

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 2652 of 1990

**IN THE MATTER OF** an application  
by the Tasmanian Salaried Medical  
Practitioners' Society to vary the  
Medical Practitioners (Public  
Sector) Award

re structural efficiency principle  
- special case

COMMISSIONER WATLING

HOBART, 11 February 1993  
Continued from 10/2/93

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER WATLING: No alterations to appearances? No. Let the record show no alteration.

Sitting times today, we will break somewhere around quarter to one, and that will be the end of it for today. We'll look at future dates at around about that time.

Are there any preliminary matters we need to deal with? Right. Mr House?

MR HOUSE: Thank you, Mr Commissioner. Over night Dr Senator and I have had a further examination of the leave provisions relating to part-time employees, and I'd like to tender an exhibit which endeavours to identify the changes.

I apologise to the commission firstly, that I haven't been able to have it typed up, and I hope my writing can be followed, and I undertake to provide to the commission and our colleagues a typed version when I return to Canberra.

COMMISSIONER WATLING: No problems. Right. Now, would it be easier - we are working off Exhibit H.14 - I take it that we are just amending H.14?

MR HOUSE: Yes.

COMMISSIONER WATLING: Have the other side got a copy? Yes. Right.

MR HOUSE: I've put in along side the left-hand side of the page the page references to the clauses in where they appear in H.14.

The first change we would like to make, and Dr Senator and I both feel it somehow slipped out of the various provisions that we have made to our claim, but on page 7 in the definitions with the leave of the commission we would like to amend the definition, and it is at the bottom of page 7:

'Temporary Employee' means a medical practitioner who is not a trainee medical practitioner who -

- and then it continues on.

That was our original intention, and it escapes us to how that wasn't produced.

The next one, sir, was on pages 13 to 14, and you will recall that there was a concern about in terms of committee leave that the provision that there shouldn't be any split shifts may interfere with the availability of a part-time employee to attend approved meetings.

Now, I am sorry, but again what I have done here is not correct because subsequently to looking at this we have decided to delete the clause, or seek to delete the clause relating to committee leave, which I will endeavour to explain later.

So what I have there - and that applies to A and B - the third paragraph, or third subclause of both A and B in the Hours of Work Clause might better read:

Subject to any requirement to attend meetings approved by the controlling authority -

- and then it would go on as in H.14:

The minimum period for daily work for a part-time employee shall be two consecutive hours for no more than one period on any day except where the Controlling Authority and the employee otherwise agree.

I am not sure whether the style there is ... We could have had a proviso instead rather than subject.

I seek leave when I provide this material in proper typewritten form to have another look at that.

Now if we can please move to page 32, the first of the leave provisions, 'Conference Leave', clause 25.

As indicated yesterday in (a) we revised our claim down from 2 weeks to 1 week's leave, and then instead after (a) the proviso referring to clause 35 we'd be proposing the following:

PROVIDED that the payment of salary for such leave will not exceed that for the number of days the part-time employee would normally be required to work in that week, and the normal ordinary hours the part-time employee would be required to work on each of those days.

Over the page on page 33 is Clause 26 - Study Leave, and again after paragraph two and subclause (a) we'd replace the reference to clause 35, or propose to replace the reference to clause 35 with the following:

PROVIDED that such leave and payment for such leave for a part-time employee will be calculated pro rata in accordance with the ratio of part-time ordinary hours worked by that employee to the ordinary hours worked by an equivalent full-time employee.

So we are seeking a pro rata approach to that.

COMMISSIONER WATLING: So, let's see if I have got it right. Are you saying that if there is an exam on -

MR HOUSE: Study.

COMMISSIONER WATLING: Study, I mean, a study period -

MR HOUSE: Yes.

COMMISSIONER WATLING: - and the full-timer has 1 day off for study, and that's 7.6 hours, and the part-timer gets pro rata. So pro rata of the 7.6. So, in calculating pro rata you're saying that it is not the hours that they would normally have worked had they been at work?

MR HOUSE: No. We are saying that this one is really not a sort of incidence one on a particular day. That people ... We are saying 8 hours, but in the Commonwealth Public Service - and I apologise again for referring to that - you are entitled to up to 5 hours a week to attend an approved study course.

Now, if you are a half-timer we'd say that the entitlement would be up to 2.1/2 hours per week, or in the case of what we're proposing here, paragraph one says 8 hours per week, and if you are a half-timer it would be 4 hours per week, and in terms of paragraph two, up to 10 days leave per annum, in the case of a half-timer 5 days leave per annum.

That is our intention. Now, I can understand that we're not entirely consistent, I suppose, in that if those hours are - attendance at lectures at the university may or may not be on the day that the person is working - and I understand that, but we again thought that - and I can only go by my own experience - when you apply for leave to attend - I was a part-time student - attend a lecture, then normally that leave is only granted for the time you would have normally been at work, anyway.

If the lecture was at 7.00 in the evening, well one obviously didn't apply.

But, prima facie, we are saying that it should be a pro rata entitlement where the lecture arises on the day that the part-timer is at work.

COMMISSIONER WATLING: Right.

MR HOUSE: If we can now turn to the next clause, clause 27 - Sabbatical Leave, towards the end of page 34 it commences. Subclause (a) and (b) remain and when we go to (c) we are proposing that (c) reads as follows:

(c) The allowance for sabbatical leave shall be -  
- I'm reminded that it should be -

The entitlement for such sabbatical leave shall be -

(i) 13 weeks paid leave for full-time employees -  
- and delete 'or such period calculated under Clause 35 of this award for part-time employees'.

And then we propose to insert a proviso saying:

PROVIDED THAT payment of salary for such leave for a part-time employee will not exceed that for the number of days and the ordinary hours of work on each of those days that the part-time employee would be required to work at the time of application for the leave.

Sorry, sir, I am again reminded we should have said in clause (i):

(i) 13 weeks paid leave for all employees -

COMMISSIONER WATLING: That's right, I agree.

MR HOUSE: Pardon?

COMMISSIONER WATLING: Yes, I agree, that's the point we were making. They all get 13 weeks, but the method of payment to the full-timer is different to the method of payment to the part-timer.

MR HOUSE: Yes. So, in effect we are saying, during the 13 weeks the part-timer would receive only the paid leave that applies to their normal attendance at duty at the time they put in the application for sabbatical leave.

MISS COX: Excuse me, commissioner, could I just clarify how that now reads on that 13 weeks.

COMMISSIONER WATLING: It will say -

MR HOUSE: (i) reads:

(i) 13 weeks paid leave for all employees;

- then insert the proviso, and then it follows on with paragraph (ii).

Sir, I am again reminded there is a bit of a - there could be with our colleagues a problem - in that when we use the word 'all' we mean all those employees that would have an entitlement. We are not saying all employees covered by this award.

COMMISSIONER WATLING: Yes, well, yes, I have taken it that you can only have an entitlement if you have been there for 5 years. So, in the case of 'all employees' it is all those who have been there for 5 years.

MR HOUSE: No, but the trainee staff are not entitled to sabbatical leave. I think that's the point that may concern Miss Cox.

MISS COX: No, I still have 'full-time' in there. That's why when it had 'all full-timers' it didn't make a lot of sense. Perhaps if we put 'all eligible employees'.

MR HOUSE: All eligible employees.

COMMISSIONER WATLING: Well who is eligible?

MR HOUSE: We're proposing that all employees at level 4, as it's set out in subclause (b) immediately above, and also in a restricted sense subject to approval of the controlling authority career medical practitioners at levels 2 and 3 who hold higher qualifications.

COMMISSIONER WATLING: Yes, so where do you get the trainees involved here?

