

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 2 December 1991

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, in both matters.

COMMISSIONER WATLING: Good, thank you.

MR D. HEAPY: If the commission pleases, HEAPY D, on behalf of the Australian Nursing Federation, sir, intervening.

COMMISSIONER WATLING: Good, thank you.

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

COMMISSIONER WATLING: Good, thank you. Right, who shall I turn to? Mr Warwick.

MR WARWICK: Sir, by agreement I would seek to address you this morning. The purpose of this morning's hearing is to consider in actual fact what the contents of the new Nursing Homes Award should be and upon consideration of that matter to determine, if you like, the destiny of Divisions B and D of the existing Hospitals Award. If I may, sir, in the first instance I would seek to tender a document which I think, if you like, predetermines to some extent the machinery in relation to today's proceedings. This is an application which was lodged by the HSUA on 27/11/91. We lodged the application after giving consideration to the wage fixing principles in relation to these proceedings and the relevant aspect, I think for the purposes of the proceedings, is at page 3 of the document and I seek to read onto transcript the nature of the application we have made and I quote:

The applicant requests that special case status be granted to this award - that is, the Nursing Homes Award - to give effect to the structural efficiency review. The Nursing Homes Award is a successor of Division B of the Hospitals Award which will be or has been rescinded.

I suppose I should point out, sir, that technically it is also the successor of Division D.

Although the first two structural efficiency adjustments have been applied to the classifications in this award, neither the structural efficiency review nor the third structural efficiency adjustment have been finalised.

The attached documentation establishes that the

HSUA claims, seeks increases in excess of the maximum increases allowable under the October 1989 and August 1991 State wage case decisions. Principle 3.3 of the current wage fixing principles stipulates that any such claim will be processed as a special case before a full bench of the commission unless the president otherwise decides. The applicant therefore -

Well, I will not go into the rest of the application, sir, but clearly we are seeking to have the president give consideration to this award being treated as a special case. And subject to his deliberations, sir, we would seek today to ask you to make the award - if you like - in terms of the existing award and to do no more today other than put into effect the changes necessary to transfer both Divisions B and D as they stand into the new award.

COMMISSIONER WATLING: Now is this process agreed because I suppose your opening submission is in relation to a special case and maybe I should be asking the employer as well whether or not they have a view on how it should be tackled.

MR WARWICK: Well, certainly we can hear from Mr Targett on that.

COMMISSIONER GOZZI: Yes.

MR TARGETT: Thank you, Mr Commissioner. Yes, as far as the request for a special case status is concerned we agree that that is probably the most appropriate method. The only point I would perhaps raise is in the document Mr Warwick submitted for consideration by the president. He does state that he believes that it should be heard still by a single commissioner and perhaps I am a bit at variance with him on that particular question I think, because of the importance of the case and there will be the necessity for arbitration in especially the wage rates area the way we see it at this point in time, would be most appropriate - from our perspective anyway - that it still be a full bench hearing. But on the question of it being -

COMMISSIONER WATLING: Well, I suppose there is two ways that that question can be tackled. You obviously know what Mr Warwick has written because it is part of the application -

MR TARGETT: Yes.

COMMISSIONER WATLING: - you can either write to the president yourself and say that you feel that it should be dealt with by a full bench or when the matter comes on you are at liberty to request the commission to forward it to a full bench.

MR TARGETT: Well, for the sake of time I will write to the president and suggest that it should be done as a full bench - for the sake of time.

COMMISSIONER WATLING: Right.

MR TARGETT: But on the question of special case status -

COMMISSIONER WATLING: It certainly has not come through to me, I put it that way, so it is still in the hands of the president.

MR TARGETT: Well, just to reiterate on the special case status we believe that that would be the most appropriate mechanism so therefore we also agree that from a procedural point of view that to establish the body of the Nursing Homes Award by utilising the existing divisions within the Hospitals Award is the most appropriate course of action as well.

