it was a minimum rates award we

certainly wouldn't be sitting here and listening to it because it would be the requirement of a special case because there'd be a requirement under the principles to convert to a minimum rates award - from a minimum rates concept to a paid rates concept and that requires that the matter be examined as part of a special case.

MR TARGETT: Well I think Mr Warwick will address the question of whether it is a paid rates or a minimum rates award and I may comment further in my response at the end of that, if necessary, on that particular question.

COMMISSIONER WATLING: But what does concern me, of course, is that the overall plan was not to - was to have a Hospitals Award for hospitals only and I'm not yet convinced on the submissions that you've presented that these people in the blood bank services are, in fact, a hospital.

MR TARGETT: Well I've already acknowledged the program and the difficulties that I have perceived.

COMMISSIONER WATLING: Yes.

MR TARGETT: And I haven't tried to evade that particular issue.

COMMISSIONER WATLING: No, I appreciate that.

MR TARGETT: But I can only put to the commission the way it's -

COMMISSIONER WATLING: Good. Mr Warwick?

MR WARWICK: Thank you, sir. I, firstly, concur with the veracity of Mr Targett's comments in relation to, if you like, the question of how the respective parties' constituents have reached their positions on these matters. The exhibit TCI.1 does constitute the view of my members by way of formal vote taken by them. It's perhaps unusual for you, sir, to notice correspondence on behalf of the HSUA which is not signed by the secretary, but that was a request made by the members that their steward write to the manager of Red Cross. But the letter itself is authorised by the secretary. It was authorised before it was sent, in fact.

COMMISSIONER WATLING: I just have to say the only status that I give it is it's a letter from people purporting to be members of the HSUA to their employer. I don't see it as an official document from the union.

MR WARWICK: Well it is - perhaps I can clarify that on the record; it is a position of the union as a consequence of instructions from our members.

COMMISSIONER WATLING: Yes, but it's not an official union letter to the employer; it's a letter of members of the union to the employer.

MR WARWICK: But there is a process of authorisation by the secretary.

COMMISSIONER WATLING: But I just make the point, I'm sure your rules say that the only one that can write on behalf of the union is the secretary.

MR WARWICK: Sure.

COMMISSIONER WATLING: That has any status but that's neither here nor there.

MR WARWICK: No, it's not.

COMMISSIONER WATLING: I just take it that it is a group of your members writing to the employer expressing a view and you're now telling me, I take it, that the union, in terms of its policy, overall policy agrees with the letter written by the members to the employer.

MR WARWICK: That's correct. Sir, you were quite correct this morning in indicating that matter T.3512 obviously does need to be dealt with first before the overall SEP questions can be dealt with and also before the question of the 2.5 per cent payment can be resolved. But obviously we would, if possible, seek to do all of those things - well apart from those outstanding matters in SEP, we would certainly seek to do a large number of the things necessary to process all matters this morning.

COMMISSIONER WATLING: Well the official thing before me this morning is whether or not the Division C, which is now Division B, be deleted from the award because that was the program.

MR WARWICK: Yes, indeed.

COMMISSIONER WATLING: Right. That's the application that's before me, to delete it from the award.

MR WARWICK: Certainly.

COMMISSIONER WATLING: Now for starters I'd have to say the application is to delete. Everything I've heard this morning so far is not to delete so I'd question the application that's before me for starters.

MR WARWICK: Well the application is to delete the divisions. Technically that's what we would be doing in absorbing Division B, as it is, in Division A. The net effect would be

that they would remain in one award but the divisions would be deleted.

COMMISSIONER WATLING: Yes, well I'd have to say the question of deleting of a division means you delete it; there's no application to re-insert it anywhere else or to pass it on to a new award or to, indeed, different division within the award. That's the application that's before me.

MR WARWICK: In respect of that matter I would perhaps suggest that it's open to us to amend the application in that regard.

COMMISSIONER WATLING: Well it could well be.

MR WARWICK: But, of course, I think we'd have to reach some sort of point of clarity in terms of how we are going to proceed and whether the suggestions put by Mr Targett are feasible because obviously they're not - if those things are not feasible there's not much point in making technical amendments to the application.