MR HOUSE: Well, I am saying that the trainees are not included at all.

COMMISSIONER WATLING: Well, this clause only applies to - this proviso - only applies to those that are eligible for the leave, and that's clearly explained at (b) plus the proviso. That's as I see it.

MR HOUSE: I was just concerned that -

COMMISSIONER WATLING: Well, if you want to make it clearer you can say, '13 weeks paid leave for all eligible employees'.

MR HOUSE: Yes. I think that might cap it off.

COMMISSIONER WATLING: Of course then it would be eligible in accordance with this clause.

MR HOUSE: If we go over the page to subclause (d) - (e). I apologise again, it should be subclause (e) and the penultimate line, or the third line, we're proposing to delete 'full-time'.

So it would read:

In order to qualify for sabbatical leave the employee shall have the potential to render to the State health system a minimum equivalent of 2 years service after that employee's return from such leave.

COMMISSIONER WATLING: Well, what does that mean? Does it mean if you work 1 hour a week for 10 years that's - for 2 years - that that's a reasonable amount?

MR HOUSE: Yes, we've discussed this, but again it covers a person returning and resuming part-time.

COMMISSIONER WATLING: Yes, well I personally would want you to give some consideration to the hours that should be provided, because it is not fair if you are saying to a full-timer they have to give 2 years, based on full-time employment, and a part-timer they give 2 years at 1 hour a week if they were part-time.

It's not equal. The problem is a full-timer is going to be burdened in a greater way than the part-timer.

MR HOUSE: Well, would it overcome the commission's concern if we leave 'full-time' in?

COMMISSIONER WATLING: No, because you are really saying that part-timers and full-timers if they fit into that category are eligible for sabbatical leave.

Now, you have got to then say do any of them or all of them have to give some time back to the health system after they have taken sabbatical leave.

If the answer is 'Yes', how much time then do they have to give back. And I think you have got to treat them in an equal fashion.

MR HOUSE: Well, if we reinstated full-time a minimum equivalent to 2 years full-time service would do that, so that a half-time person would have to provide 4 years' service.

COMMISSIONER WATLING: Yes. Well, it is either that or get down to so many hours, because say, for example, someone might work 2,000 hours say, for example, in 2 years - just for the sake of the discussion - another person might be able to get the 2,000 hours up in a year and a half.

So, what are we looking at giving back to the system? Are looking at time equivalent. I'm not quite sure what 2 years is. It could mean different things to different people. And,

in fact, it could mean even within different specialities - depending on their workload, etc., etc., a different requirement; 2 years to someone in this area might be totally different to 2 years to someone in that area.

If we're talking about 2 years at 7.6 hours a day in a 38-hour week.

MR HOUSE: Well, then arises the question of other leave. Making allowances for annual leave, sick leave, and so on, that might -

COMMISSIONER WATLING: Yes. I just find it hard to actually work out how do you calculate how much service they have to render, because it's nicely vague that it could mean anything.

MR HOUSE: I think it is just that you are prepared to continue on. The original intention was that you wouldn't resign until the expiration of 2 years.

COMMISSIONER WATLING: So, if that's the case, then this particular clause doesn't stop them from resigning, does it, because it doesn't provide a penalty.

MR HOUSE: That's right. I am not sure where it is actually the service that you provide, I think it is the period that you are prepared to continue to work for the state health system.

I know it is in other jurisdictions that that is the intention. It's a bit like cadetships where you are bound to the employer for a certain period.

COMMISSIONER WATLING: Yes, well I support and understand the logic of it, but I am really saying, (a) is it something he completes, anyway, because there is no provision there to say what should happen if you don't, and also you'd have trouble working out what is the minimum equivalent 2 years' service.

MR HOUSE: Well I .... the intention of that clause is that, for example, and given a real practical example I had where someone's working for the Repatriation Hospital here in Hobart and it's imminent that that hospital be transferred to the state, it's quite clear that there's a problem in terms of a person continuing to render service to the Commonwealth. The other situation is where a person is nearing retirement and puts in for sabbatical leave. Again, there's some doubt as to what return there will be to the public hospital system. In those circumstances, if the person - I suppose its an honour system otherwise, but there's the expectation that when the person accepts that entitlement to - that they will be prepared to provide a return to the hospital system within which they work -



COMMISSIONER WATLING: Well - yes. Well certainly -

MR HOUSE: - really in terms of continued employment rather than any particular amount of service is my understanding of the intention, yes, and the availability of that expertise gained to the hospital and the colleagues - well other doctors.

COMMISSIONER WATLING: Yes. Well, as I say, my query is only in relation to really two things: (a) that it doesn't have to be carried out for starters. It just says you have to have the potential to do it, so it's not enforceable for starters; and the second thing is that given that a part-timer and a full-timer can be eligible -

MR HOUSE: Yes.

COMMISSIONER WATLING: - it could mean that a part-timer would only have render - say, for example, if they worked 4 hours a week, they would only have to be able - they would only render 2 years worth at 4 hours a week, but the other person might render 2 years worth at 7. - at 48 hours a week. But if you're -

MR HOUSE: I'm not sure how you can enforce -

COMMISSIONER WATLING: Well, if you leave the full-time equivalent in it might read something different, if you leave the full-time service in, but I still think if it's meant-

MR HOUSE: Well short of requiring a bond, it's very difficult to enforce -

COMMISSIONER WATLING: Well, why do you put it in then? It's useless.

MR HOUSE: Well we're arguing that it's not useless in the sense where a person is obviously is not going to - I could quote a well known a case in the Commonwealth where someone took an extensive trip overseas - not a doctor - and when they returned they resigned from the Commonwealth. Now, there's nothing that could be done about that.

COMMISSIONER WATLING: Well nothing can be done about this either.

MR HOUSE: No, but in assessing a - the objective is that when the application comes in, that the employer at least has some say over people who are going to retire or there may be some doubt about them staying. It is a paper tiger, but -

COMMISSIONER WATLING: It sure is.

MR HOUSE: - but we believe it's signifies to our membership that there is an obligation and a requirement that you are able to provide - all other things being equal, you be able to provide 2 years continued employment with the public health system.

COMMISSIONER WATLING: Yes, but - so - but that's slightly different to what you're saying here. You're saying now they should provide, say, 2 years service, right, and it would be different if the words were to say something like an employee taking sabbatical leave shall, under normal circumstances - and you can't take into consideration things like redundancies or retrenchments, but under normal circumstances they shall render 2 years service after taking sabbatical leave, but this says that to qualify you shall only have the potential to render it. You don't have to render it. You only have to have the potential to render it, and - now you might have the potential to render it, but resign when you come back. They either put in the time or they don't. If you are fair dinkum, they've either got to put in the time, given - under normal circumstances, and that's not given - well you'd say - go back one step - you'd have to say that if there weren't any redundancies or retrenchments or dismissals because of misconduct or neglect of duty or whatever might happen -

MR HOUSE: And then you - well there's also, you know, there might be family reasons or reasons outside of your control.

COMMISSIONER WATLING: Well if you're trying to tell me that it's a bit like, sort of -

MR HOUSE: Well all I'm saying you could -

COMMISSIONER WATLING: - a bond where you give something back, all I'm saying is these words are absolutely useless. It means nothing. Absolutely nothing. Now, I don't really know what you want to do with it. If you want to make it a bond-type of thing, well you tighten it. If you don't want to make it a bond-type of thing, well as long as you understand it means nothing, and of course, that's one of the things I have to weight up.

MR HOUSE: Well could I seek instructions on that matter and when I send you the proper typed version, make a comment or -

COMMISSIONER WATLING: Yes.