COMMISSIONER WATLING: Right. Mr Warwick.

MR WARWICK: Thank you, sir. There is perhaps one more point I should make about the document that I have tendered and that is that it is in all respects the same as the claim made by the Trades and Labor Council in respect to the public sector award restructuring case, except that our claim does not contain a technical stream. We have a view that there are no technical employees in nursing homes generally and I think that that is a fairly realistic observation and I make that point because it does have some bearing on the submissions that will follow. We have made some minor alterations to the text of the award on that basis.

COMMISSIONER WATLING: Yes, so does that - or in view of the fact that that claim has been heard and dealt and run and won it might alter the situation a bit, do you think?

MR WARWICK: The situation will alter it, sir, but I would need to be before the bench that is hearing it to amend it.

COMMISSIONER WATLING: Yes that is right.

MR WARWICK: Certainly. It I may, sir, I seek to tender two documents.

COMMISSIONER WATLING: Well, we will mark the first document which is the application itself W.1. Have we got any other - we have not got any other exhibits in relation to this matter, I do not think.

MR WARWICK: I do not think so, sir.

MR TARGETT: I thought we did from when we established the scope of the title -

MR WARWICK: I think there is an exhibit from the TCI which was the original - or the scope - I think that was handed up but otherwise there is none from us I am pretty sure.

COMMISSIONER WATLING: Right, well it is W.1. The document titled 'Summary of alterations' we will make that W.2 and the document which looks like 'draft orders' as W.3 and you can deal with them in any order.

MR WARWICK: Thank you, sir. I would propose that we go through both documents at the same time. W.2, as it says, is a summary of alterations to the full text of the Division B of the Hospitals Award prior to the abolition of that division and its supersession by the Nursing Homes Award. Point 1 is that clauses 1 and 2 of the Nursing Homes Award have been determined by the commission and they will not oppose amending those. Point 2 needs to be added to the Nursing Homes Award in clause 3 - arrangement, the following - a new clause 7 - definitions - and I will come to those. And also clause 8 - wage rates - they follow in the text of the document but they need to be added to the arrangement at this time. And then the words 'conditions of service' need to follow and you will see that that is in fact what appears on page 2 of Exhibit W.3. Point 3 of W.2 indicates -

COMMISSIONER WATLING: Can I just say, are we going to bring this new award into modern lingo as well at some stage of the game?

MR WARWICK: Yes.

COMMISSIONER WATLING: Because if we are just transferring what is from the Hospitals Award at the moment to this, we are perpetuating another problem because some of the language that is used is outdated and, secondly, it is very confusing. When do we get to deal with that? The full bench would not be dealing with that as part of a special case, surely.

MR WARWICK: Well, we are more than happy to deal with those problems, sir. We saw this morning's proceedings more as a matter of - a machinery matter - in terms of establishing an award that the full bench could look at. Certainly, we see there are many flaws with the terminology contained in the award and it is our intention to address them.

COMMISSIONER WATLING: Even words like conditions of service - it is really their conditions of employment.

MR WARWICK: Well, if -

COMMISSIONER WATLING: You know, I just make the point you know, you can still be transferring to a new award the same

conditions and things like that but they might be placed in more modern terminology.

MR WARWICK: Well, if there is no objection I am happy to change those words here and now.

COMMISSIONER WATLING: Oh, I think it is more than that.

MR WARWICK: Oh, I do but we probably should not go through the process of doing the whole document today but -

COMMISSIONER WATLING: Well, yes -

MR WARWICK: Well, I have to say -

COMMISSIONER WATLING: When do we actually do it because it is part of the award modernisation, even the Hospitals Award should have been done by March last year. So if we are making a new award, should we not come to grips with that? Mr Targett.

MR WARWICK: Well, there is a fairly large exercise simply getting to the stage of transferring to the new award in terms of coordinating two or three computers and in actually getting the work done to get these exhibits ready. So I am happy to listen to Mr Targett's view on the matter but that is all I can add.

