

**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, 10 February 1993  
Continued from 23/12/92

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER WATLING: I'll take appearances please.

**MR J. HOUSE:** If the commission pleases, I appear with **DR GORDON SENATOR** for the Tasmanian Salaried Medical Practitioners' Society.

COMMISSIONER WATLING: Good, thank you.

**MISS J. COX:** If the commission pleases, JANE COX, representing the Minister Administering the Tasmanian State Service Act. With me this morning is **KATE PAMMENTER**.

COMMISSIONER WATLING: Good, thank you. Any preliminary matters?

MR HOUSE: The hearing times, sir.

COMMISSIONER WATLING: Yes, well we'll go through till approximately 12.45 or thereabouts and reconvene at 2.15 and adjourn at 4.45.

MR HOUSE: Thank you.

COMMISSIONER WATLING: Now in between last hearing and this hearing I've received correspondence from you, Mr House. How shall we deal with that matter?

MR HOUSE: Well I was proposing, sir, to give a short explanation of the changes which were detailed or summarised, I should say, in the covering letter.

COMMISSIONER WATLING: So should we give it a new exhibit number?

MR HOUSE: Well I'm in the commission's hands, sir.

COMMISSIONER WATLING: Well is this replacing another document?

MR HOUSE: Yes, it's a replacement of H.8, which was a replacement of H.4.

COMMISSIONER WATLING: Yes. So if we made it H.14 then this is the latest up-to-date document and those other - it will supersede those other exhibits which were in the form of a draft award.

MR HOUSE: Yes, that's probably appropriate, sir.

COMMISSIONER WATLING: Right, we'll mark it H.14.

MR HOUSE: As you have indicated, sir, on 28 January I wrote to you advising of changes, including changes we've made to the classification standards which have the effect of reducing

our proposed structure from five levels to four. However level 4 now has six grades instead of five as previously.

Promotion to grade 6 still requires at least 10 years experience as a consultant and assessment against a set of criteria. Having considered the difficulties or possible difficulties with our proposal that the assessment process against these criteria be carried out by an advisory panel, we recognise the potential for conflict with the provisions of the State Service Act and possibly managerial prerogative.

However we believe the selection process for this grade should embody the concepts we have advanced and if this proves not to be appropriate by way of award provisions, we believe that it should be picked up administratively by the selection criteria for senior consultant positions. In other words, if the commission determines that it is inadvisable or inappropriate to impose such a panel on the controlling authority then we would ask the commission to at least recommend that the professional achievements identified in our criteria are relevant to the selection process, given their fundamental underpinning of the work value at the top of the structure.

The other main concern to the society, should the professional issues panel not be adopted as an award provision, is the more or less blank refusal of management to give qualified recognition no non NASQAC post graduate qualifications where these qualifications, we would say, are relevant to the duties performed.

If management chooses to exercise its prerogative in an inflexible way, which we believe has been the case so far, I guess there is little that can be done in this particular area by way of recourse to existing grievance or administrative appeals procedures. So whether it's persuasive on the commission or not we believe the professional issues panel does provide some mediator role in terms of some of the problems that have been experienced in this state and may inject a possible new dimension into the management's consideration of people's qualifications in terms of particular jobs. I know it's a bit airy fairy but we see that something needs to be done in this area and that's the best that we've been able to devise.

As advised in my letter, and in light of your comments last time, we have revised our claim for a loading on temporary employee rates down from 30 to 20 per cent. I'd like to tender an exhibit which sets out our original and revised calculations.

COMMISSIONER WATLING: Right. We'll mark this exhibit H.15, thanks.

MR HOUSE: Sir, you'll see at the top of the page a component that we'd identified as areas of leave that may not be appropriately applied or be available to temporary employees, and that was annual leave, 5 weeks; sick leave, 5.6 weeks, that's based on the hospital doctors, 28 working days per annum in the registered agreement; conference leave, well we had 2 weeks and we're now saying 1 week but at the time we .... in 2 weeks; sabbatical leave, 2.6 weeks per annum and leave loading, which we've estimated and averaged to be worth 0.7 weeks, giving a total of 15.9 weeks per annum. And I calculated that to represent just over 30 per cent of time in a full year.

Turning to our revised components, we've limited it to annual leave, 5 weeks; sick leave, 5.6 weeks and the leave loading, 0.7 and that gives a total of 11.3 weeks, which represents just over 20 per cent of a full year. However we've also had regard to what I understand is the state standard for temporary employees and for consistency sake we now claim 20 per cent on the loading for the base rate for temporary employees for the lack of paid leave entitlements.

In terms of subclause 12(d) where we had, if you like, a penalty for people not receiving their award entitlements being paid out within, what we said, a reasonable time, I did have a look at the concept of waiting time. Now that seemed to me in the areas that I looked more related to where a person is paid in cash at a certain time towards the end of the day, towards the end of the week and that payment doesn't eventuate then, say, the payment was due at knock off time at 4 o'clock and the paymaster didn't arrive till 6.00 and they had to wait around for the pay, then there is a provision that they be continued to be paid that extra 2 hours.

Now I've tried to arrange it, in the case of the situations we're concerned about, the controlling authority has 10 days to pay and if that doesn't eventuate, then the person is entitled to be paid the base salary as if they were working for those 10 days. Unless the commission would me to discuss any of the other changes, I'd propose now to turn to pick up where we were last time.

COMMISSIONER WATLING: Right, I'm in your hands.

MR HOUSE: I think we were discussing the area of our inclusion of provisions from the General Conditions of Service Award and I endeavoured to explain a limited number of instances where we've deviated slightly from the provisions in the GCOS.

In inserting these provisions, as the commission is well aware, we've simply endeavoured to make the Medical Practitioners Award comprehensive. And, as I'll discuss later for the same reasons and in the same way, we've inserted the

commission's decision regarding parental leave in lieu of the previous more limited maternity leave provisions in our registered agreement.

I should indicate to the commission that we do not however take these things for granted, but simply say they are appropriate and at this stage we're not aware of any sound reasons for denying salaried medical practitioners access to either relevant general conditions of service provisions or the parental leave advancements that have occurred in this jurisdiction.

We are aware, of course, that the department intends to pursue such matters as shift work, HDA, MRDA, but we feel that it would be appropriate to respond to those particular issues when we've heard their submission. We simply - or shift work I have some idea but with the HDA and MRDA we're just in the dark over that area of government policy - well I am, I should say - at this moment. We propose to delete those two - both HDA and MRDA from our claim.

I'd now like to turn to our claims concerning leave provisions which we seek to have inserted in the award. And the first one was clause 25 - Conference leave.

COMMISSIONER WATLING: What page?

MR HOUSE: Page 32, sir. Before I do that I'd like to tender an exhibit which sets out what I understand to be the leave provisions.

COMMISSIONER WATLING: We'll mark this H.16, thank you.

MR HOUSE: These data have been assembled from our records in Canberra, some of which could be out of date. I've written to associated organisations to confirm the current situation but have not yet received a complete set of replies. I will, of course, advise the commission and the department if corrections are necessary.

The first page endeavours to summarise the main leave provisions for trainee medical staff in terms of annual leave. There's a mixture there of 4 weeks plus an additional week if a certain periods of weekend work and public holidays are worked. For example, in New South Wales, if 35 Sundays and/or public holidays are worked in a year there's 5 weeks leave and that provision is also reflected in the ACT because of state matching. However in the ACT, not in this document, there's also where community medical officers - I call salaried GPs - are placed on an after hours roster. Irrespective of the incidence of recall they also receive 5 weeks leave.

There's a similar arrangement in terms of people working excess hours in Victoria. If they work outside their standard hours and also 10 weekends there's 5 weeks leave. Queensland it's, as I understand it, a straight 5 weeks; South Australia, 4 weeks or 5 weeks if on roster; similarly in WA; Tasmania the provision that is in the registered agreement just says 4 weeks or 5 weeks if employed in a hospital, which may - well I'm instructed doesn't cover what were previously departmental doctors or doctors in mental health services who are on rosters are only entitled to 4 weeks. In the Northern Territory they've got the most generous arrangement. There's 6 weeks but one of those weeks includes the fact that you work in the Northern Territory and then 7 weeks if rostered for 10 Sundays per annum.