MR HOUSE: - correction?

COMMISSIONER WATLING: Yes, no worries. But, you know, at least I'm giving you a nod and a wink that I'm going to be looking at it.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right? So I don't want you think you didn't have an opportunity to have a say on it.

MR HOUSE: I appreciate that. In the case of (f), paragraph two, we're seeking to add after 'leave': within 3 months after returning from the leave, so it would read: arrange to present to a relevant peer professional group details of the knowledge gained from such leave within 3 months after returning from the leave and we seek that - given the need to have some time to make necessary arrangements, to get colleague together, that hopefully in a short time than that, but 3 months is a reasonable maximum period. So after 2 months arrangements will have to be made and after a further month the actual presentation would have been made.

If I can move to (g). We're proposing that that be replaced - the existing one be replaced by: sabbatical leave may be accumulated up to a maximum of 26 weeks entitlement subject to the approval of the controlling authority to permit an extended program of research or study, and then a proviso: that any unused entitlement is to be available to be taken within 5 years of accumulation. A further proviso: that no subsequent accumulation in excess of 26 weeks may occur. Now, we believe that provides the necessary flexibility as I endeavoured to say yesterday to accommodate a program that extends beyond the one period of entitlement to sabbatical leave. It also hopefully covers a situation of any balance of entitlement during the second period and also provides an incentive or a penalty - a incentive for people to take their sabbatical leave and a penalty if they don't.

COMMISSIONER WATLING: Right. Well let me follow this through then. You've got 26 weeks. It's taken you 10 years to get it.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right?

MR HOUSE: Yes.

COMMISSIONER WATLING: And then you decide to take 20 weeks on an extended program. That means you've got 6 weeks left. Right? You have to take that 6 weeks within a 5-year period. Is that what you are saying?

MR HOUSE: Within that -

DR SENATOR: Within that, yes, after you've had the opportunity - subject to the granting of approval of the program - to add it to the 13 weeks that would then become available to you at the end of the subsequent 5 years.

MR HOUSE: I'm instructed that that's correct, but you have the opportunity to add it to the next 13 weeks when that becomes available.

COMMISSIONER WATLING: So it says it has to be taken within 5 years.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. So, for example, 10 years I take 20 weeks off in the eleventh year?

MR HOUSE: Yes.

COMMISSIONER WATLING: Righto, and I've got 6 weeks swinging. Does that 5-year period start from the end of the 10-year period and you've got to take it within that, so that means you've got to take that 6 weeks prior to being eligible for the next lot.

MR HOUSE: If it's got to be taken within 5 years you can't add it to the next lot.

DR SENATOR: Why not?

MR HOUSE: Because it's got to be within the 5 years.

COMMISSIONER WATLING: That's exactly the point I make. You're right.

DR SENATOR: Can we seek an adjournment to discuss this. Got to get it right.

MR HOUSE: Would it be possible to seek a short adjournment, sir?

COMMISSIONER WATLING: Yes, I think so. And you can see the point I'm making?

MR HOUSE: Yes, -

COMMISSIONER WATLING: It says -

MR HOUSE: - I can see it.

COMMISSIONER WATLING: - and you're telling me that it's got to be taken within the 5 years so it certainly can't be added to the next 13 weeks. So that 6 weeks swinging has to be taken prior to the next lot accruing.

MR HOUSE: Because he's not entitled to get it - well under our words.

COMMISSIONER WATLING: Because it says quite clearly here that - it says: provided that any unused entitlement is to be available to be taken within 5 years of accumulation, so the 6 weeks examples that's swinging has to be taken in that block and it's not carried over to the next block.

MR HOUSE: That was my understanding, but I need further instructions.

COMMISSIONER WATLING: Righto. Well, we will adjourn for a short moment.

#### SHORT ADJOURNMENT

MR HOUSE: During the short adjournment, my instructions are that it is correct that any unused entitlement should - well must be used within the 5 years of accumulation of that entitlement. The - an example given go me is a situation where in the eleventh year, 20 weeks of sabbatical leave entitlement is used leaving 6 weeks in the balance. During year 15 the medical practitioner may apply for the first 13 weeks to be used in year 16, plus a residue of 6 weeks at the end of year 15, so it's possible that they could use the residue right at the end abutting the entitlement to a further 13 weeks. But it's not intended that the residue would be used after the next entitlement accrues.

COMMISSIONER WATLING: Well that still means it's still got to be taken within the 5-year period.

MR HOUSE: Yes, that was my understanding but as -

COMMISSIONER WATLING: Now if it's got to be taken in that period, how it can be added to, even if it was abutting it?

MR HOUSE: Well it's made - well the -

COMMISSIONER WATLING: Because you'd have to apply for six -

MR HOUSE: - it could be so arranged that the 6 weeks is taken immediately prior to the entitlement to a further one and a

COMMISSIONER WATLING: Well it couldn't work that way, could it, because you wouldn't be able to apply until after the fifteen year - until the third block had started?

MR HOUSE: Well as I understand it, you can put in a program ahead - in fact, it was 6 weeks - 6 months -

DR SENATOR: 6 months, yes.

MR HOUSE: - 6 months ahead - or is 6 months ahead at the moment that you need to put in your proposed and we've -

COMMISSIONER WATLING: Even when you haven't accrued the entitlement.

MR HOUSE: As I understand it you may do so. You may foreshadow - yes, the clause on - up in (d)(ii) we're saying: submit such a program not less than 3 months prior to the requested date of such leave.

COMMISSIONER WATLING: Yes, but that doesn't mean you can submit it prior to the accrual date.

MR HOUSE: Well with due respect, sir, -

COMMISSIONER WATLING: You're not eligible -

MR HOUSE: - if I was not eligible for recreation leave until the 1st of October, I could put in an application now -

COMMISSIONER WATLING: We're looking at sabbatical leave. Most recreation leave clauses have a provision that says you can apply 6 months before or 6 months after. Right? It contains flexibility of when you can apply. Now, I can understand where you're coming from as the example, but it's probably not a good example because annual leave picks up this applying before the accrual date in lots of areas, but - and usually it's 6 months before and what have you. It varies from award to award. But we're talking about a clause that hasn't got any specifics in it -

MR HOUSE: Well -

COMMISSIONER WATLING: - and I'm saying, can you apply 6 months before the accrual date?

MR HOUSE: Well (d)(ii) says that you must apply -

COMMISSIONER WATLING: Yes.

MR HOUSE: - not less than 3 months.

COMMISSIONER WATLING: Before you -

MISS COX: Before you go.

MR HOUSE: It's doesn't say accrual day but -

COMMISSIONER WATLING: No, that's right. It's before you go on the thing and that might be some - that could be 6 or 12 months after the accrual date - after you've accrued it.

MR HOUSE: Well the award - our proposed claim doesn't - it's not again imprecise, but as I understand it, custom and practice -

COMMISSIONER WATLING: No, we're looking at what - don't worry about that with me. I like to look at what the words say, like, I see so many disputes about what the words say in an award and that's why I get so toey about it because I think we could eliminate most of the disputes if the clauses in awards clearly express what was the spirit and intent rather than someone coming along after it's all up and running and saying, 'Well, it was intended to this'. I like to get it sorted out before we get into it, you see. That's probably why I get a bit toey on the words because I think I'm in the business of preventing industrial disputes as well as settling them and certainly, if you read that, it certainly says that you have to submit it no less than 3 months prior to the date of leaving, but it doesn't say 3 months prior or 6 months prior to the date that you've even accrued it. You haven't got it to apply for it. You're not eligible for it. You're not eligible until after you've finished 5 years - completed 5 years, so how can you apply when you're not eligible.