MR TARGETT: Mr Commissioner, to take up the point on the question of the modernisation of the terminology used within the award, it is very strongly the view of the employers that this is a process that has to be undergone, but it was our view and we agreed with Mr Warwick on this particular point that to try and keep things moving and get things - not just affecting the Nursing Homes Award but also the Hospitals Award into proper perspective - that we wanted to get the body of the award, of the Nursing Homes Award, put in place. The whole process of award restructuring for the Nursing Homes Award is still an ongoing process and there is a substantial amount of work to be done in this particular area, one of which is obviously the modernisation of the terminology and removing any ambiguity that is contained within some of the clauses.

We certainly agree that it has to be done and has to be done in the very near future, but I guess this is a step in the continuing process only and I do not think it should be seen to be any more than that at this particular point in time. But it is certainly not an attempt to try and bring the award restructuring issue on this particular award into any sense of finality - it is just one step in that process.

COMMISSIONER WATLING: When do we deal with the award modernisation then?

MR TARGETT: Well, following the - as the employers we are currently going through a fairly lengthy process with our members of getting all of the points that they have difficulty with or ambiguity with within the award. We have already held two meetings on that particular issue and they are holding another one themselves, in my absence, over the next few days to try and get that done. What the arrangement is between ourselves and the HSU is that we are putting together a document which contains all of the problems that we perceive from a use in the field position with the difficulties in that award and we intend to put that to the HSU to try and then start working on what areas we can agree on and what areas we cannot agree on as far as changing the wording of the clauses within the award.

COMMISSIONER WATLING: Yes, so -

MR TARGETT: So it is a process that we have commenced from the employer perspective.

COMMISSIONER WATLING: Right, so we do not have any disagreement that some of these clauses in the award maybe up for grabs - some or all of the clauses in the award might be up for grabs at a later stage.

MR TARGETT: Well, certainly from my perspective that is the position - yes - and I have made that plain to Mr Warwick along the way.

COMMISSIONER WATLING: Because you understand my position, if I am making a new award and then at a later stage people come along and say well look, you made the new award and it was made by consent and then we do not want you to alter it, it leaves me in an invidious position.

MR TARGETT: I certainly understand the difficulty that you are raising and I will quite happily put on transcript as part of my submissions, following Mr Warwick's presentation, that as far as we are concerned this is only agreed to establish the award but it is not the end of the process as far as we are concerned. We are going right through every part of the award to make that plain.

COMMISSIONER WATLING: Right. Mr Warwick, is that your understanding - that every clause may well be up for grabs at a later stage?

MR WARWICK: Well, sir, I have some difficulty with the term 'up for grabs'.

COMMISSIONER WATLING: Well, if we are looking at award modernisation -

MR WARWICK: Certainly in terms of the nomenclature, giving the text of the award in more readable and understandable terms then, yes, it is all up for grabs.

COMMISSIONER WATLING: What about -

MR WARWICK: In terms of rights and entitlements, it is not - that is our blunt position and that is a matter that will have to be determined by the full bench.

COMMISSIONER WATLING: Well, no, they would be determining the special case aspect which will be the wage rates.

MR WARWICK: Well, I would -

COMMISSIONER WATLING: Well, are you going to put the whole lot up to the -

MR WARWICK: I have yet to come across a special case that does not ultimately deal with conditions but I would be quite happy if this one does not although I cannot see that that will not the case but anyway, we -

COMMISSIONER WATLING: Is it not the reason that it is before a - you have applied for a special case to access amounts more than the 6 per cent?

MR WARWICK: Certainly, sir, but Exhibit W.1 does not simply talk about wages rates - it talks about the structural efficiency review - and we would take that to mean and include award modernisation.

COMMISSIONER WATLING: Well, I think we need to get this straight because I want to know what I am dealing with and I am going to be a bit cautious then if you are saying everything is up for grabs before the full bench.