With sick leave I suppose I'm influenced by what's in the commonwealth area which is 2 weeks full pay plus 2 weeks half pay per annum accumulative. But in the Northern Territory there's just 14 working days accumulative - sorry, New South Wales. Victoria, 28 days per annum accumulative; Queensland, 2 weeks full pay plus 1 week half pay accumulative; South Australia, 12 working days accumulative; Western Australia, 2 weeks full pay and 1 week half pay; Tasmania in regard to, as I said before, hospital doctors, 28 working days per annum and doctors in the department appear to have, what I don't understand the particular arrangements that apply in the state service.

I've included long service leave just for the sake of completion, but that's normally not an award matter, although in some states it is provided for in the award, but in the minority of cases. Compassionate bereavement leave - yes, I've hand written a correction for Tasmania, sir, that my reference was to CCH and I'm instructed that what I had there, 13 weeks after 15 years is the provision for, I believe, the private sector. For the public sector, unless I'm corrected, is 13 weeks after 10 years.

COMMISSIONER WATLING: Yes, that's right. I'm not really interested in long service leave anyway.

MR HOUSE: No, I just wanted to give a total picture of what leave people may access. Compassionate bereavement leave, there's no difference between junior and senior staff so I've just put it in the junior area. New South Wales, up to 3 working days per annum; Victoria, up to 2 working days; Queensland, I apologise but I haven't been able to track down what the regulation says at this stage; South Australia, up to 2 days per annum; Western Australia, up to 3 days per annum; similarly with Tasmania and ACT and the Northern Territory and, indeed, the commonwealth.

Study examination leave, New South Wales, a maximum of 4 hours per week for a maximum of 27 weeks per annum and people may

accrue to 7 working days per annum or 14 days per 2 years; Victoria, up to 8 working days per annum; Queensland, there's a provision to attend exams plus have 1 day preparation for each exam; South Australia, 1 week prior to the exam for preparation plus sitting time; WA, 1 day prior to the exam plus sitting time plus 2 weeks per annum study leave; Tasmania, as I understand it, is only time to actually attend the examinations; similarly in the ACT; in the Northern Territory perhaps more generous arrangements because of geographical location have up to 8 hours a week or 4 weeks per annum.

In terms of conference leave, it's only in Victoria that I'm aware of, where the junior staff may, with the approval of management, get up to 3 weeks per annum to attend relevant conferences.

Turning to specialists on the second page, sir, recreation here is 5 weeks in New South Wales; 4 weeks in Victoria; 5 weeks in Queensland with 2 years maximum accumulation; South Australia, 4 weeks or 5 weeks if regularly rostered on call; Western Australia, 4 weeks, 5 weeks if rostered, rostered to work as distinct from being on call; 4 weeks in Tasmania or 5 weeks if employed in a hospital; the ACT matches New South Wales with 5 weeks and that matter was tested in a separate decision by the federal commission in the state matching full bench case; and in the Northern Territory again you get that additional period for being in the northern zone and then that's 6 weeks instead of 5 and 7 weeks if you're on, what's called, the second roster up there.

With sick leave, 14 days accumulative per annum in New South Wales; 28 days accumulative in Victoria plus - we'll be discussing later - 39 weeks impairment leave; Queensland, 2 weeks per annum; South Australia, 12 working days accumulative per annum; Western Australia, 2 weeks full pay and 1 week half pay; Tasmania up to 28 working days plus 12 weeks impairment leave; ACT, 2 weeks full and 2 weeks half; and similarly in Northern Territory the commonwealth standard.

I'll skip the long service leave. Conference leave, New South Wales, 1 week per annum accumulative to 2 weeks maximum; in Victoria I'll I could deduce was a statement that it's at the discretion of each hospital; Queensland, there is nil in that they combine it - it's combined with the study leave provisions, as I understand it; South Australia, up to 5 days accumulative to 10 days maximum; Western Australia, up to 1 week; Tasmania, up to 5 days; and the ACT, up to 2 weeks per annum; again in the Northern Territory they don't distinguish between conference and study leave and sabbatical leave. Well in fact there's no sabbatical leave in the Northern Territory.

So study leave is called study leave in some places and sabbatical leave in other places but I've just defined it as

study leave. New South Wales, 3 months after 5 years accumulative and 6 months maximum. I should have pointed out, sir, that I've endeavoured to identify those ones that are not actually award provisions by an asterisk. They're usually in the administrative instructions rather than even registered agreements. Victoria, 26 weeks after 6 years service - Queensland, they have an arrangement where you can have a choice, 6 months after 6 years service and 4 months thereafter per 4 years service, but if you wish to go overseas that entitlement is halved 3 months after 6 years service and 2 months after 4 years service plus what I'd consider reasonably generous overseas travel entitlements up to first class air fares and those sorts of things.

South Australia - there doesn't seem to be any sabbatical leave as I can - it's only the examination leave of 1 week study time plus sitting time per exam.

Western Australia - 3 months after 5 years with a maximum accumulation of 6 months.

Tasmania - it's 13 weeks after 5 years.

The ACT - 3 months after 5 years, then 6 weeks each 3 years cumulative to a maximum of 6 months. That's also reflected in the Repatriation Hospital system by way of - both by way of administrative arrangements although it will be part of a certified agreement, so-called enterprise agreement, that I'm currently negotiating.

In the Northern Territory - it's up to 8 hours a week or 4 weeks per annum. The purpose of that exhibit, sir, is to give the commission an overview of, if you like, the standards that apply in other jurisdictions.

The current provisions for all leave entitlements for salaried doctors in Tasmania are of course in a registered agreement with this commission entitled the Salaried Medical Practitioners Condition of Employment Agreement 1988.

Dr Senator and I have had some discussions about the origins of why it was put in an agreement. It seemed, as I understand it, an appropriate way to regularise what was largely contained in administrative instructions at the time. I guess - and I'm only speculating here, sir - that this may have partly been because of fears of possible flow-on to other groups. If this was the case we would argue that there are no longer any grounds for such fears.

We say firstly that the leave entitlements reflect the particular duties, responsibilities and activities of the medical profession which include teaching, research and out-of-hours patient management services - service provision.



Second, in those states where leave entitlements are embodied in the award we are not aware of pressures for flow-on to other groups.

And finally, we would say that the commission's principles and the general industrial economic climate and moves towards enterprise bargaining all militate against the chance of flow-on, so we've endeavoured to address the commission's concerns about flow-on in terms of conditions of employment in the principles. We also say that the first award principle - and I'm aware of the different approach - that's probably not the word the commission takes in terms of looking at registered agreements as distinct from actually placing things in the award - but we say that all we're trying to do is put in the award what currently is - is the situation in the registered agreement with some changes which I'll talk about later, but in essence that's what we're trying to do, and we also say that any fears of flow-on are not a reason for drawing back from making the award comprehensive in terms of conditions of employment.

Now as I indicated earlier, we've carefully considered our claim for additional weeks conference leave against the wage fixing principles, the standard in other jurisdictions and the economic environment.

We seek leave to amend the claim to 1 week's leave per year of - but we still claim that that should be exclusive of travel time.

COMMISSIONER WATLING: So do we amend the document?

MR HOUSE: Yes please, sir.

COMMISSIONER WATLING: Right - take me to the amendment.

MR HOUSE: 25(a):

Subject to the provisos hereunder, on application by a medical practitioner, the Controlling Authority shall approve up to one week's -

- instead of two weeks -

- leave per year exclusive of travel time by the most direct means on full pay for the purpose of attending conferences (however titled) concerning medical practice, research, management or education.

COMMISSIONER WATLING: Right. What does 1 week mean - 7 days, 5 days, a working week?

MR HOUSE: Five working days or a working week however that's arranged, but we're only aiming at actually working days. Our argument for excluding travel time goes to the relative - expressed relative geographic isolation - of this state relative to, say, Canberra with New South Wales and Victoria, and the perhaps more limited airline or other transport mode schedules.

However, with the pace of developments in medicine and medical administration, we submit that our amended is more than justified if a practitioner is to keep abreast with his or her specialty or discipline.