Sir, I think, in terms of TCI.1 it's probably worth me pointing out some of the reasoning behind that letter. There are a significant number of new employees at the Red Cross Blood Transfusion Service who, I understand, have transferred across from the Department of Veterans' Affairs Hospital. In effect, the Red Cross has taken over a significant part of the operation of the - as part of the overall integration of Veterans' Affairs into -

COMMISSIONER WATLING: So how many of those have they taken over?

MR WARWICK: I don't have the exact number, sir, but I know that a significant number of the more professional and technical positions.

COMMISSIONER WATLING: What are we talking about - 10, 5?

MR WARWICK: I think it'd probably be somewhere between 5 and 10.

COMMISSIONER WATLING: And how many in this Transfusion Service altogether?

MR WARWICK: I can only give an indication of our members, sir. There would be about 20 in Hobart and two, I think, in Launceston.

COMMISSIONER WATLING: Do you know how many all up we're talking about and how many have transferred from Veterans' Affairs?

MR TARGETT: I don't know how many have transferred from Veterans' Affairs - I was just quickly trying to look up a document I think I've got here which may give me an indication as to the numbers. Perhaps I can continue to look while Mr Warwick continues.

COMMISSIONER WATLING: Good, thank you.

MR WARWICK: As I say, sir, it's my understanding that with, as I'm sure you're aware, the development where significant increases in technical requirements in relation to the testing of blood have developed over time. More technically qualified people have had to have been employed and, I think, that's a reasonable trend that I can point to in the employment status of the workers at Red Cross.

And coming back to the letter, one of the points I think that needs to be made is that the people that have come across are aware of, if you like, the benefits of public sector employment, having been Commonwealth public servants and, I guess, for their part that, sort of award coverage, broadly speaking, is not something that they want to lose as part of the transfer across. So I think that that -

COMMISSIONER WATLING: But I take it though that they've taken on employment, they weren't forced to go with the employment -

MR WARWICK: Oh, no.

COMMISSIONER WATLING: - and they've obviously accepted some sort of package deal.

MR WARWICK: That's correct, which I think, as I understand it -

COMMISSIONER WATLING: And the award at the moment doesn't even have any classifications for them.

MR WARWICK: That's right but I make that point because I think that that is a relevant factor in terms of the debate on minimum rates and paid rates. We'll perhaps move on to that, in fact, and put a submission to that effect.

Sir, we would say that the award should be - Division B, as it is, should be viewed as a paid rates award which has some integrity problems. We certainly don't discount the fact that those problems exist but the problems of the integrity in the paid rates nature of the award is not as a consequence of overaward bargaining on our part or endeavours to achieve overaward payments. The union for its part has observed the paid rates nature of the award and, I think -

COMMISSIONER WATLING: So you accept that the employer should pay as a maximum and a minimum, \$363.70 for a blood bank technicians assistant?

MR WARWICK: Well that is the rate that's paid, as I understand it, sir. It's positions such as actual scientist positions and more highly qualified technical positions which are the ones that give us the integrity problem we have. As I understand it, for and for all purposes the two classifications in the award do apply as paid rates for the people who are employed under those classifications.

Sir, we would suggest that in determining the nature of the award - the minimum rates or paid rates status of the award - one of the important things that the commission would need to be mindful of is the intention of the award makers in making the award at the point in time when the division was inserted into the award.

It's our understanding, sir, that at that point in time the classifications that were inserted in the award were the only classifications which were appropriate to the enterprise; there were no other positions apart from managerial positions which don't fall within the scope of the award which applied. And it was the intention of the parties, both the employers and the employees, that they would be the rates and, for its part, we have never sought to achieve rates - for our part, we have never sought to achieve rates in advance of the rates which appear in the award.

COMMISSIONER WATLING: Right. So what are you trying to tell me, when the people inserted the amount in the award they only wanted to cover those two classifications?

MR WARWICK: They were the only classifications.

COMMISSIONER WATLING: Well how does that make me understand that it's a paid rates award or a minimum rates award

MR WARWICK: Well we would suggest that a minimum rates award must be one that is, when it is made, recognised as such, throughout its history is recognised as having a capacity for the employees to seek payments in advance of the rate sought.

COMMISSIONER WATLING: Right. Are you going to take me to this? Is it just hearsay? I don't know how it got in there.

MR WARWICK: Obviously, there are complicated matters, extensive submissions perhaps need to be put to - if you wish to be satisfied on those matters. I don't think it's hearsay to say that we have not sought, for our part, to achieve overaward payments in relation to an industry.