MR WARWICK: I did not say that.

COMMISSIONER WATLING: Well, I thought that was your view.

MR WARWICK: Well, in terms of - well, everything is up for grabs in terms of improving the words in the award and I make an unequivocal statement to that effect. Now I cannot put an absolute time limit on it because we do not know when the special case will be heard. I am having holidays in January so there is going to be a lot of work to do from my organisation's point of view, because of the decision that was handed down on Friday in another matter. So I would have to say that I cannot see that the aspect that you raise will be addressed overnight - that it will be in the new year. But the award as it stands is as difficult -

COMMISSIONER WATLING: So, Mr Targett, it is your understanding that it is only in words only - it is nothing to do with contents of the clause?

MR TARGETT: That is not what I said either, sir, if I may.

COMMISSIONER WATLING: Well, explain yourself very clearly then so I do not misunderstand it.

MR TARGETT: I object to the terminology 'up for grabs'.

COMMISSIONER WATLING: Right. I withdraw the terminology 'up for grabs'. I now ask you, when is the award modernisation for each clause going to be debated and if the word 'up for grab' offends you, well I apologise. But, in essence -

MR TARGETT: It does not offend me -

COMMISSIONER WATLING: - what I say is that I want to clearly know when the award modernisation is going to take place and if it is not taking place during this exercise, when is it and, secondly, does that mean each clause will be debated in the award modernisation process in terms of contents and verbiage? Now is that pretty clear?

MR WARWICK: You want to know what my position is in relation to that.

COMMISSIONER WATLING: Yes, because how I tackle this today will be dependent upon what the parties - how they respond, because if I am making a new award and a new award is handed down by consent and when we all know that that is not how it may end up, I do not want people coming along saying to the commission - I do not want you to alter anything contained therein because it was a matter of consent and one party wants the things to continue. Now I am buying a pig in a poke here, like it is either - I want to know what the clear future is because I am not going to buy a bunny, I will tell you.

MR WARWICK: Well, let me say that - as I said earlier - I can state unequivocally that we are prepared to negotiate on the terminology used in the award and that will happen in the time that is available this year - the remaining time available this year and in the new year recommencing in February.

COMMISSIONER WATLING: Now terminology only.

MR WARWICK: Any other matters in relation to the contents of the award are matters that the employer would have to raise with us in terms of entitlements, as opposed to terminology. They are matters that we would negotiate upon. We would have no option but to negotiate upon those in my view and for those matters to be addressed there would need to be an application

from the TCI in respect of any matter that they sought to vary which they could then seek to join with the full bench proceedings or not. There is no application before you to vary the entitlements in the award or at present -

COMMISSIONER WATLING: See, what I am concerned about some of them that we are putting in may not be in this day and age even relevant. I do not know.

MR WARWICK: Well, I am not sure about that. We have had discussions about this award over many years with the TCI -

COMMISSIONER WATLING: Well, if you are not sure about it I can assure you that I am not sure.

MR WARWICK: Well, the TCI has expressed to us the view, at times, that they see some of these clauses as not relevant. One that springs to mind is union officials - right of entry - which just happens to be on the page that I am looking at and we see that as very relevant. So I think that that is largely a matter of opinion. But -

COMMISSIONER WATLING: So when that is up for award modernisation, you are saying you are only prepared to look at the words but you are not prepared to look at the clause and the contents of the clause. You are only prepared to play around with the words - you are not prepared to look at the thrust of the clause.

MR WARWICK: Well, the intention of the clause from our point of view is to simply express in the award the facts of law which are contained in the Industrial Relations Act in relation to that clause. Now if those provisions can be better expressed or if perhaps the award clause goes beyond what is expressed in the legislation, then perhaps to the extent of any inconsistency.

COMMISSIONER WATLING: What about the amendments to the act? I know we are getting off the track here -

MR WARWICK: I think we are somewhat.