We've also added a subclause (d) to what prevails at the moment and that says:

(d) An employee granted conference leave shall within a period of two months after resuming duty arrange to present to a relevant peer professional group details of the knowledge gained during such leave.

This we believe is of benefit to both management and the public health system in terms that - that there is a wider dissemination of information in terms of ongoing trends amongst the medical profession generally. In other words we've tried to maximise the value of the conference leave to the system.

COMMISSIONER WATLING: So they don't have to present it in 2 months - they only have to arrange to present it? So they could arrange to present it a year later?

MR HOUSE: Well I would interpret that clause, sir, that there be a notification of relevant people within 2 months that this seminar if it can be called the seminar would be available so that the person should after 2 months be in a position to present that learned knowledge at a convenient time to those people that would be interested. Certainly I wouldn't have thought that - well in my own case I'd like to give it as quickly as possible so that it's fresh in my mind.

But we - subject to my instructions - would not be averse to limiting the time further if - if that was seen to be appropriate.

Sir, I'm instructed that the procedures of having to publicise these matters through professional bulletins and other literature that doctors would have access, that we would expect that the actual presentation would occur within 3 months after - a maximum of 3 months after the conference ceased, and at the risk of having continual changes to our claim, if the commission so pleases, we could build that in.

But it certainly wasn't our intention to put it away in the never-never, otherwise the clause is meaningless.

I must say, sir, that going through this document again, the more you look at it the more problems you have with it and I can understand your concern so, you know, I just - I'm starting to get extremely frustrated in - in the process even of the last couple of days in trying to make this precise document.

Clause 26 - study leave - on page 33, is a new provision in this award but has precedent in - as I'm instructed - the State Service Act in respect of trainee medical practitioners.

We submit that the - the actual formal inclusion of the study leave provision in the award is appropriate to enable medical practitioners to gain relevant qualifications for career advancement and improved service delivery.

We'd also submit that such leave would be of considerable benefit to the public health system and that the cost impact, either directly or through flow-on, would be negligible. We also say that it's consistent with structural efficiency skills enhancement. That's as a matter of principle, but again if you go to subclause 26(b) paragraph (i) again there's the contention - contentious issue of non-NSQAC qualifications, and in subclause 26(h) our proposal to have the course to be - that's on page 34 - at the end of this clause - access to the Professional Issues Panel in the event of contention about the worth of the study leave - having regard to the difficulties we've had the final decision we see it as still rests with the controlling authority. But I suppose the question of a person's wanting to do an M.BA - an extra professional qualification that's relevant their work - we believe that those opportunities shouldn't be arbitrarily closed off.

If I may now turn to clause 27 of our claim towards the end of page 34, we're proposing in line with the existing arrangements in the registered agreement that there be available 13 weeks paid leave after 5 years and we would argue that that is not inconsistent with standards in most other states. However, where we seek to depart from what's in the registered agreement and other states, we believe that for flexibility reasons that such leave should be able to taken in broken periods of not more than 3 months - three periods of 4 weeks in any 12 months and that service as a temporary employee shall be counted if he or she is made a permanent employee.

Now the possible cost offset there is that if there is a capacity for broken periods, this may remove the requirement for employing locum.

Now the sabbatical leave at the moment is confined to specialists in the hospital setting. We've extended our claim to seek sabbatical leave for all level 4 employees and subject to the approval of the controlling authority, career medical practitioners at levels 2 and 3 who hold a higher qualification, again we see that that in certain circumstances may or should maximise the value of the sabbatical leave to the employer as well as the employee in terms of our new concept of career medical practitioners who wish to advance in that particular stream and have obvious potential to advance.

Now we say that again that part-time employees should be entitled to pro rata paid leave. Later on I'll discuss the clause that - 35 - where we talk about how those leave entitlements might be applied to part-time employees on a pro rata basis.

So I'd like to leave my argument till we get to that. Now, as I've said before, the current agreement restricts sabbatical leave to medical administrators and full-time specialists who - quote: Who are employed in public hospitals and who are actively engaged in clinical practice.

Now, since that clause in the agreement was devised, there have of course been changes in the structure of the central department in terms of amalgamations of departments and changes in service delivery arrangements. There's been developments in public and environmental health and new opportunities for medical practitioners and we believe there should be - as I've said - a more flexible approach to people having at least the opportunity to apply for sabbatical leave. We're not asking for a blank cheque, but we think people should have certain opportunities to at least put a case forward that the sabbatical leave would be a benefit to the public health system.

On page 36, paragraph 2 of subclause of 27(d), we submit that 3 month's notice for the sabbatical leave program should be adequate. It's in the agreement currently, 6 months, and then we further submit that in any event if problems arise the timing may be varied by mutual agreement. Where's the agreement? Now, in the next paragraph, subclause (d), there's again a contentious right to refer a decision of the controlling authority not to grant sabbatical leave to a professional issues panel as defined. Now, in putting that proposition forward, amongst other things, we had regard to subclause (c)(iii) of clause 5 in the registered agreement which is on page 12, and if I may quote: A right of appeal against a decision of the board - and I'm not sure what that is, the Public Service Board or the Hospital Board - not to grant sabbatical leave -

COMMISSIONER WATLING: It can't be the Public Service Board because we don't have one.

MR HOUSE: Yes. Well I thought it was the Public Service Board.

MISS COX: It would have been the Board of Management ....

COMMISSIONER WATLING: The Public Service Board went out in '84.

MR HOUSE: Well, whatever board - the right of appeal against a decision of the board not to grant sabbatical leave shall be established and an employee may appeal to an independent arbitrator. Such independent arbitrator shall be mutually acceptable to the board and the employee concerned. The independent arbitrator shall arbitrate on the merits of the proposed study program only and not upon the entitlement as to the sabbatical leave. The decision of the independent arbitrator in this matter shall be final and mutually binding on both parties. And that's the end of the quote and the paragraph.

Now, we are no longer attracted to the idea of having to set up independent arbitrators with the requirement that there be mutual agreement over who that arbitrator is. We're more - in terms of the current ways of industrial relations - attracted to, you know, the grievance procedures approach, but as we'll discuss later, we believe that there should available a step in that process to have a professional matter assessed by a professional panel.

However, if there is to be no professional issues panel, our preference is for no right of rejection of a study program other than for reasons of the program not being genuine in a professional development sense or that the timing is not consistent with the maintenance of service delivery. However, there - and again, I know that this carries little weight, but that is the situation in the Commonwealth.

However, there should be a limit of say, three months on how long management can defer the taking of the leave, particularly as we've proposed in our claim in some instances that leave would be forfeited if it wasn't taken after a 2-year accumulation period and I anticipate from the other side some submissions on the question of how you can you can accumulate leave, so we want a safeguard built in that as you indicated about the time that might elapse before the report back to professional people might be given. We believe that there should be some limit on management's right to defer the taking of leave.

Further down the page, paragraph 2 of subclause (f), we again say that a person returning from sabbatical leave should be required to present or make a presentation to a relevant peer professional group of the details and the knowledge gained

from such leave. This would be in addition to the preceding paragraph where there's a requirement to provide a detailed written report on the activities associated with such leave.

Finally, in terms of our restructuring of - or the formatting of our claim, we say that in subparagraph (h) commencing at the bottom of page 36 and going over to 37, that payment shall not be made or accepted in lieu of sabbatical leave except that the leave entitlement as specified in subclause (c) of this clause will be paid pro rata where an employee - and, sir, there was one officer left in there that I finally found - resigns on the instigation of the controlling authority as part of a redundancy program. We say that where the person's services are more or less terminated involuntary, even though they are called voluntary redundancy programs, that the entitlements should be available to them and part of that reason is that those entitlements could well assist the person to redirect his or her career into another area where employment can - continuity of employment can be maintained. Now, why sabbatical leave?

COMMISSIONER WATLING: Well, if I can just take you back to (g).

MR HOUSE: Yes.

COMMISSIONER WATLING: What does that mean?

MR HOUSE: That means that you can't accumulate more than two lots of sabbatical leave, that if you don't take it after 5 years and then you don't take it after 10 years, then that's - you lose the entitlement.

COMMISSIONER WATLING: It says here: in excess of 10 years entitlement.

MR HOUSE: Yes.