MR HOUSE: Well I can't bring to mind a set of precise words at the moment.

COMMISSIONER WATLING: No, no - but I'm just trying to sort of make the point that I still think you will be required to take the 6 weeks prior to - if you look at those words.

MR HOUSE: Yes.

COMMISSIONER WATLING: Because you'll get - and you'll have to take those 6 weeks - you'll have to apply 3 months prior to the end of the term, so you'd come back 6 weeks, right, that's your 6-week period, and then 3 months before that, you've got to apply for it so there's four and a half months before you - that you've had to apply for it, even before you accrue the next lot. Now if there was a provision there to say, well you can apply before the accrual date, it might be different.

DR SENATOR: Yes. Well we've got this - that period may be reduced under those circumstances so there is .... flexibility there. But we haven't addressed the .... Anyway we'll take it away and ....

MR HOUSE: Again, could I take that on board, please?

COMMISSIONER WATLING: Righto. No worries.

MR HOUSE: If I may now turn to the following page, examination leave, and in (a) we propose the wording to be slightly varied: an employee who is undertaking study in

accordance with subclause 26(b) of this award - and applies as stated. We don't believe that it is necessary to distinguish it there between the trainee medical practitioner and others who may be required to attend examinations relevant to our - relevant in our claim as spelt out in clause 26(b), which I remind the commissioner is the study course leading to a higher or senior qualification as defined or a Fellowship of Australasian College of Emergency Medicine or a Fellowship of the Royal Australian College of Medical Administration or a masters degree in health or business administration or in respect of a qualification or the acquisition of skills and knowledge which when obtained would be relevant to the needs of the health service facility, so we're extending the scope of examination leave beyond just trainee medical practitioners.

Now in the case of a part-time employee we're proposing that a proviso that where the examination coincides with the ordinary hours of work of a part-time employee, that employee shall be paid for such coinciding hours. So that if the exam doesn't occur in their ordinary part-time hours then it's a matter for them, but if it's an approved course and the exam occurs either wholly or partly during the part-time employee's ordinary hours, those - that part of the exam that arises during the - those hours would be granted as leave.

And we continue on with the proviso, the second proviso, which probably better reads:

PROVIDED FURTHER than no payment shall be made in respect of leave under this clause coinciding with an employee's rostered day off.

COMMISSIONER WATLING: Would it be a rostered day off?

MR HOUSE: Well, it may be if the part-time employee is a rostered employee, or a full-time employee, but in terms of part-time - or the person may be a daily employee on part-time hours.

COMMISSIONER WATLING: So, we're talking about all employees here?

MR HOUSE: Yes. All employees. The second proviso hopefully covers both.

COMMISSIONER WATLING: All employees?

MR HOUSE: Yes. Do you wish the insertion of 'all'?

COMMISSIONER WATLING: Well, I think we had better. There are two provisos here, so you start off talking about the part-timers, maybe it should go on to provide that 'no employee shall be paid ...'



MR HOUSE: Yes.

COMMISSIONER WATLING: So that picks up all, sort of. 'No employee shall be paid in respect of leave under this clause ...'

MR HOUSE: Now the next clause, sir, as I indicated at the outset, 29 - Committee Leave.

Having a further look at the position classification standards last night it returned to our minds that these sorts of activities are included in the group standard for medical practitioners, specifically in the definition in the group standard, and there is a series of references that could encompass this.

They are:

(e) Participation in the planning coordination and conduct of medical, scientific and educational research activities including participation in meetings to report and review findings and the preparation of material for publication or presentation.

(f) Participation and attendance at meetings of health service facility agency and health regional board and other health-related service committees, sub-committees, working parties and panels (however titled) approved by the controlling authority.

(h) Participation in and attendance at regional medical staff counselling activities; and

(i) Participation in -

- and again I have missed one in the correction - it says 'review panel' but it should read:

- unpaid professional issues panel (as defined) as provided for under Clause 7 of this award.

So that in the light of that arrangement, or that provision, it is our conclusion that the committee leave claim is redundant.

COMMISSIONER WATLING: Right.

MR HOUSE: In terms of 'Recreation Leave' we would envisage that the same words as provided for for 'Study Leave' would be appropriate to replace the first proviso under (a), and I will just repeat that:

PROVIDED that such leave and payment for such leave for a part-time employee will be calculated pro rata in accordance with the ratio of part-time ordinary hours worked by that employee to the ordinary hours worked by an equivalent full-time employee.

So that's one of the simpler pro rata approaches.

If you turn to page 41 - sorry, yes, that's right, page 41 - Clause 32 'Sick Leave'.

To be more precise in paragraph one, subclause (a), we'd suggest that we change 1.66 to 1.2/3rd days, and then add a proviso in the place of the existing immediately following proviso:

That such leave and payment for such leave will be calculated pro rata in accordance with the ratio of part-time ordinary hours worked by that employee to the ordinary hours worked by an equivalent full-time employee.

COMMISSIONER WATLING: For whom? For part-timers?

MR HOUSE: Yes, for part-time employees.

COMMISSIONER WATLING: So, it will read:

PROVIDED that for part-time employees such leave and payment for leave ...

MR HOUSE: Yes.

Now we thought it was redundant, overstating it to say, that if they get sick when they are not required normally to attend work they won't receive sick leave, because if you get sick on the weekend then you don't get sick leave.

COMMISSIONER WATLING: Right, so you want something taken out, do you?

MR HOUSE: Sorry, no. It's just - I am saying there is nothing to be taken out - but it's not an exact pro rata thing like the recreation leave, it is slightly different in that you only get sick leave when you are sick at work.

So, only the one proviso there.

The next one, sir, appears at page 70, and that is the claim in respect of 'Bereavement Leave, clause 34, and in relation to (a) we propose at the top of page 71 to replace the first proviso with the same words as we're proposing for the proviso in clause 32 - Sick Leave, and that would be:

PROVIDED that for part-time employees such leave and payment for such leave will be calculated pro rata in accordance with the ratio of part-time ordinary hours worked by that employee to the ordinary hours worked by an equivalent full-time employee -

COMMISSIONER WATLING: You have a bit of a problem with the next one, haven't you?

Say, for example, there was a death - and that's the PROVIDED FURTHER' - say you have got a death and then they are in fact - the death occurs on the Saturday, they are not rostered on the Saturday, and then my question will be whether they are entitled to get 3 days compassionate leave.

Is it 3 days because they have the Monday, Tuesday and the Wednesday off, or do they have to take the Saturday, Sunday and the Monday?

MR HOUSE: Yes, well subclause (a) says 'leave up to and including the day of the funeral', so I would think it would be the 3 days -

COMMISSIONER WATLING: It would be the Saturday, the Sunday and the Monday.

MR HOUSE: If the funeral is on the Monday, and if they are not rostered on the Saturday and Sunday, but on the Monday they would only get the Monday.

COMMISSIONER WATLING: That's right. Fair enough. And then you go to your 'PROVIDED further, right, that no payment ... So, who are we talking about here? That no employee shall receive a payment?

MR HOUSE: Yes. So, it should be 'no employee shall receive'

COMMISSIONER WATLING: '... payment in respect of the employee's rostered day off'.

MR HOUSE: Well if they're not on the roster it doesn't apply.

It's been pointed out to me that not more people on rosters, but we say if you're not on a roster that proviso wouldn't apply.

COMMISSIONER WATLING: But then again what is a roster? A roster is a document.

MR HOUSE: So I saw in the dictionary.

COMMISSIONER WATLING: Yes, we've had this big argument about rosters in the Nursing Homes Award.