COMMISSIONER WATLING: But they might be better than what is contained in the award.

MR WARWICK: Well, we would seek to amend the award accordingly.

COMMISSIONER WATLING: Yes.

MR WARWICK: But my optimism about what might happen down in Parliament House is waning daily.

COMMISSIONER WATLING: I think it has gone through, has it not?

MR WARWICK: No, well I am not sure.

COMMISSIONER WATLING: Yes, it went through the other night - the lower House.

MR WARWICK: Oh, right.

MR TARGETT: Can I just ask a question, from a point of clarification, is there currently an application before the commission for the 2.5 per cent and the structural efficiency process in the Nursing Homes Award?

COMMISSIONER WATLING: No, it was in respect to the Hospitals Award.

MR TARGETT: So there is required for the union to access the 2.5 per cent, an application for the 2.5 per cent increase.

COMMISSIONER WATLING: Yes, there would be in respect to this award.

MR TARGETT: So the award modernisation procedure, which is certainly envisaged in the 2.5 per cent case as a result of the April 1991 Federal decision which was flowed into the State, would come as a result of an application being lodged by the union.

COMMISSIONER WATLING: Well -

MR TARGETT: Could.

COMMISSIONER WATLING: Yes, it really depends on what happens during the course of the special case and I am not running the special case so I do not know what the game plan is. But -

MR TARGETT: There aint no game plan at this point in time.

COMMISSIONER WATLING: I see. Well, all I can say is that if you are posing the question I say that in terms of procedure and putting the full bench thing to one side, there would need to be an application to put the 2.5 per cent in this award, all right? However, I do not know how one intends running these special case argument and whether, at the end of the day, it is all wound up - the 2.5 is all wound up - in that matter, but I would hardly think so. But all I could say is that the union would need to pursue the special case first before it dealt with the 2.5 - that is as I see it, but I do not know whether they have any other view on that.

MR WARWICK: It is logical.

MR TARGETT: I am just trying to sort out this question of the award modernisation process that is all.

COMMISSIONER WATLING: Yes. Well, if there was some understanding - see you have got to appreciate that I am making a new award under the current principles and that is why I am just being a bit toey here. I am making a brand new award and I suppose I could accept the position whereby it is stated that these issues will be dealt with when dealing with the 2.5 per cent application. And then at least I know that in making the award it can be clearly seen that it is a temporary arrangement.

MR WARWICK: Sir, is that not explicit in the principles themselves where the first awards and extensions to existing award principle says that prima facie existing rates and conditions shall apply.

COMMISSIONER WATLING: Oh yes, too right. But of course I have been told for nearly three years about the award modernisation in the area, which still has not happened, so naturally enough I am still trying to get the parties to do something that should have been done three years ago. But I am enquiring as to when that will be done and I know that prima facie existing award conditions, rates of pay and conditions apply, but nevertheless the award modernisation is not dealt with in the making of the new award as per this document and I am enquiring as to when it will be dealt with because that is part of the 6 per cent arrangement.

MR WARWICK: Well, I think since Mr Targett has been good enough to raise that important point I think it would seem evident that the award modernisation process will need to take place before the 2.5 per cent is paid in the award.

COMMISSIONER WATLING: Right. Well, if that is an understanding we have, at least I know in making this award that that process is going to go on because if I was making a new award, as I made the other day in the fishing industry, we sat for three days off the record going over the document clause by clause making sure that it was in understandable lingo, all unnecessary words were removed - it was neuter gendered - the whole box and dice. But we are not doing it as I take it in this award today - we are just going to pick up all the mistakes and all the errors from one award and plonk it in this award and therefore, naturally, I am going to ask the question when are we going to come to grips with all of the problems in -

MR WARWICK: Well, we are doing that as an interim measure, certainly, but that is all it is.

COMMISSIONER WATLING: Yes, right.