COMMISSIONER WATLING: And, also, in the clause where does it say that you can accumulate sabbatical leave anyway? And I want you to address me on what is the argument associated with accumulating sabbatical leave. If it's suppose to keep people up to date, why would they accumulate it?

MR HOUSE: Well, normally we would expect people to take their sabbatical leave at the end of 5 years, but it may be that there is a project in process where - that it would be desirable that the leave extend beyond the 13 years - the 13 weeks so that there again is some flexibility in terms of both the timing of when you take the leave and how much you can take.

Given the commission's difficulty with having two advocates, I'd like to either now or later, seek instructions as to the

precision of that statement I've just made in terms of examples, but it provides -

COMMISSIONER WATLING: Well take me to where it's able to be accumulated.

MR HOUSE: Well you've identified again, sir, deficiency in the construction of our claim but - and also in terms of the way we've expressed an implied accumulation. What - what we're meaning is, if you haven't taken your sabbatical leave after 10 years service then you lose it.

COMMISSIONER WATLING: Is that what that clause says - (g)?

MR HOUSE: Well sabbatical leave - it's the word 'entitlement', I suppose, that - in excess of 10 years - 10 years service.

Would it suit the commission for us to adjourn now to answer that - for a short period. I see Dr Senator's .... me with instructions - or - or go on with -

COMMISSIONER WATLING: Well, I mean if you want a short adjournment I'm happy to do that.

MR HOUSE: Yes, if the commission pleases.

COMMISSIONER WATLING: Okay, we'll adjourn.

SHORT ADJOURNMENT

COMMISSIONER WATLING: Mr House?

MR HOUSE: Thank you for the adjournment, Mr Commissioner. Firstly, I'd just like to point out that at the moment there is no restriction on the accumulation of sabbatical leave, so that we saw it as a - a structural efficiency that there should be a limit on the time that such leave can be accumulated, not only for budgetary reasons but also we believe that if medical practitioners are going to keep up with current trends they should utilise the - the sabbatical leave when it becomes available as a matter of course that - and in terms of clause (g) it - it would probably be better expressed that - that there can be an accumulation of up to 6 months sabbatical leave, but if the sabbatical leave is not taken by - then that accumulation occurs then it is forfeited. The only difficulty we have is if a person puts up, say, 3 months before the end of the 10 years a program and that program is knocked back then does that mean the person is being denied the sabbatical leave.

We have put in a clause later on that - and what I've mentioned before - tries to address that - that sort of situation that - that management prerogative is not exercised in such a way to frustrate a person's access to the sabbatical leave.

Now as to the question of why should there be the opportunity to accumulate or go - or not take it when the 5 years is up, then I'm instructed that there are ongoing - not as a matter of course - but situations do arise where there are ongoing research projects that go beyond the 3-month period and it's not practical to suspend - suspend the project because the sabbatical leave has run out, and specifically there may be a project where - being carried out by a medical practitioner that requires ongoing supervision as part of the contract providing funding for the project and if - if the supervising medical practitioner is told that he or she can no longer use their sabbatical leave to have the overall management of this project then it could be in breach of the original terms of funding the project.

The other - other problem is the question of the difficulties of getting relief for - for people which we've endeavoured to address in - in a subsequent clause which I'll come to. So what - what we've tried to do is ensure that sabbatical leave is utilised to the maximum benefit of both the hospital system and the person involved - that it's not just something that's stored up for use just before you retire. There is a requirement that there must be a potential continued benefit to the employer for - in terms of 2 years - potential for giving 2 years service after completion of the sabbatical project and we've endeavoured to strengthen - strengthen the disincentives for sabbatical leave not - not to be taken.

In my discussions with Dr Senator it has been clarified that in the original - or the existing agreement you are correct that the reference to 'board' is the hospital board and not the Public Service Board. That, I think, is - is confirmed by the medical practitioners in the health services who were subject to the oversight of the Public Service Board didn't have access to sabbatical leave. So again we believe that our proposal - or our proposal to change that provision in the agreement is more attune to the situation that we're seeking now where that sabbatical may be available to clinical doctors employed in the department who were previously in the mental health services separate area.

So what we've tried to do is in terms of having a capacity to take the sabbatical leave in monthly bites - if I can put it in that way - would provide a degree of flexibility for short-term projects. We've endeavoured to provide a situation where - where it's clearly warranted - people can accumulate a certain amount of sabbatical leave beyond 3 months period, however we've also recognised the requirement that there be a



limit and an incentive for people to take their sabbatical leave and not just store it up.

COMMISSIONER WATLING: Could someone take 15 weeks - 16 weeks sabbatical leave?

MR HOUSE: I'm instructed yes.

COMMISSIONER WATLING: In what circumstances? How would they actually get it?

MR HOUSE: As I'm instructed, sir, I hope I understand, that they can take their 13 weeks and then as necessary, depending on the requirements of the program, take a further 3 weeks.

COMMISSIONER WATLING: Where do they get that 3 weeks from?

MR HOUSE: I'm instructed that after 10 years they could take their 16 weeks and then take the balance in small bites - or another 10 weeks.

COMMISSIONER WATLING: But only after 10 years service?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. Where does it say that you can accumulate above the 13 weeks?

MR HOUSE: Well again, sir, we beg your indulgence that we'd have to modify subclause (g) more to be more precise as to what we mean.

COMMISSIONER WATLING: Right.

MR HOUSE: I'll endeavour to supply the commission with a form of words at the earliest opportunity, and our colleagues.

COMMISSIONER WATLING: So if you're going to provide the commission with an amendment to this exhibit you might also look at addressing on what grounds one can accumulate if that's going to be your claim - there must be grounds for accumulation.

And I suppose at that time you will - you'll need to convince me that they should be able to accumulate sabbatical leave at all.

MR HOUSE: Well I'm sorry if I haven't convinced you in that we say that there are occasions that arise where the ongoing nature of a research project, and indeed the commitments that may have been given in terms of funding the research project -

COMMISSIONER WATLING: Yes, well I heard what you said on that but of course you made those comments in the absence of

anything contained in the clause relating to accumulation. There's nothing in the - there's nothing in the clause at this moment that gives you authority to accumulate, and nor does it say anything in the clause on the reasons that one may accumulate it. You've told me why you believe that people should accumulate it but it's not part of your document. So what do you wish to do with that given the questions I've put to you?

MR HOUSE: Well if the commission pleases we would like to have some little time - not lengthy time - to redraft what we would hope suitable provisions to go in that award to make our intent more precise and more clear. I don't - I would submit, sir, we are not making an additional claim in that our intent was that instead of the current open-ended arrangement that there be more precision, more flexibility and a cap on the accumulation to ensure that the maximum benefit to members and to the system is derived from sabbatical leave.

COMMISSIONER WATLING: Mm. Well I understand that but -

MR HOUSE: That is what - that was our intent - we've obviously failed to reflect that intent in the way I've said - in the wording.

COMMISSIONER WATLING: Yes. No, well that's right because at the moment the award just says you get 13 weeks after 5 years - full stop.

MR HOUSE: Yes.

COMMISSIONER WATLING: Now if you want it to accumulate then you must have a provision in for accumulation -

MR HOUSE: Yes.

COMMISSIONER WATLING: - and the provision must also address the question on what basis it can be accumulated. And then it goes on to say what's the maximum accumulation.

MR HOUSE: Yes.

COMMISSIONER WATLING: So that's the point I'm making. At the moment it just says 13 weeks, 5 years - full stop. There's no right to accumulate it at all -

MR HOUSE: No.

COMMISSIONER WATLING: - and if one looked at the agreement they'd probably that that's the same.

MR HOUSE: And as I understand it the practice has been that people don't - don't always take it for whatever reason.

COMMISSIONER WATLING: Yes.

MR HOUSE: Well I mean in terms of what the commission is saying -

COMMISSIONER WATLING: Well anyway, it might be an issue you want to take a look at. So what, do you think the luncheon adjournment might be time enough or after the luncheon adjournment - tomorrow - overnight or something?

MR HOUSE: We'd like to get it right, sir. We can start at lunch time but -

COMMISSIONER WATLING: Oh well, well -

MR HOUSE: - rather than give you something half baked -

COMMISSIONER WATLING: - so when do you want to come back to me on it - I'm in your hands.