MR HOUSE: Mm. Yes, you reminded so I went and had a look. In fact it's got military origins my dictionary says.

COMMISSIONER WATLING: Yes.

MR HOUSE: Well if the person is not on a roster -

COMMISSIONER WATLING: Well if they're not rostered for work or they're, you know, it depends on whether you talk about a rostered day off, the chart, the piece of paper, not having them working that day or whether you're really saying that if you - if you're not - if you're not working that day you just don't get paid for it. It mightn't be - see I noticed a couple of times in this document we're using rostered day off - we've got into the jargon of a rostered day off but we're really talking about if they're not at work. It - it mightn't be rostered off, it might be they never work that day.

MR HOUSE: Yes, well I'd assumed that there is the chart and on that day your name doesn't appear on the chart.

COMMISSIONER WATLING: I think that's the employer's argument that there will be a chart - they're a shift chart.

MISS COX: That's what a roster is, yes.

MR HOUSE: Oh yes, we've - we were waiting for that one - with baited breath. Well Saturday and Sunday for ordinary time, ordinary worker, I wouldn't say is a rostered day off for me for example.

COMMISSIONER WATLING: No, I agree. It's a day on which you normally wouldn't work.

MR HOUSE: But of course in the building industry now they have these rostered days off -

COMMISSIONER WATLING: That's right.

MR HOUSE: - that there wouldn't be a piece of paper on the wall.

COMMISSIONER WATLING: Yes. All you'd do too with people accruing extra time to get an RDO - a rostered day off -

MR HOUSE: Yes.

COMMISSIONER WATLING: - for working a 38-hour week.

MISS COX: Or an ADO.

COMMISSIONER WATLING: Yes.

MR HOUSE: But there wouldn't necessarily be an employer's roster, there might be something in the union journal saying -

COMMISSIONER WATLING: Yes. Well we're really talking about if they don't get any - that no employee shall receive payment in respect of those days if the employee would normally not be working that day.

MR HOUSE: Yes.

COMMISSIONER WATLING: I - that's what we're really talking about. But it's just a matter of words, that's all. The principle is reflected there.

MR HOUSE: Now finally I - in this part of our submission, sir, we debated and decided that we prefer to keep a clause in stating leave entitlements part-time employees, so that someone that's wanting to look at that particular aspect of the award there's a central reference point.

COMMISSIONER WATLING: Well I'd have to say to you then if you wanted to do that -

MR HOUSE: Mm.

COMMISSIONER WATLING: - there is a great need to put in in respect to what leave this clause is applicable -

MR HOUSE: Yes.

COMMISSIONER WATLING: - because other leave entitlements from what you've said to me today won't be applicable and therefore which one sort of takes supremacy over the other.

MR HOUSE: Mm.

COMMISSIONER WATLING: So if you're saying that leave entitlements part-time employees in respect of which clauses shall this formula be used?

MR HOUSE: Well I was going on to say whether this meets the commission's views that we'd have a clause (a) - provisions applying to part-time employees are specified in the respective clauses of this award and that should be, and are as follows, and then we would list the clauses and the title.

COMMISSIONER WATLING: Right.

MR HOUSE: Clause 25 - conference leave, and so on.

COMMISSIONER WATLING: Mm.

MR HOUSE: And then we - it occurred to us last night there was no discussion about holidays leave.

COMMISSIONER WATLING: No.

MR HOUSE: I think you reminded us of it yesterday when we were -

COMMISSIONER WATLING: I asked you a little question. I thought you might have picked it up.

MR HOUSE: So we're proposing at this stage a subclause (b) where a part-time employee's ordinary hours of work coincide with any of the holidays prescribed by Tasmanian State Service Regulation 3(2), then a part-time employee will be paid in accordance with their ordinary hours for that day. And then -

COMMISSIONER WATLING: Had they been at work?

MR HOUSE: Yes.

COMMISSIONER WATLING: Mm. Right.

MR HOUSE: Provided that if the part-time employee is required to work on a public holiday then he/she will be entitled to the appropriate penalty payment specified in clause 17 of this award.

COMMISSIONER WATLING: Right. Well we don't have any public holidays in this award do we?

MR HOUSE: No. But there is a reference -

COMMISSIONER WATLING: And you don't have any public holidays in the regulations do you?

MR HOUSE: State service regulations?

COMMISSIONER WATLING: I think you get the - don't the public service get their public holidays from the Bank Holidays Act?

MR HOUSE: Well we started off by using an act of parliament and proclamation - public holidays provided for by act of parliament and proclamation and then we picked - having a look through we saw in another part of our award and possibly other awards that it's styled as we put in there.

COMMISSIONER WATLING: Mm. Well you've got to appreciate a lot of those went in by consent and I'm not too sure how accurate some of these are, because we don't have a public holidays act in this state and that you note - you probably noted in all the award restructuring in the private sector all those clauses have changed from public holidays to a holiday with pay because the award system doesn't determine public holidays, nor do we have a public holidays act. We have a Bank Holidays Act that seems to affect insurance offices, banks and - and the public service and certainly the shop trading hours. So -

MR HOUSE: Well we though - oh, I thought - Dr Senator didn't - that perhaps we'll list the public holidays but then you've got different public holidays in different parts of the state.

COMMISSIONER WATLING: Well, yes, that's why the other awards of the commission don't list public holidays, they list holidays with pay and then when the government wanted to change the public holidays for up north they found that they couldn't because it was contained in the award. And it was a holiday with pay in the award.

MR HOUSE: Mm.

COMMISSIONER WATLING: And that's why some unions continued to race along to the commission to make sure that all the holidays with pay were listed in the awards so the government couldn't change it.

MR HOUSE: Well I think we would prefer the same sort of approach. As to the exact wording, I'm not expert enough on that at this stage.

COMMISSIONER WATLING: No, well it's - but I think it's good that you understand that we don't have a public holidays act. And a lot of awards did have the heading public holidays. But certainly in my area I said that this commission doesn't determine public holidays - it determines award holidays with pay and they're listed.

MR HOUSE: However -

COMMISSIONER WATLING: Anyway you've decided which way you should jump on that. There's -

MR HOUSE: Well however the intent is -

COMMISSIONER WATLING: - they're good arguments both ways I would think.

MR HOUSE: - if a person normally works on the day in - somehow declared to be a public holiday then they're entitled to be paid for that day.

COMMISSIONER WATLING: Yes.

MR HOUSE: That's the intent. If they're not working on -

COMMISSIONER WATLING: Yes - at a certain rate.

MR HOUSE: Yes.

COMMISSIONER WATLING: Yes.

MR HOUSE: And if they're not working on that day - normally it's one of their allocated days, then they wouldn't be paid.

COMMISSIONER WATLING: They don't get the money. Yes, well look -

MR HOUSE: That's -

COMMISSIONER WATLING: - that's the standard principle.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. But the - and of course - but at the moment if we don't have holidays with pay in the award and keep in mind that you won't be able to refer to them as public holidays, but they'll be listed holidays with pay.

MR HOUSE: But if my memory's correct in terms of, I think, annual leave, that if a public holiday, however described, occurs during your annual leave, it's added on to the annual leave.

COMMISSIONER WATLING: Yes, but I think that's something that has to be taken into consideration. I've always been very keen to point out that when it comes to an award that has listed holidays with pay, we're not talking about public holidays, we're talking about if they're on leave on a day on which a holiday described in the holidays with pay clauses arises, then they shall get -

MR HOUSE: Yes.

COMMISSIONER WATLING: But this - but in the public sector over the years they haven't listed these days you see, and then they've talked about public holidays. So if they're talking about public holidays that means they're divorcing them from the award. If they're putting them in the award they're talking about holidays with pay.