COMMISSIONER WATLING: Well how do I know then; how can you satisfy me that this is a paid rates award?

MR WARWICK: Well I would have to, obviously, look at the decision which made the award, in effect, and we would have to look at seeking some confirmation from the employer as to whether the employees, through their union, had sought overaward payments in the duration or period since the award was made. And that would be, in our view, the real test.

COMMISSIONER WATLING: Well I'm not too sure it is. I'd like to know what the decision maker thought at the time when making the award. That's the only true test.

MR WARWICK: Indeed. But, as I suggested, we would have to find that decision. I don't have it with me. The question of minimum rates and paid rates is not one that I expected to be addressing you on this morning.

COMMISSIONER WATLING: Yes, you can see the significance of it, though.

MR WARWICK: Certainly. I'm not suggesting that it is not significant but I'm also - having tried to put to you it may not be such a significant problem.

COMMISSIONER WATLING: Well let's follow this track. If I was to - if I decided at the end of the day to take the blood bank technical assistant and the office assistant and the junior and the trainee clerk and put it in Division A, why should I then allow it to be opened up without hearing one skerrick of submission on the other occupations and classifications contained in the blood bank services?

MR WARWICK: The ones which aren't covered in the award at present? They would be accommodated in the translation process to the new award in -

COMMISSIONER WATLING: Yes, but why should I do this sight unseen? I don't know what classifications are in the blood bank services, I don't know what levels they need to go to and just by the mere action of transferring them into Division A I'm taking this great leap in the dark to allow something to happen in the future that I have not seen or don't know anything about.

I could understand the submission if one was making a new award, right, because I would actually be taken to the classifications that would prevail in the establishment, I would be told that there are technicians, I would be told there are professional people, what levels of professional people, I would be fully au fait with the operation. And therefore in making a new award I might decide that there is a need to add another 10 classifications to cater for the people

within the blood bank services. But the mere act of transfer at this stage, which opens up something else which I don't know, is like, you know, a lottery ticket.

MR WARWICK: The point of the matter is that there are people working in there whose classifications don't appear in the award.

COMMISSIONER WATLING: That's right.

MR WARWICK: And if we maintain that it's a paid rates award, then obviously that needs attention. However we've proceeded today -

COMMISSIONER WATLING: Well why aren't we attending to that?

MR WARWICK: Well I would suggest to you, sir, that we are, in fact, attending to that, that the application of the decision -

COMMISSIONER WATLING: In a de facto way though.

MR WARWICK: But the nexus agreement will address that matter in the same way that it will address the matter in the private hospitals.

COMMISSIONER WATLING: Yes, but -

MR WARWICK: Sir, I think it would be not unreasonable to say that a similar situation appears in the hospitals. There are people working in the private hospitals who aren't appropriately classified.

COMMISSIONER WATLING: But I can understand, and I've always accepted, there has been a nexus and there's never been a decision written by me that has overturned the nexus between the public hospitals and the private hospitals. I have at no stage acknowledged or agreed that there is: a) any nexus between the blood bank services and hospitals for starters, never.

MR WARWICK: Oh, I think, in effect, that's what we're asking you to do through these proceedings, Mr Commissioner.

COMMISSIONER WATLING: Yes, well I tell you what, you'll want a pretty good argument, that's all I can say.

MR WARWICK: Well can I suggest that the wishes of the parties to industrial relations are, in themselves, fairly persuasive. The parties are agreed.

COMMISSIONER WATLING: Well it's got to stand the test though.

MR WARWICK: Sorry?

COMMISSIONER WATLING: It's got to stand the test. The parties can stand before me and say anything. At the end of the day I've got to be satisfied and I've got to put my moniker on it.

MR WARWICK: Certainly.

COMMISSIONER WATLING: You know, you may well come with an agreement, it doesn't mean that I endorse it.

MR WARWICK: No, obviously you have to be convinced that it's not inconsistent with the Principles.

COMMISSIONER WATLING: Yes, and the public interest.

MR WARWICK: Well I think from the position we're at there's only one of two things we can do. If you wish to have submissions put to you on the question of the making of an award and the tests that apply and the question of the operation of the award over time and its status as a paid rates award or a minimum rates award, well we'll need to set down a hearing date to do that. Or, alternatively, if - I guess, if you see the whole thing as ill fated anyway, for our part, we would need a decision to that effect, that we could take to our members and say: Well that path isn't appropriate.