MR HOUSE: Tomorrow morning.

COMMISSIONER WATLING: Right.

MR HOUSE: Sir, I'd now like to make some submissions on why there should be sabbatical leave.

COMMISSIONER WATLING: Yes, right.

MR HOUSE: I suppose we believe if you're looking at it in a de novo sense and there wasn't any sabbatical leave the developments of medicine and demands from employers to .... practitioners to acquire knowledge and keep abreast with medical and associated developments is even more pressing today with the rapid rate of technological development and the development in medical techniques.

Even if there weren't these external demands imposed by the employer, we believe the professional imperatives are such that it is incumbent on a medical practitioner to keep up to date with the state of medicine.

Now we've identified four broad areas of - that these - the needs might be categorised into. These are service provision, teaching and training, the impact of statutory legislative changes on medical practice and the adoption of new concepts and finally research.

Now if I can turn to the - firstly to service provision, of course there are new technologies and some of those that are perhaps more dramatic or at least more in the public eye of developments in surgical techniques. There's endoscopic techniques, surgery, laser techniques, laparoscopic techniques and microsurgery and all these developments are such that it's

- it is necessary for practitioners to have exposure to developments not only nationally but internationally.

In terms of Tasmania and some other areas that I deal with, we don't have large groups of specialists that may, sort of, interact within the hospital or the state system that are, if you like, sub specialised in these areas and can exchange information with their colleagues. So that it's necessary to have the opportunity to go overseas or go to other states to ensure that contemporary standards are being inculcated into the state system.

If I turn to, say, anaesthesia there's special techniques and technological approaches, if that's the correct way. For example, in the open heart unit and there's a need to access, if you like, right of training in other states and overseas. There are new anaesthetic agents, drug aids, medical aids, monitoring equipment that people not only need to be familiar with but may need to assess the appropriateness of those to the particular infrastructure here in Tasmania.

One instance that I've been informed of is the new hyperbaric chamber in Hobart which is apparently state of the art technology and there's been a need for the medical profession to be involved in the design and use of this world class unit. Without sabbatical leave .... leave that sort of development would at least be impeded. There's the area of diagnostic services, again with the .... scanner, again the choice of technology that's the best available and the need for people to get appropriate training in how to make the maximum use of that technology.

There's automotive bio-chemical chemical analysers. Again you need the access to the developments worldwide in those areas as computerised services for laboratories is another area of significant change. There's new technologies in radiotherapy and nuclear medicine, new systems for hormone measurement to reduce the need for radiation therapy. New treatments are being developed all the time such as in the area of HIV and AIDS and multiple sclerosis. So there's a vast array of developments that require more than reading textbooks but need actual exposure and actual interaction with the profession and the equipment, the techniques beyond any one state.

The next area goes to developments in reorganisation of services. Dr Senator has been involved, for example, in the development of high risk clinics for patients with diabetes which is, I understand, a special project to this state. Again there's the need to develop services for AIDS sufferers, there's the trends towards day surgery, application and organisation of those sort of services in this state. Changes in pre admission arrangements for routine services and one other area I've been involved in is the ACT where they've got a, sort of, one stop cancer service for the south east region

of New South Wales, where a full range of services are provided from Canberra to the south coast and other areas, which is a coordinated service.

So there are these sorts of advancements in how you maximise service provision and coordinate such provision in such a way as to give such the best possible treatment to patients. It's really a matter of how you best coordinate the services to get the best delivery. There are also multi centre drug trials that involve more than one centre and the need to interact and coordinate with colleagues in other centres of excellence. There are special access schemes for new drugs and technology that are also facilitated by the availability of sabbatical leave.

In terms of teaching and training, there are again developments in the design of medical courses, how you may improve the delivery and structure of those courses. There's a need to perhaps make modifications and changes to accommodate the needs of paying students from overseas so that - and generally the - I'd say the acquisition of new teaching techniques and curriculum development and integration.

The next one, statutory and legislative changes, there are - you're probably aware or you would be aware of significant developments in the area of medico legal changes. There's a need to be able to discuss the impact, the potential impact of the trends in this area. There are developments here in Tasmania and other states in terms of regionalisation and .... There are some moves towards privatisation in certain areas of the public health system. For example, there's talk of privatising the .... Repatriation Hospital in Western Australia. If that happens it may be a precedent for elsewhere. There's developments in the area of health insurance, quality assurance, total quality management, the integration of tertiary, secondary and primary services and, of course, case mix and clinical devolution and budgeting.

The other broad area is research. These perhaps are not all mutually exclusive but there's participation in multi centre programs and the need to continually update and keep abreast of the updated findings and refinement of research practices and protocols. Now, as I've indicated, the acquisition of all these skills, knowledge and procedural experience, techniques and evaluation methods are not fully available and in some cases not available at all in any one state or perhaps or even contemplated within the state. So there's a need to be aware and have a practical exposure to these things and need to see them actually in operation, in practice.

So that for all these reasons we argue that sabbatical leave is something - I won't say confined or the need for it confined to the medical profession, but it certainly is something that is an essential part of the practice and

development of medicine and we would be seeking, sir, when we go to the work value part of our case to further expand or provide some evidentiary material to back up our claim in this area.

If I may now turn to clause 28 on page 37. This deals with examination leave and reflects the equivalent provision in the registered agreement except that it extends such leave to employees seeking to gain higher qualifications, not necessarily recognised by NASQAC or additional specialist qualifications beyond those gained formally as a trainee medical practitioner. The provision in the agreement that payment may be determined by the controlling authority has not been reproduced in our claim and has been replaced by the proviso at the end of the clause which says: provided that no payment shall be made in respect of leave under this clause coinciding with an employee's rostered day off.

We're also, just above that, included a provision for part-time employees to have access to examination leave. We don't see any reason why - and this goes generally for these leave provisions, why part-time employees should be discriminated against.

COMMISSIONER WATLING: What does it mean in (b)?

MR HOUSE: Well I've had another look at clause 35, sir, and I've seen that it's not an adequate clause. However in simple terms that there will be pro rata. If a person works 19 hours a week or 38 a fortnight, then they be entitled to leave that - this is where I got into difficulties. If they had - well I'd better express it in terms - if they were working 2 days a week then for the period of the examination leave that occurs on those 2 days a week, they'd be entitled to access that leave. But if the examinations were on other days then they wouldn't.

COMMISSIONER WATLING: So you're saying if you've got a person who works every Tuesday and Wednesday for 5 hours in a day and the exam happens to fall on the Tuesday and the Wednesday for 5 hours on each day, they would receive their normal pay had they been at work.

MR HOUSE: Yes, the examination, in brief, needs to coincide with the time that they would normally be at work.

COMMISSIONER WATLING: Now does that say that in (b)?

MR HOUSE: The proviso is supposed to say it. I don't know whether 'rostered day off' is the right term, but if a person is not scheduled to be at work at the time the exam is on, then they don't access the leave. That's the intent.

COMMISSIONER WATLING: But (b) says that part-timers shall only get pro rata of that.

MR HOUSE: Yes, well I came across this difficulty and a lot of other difficulties in a relook at all this part-time thing. I've got a new clause 35, now I don't know whether that will overcome the problems you've correctly identified.

COMMISSIONER WATLING: Well let's go back one step. If you're telling me that you believe that employees should be entitled to time off to attend exams if they happened to be rostered on duty at those times the exam was on.

MR HOUSE: Yes.

COMMISSIONER WATLING: That's the first point.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. If the principle is right what's the difference between a full-timer and a part-timer or a temporary, if the principle is right? Because I gather you're saying to me that they should be -

MR HOUSE: Well we've excluded any loading for the temporaries for this sort of leave.

COMMISSIONER WATLING: Yes, but isn't it such that you just want them to get off work to go to the exam.

MR HOUSE: Yes, to have the capacity to do that.

COMMISSIONER WATLING: Right. So what does it matter is you're a part-timer or a full-timer and you happen to be rostered for work on that day that the exam is, isn't the principle the same?

MR HOUSE: Yes.

COMMISSIONER WATLING: Well why would part-timers be paid pro rata and pro rata of what?