MR TARGETT: Could I put a proposition to the commission and Mr Warwick may then be able to either accept it or not that an undertaking - in asking the commission to establish the body of the award in the terms of what is currently in existence in the Hospitals Award, warts and all, that there is an undertaking by the parties that the requirements of the principles, which includes award modernisation, is to be undertaken prior to the 2.5 per cent being accessed. Would that be suitable to the commission?

COMMISSIONER WATLING: It sure would - it has established where I am heading.

MR TARGETT: That is then up to Mr Warwick whether he can agree with that proposition or not of course.

COMMISSIONER WATLING: Yes.

MR WARWICK: Can I say that I really do not have any difficulty with that. Being a pragmatist I doubt that that would happen anyway, so certainly.

COMMISSIONER WATLING: Right. Well, at least we can put on the record that that is the position and therefore I am not making the in its finality. Right, well that being the case then I will not get into the question of the verbiage contained in your document W.3 and I will just accept that it is a straight transfer of the current provisions into the new award.

MR WARWICK: That is the intent of both Exhibits W.2 and W.3 if you wish me to take you through them.

COMMISSIONER WATLING: Well, I think I am prepared to accept if it is a direct take - I am prepared to accept that it is just that - and

MR WARWICK: There are perhaps one or two points that I should make.

COMMISSIONER WATLING: Right, well you had better highlight the ones that are not.

MR WARWICK: While most of them are not of any great consequent importance other than point 3 -

COMMISSIONER WATLING: Point 3, right, on W.2?

MR WARWICK: Yes, sir. We would say that there needs to be a new date of effect and also that any order emanating from these proceedings would need to supersede No. 1 and No. 2. All the other references -

COMMISSIONER WATLING: And the Hospitals Award as well, would it not?

MR WARWICK: Yes. Well, I am not sure that it does, sir, because -

MR TARGETT: Division B and D of the Hospital Award.

MR WARWICK: - we will be dealing with the application to abolish them today I would imagine.

COMMISSIONER WATLING: They are still superseded, otherwise people do not have any recourse back to that award if there is any claim.

MR WARWICK: Certainly. Most of the references in W.2 are purely mechanical - they deal mostly with cross-references to other clauses. Point 9 on page 2, there was a reference to Division B which I believe should be deleted. I have, for the sake of expediency and in the interests of trying to get some things done in this process, included the standard contract of employment provision which is required by the August 1991 State wage case decision in the draft orders.

COMMISSIONER WATLING: That is the consultation mechanism -

MR WARWICK: The consultation mechanism and the work as directed clause.

COMMISSIONER WATLING: And work as directed.

MR WARWICK: I see no reason why they cannot be put in at this time.

COMMISSIONER WATLING: Right.

MR WARWICK: And we have also sought to delete the terms 'technical staff' or the term 'technical staff' wherever it appears because it is anachronistic and I have done that simply because of a need to avoid confusion for any full bench that maybe hearing the matter. I have also proposed that the preference in employment clause, which is referred to in W.2 of page 3, point 17, that the name of our organisation be changed to the Health Services Union of Australia. And other than that the variations sought are purely mechanical. We would seek the commission make the award in the terms sought in the interim and I do believe that there is one matter that Mr Targett has raised with me this morning that he wishes to address you on, if the commission pleases.

COMMISSIONER WATLING: Good. Mr Heapy, do you wish to add anything?

MR HEAPY: Only that it is my understanding, sir, that the new proposed award and the numeric terms and levels will not cover nursing or nurses.

COMMISSIONER WATLING: Well, if it is a direct take from the current award it would not.

MR HEAPY: Thank you, sir.

COMMISSIONER WATLING: And I do not see any nursing classifications appearing in the -

MR HEAPY: It talks about graduates and professionals, sir, and I am talking about W.1. It is very wide ranging when you look at the terminology but I have got an assurance, I believe, that it is not intended to. It could be used that way because of its wide ranging verbiage, particularly graduate, practitioner -

COMMISSIONER WATLING: So you have got agreement with the union that it will not contain that. Have you got agreement with the employer?