COMMISSIONER WATLING: The other thing that I would be concerned with, if we come along here and we agree in hearings before the commission that certain programs be carried and certain things should be done - and it was my clear intention that we were looking to create a Hospitals Award for hospitals - and then we change path down the line. Now this is not the first time its happened in this area where we change direction on things.

Now I gave the decision to link the hospitals - private hospitals with the public sector stream with the intention of continuing the nexus that I've always held exists between the private hospitals and the public hospitals. And I've even written it in decisions. And that's another reason that encouraged me to pick up your request at the time to accept the full bench decision in the public sector because then the public hospitals would be required to follow this and it would continue the nexus with the private hospitals.

And there was an application lodged, which we're dealing with today, to delete all the other divisions, right, so as we clearly establish this nexus with the hospital in the public sector and the hospital in the private sector. Now we've done that; you've got the decision on that. And now, when it

comes to carrying out one part of the deal, the parties come back before me and say: Well they don't want that now.

MR WARWICK: Well we can only represent the views of our constituents.

COMMISSIONER WATLING: Yes, I know, but your constituents have to understand that the whole intention was to create a Private Hospitals Award and it would cover hospitals, so much so that we've deleted nursing homes from the award -

MR WARWICK: Well, I guess the difficulty, sir, is -

COMMISSIONER WATLING: - we've deleted areas like St Giles, places for handicapped people because they weren't hospitals and now we're saying that - well this equates, Red Cross Blood Transfusion Services equates to a hospital or is a hospital or should fit within the Hospitals Award. Now I'm not overly happy with that.

MR WARWICK: Well, I guess, the thing is that from our constituents' point of view - I'm sure it's the same for the people the TCI represents - they don't see that what they do is in any way terribly different from what goes on in the pathology laboratory in a hospital.

COMMISSIONER WATLING: But they're not a hospital and the program was to create a Hospitals Award. That was the program, that's what you told me when you were here before. I gave you the decision exactly how you wanted it and I gave you 2.5 per cent increase for it and that was tied up with an application to delete B, C and D. We've deleted two of those and here we are today to delete the final one, and now you're telling me the plan has changed. Now that's what I'm faced with and, you know, I somewhat feel that, after giving the major decision in relation to the hospitals, people are turning turtle on this and renegeing from the program.

MR WARWICK: Well, as I say, I don't see that there's much point in labouring the point, sir. I mean, I think that my earlier comments are relevant, either we set down a date to determine whether it is or it isn't a minimum rates award or, alternatively -

COMMISSIONER WATLING: I think there'd be a number of issues that we'd have to address. There would certainly be the issue of whether: a) we should continue with the program to develop a private Hospitals Award, full stop. That's the first thing. The second thing would be where does the blood bank services become part of a hospital; right? And keeping in mind an award is established in respect of the industry of the employer, right, not a group of employees within the employers establishment, right, the employer of these people is the

Australian Red Cross Society. It's involved in many facets. Right?

So there's the argument about how they'd fit into the scope of being a hospital, if we were to continue with our program to establish a Hospitals Award only and then there'd be the question of whether or not it would be appropriate to transfer these people into the Hospitals Award and allow them to be classified in a new structure without the commission even seeing it, understanding it, indeed, how many different employees the employer has in this area, what work they do. It's sight unseen; you're just asking me to accept it willy-nilly and: Let us go away and do what we want to do; just sign here and nick off.

And then there's the question of whether or not we are transferring a minimum rates - in terms of your application - a minimum rates concept into a paid rates concept and whether, indeed, we're only transferring those areas, those three areas or four areas that are currently in the award or whether, indeed, we're seeking to extend it. Now this is not an application to extend the award to new work. Right?

MR WARWICK: I can see that. It's not that.

COMMISSIONER WATLING: These are just some of the questions that - and I'll have to be honest with you, I thought the program would have been, as we've started, we're going along very nicely to have the Hospitals Award contain matters or scales for hospitals only. And I know I might be only trying to second guess what the parties wanted, but certainly through private discussions we had in terms - and I'm talking about private, when we went off the record to discuss programs and where we were heading for this - there was a definite feeling that we would delete all the other divisions so much so that we've got an application before me to do it. The intention is clearly reflected in the application to delete those other divisions in the award.