MR HOUSE: Yes.

COMMISSIONER WATLING: So you've got to - you might have to be mindful of that depending on which way you jump.



MR HOUSE: Yes. Well it's probably not relevant, but in the Commonwealth the Department of Industrial Relations issues a circular that sets down what days are to be observed as public holidays for the purposes of the Commonwealth Public Service.

COMMISSIONER WATLING: Yes. But of course in New South Wales they have a Public Holidays Act.

MR HOUSE: yes.

COMMISSIONER WATLING: In fact nearly states in Australia have a public holidays act - well we don't. We have a Bank Holidays Act which is very limited and that's where the government get its charter to give state servants their holiday.

MR HOUSE: Now I ran out of time - or certainly I was against time - but I was going to have another look at whether there was a suitable provision that we might put in about the situation where people revert in terms of their leave entitlements - revert between from full time to part time and vice versa, but I'm sorry I haven't got any further with that.

We - our approach to part-time employment has been to facilitate it but, as I've said before, make it a vehicle for casualisation and I just - it just occurred to me last night, we've also not, and we wouldn't propose to put in the various restrictions that apply in the Commonwealth where the employer has to submit regular returns as to who is - who is working part time and how that affects full-time positions and all that sort of hauff.

We don't think that's structurally efficient. It might be at our peril, but I think it reinforces our submission that there should be some limits on, you know, the times that - well minimums and the times that medical practitioners can be employed.

COMMISSIONER WATLING: Like in the banking industry where a part-timer can only work so many hours, for example.

MR HOUSE: Well minimum - we say - as we said, 40 per fortnight or 20 - 30 per fortnight depending on the group. In the Commonwealth again there's a maximum of - it's usually 30 hours. We don't see that that's really structurally efficient because if a person wants to work 4 days a week then that's over 30 hours and they wouldn't be able to work four.

But our main worry, and I can reiterate this, that we are very much opposed to this being a vehicle to undermine the award by - by way of the think edge of the wedge for casualisation which occurs quite frequently in some other places, not that our award seems to stop it.

Sir, if I can now return to where we were - and we were at the end of - of perhaps the leave section and - and that was on page 71.

COMMISSIONER WATLING: Now you've got this document on computer have you, Mr House?

MR HOUSE: Yes, sir.

COMMISSIONER WATLING: So any of these alterations that you've made -

MR HOUSE: Yes.

COMMISSIONER WATLING: I take it that next time you're going to ask us to delete certain page and insert new page?

MR HOUSE: Yes, I was going to do that on the last time, but there were so many changes -

COMMISSIONER WATLING: Right.

MR HOUSE: - I put the whole document, but rather than continually have (h) replacing (h) I will endeavour to provide suitable replacement pages.

COMMISSIONER WATLING: Right, so we can still work with this document?

MR HOUSE: Yes. And probably still use the italics or perhaps an underlining for this issue or -

COMMISSIONER WATLING: Yes.

MR HOUSE: - to identify -

COMMISSIONER WATLING: Yes.

MR HOUSE: - this latest round of changes.

COMMISSIONER WATLING: Yes.

MR HOUSE: Or bold?

COMMISSIONER WATLING: Bold is certainly a lot easier.

MR HOUSE: Yes.

COMMISSIONER WATLING: It stands out very quickly.

MR HOUSE: Good. We've already - discussed briefly clause 36, but obviously this - this clause is designed to place the

onus on the employer for maintaining continuity of service when employees take leave. I'm instructed that there occasions where medical practitioners are reluctant to take leave due to the - a lack of adequate relief, but at the same time face probably in the future, if not now, the possibility of losing the leave entitlements if they're not taken within a certain period, so that we're anticipating a possible claim from the other side and if that - that claim was successful we believe at least greater than exists at the moment should be placed on the employer to ensure that there's continuity of service provision so that there's less pressure on our members not to take leave.

We've also provided for employees sharing a job to provide relief for each other as far as possible.

COMMISSIONER WATLING: No we don't have job sharing in this award and I haven't struck it thus far - what does that mean?

MR HOUSE: We put - I know there was a deficiency, sir, in that we hadn't spelled out what conditions in job sharing is, but if you go to - I'm reminded of clause 38.

COMMISSIONER WATLING: Yes. Right - job sharing.

MR HOUSE: Again it says at the end there, employees sharing a position will agree to provide relief where - where ever practical for periods of leave or absence of other employees sharing their duties subject to clause 36 of the award. Again this is - we would see as structural efficiency that if the employer is cooperating with job sharing then the job-sharing employee ought to cooperate with the employer as far as possible and - in the relief - in relief situations.

COMMISSIONER WATLING: Mm - that poses some interesting questions. I'm just jumping between 36 and 38. So if you've got a job-sharing arrangement and you have a position within the state service - a state service position - you're saying that these two people would actually have the same position number? And if they're sharing the job, do they share the conditions?

MR HOUSE: Well yes, and each of them would be a part-time employee.

COMMISSIONER WATLING: Right. Now let's follow that through. The concept of job sharing is obviously two people sharing the one job.

MR HOUSE: Yes.

COMMISSIONER WATLING: Prima facie should have the same position number and they share everything.

MR HOUSE: Yes.

COMMISSIONER WATLING: Do you have genuine job sharing in the hospital or do you have two part-time people employed separately to - to carry out the same or similar work?

MR HOUSE: Well my understanding - and I don't have a close understanding here - but in other places you have two doctors sharing the one position as part-time employees. Their conditions of employment are that of part-time employees.

COMMISSIONER WATLING: Yes. I'd understand that.

MR HOUSE: Now the - in another place because of staff establishment restrictions, and they wanted more than one psychiatrist in this case available in the system, it suited both management and the employees as it happened - I'm probably not answering your question - but - that the, if you like, the duties be shared of that position. It gave two different practitioners with two different perhaps areas of skill which couldn't have been employed before because of the - it's only the one position there was no chance of getting another position - and as to who owned the position I think it was the original incumbent who agreed to work part time so that they could have another specialist and so the other person was presumably unattached.

COMMISSIONER WATLING: And do they - are supposed to communicate between themselves to arrange their own hours or does the employer say, look I want you to work 40 hours or 20 hours and I want you to work 16 hours? Or does the situation occur whereby there's a 38-hour a week job there and the two people decide amongst themselves what hours will be covered by the employee - or the two employees?

MR HOUSE: Well I think - I'm not sure what the formal situation is but I think there was something mutually agreed between management and the employees concerned as to how -

COMMISSIONER WATLING: So what's the difference then -

MR HOUSE: The - certainly the 38 hours would have been covered -

COMMISSIONER WATLING: Yes.

MR HOUSE: - that - but how that mix was made up and what days and what hours would be -

COMMISSIONER WATLING: Is it true job sharing as we know job sharing in the industrial arena where you take one position and you work it out amongst yourselves who covers what hours?

Or are we using job sharing in the loosest possible way here? You see, we could have a situation where we have just got two part-time employees covering the same job, which is not necessarily job sharing.

MR HOUSE: Well, I think, as I understand it, there's let's say a 38-hour week job to be performed, and the employees in consultation with management would work out how that work is arranged. But our award doesn't say that, obviously, but I'm not sure whether we would want to be terribly prescriptive as to - I'd have to seek instructions - to put too many restrictions on how that -

COMMISSIONER WATLING: I'd like to know - if you are going to go ahead with this - I'd like to know what job sharing is, how you define job sharing, and what are the rights, privileges and obligations on both sides, and the people sharing the job.

MR HOUSE: Right.