MR HOUSE: Well if they - say the exam went all day they couldn't claim the whole day in terms of a full day's salary. They can only claim the 5 hours or whatever that they would normally be paid.

COMMISSIONER WATLING: So they would be paid the full amount for the period that they would have worked had they not been at the exam.

MR HOUSE: That is the intent but we wouldn't argue that they should be paid for the full day, obviously -

COMMISSIONER WATLING: No.

MR HOUSE: - the 7.6 hours.

COMMISSIONER WATLING: No, but I'm just wondering whether it even says that there. It says here that: part-time employees shall be paid - right - pro rata. They don't get time off, they shall be paid pro rata in accordance with clause 35. So if full-timers get time off, part-timers get paid.

MR HOUSE: Yes. Well all these difficulties have struck me as to how you can express it. I've had a look at the commonwealth awards where they have recourse to all sorts of administrative instructions. They call them up and have gone through this exercise with the ACT as well trying to get it right. I've looked at the Tasmanian awards as well and I wouldn't say as extensively but as much as I had available to me and rightly or wrongly I haven't been able to get something that is succinct and not without it's loopholes.

COMMISSIONER WATLING: Right. So you'd have great difficulty finding an award with examination leave in it.

MR HOUSE: Oh, well, in terms of leave, per se, and for say, bereavement leave where, you know, when the funeral is - in the day, what happens. They're given the day off, say, and they get paid just for the time that they would normally get paid.

COMMISSIONER WATLING: So, how much leave are they entitled to?

MR HOUSE: Well, what we're saying is that if the exam occurs on the day that they would normally be required to attend work, then they're given the time off in accordance with whatever time they'd work on that day. If the exam occurred on the day that they weren't normally required to attend to work or not for the full day, then they'd only - they wouldn't access the leave for that time that is their own, if you like.

COMMISSIONER WATLING: Well what do you think I should read into the words that say: such paid leave as is necessary to enable convenient attendance. What does that mean?

MR HOUSE: Well that encompasses time - well the concept behind there is the time it takes to get to the examination centre.

COMMISSIONER WATLING: Right. So, you're now telling me that they are not - in addition to spending the time in the exam, they've also got to get leave prior to and after the exam to travel to the exam. Now what if that time - that travelling is outside their normal hours of work that they may have been rostered for that day? They're still paid it?



MR HOUSE: Well, we're only saying that the leave would apply for the 7.6 hours a day or whatever it is -

COMMISSIONER WATLING: Well, you're not saying that there. Look, let's face facts. The words don't say that at. It says: Such paid leave as is necessary to enable convenient attendance. Right? They're getting paid leave - unspecified.

MR HOUSE: Well -

COMMISSIONER WATLING: It's: as is necessary to enable convenient attendance. Now you've tried to describe to me it goes for travelling to and from the exam and also the time in the period during the exam. Well those words certainly don't say that. Now, it's one thing telling me in submission what it's meant to be and then me looking at your document and taking - and giving some weight to that document because at the end of the day, if this has been given an exhibit number, I'm going to take the words and examine those words to see what they mean and see if they match up with your submission, but your submission is totally different to what those words are saying. I just happen to glean from your submission that you're saying that people should be entitled to - all employees, if they'd be rostered for work on a given day and the exam falls on that day, then they should receive their normal pay or the pay they normally would have received had they been at work.

MR HOUSE: Yes, and within the normal span and not exceeding 7.6 ordinary hours in any one day. I'd - we'd hardly see them getting excess time or whatever.

COMMISSIONER WATLING: so what if the exam went - yes, well I can understand that.

MR HOUSE: So we can't - if the exam was to start at 4.00 in the afternoon and went through till 8 o'clock at night, then it was only, say, 4.00 to 5.00 if that was the time they normally worked.

COMMISSIONER WATLING: Well that clause certainly doesn't say that. It says that they shall be granted such paid leave as is necessary to enable them to attend. See that could mean - it's an open cheque book. So, given your scenario, if the exam did go till 8 o'clock in the evening, then they would be required to be paid -

MR HOUSE: Yes. Well it's not the intent.

COMMISSIONER WATLING: - under this clause anyway.

MR HOUSE: Can we have another go at that one overnight too, please?

COMMISSIONER WATLING: Righto, yes.

MR HOUSE: I think we're going to have - you won't like section 35 either.

COMMISSIONER WATLING: Oh, well, don't put your submission down before it gets to me. If you don't think I'd like it, it might be prudent then to change it.

MR HOUSE: Well, I - it's no excuse, but I've tried, I've tried to do it and it's beyond me.

COMMISSIONER WATLING: Yes. Well you sort of - at the end of the -

MR HOUSE: It's my own deficiency. I'm not an expert really in this area. I'm learning.

COMMISSIONER WATLING: So I really think at the end of the day though, and we'll break in a minute for lunch, but at the end of the day when I've got to make some decision -

MR HOUSE: Oh, yes.

COMMISSIONER WATLING: - I'm going to weigh up what you've told me in relation to this clause and I'm going to have a look at it and then see what the words say and then I'll weight up the principle and then see whether the principle is right and whether the words at the end of the day reflect that principle. Nothing should be left for people to guess at there or interpret.

MR HOUSE: I totally agree, and again it's no excuse, it's taken us 2 years to develop the part-time thing for the ACT and I don't think it's - still - it is right.

COMMISSIONER WATLING: Well I certainly think in relation to exam leave, if the principle is right, if all employees, if they're been rostered to work, and the exam happen to falls on that day, then they should all be entitled to get paid what they would have been paid had they been at work. It doesn't matter whether they are part-timers, full-timers, whatever, if the principle is right.

MR HOUSE: Yes. I think we're - I'm not sure whether we're even asking for - I'd have to seek instructions -

COMMISSIONER WATLING: Yes.

MR HOUSE: - for people that - who would have been rostered outside of hours getting time off. I'm not sure.

COMMISSIONER WATLING: Oh, well, maybe we'd have to have a look at that, you see, because you then get into the question - if you're looking for people who were rostered - who were not rostered to work, whether they should attend in their own time and the certainly the proviso that you seemed to have put there seems to indicate that prima facie, anyway, you're saying that if you're not rostered to work on that day, then you just sit the exam in your own time.

MR HOUSE: Yes, that's what we intend.

COMMISSIONER WATLING: So that means if you weren't rostered or if you weren't on duty that day, then you don't get anything. It's -

MR HOUSE: But if we say, you know, if any exam outside the normal span, then what about someone who is rostered outside the normal span?

COMMISSIONER WATLING: Well that's where I didn't say 'normal span'. I kept on talking about a person required to sit an exam and it was - and the exam time was during the normal time that they were required to work. See, what you're really saying is that they - instead of fronting up to work for 4 hours today, you sit your exam for 4 hours and instead of getting paid to be at work, you're going to be paid to at the exam. You're not going to be out of pocket by going to the exam. That's what it really means. But you're not going to make money out of it either.

MR HOUSE: No.

COMMISSIONER WATLING: Yes. Well there's certainly some drafting work to be done there then if that's what you really want it to mean.

MR HOUSE: Yes.

COMMISSIONER WATLING: Anyway, we'll adjourn till 2.15. Thank you.

#### LUNCHEON ADJOURNMENT

COMMISSIONER WATLING: Mr House?

MR HOUSE: Mr Commissioner, before the luncheon adjournment we were looking at some of the difficulties with the way we've constructed examination leave and with the leave of the commission we would like to be able to have a closer look at that tonight and produce hopefully a better and more specific or more readable or understandable version of that clause.

The next clause is clause 29 on page 37 which is a new clause that deals with provision of committee leave and that seeks to provide that for the granting of leave on application to the controlling authority to fulfil official duties on behalf of recognised medical and scientific bodies, professional organisations, and government agencies relevant to the medical practitioners employment or to attend for research grant committee interviews conducted by recognised scientific bodies approved by the controlling authority and for other purposes approved by the controlling authority. Such periods of leave granted shall not be taken into account for purposes of calculating overtime payments and the clause (b) stresses that payment for periods of this leave shall not exceed that for 7.6 ordinary working hours in any one day.

The following subclause (c) provides that part-time employees would be provided with time off on a pro rata basis.

COMMISSIONER WATLING: Does it say that?