MR HEAPY: I understand that is the case, sir, yes.

COMMISSIONER WATLING: So you have got agreement with both sides.

MR HEAPY: Yes.

COMMISSIONER WATLING: Right.

MR HEAPY: Thank you.

COMMISSIONER WATLING: Good.

MR HEAPY: If the commission pleases.

MR TARGETT: Thank you, Mr Commissioner, and perhaps just on that last point I think I would firstly state Exhibit W.1 is not part of today's proceedings anyway, it is merely an exhibit showing what has been put forward to the commission is my understanding for a matter to be determined. On the question of nurses, I did state to Mr Heapy this morning that my understanding is that nurses are covered under the Federal award anyway for all areas that would be covered under this particular State award so, therefore, the Federal award takes precedent so I do not believe he has a difficulty from that perspective anyway.

A couple of points, in general terms the comments made by Mr Warwick are agreed by the TCI. There are perhaps just a couple of minor points which I think - well, minor points firstly and then I will go to a more substantive one - that

perhaps need to be pointed out. And, as an example, could I refer to W.3, page 5, clause 7 - definitions, ancillary and clerical staff - Mr Warwick, in putting together this particular document, has for example included the words 'and registered nursing staff' as an exclusion. So it is a matter of it does not change, I would submit, the context of the original document contained in the Hospitals Award but I think it would just - or I just point out that there are a couple of minor things like that which do not change the context but they are merely an attempt to satisfy the likes of Mr Heapy's concerns as he has already expressed.

The other minor point which I will just raise for the consideration of the commission, goes to clause 4 - date of operation - and I would point out that in the original document there was in fact the commitment of the union contained within clause 4 of Division B, relating to Division B, in the Hospitals Award. I do not know whether the commission still requires the commitment to be put into the new award in the terms - I just merely raise that.

COMMISSIONER WATLING: Well, it is in the award now.

MR TARGETT: I just raise that for the consideration of the commission and the response of Mr Warwick -

COMMISSIONER WATLING: Well, there is no application to vary the award before me.

MR TARGETT: So I would point out to the commission once again, Mr Warwick has done an excellent job in putting this document together. Unfortunately, because of my commitments and when he finished it, I have only had the opportunity to go over this over the weekend so I would put a proviso on it that it be subject to errors and omissions, as I normally do, because of the brief time I have had to look at it. Mr Warwick did raise the spectre of me presenting one issue which I think does need to be addressed and I would preface that by saying that the intention of this particular document - W.3 - is to put in place the new award - the Nursing Homes Award - and that is being done on the basis of both Division B and Division D being deleted from the Hospitals Award.

So the clear intention is to cover those people who were previously covered by both Division B and D. In saying that, I would draw the commission's attention to clause 8 of the new document - W.3 - and also to Division D of the Hospitals Award and the purpose of so doing is that there is a classification within Division D - of the wages clause of Division D - two classifications, sorry - both welfare officer - on page 35, I think it is page 35, I could be wrong there -

COMMISSIONER WATLING: Right, what is it - welfare officer?

MR TARGETT: Welfare officer and home mother. Now both of those classifications are contained within Division D, but in Mr Warwick's document - W.3 - they are not contained. Now as this W.3 is intended to be a document which covers the deletion of both Division B and D I believe that both of those classifications should be put into W.3. Now, unfortunately, it was only last night that I realised that that had actually taken place and I have not had time to prepare a document putting those in. But, I think, for the sake of completeness to ensure that classifications do not end up award free, if Divisions B and D are deleted in the order or orders following these proceedings both those classifications should be put into the new Nursing Homes Award.

Now, having said that, Mr Commissioner, I believe that -

COMMISSIONER WATLING: Otherwise they will be award free.