COMMISSIONER WATLING: Because at the end of the day we may be just talking about two part-time employee full stop that are just sharing the one - that just happen to be carrying out duties in the same area - rather than the whole conceptual thing of job sharing.

MR HOUSE: Yes. I'm sorry, sir, what was the last - what is job sharing, rights, privileges and obligations on both sides - and what was the third one, please?

COMMISSIONER WATLING: And the people sharing the job.

MR HOUSE: We've only put the one in that they have got to cooperate and relieve each other.

COMMISSIONER WATLING: Yes, but we have to start off with a concept first. What is job sharing? Because we are introducing job sharing into this award. What is job sharing? How does it work? Who initiates it?

MR HOUSE: Mm.

COMMISSIONER WATLING: All those types of things. You know. And it seems from what you have written here that you're not sharing the wage rates or the conditions that go with the position.

MR HOUSE: No.

COMMISSIONER WATLING: They are separate part-time employees. So they are not sharing sick leave ...

MR HOUSE: It's allowing two people to be employed, or perhaps even more, where normally there would only be one.

COMMISSIONER WATLING: Yes. So, does that really need - if they were straight part-time employees there would be no need to have any prescription in the award then, would it, because there would just be certain people employed - two part-timers to do the job.

The only reason I am querying it is, as soon as I see job sharing to me it is a different concept, and I am trying to find out whether you are really introducing this concept of job sharing or whether you are really just talking about part-time employees, in which case you don't need to have anything about job sharing.

MR HOUSE: Yes, well I wondered about that myself. You know, if a sensible approach is taken, then the part-time provisions allow -

COMMISSIONER WATLING: It might just be the employer employs two part-time people.

MR HOUSE: Yes.

COMMISSIONER WATLING: But these two part-timers may just be looking after the same or a similar area of work.

MR HOUSE: Mm.

COMMISSIONER WATLING: Then you don't have to get into the concepts because concepts of sharing the position might also mean sharing the wage rates, sharing the benefits, sharing everything; because in the truest sense -

MR HOUSE: Yes, sharing the same furniture and phone.

COMMISSIONER WATLING: Well, that's right. And it certainly could mean sharing the annual leave, it could mean sharing the sick leave, and those people who are job sharing work it out between themselves.

MR HOUSE: Mm.

COMMISSIONER WATLING: In the true concept of job sharing the employer really doesn't have much say in it, as long as those two people provide coverage for that position.

We may be really talking about part-timers, I think.

MR HOUSE: Yes.

COMMISSIONER WATLING: Anyway, food for thought there.

MR HOUSE: Thank you. Well, going back to the relief arrangement, again we've got a provision there where problems

arise - sorry, that's at the top of page 72, the proviso - where problems arise alternative provision of adequate relief, we again consider that the Professional Issues Panel should be available to advise on the need for relief.

COMMISSIONER WATLING: Can we just go back one bit. It says here that, 'PROVIDED that job sharing employees will agree to provide relief'.

Is it policy and practice that you believe that employees should find their own relief, or do you think that's the responsibility -

MR HOUSE: Well, as far as practicable the job sharing employees should contribute at the very least to the maintenance of the provision of service. Like, the situation -

COMMISSIONER WATLING: So you are saying that they have to provide their own relief before they can go off, not the employer? If you are saying that, doesn't that contradict the previous paragraph?

MR HOUSE: No. What we are saying is - let's assume there are two people sharing the job - and one wants to go on leave, then as far as practicable the other employee organises his or her working arrangements to provide the relief.

COMMISSIONER WATLING: So there is no responsibility on the employer to provide relief there?

MR HOUSE: Well, we do include, even in the normal situation, consultation with the employee concerned or his or her supervisor. The intent -

COMMISSIONER WATLING: Yes, but we are now making this an award provision, you see, and of course consultation will go on. We are saying this is now law, it's now law that an employee has to provide his own relief, irrespective of what the employer does, or the employer's rights in this area, the employee by the award is required to do it.

MR HOUSE: Wherever practicable.

COMMISSIONER WATLING: So is the employee in breach of the award if they don't do this?

MR HOUSE: Well, I am reaching the view that job sharing is more of a problem than it is worth. That's the answer to that one.

COMMISSIONER WATLING: Oh, well, point taken. In most other countries the employers are finding the same problem.

In fact, in some other countries in certain areas that I have had a look at the employer is a bit annoyed that the job sharing people are doing their own thing and the employer has no say in it because they are operating their own little thing and arranging their own times and hours of work and everything, and as soon as the employer wants to contribute something they say, well it is our job, mate, we're arranging it.

MR HOUSE: I've just got a book from the Department of Industrial Relations about industrial democracy which I am going to have a look at.

COMMISSIONER WATLING: Oh, yes, that's good stuff. It's in the eye of the beholder.

MR HOUSE: Clause 37 - Leave Without Pay, as I understand it, reflects the state service provisions, so that it is not a new claim in that sense, but it seeks to put those provisions in the award.

'Job-Sharing' we'll have another look at, and advise you.

Clause 39 - Termination of Employment: as I am sure you are aware the registered agreement currently provides for 1 day's (sic) notice either way.

We now propose a more flexible arrangement where 4 weeks remains, or is the minimum notice, but this may be extended to 12 weeks if the situation requires it.

I think Dr Senator explained earlier in the case that both sides may find it convenient for there to be a longer period of notice so that continuity of service may be maintained.

I know that it is rather an unusual sort of an award provision. Again it is one of those sort of signposts we've put in that a rational approach ought to be taken by both sides so that continuity of service arrangements are taken into account when severance situations arise.

At the moment the award just says 1 month's notice either way, well someone could read that literally and the personnel officer could say, 'Well, you know, we'll give them 1 month's notice and that's it' and they have got to go, or one of our members could say, 'Well, it's 1 month's notice in the award, and I am off'.

COMMISSIONER WATLING: That's what happens in all other areas except it is a week.



MR HOUSE: Mm. Well, the justification for a month is - well, we certainly - our members are largely fortnightly paid employees - so, you know, we would say at least a fortnight's notice either way, if we are looking at the minimum, sir.

COMMISSIONER WATLING: What would happen - just follow this scenario through - what would happen if an employee went to the employer and said, 'I give you 11 weeks' notice that I am going to resign', and the employer said, 'Well, I only require 4 weeks' notice so at the end of 4 weeks you will go'?

MR HOUSE: Well, if that matter is not negotiable, then under what we have here the employer can exercise his or her management prerogative.

So we are not changing really the bottom line, but we're trying to inculcate into the award a degree of flexibility amongst those that are subject to the award and administering the award that that period of notice may be extended for reasons of service provision, I suppose.

It may not be easy a situation of dispensing with someone's service for whatever reason and getting a replacement.

I'm instructed it is normally more than 4 weeks that process. Normally more than 3 months, I am indeed told.

COMMISSIONER WATLING: Right. Thank you.

MR HOUSE: 'Abandonment of Employment' again, as I understand it, reflects the state service provisions, and we believe that is appropriate to put in the award.

Again, 'Employee Organisation Meetings' merely reproduces its clause 22 in our current award.

The next one, '42. Grievance and Dispute Settlement Procedure', this is a new clause which should be in all modernised awards, and is a requirement of award restructuring in some jurisdictions.

We've endeavoured to follow the format that applies in Tasmania, but have incorporated a mechanism to assist the resolution of disputes over professional issues.

If necessary, all disputes may end up being dealt with by this commission if negotiations between the parties with or without the involvement of the Professional Issues Panel are unsuccessful.

COMMISSIONER WATLING: What would be the charter then for the Professional Issues Panel if it dealt with a matter like that?