MR HOUSE: Well the - again, it's a similar problem as before that the leave - well, it may be a bit different, but in the leave - if the leave coincided with the time the employee was normally on duty and hopefully it would, then they would be paid for it. This is another difficulty I've had in the sense that to some extent these commitments or work requirements may not coincide with the time that the part-time employee would normally work. My considerations of that would be that in a sense that they would be paid single time in the event up to 7.6 ordinary working hours on any one day in terms of excess time over their normal part-time hours.

COMMISSIONER WATLING: So, you're saying to me that if they are not rostered on - not rostered for work -

MR HOUSE: Yes.

COMMISSIONER WATLING: - on a day -

MR HOUSE: Yes.

COMMISSIONER WATLING: - and their happens to a committee meeting -

MR HOUSE: Yes.

COMMISSIONER WATLING: - that they: (a) compulsorily have to attend the meeting?

MR HOUSE: Yes, these - committee leave is only provided where the controlling authority requires the person to attend. It's the - it is at the initiation of the controlling authority rather than the employee.

COMMISSIONER WATLING: Righto. Now if that employee was not working on that day and they attended the meeting, you'd say that they have to be paid to attend the committee meeting?

MR HOUSE: Yes. It's - again, it's not explicit and I wasn't able to come to grips with it. It's the same situation where a person's, say, required to work 4 hours a day and then for - patient requirements or whatever - might have to work on and we're saying that they'd be paid at a single time for that extra time up until they exceed the hours of an equivalent full-time employee.

COMMISSIONER WATLING: Well if you had a part-time employee that worked 4 hours and the meeting went for 7 hours, -

MR HOUSE: Yes.

COMMISSIONER WATLING: - do they get paid for the 7 hours or do they get paid for the 4 hours?

MR HOUSE: 7 hours.

COMMISSIONER WATLING: Well how do we find that out, because it says there for a part-timer it shall be calculated in accordance with clause 35?

MR HOUSE: Yes. Well, again, we've got a problem of the leave - actual time and what they get paid.

COMMISSIONER WATLING: Isn't it a question then if the employer requires an employee to attend a committee meeting they shall be paid for such time for attending the meeting? Isn't it as simple as that?

MR HOUSE: Yes. Yes.

COMMISSIONER WATLING: Why do we get hung up on all this other stuff?

MR HOUSE: Yes.

COMMISSIONER WATLING: Because that's what you're really claiming.

MR HOUSE: Yes, up to a maximum of 7.6 on any one day.

COMMISSIONER WATLING: Yes. Right. So, what's the difference between a part-timer attending a meeting or a temporary attending a meeting or a full-timer? If your argument is right, surely you're trying to tell me that they all get paid if they're required by the employer to attend the committee meeting.

MR HOUSE: Yes.

COMMISSIONER WATLING: Except if they are rostered on duty, they don't get two bites of the cherry.

MR HOUSE: No.

COMMISSIONER WATLING: There's no double dipping.

MR HOUSE: No. Well we really just don't need (c) then.

COMMISSIONER WATLING: Well you need to change a lot of words to get the simple message across if you're saying that the -

MR HOUSE: Well do we - if we just say 'an employee'?

COMMISSIONER WATLING: Yes. Well if, at the request of the employer an employee is required to attend a committee for the purpose of 'X', 'Y', 'Z', then they shall be paid for the duration of the meeting but in any case it wouldn't be in excess of 7.6 ordinary hours and then you'd have to cover the question of double counting, that if they were rostered on duty and being paid for that duty, they wouldn't expect to get another 7. - well another 'X' number of hours on top of it.

MR HOUSE: Excuse me.

COMMISSIONER WATLING: The point to remember here - it's quite clearly stated that it's not compulsory. It's only where the employer grants the leave, so the employer doesn't have to grant the leave.

MR HOUSE: No.

COMMISSIONER WATLING: And the employer doesn't have to request someone to go.

MR HOUSE: That's right. It's - when I say 'employer initiated' I meant that, you know, employer approval.

COMMISSIONER WATLING: Yes. So, the employer may not approve.

MR HOUSE: Yes.

COMMISSIONER WATLING: So that means the meeting wouldn't be compulsory - ....

MR HOUSE: I suppose - in the real world it could be initiated by either side, but the employer would have the final say, but the emphasis would be where the - I would think, where the state or the department is wanting someone to be present and represent the department or the state.

COMMISSIONER WATLING: So it would boil down to if the employer required the employee to be in attendance.

MR HOUSE: Yes. Yes. But it could - the initiation of the process might be -

COMMISSIONER WATLING: It could be from either side.

MR HOUSE: - say, the scientific body writes to the employer.

COMMISSIONER WATLING: Yes. Well, look, either side could initiate it, but the employer might not require someone to attend.

MR HOUSE: Yes.

COMMISSIONER WATLING: The actual initiation of it is neither here nor there. I think the question is whether or not the employer is requiring someone to attend. If the employer is, then what shall apply?

MR HOUSE: Well -

COMMISSIONER WATLING: And that's the -

MR HOUSE: - the person would be paid -

COMMISSIONER WATLING: At their normal hourly rate -

MR HOUSE: - up to 7.6 hours a day.

COMMISSIONER WATLING: Yes, for the duration of the meeting.

MR HOUSE: Yes.

COMMISSIONER WATLING: Whilst attending the meeting, sorry.

MR HOUSE: Yes.

However we've got the proviso that payment will be made in respect of leave under this clause coinciding with an employee's rostered day off.

COMMISSIONER WATLING: No - which is different - that is different to what you're telling me. It's in contradiction to what you're telling me.

MR HOUSE: I'm instructed that that should be removed.

COMMISSIONER WATLING: Well maybe you might want to tidy that up overnight. If -

MR HOUSE: Yes.

COMMISSIONER WATLING: - if you're really wanting, you know, committee leave to be as simple as saying if you're required to attend these meetings by the employer then all employees shall be paid for the duration of the meeting, however it won't exceed 7.6 ordinary hours -

MR HOUSE: Yes.

COMMISSIONER WATLING: - and that if the employee was rostered for work then there won't be any double counting -

MR HOUSE: Mm.

COMMISSIONER WATLING: - so they wouldn't get paid - if the meeting was 4 hours they wouldn't get paid for the 4 hours at the meeting - attending the meeting on top of their normal hourly rate.

MR HOUSE: Yes.

COMMISSIONER WATLING: So I think you could make it pretty simple and then you wouldn't have to differentiate between part-time employees and full-time employees - it would be a case of all employees if they were required to attend.

MR HOUSE: Yes.

COMMISSIONER WATLING: Because you could have a situation where a part-time employee, say, working 4 hours on Tuesday was required to attend a 7-hour meeting.

MR HOUSE: Mm.

COMMISSIONER WATLING: Where you are not saying that the person - when you say here the - in (c) that shall be calculated in accordance with clause 35 - that's the part-time rate, so you're saying they shall get only paid for the, you know, the 4 hours - not the seven that they're required to attend the meeting.

MR HOUSE: One of the other problems that occurred to me there too though was there'll be no split shifts and so the - they finish their normal duty in the morning and then are required to attend the committee meeting in the afternoon. So the more you look at this the more -

COMMISSIONER WATLING: Well you've just got to answer all the questions, I think, that's what - you've got to cover all bases because if you look at it to the letter of the law as per your document you would find the employee wouldn't be attending the meeting in the afternoon because they'd be splitting shifts - or - or they would attend but wouldn't be paid for it because you can't split shifts.



MR HOUSE: Now I'll have to go back to the split shift one and exclude these situations.

COMMISSIONER WATLING: Yes, well you might just want to say, except in the case of clause 30 whatever it is.

MR HOUSE: Mm.

COMMISSIONER WATLING: Twenty nine. But - right, well you might have a look at that overnight because I think you should reflect what you're real claim is. Certainly your real claim seems to me to be more than part-timers getting their part-time rate - they're going to get paid for the meeting -

MR HOUSE: Mm.

COMMISSIONER WATLING: - the duration of the meeting.

MR HOUSE: Finally, subclause (d) we say:

Payment for such leave will not be the responsibility of the Controlling Authority where reimbursement is offered by the recognised body, organisation or Agency.