MR TARGETT: Yes, they would be award free and that is not the intention of anybody to attempt to do that, so I would appreciate it if they could be put in place to ensure completeness. Having said that, I would like to state on record that from the TCI's perspective what is being requested of the commission in today's proceedings is an interim step in the award restructuring process from our perspective and that award modernisation is a procedure which is to take place within the Nursing Homes Award. In asking the commission to adopt W.3 plus the additional classifications I have mentioned as being the body of the Nursing Homes Award, we stress from our perspective that award modernisation is still to take place and should take place in the process leading up to and including the 2.5 per cent wage increases that the union, as yet, have not applied for in this particular award.

So it is not, in our view, the finality of the proceedings in the making of this award. It is an interim step which facilitates both this award being established and the process within the Hospitals Award to be completed. It does not complete the process within the Nursing Homes Award as far as we are concerned. We believe that there is nothing within asking the commission to approve this process which would offend the wage fixation principles, providing that it is an ongoing process and we also believe that in doing this and by ensuring the process within the Hospitals Award is brought to a finality quicker than it may otherwise be, is within the public interest, if it pleases the commission.

COMMISSIONER WATLING: Right. Can I take then that the arguments that you have put forward should be also read in relation to application 3478 - sorry, where is the application dealing with deletion - sorry, 3512 of 1991.

MR TARGETT: And if that relates to the application deleting Division B and D I just do not have it in front of me, but if

that is that application - yes, Mr Commissioner, we would ask that those submissions from the TCI be included.

COMMISSIONER WATLING: I think that application - it says C and D.

MR TARGETT: C and D? We amended it.

COMMISSIONER WATLING: Right.

MR TARGETT: Well, it does not apply to Division C at this stage, Mr Commissioner.

COMMISSIONER WATLING: Yes, right.

MR TARGETT: We do not believe that it is appropriate at this point in time to delete Division C.

COMMISSIONER WATLING: So we are still looking at this application being alive in terms of Division C?

MR TARGETT: Yes, that is correct that it is still alive in relation to that division. But our arguments on the deletion of B and D would apply.

COMMISSIONER WATLING: Right, good, thank you. Mr Warwick.

MR WARWICK: I endorse all of Mr Targett's comments, sir. The question of those two classifications that you raised were matters which just managed to slip through the safety net in terms of drafting the award, but obviously those people need to be included and we would ask that that take place.

COMMISSIONER WATLING: Right. Are they the only ones that we have to -

MR WARWICK: Yes. I have actually had a prepared document, which I should have referred to in drafting Exhibit W.3, but I have researched that previously and that they are the only two - two inconsistencies between Division A and Division B. In terms of our application to delete the various divisions of the Hospitals Award as it stands, we would request that Divisions B and D be rescinded upon the same day and with the same date of effect as the making of the award as sought by the TCI in their application 3478 of 1991, so that both matters would occur automatically at the same time and would not leave the parties open to confusion on the matter, if the commission pleases.

COMMISSIONER WATLING: Good. I can indicate to you that I accept the applications A to delete B and D from the Hospitals Award and the application - or the continuing application - to make the contents of the Nursing Homes Award and I do so on the basis that I see this as only as an initial step. I also

do it on the basis of wage rates being determined by a full bench, possibly, by a special case. And, thirdly, that this does not complete the award modernisation and that will be done at a later stage either (a) after the special case has been completed or (b) prior to or in conjunction with the 2.5 per cent application. So I take this as the initial step only and I am translating existing award provisions into the new award provisions without debate, knowing that some of these issues may well be the subject of consideration at a later stage.

That being the case those applications before me this morning would be granted and application 3478 of 1991 will remain open in respect of wage rates. I would take it that we might still have to leave this open for a while anyway. I am not too sure whether the full bench will need it if they consider a special case, but I will give that greater consideration when I am writing my decision. But, certainly, application 3512 will have to remain open in respect to Division C only. That being the case this matter is now adjourned.

HEARING ADJOURNED