MR HOUSE: Well, the charter, as I perceive it, is that the Professional Issues Panel is a panel that would provide expert advice on the professional matter in dispute to both sides. Hopefully, both sides would have regard to that in their negotiations to try to settle the dispute. However -

However, if the parties are so entrenched or so polarised that they are not prepared to - well, take any account of that panel's views which we'd see in the medical area not to be a great possibility I'd hope, the grievance procedure would go onto the next step. I suppose we've tried to build it in as one of the, you know, steps in the procedure.

COMMISSIONER WATLING: So you're saying that the employee may request this advisory board to have a look at it and then this advisory board called 'The Professional Issues Panel' would give advice to the controlling authority ?

MR HOUSE: Yes, and we'd hope to - if the society was involved - that we would have access to that advice too.

COMMISSIONER WATLING: Well if it was established the society gets a person on the panel anyway - a nominee on the panel.

MR HOUSE: Yes. Or me perhaps. I'm not the society.

COMMISSIONER WATLING: Yes.

DR SENATOR: They may be bound by confidentiality ....

MR HOUSE: Would they? Well I'm sorry, sir, I'm reminded that they may be bound by confidentiality so, -

COMMISSIONER WATLING: It doesn't say that here.

DR SENATOR: No.

MR HOUSE: No.

COMMISSIONER WATLING: Certainly if it ended up in dispute and it came here it wouldn't be confidential.

DR SENATOR: But being a professional issue there may need to be examination of confidentially issues .... to medical ethics.

MR HOUSE: Yes. I'm reminded there are the problems about if a patient records were -

COMMISSIONER WATLING: We've already had this argument in this commission.

MR HOUSE: Well -

COMMISSIONER WATLING: If it comes to the crunch, at the end of the day we'd be looking at the issues rather than the individual patient. We've even been involved in looking at patient's chart with the patient's name obviously crossed off or patient not mentioned in terms of name, but I assure you we've dealt with many of those issues especially on dismissal cases we've had a number that have been involved the way - example, a recent one - a nurse and a patient. Obviously I didn't know the patient's name, but I knew all the circumstances surrounding the problem without knowing who the person was. But any way that's another issue. But that would - I'm very interested in this role of this panel because if they've now going to settle disputes or advise on the settlement of disputes -

MR HOUSE: Well I'd like to say facilitate the settlement of dispute.

COMMISSIONER WATLING: Well the award says they advise.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right? That's what the award says - quite clearly - that they shall advise on issues relating to alleged medical professional misconduct or compromise patient care provided for in clause 42 of this award. So, they have an advisory role and whether or not we may be establishing another area of conflict, because you should have the advisory panel saying something, the employer saying something and then the commission saying something and the employee saying something.

MR HOUSE: Well my instructions in this area are that we're really in the hands of the commission as to -

COMMISSIONER WATLING: Yes.

MR HOUSE: how - what it -

COMMISSIONER WATLING: See, the other thing is too, if we're putting it in the award, this panel is to advise the employer only. Right? So if there is any dispute, the employer gets the message from the advisory panel.

MR HOUSE: Well again we would hope the employer's main objective is to try to settle a dispute rather than exacerbate it -

COMMISSIONER WATLING: Right. Well that's -

MR HOUSE: - and have to bring it to you, sir.

COMMISSIONER WATLING: So that's another thing that I - if it would exacerbate to a dispute I'd rather not put the panel in there.

MR HOUSE: Yes. Well any dispute procedure, in my view, is only as good as the goodwill of the parties.

COMMISSIONER WATLING: Yes. Well I agree with that and I've always held that view -

MR HOUSE: Yes.

COMMISSIONER WATLING: - and it will only work if the parties want it to work.

MR HOUSE: Yes.

COMMISSIONER WATLING: So that's why often these things - these sorts of issues, especially dispute settling procedures, are worked out by agreement rather than being arbitrated because you've got an immediate block there from day one.

MR HOUSE: Yes.

COMMISSIONER WATLING: Because you've got one party opposed to the procedure, well it's never -

MR HOUSE: Well the whole concept -

COMMISSIONER WATLING: It's not going to work if you've got one party opposed to it. Anyway.

MR HOUSE: Sir, conscious of the time -

COMMISSIONER WATLING: Right.

MR HOUSE: - can I quickly move through the facilitative clause.

COMMISSIONER WATLING: Right.

MR HOUSE: Clause 43 is our view of an appropriate facilitative clause for awards covering salaried medical practitioners and is consistent with the wage fixing principles in our submission and a move to enterprise bargaining. Similar clauses have been inserted in federal awards covering medical practitioners and we now have an agreement in the Australian Public Service as you would be aware that has been certified by the Australian Commission. Another is about to be signed for medical practitioners, hopefully, from my point of view, in the ACT and brought to the commission. If I could quickly tender an exhibit.

COMMISSIONER WATLING: Right. This becomes H.17.

MR HOUSE: Sir, H.17 is a decision of the federal commission. There's two purposes in tendering this; one -

COMMISSIONER WATLING: This is the late Jim Sheather?

MR HOUSE: Commissioner Sheather, yes. It was sad news about Commissioner Sheather.

COMMISSIONER WATLING: Yes.

MR HOUSE: This - at your leisure or your associate's leisure - I'd like to be incorporated into Exhibit H.5 - that's the big white folder -

COMMISSIONER WATLING: Right.

MR HOUSE: - in the section dealing with the ACT. This gives the rates post the second three per cent and the two and a half per cent and confirms the rates or - for the community medical people there and the restructuring and work value which I will be talking about later. But for the purposes of this submission, you will see on page 6 of the commission's decision a facilitative clause and I don't put this forward in any way as suggesting that you should automatically pick this up. It's by way of just example that the sort of facilitative clause that we've proposed in other places to other employers for medical practitioners has been seen to be appropriate.

In the area of - the particular area of perhaps potential conflict of - with our friends, it's probably in the area of task broadening and that's on page 7 where we say: an employer may direct an employee to carry out such duties as are within the limits of the employee's competence and training, and we say: with established quality assurance protocol - I'm reading from the exhibit rather than our claim - providing that such duties are not designed to promote deskilling or would invalidate or be in conflict with an accredited training program in a speciality or discipline as defined by the National Specialist Qualifications Advisory Committee of Australia. So, we put certain, if you like, requirements on the multiskilling aspects of award restructuring which we think are necessary in terms of our members.

Now, also in the second subclause: an employer may direct an employee to carry out such duties provided that the employee has been appropriately trained and has maintained an ongoing acceptable competence in the performance of such duties. Now, of course, a doctor may have been trained in all aspects of medicine when he or she originally was registered, but as time goes on all doctors - not only specialists - would tend to concentrate on particular areas, as I understand it, and we wouldn't accept a situation where the employer just comes up

and say, 'Well, you're a trained doctor; you go away and carry out that procedure'. If the doctor felt that he or she - a lack of a better word - and the time's running out - had gone rusty in that area, we don't think it would be fair on the patients either, so the facilitative clause without going through all the rest of it, I think is similar to what applies in Tasmania or what the state government feels is the appropriate approach. The format might be a little bit different, but in terms of the task broadening we make the strong submission that the sort of construction we've put on task broadening should be expanded upon or elaborated upon in the way that we've done to suit this particular award. If the commission pleases.

COMMISSIONER WATLING: Righto. Thank you. We'll we go off the record for a moment and just look at our program.

OFF THE RECORD

COMMISSIONER WATLING: This matter stands adjourned until 10.30 on Wednesday the 17th of March. Thank you.

HEARING ADJOURNED