And in the meantime we established a new award in the diagnostic services area to cater for people in that arena and, quite frankly, I thought through our off-the-record discussions we would either head down the way of having a special agreement registered with this commission for the blood bank services or they would fit into the new diagnostic-type award that's being created by the commission.

COMMISSIONER WATLING: Now this is a definite change in tack and it is a definite change to the program. Now we have to ask ourselves; When do we stop changing the program? After I write each decision the program changes, is that the case? I don't think so. So maybe we need to go back to basics and find out why we're not sticking with the original program.

So, you know, I don't know whether it would assist whether we had some private discussions on the issue but -

MR WARWICK: I think that would be useful sir.

COMMISSIONER WATLING: Mr Targett.

MR TARGETT: If we're going to go off the record perhaps I'll just answer the question on the record that you did put earlier concerning the classifications for the people employed so that it is on the record. To the best of my knowledge based on the most recent documentation I have from the blood transfusion service, they have six clerks, three office assistants, three technical -

COMMISSIONER WATLING: What's the difference between a clerk and an office assistant?

MR TARGETT: Based on the information I have with me at this point in time, I believe the difference may be that in Division A of the Hospitals Award there is a clerk and there is an office assistant; different classifications.

COMMISSIONER WATLING: Yes, but the employer would be covered by the new Clerical and Admin Employees' Award.

MR TARGETT: Well, that's possible but I think the rates are higher but all I'm saying is there is a clerk and there are office assistants, three technical assistants, one storeman and four medical scientists. In addition - some additional information relating to that, once again from the information I have available here, to the best of my knowledge the employer for these people is utilising the Hospitals Award, the Medical Scientists Award - not by the fact that they are bound by that award necessarily but for other reasons - the Medical Scientists Award, The Hospital Technicians' Award and the Hospital Employees Public Hospitals Award.

COMMISSIONER WATLING: What about the awards they are legally bound to like the Clerks Award and the Retail Trades Award and a whole series of others.

MR TARGETT: Well, I'm only relating to this to the blood transfusion service.

COMMISSIONER WATLING: Right. Well what about the storeman. He's certainly not covered by -

MR TARGETT: I understand that. I can only try - I mean I can debate each one of those as to the rights and the wrongs and in some instances it may well come down in your favour in the debate. I'm merely trying to give you an indication of what's going on.

COMMISSIONER WATLING: I think you have to recognise and the people that you represent have to recognise it's quite a mess. In fact they've decided to jump all over the place which they are entitled, I suppose, to do as long as they pay the minimum requirements but in some cases it could be argued I suppose that certain people may be award-free.

MR TARGETT: Yes, that's correct.

COMMISSIONER WATLING: And therefore they would be entitled to go anywhere and everywhere for the award.

MR TARGETT: That's correct. I mean the basis for - once again my understanding - the basis for the decisions they've made as to utilising, for example, the Medical Scientists Award is as I mentioned earlier, the commercial realities of - that's where people have come from and the award they've come from being covered by and to retain these people and to retain their services they've had to match what was going on previously.

I think it is fair to say and I could I think say quite unequivocally that people that are employed, although there are a variety of awards being utilised, it is in my view quite reasonable for me to say that no one would be receiving any less than they would be receiving - they would certainly be in advance for those reasons.

COMMISSIONER WATLING: No, well I think the employer is entitled to pay as much as he wants, that's my view, as long as he doesn't pay less than.

MR TARGETT: Yes. So that gives a total from the records I have with me of 17 employees employed within the blood transfusion service. Now that is just the blood transfusion service.

COMMISSIONER WATLING: So in actual fact we'd be, if you look at the clerks accessing the public sector stream, the technical assistants, they would access the operational services because they couldn't fit into the technical stream because they're only technical assistants. The storeman would fit into the operational stream and the medical scientists would fit into a professional stream.

MR TARGETT: Correct. And I think I did say in my original submissions that that would be the case, I mean the four streams being imported into the Hospitals Award would in fact be to the advantage of the employer because they are in some ways, for commercial reasons, having to utilise that system anyway.

COMMISSIONER WATLING: Well, only in relation to probably a handful, four of them - medical scientists.