I'm instructed that situations still arise where the committee does provide a sitting fee of whatever and we're endeavouring to avoid another aspect of perhaps double counting if that's the case.

COMMISSIONER WATLING: So in that you're really trying to emphasise that if - if the employee receives a payment from the organisation or agency or body running the meeting -

MR HOUSE: Yes.

COMMISSIONER WATLING: - then the employer shall not be required to pay the earlier amount.

MR HOUSE: Yes - hopefully the payment will equate or be roughly the same as their salary, but we're trying in the interests of structural efficiency to overcome duplication.

COMMISSIONER WATLING: Yes - well what happens in the case then of an agency or an organisation or the body running the meeting is responsible for the payment of it but doesn't pay it? Because you say here that payment for such leave will not be the responsibility of the controlling authority -

MR HOUSE: Well this is -

COMMISSIONER WATLING: - where reimbursement is offered not made.

MR HOUSE: - to be truthful with you that's one that I missed when I was redoing the document for the purposes of sending you the letter. We did have 'is made' and I overlooked it.

COMMISSIONER WATLING: Yes - right, well I think you could probably even make it clearer still by saying where the meeting - where an employee attending the meeting receives payment from whom - then the employer won't be - be required to pay the earlier amount specified in this clause.

MR HOUSE: Yes.

COMMISSIONER WATLING: Anyway you can have a look at that.

MR HOUSE: The next clause, 30 - recreation leave - is a full bench matter so I'll say no more.

COMMISSIONER WATLING: Right. Why do think it's a full bench matter - because it extends the period of annual leave?

MR HOUSE: Well I may not have interpreted you correctly, sir, but when - in the last hearing I understood you to say that you'd considered all the leave matters -

COMMISSIONER WATLING: Yes, but I'm saying - I'm wanting you to place on transcript, I think that's why I'm asking you the question, it's because you're seeking an increase in recreation leave and the amount of leave.

MR HOUSE: Yes, for those doctors that might be called departmental doctors, that doctors as I understand it that are in the - were in the previous mental health service that do get 4 weeks - or are entitled to 4 weeks leave. Some of them, as I understand it, are required to be on an after hours roster and don't benefit from the 5 weeks provision.

COMMISSIONER WATLING: Right. So you're asking that the matter be referred by me back to the President with the recommendation that it be heard by a full bench?

MR HOUSE: I'm saying to the commission that my reading of the Industrial Relations Act 1984 says that if there's an application to increase the recreation leave or vary recreation leave, if my memory's correct, then that is a full bench matter under section 35.

COMMISSIONER WATLING: Mm.

MR HOUSE: If my -

COMMISSIONER WATLING: So how does it get there?

MR HOUSE: - interpretation of the Act is correct, we accept the commission's - or the President's - well I think we

firstly accept that the matter is something that should be considered by the President obviously, and secondly, if the President so rules then we of course will - are prepared to argue the matter before a full bench. It's not my personal wish that it be a full bench matter, but if that is the requirement of the act of course we will comply with it.

COMMISSIONER WATLING: Right.

MR HOUSE: But I just want to say no more than this - that what we seek basically reflects the existing situation in this state other than the group of doctors I mentioned, and most other states. We don't believe that we are creating new community standards in making this claim.

COMMISSIONER WATLING: Right.

MR HOUSE: Turning to clause 31 which is towards the end of page 40 - the recreation leave allowance - this reflects the standard provision in the General Conditions of Service Award except that we propose that employees classified at level 4 shall not be entitled to this allowance as a structural efficiency offset to improvements that we have sought elsewhere, and as a further structural efficiency requirement or initiative we would seek to delete - and I'll read the first section:

During a period of recreation leave only employees classified at or below level 3 shall be paid an allowance by way of additional salary, calculated at the rate of seventeen and a half per cent of that employee's normal salary.

And then we'd seek to delete the rest of the sentence, i.e., plus, where applicable, all allowances of a permanent nature specified in subclauses 11(A) and (B) of this award payable to such employees.

COMMISSIONER WATLING: So we put a full stop after salary and cross out all the rest of the words?

MR HOUSE: That's - so we remove the allowances from calculation of the recreation leave allowance. And as I understand it the provisos and restrictions on the amount of allowance coincides with the general conditions of service or state service requirements, although I noticed in one award they actually have a figure that won't exceed 400 and something dollars.

And I'm again - I've wondered with the restructuring of the administrative stream whether those classifications continue - clerical employee Class IX - are they still in - in the interests of award restructuring I'm not sure whether I'm up to speed with -

COMMISSIONER WATLING: Well the award restructuring in the public sector generally -

MR HOUSE: - with what the -

COMMISSIONER WATLING: - I have to say to you it's all up in the air and the bench is considering whether or not it will be abandoned.

MR HOUSE: Right. Well all I say is if that - well that's a bit sad but -

COMMISSIONER WATLING: Well at the bequest of most unions and the employers - they've asked us to abandon the process. That - before the bench does that they've asked the parties to address a couple more questions on 18th March before they rule on the decision of abandonment.

MR HOUSE: Well it's not for me to say, but salary increases have been granted in terms of structural efficiency.

COMMISSIONER WATLING: But I suppose if the parties don't want to restructure, put in career paths and salary increases in the career, you know, you take your horse to water but you can't make it drink.

MR HOUSE: Mm.

COMMISSIONER WATLING: May well have to give consideration to the 6% that's been granted.

MR HOUSE: That's what I was wondering - 2.1/2%.

COMMISSIONER WATLING: Anyway that's an argument for another day - no-one wants to restructure.

MR HOUSE: If I can now turn to -

COMMISSIONER WATLING: Well just look at - look at (B) for example.

MR HOUSE: Yes.

COMMISSIONER WATLING: Is that relevant in relation to this award?

MR HOUSE: Well there's interns and it's a question of whether the cap affects any of our members.

COMMISSIONER WATLING: If there's going to be a salary on it, why do we direct people to another award?

MR HOUSE: Well why - it was just again convenient to refer to the standard - the state standard.

COMMISSIONER WATLING: Well there's no state standard .... references.

MR HOUSE: Well again I'm probably wrongly influenced that in the Commonwealth there is - it says, you know, certain level in the - or equivalent.

COMMISSIONER WATLING: Yes, but I - the point I'm making - I'm not talking about the upper limit, I'm saying, why does someone have to reference another award? Why can't this award stand on its own feet? I thought that was the thrust of your submission. Why isn't it then a percentage of a rate within this award so you don't have to go any further?

MR HOUSE: Yes.

COMMISSIONER WATLING: We're trying to make the award workable as well, not direct people all around the country to other awards.

MR HOUSE: Yes.

COMMISSIONER WATLING: It should stand on its own feet. So if you're having an upper limit, in no case allowance - allowances calculated on the .... and can pick out something in this award, and who's to say -

MR HOUSE: Well could we just put a salary?

COMMISSIONER WATLING: Yes - well you can do anything. But who's to say - what happens when it doesn't become the Clerical Employees Class VIII - and do you know what that is now?

MR HOUSE: No, well that's what started this discussion -

COMMISSIONER WATLING: Yes.

MR HOUSE: - and I don't know whether it's -

COMMISSIONER WATLING: That's right.

MR HOUSE: - current.

COMMISSIONER WATLING: Well there's been an interim decision made and I'm not too sure whether you - if that was to go ahead or not go ahead, you've got a problem. A number of unions are arguing that maybe there should be agency-specific awards.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. Well that could mean that something like the Clerical Employees Award would go. Why would you direct someone to an award that might be doomed to go down the gurgler.

MR HOUSE: Mm.

COMMISSIONER WATLING: For the sake of transcript, I'm not too sure how to spell 'gurgler' so they might look it up. It's one of those 'top of the Wazzer' things.

MR HOUSE: Yes, I've been reminded that we may not have a salary point that exactly coincides with the - the rate in that whatever the cap is at the moment, but that's just a technical matter -

COMMISSIONER WATLING: Yes.

MR HOUSE: - we can have a look at.

COMMISSIONER WATLING: Well all I have to say to you that I don't know whether those awards will continue in place after restructuring.

MR HOUSE: Yes.

COMMISSIONER WATLING: But I think it's the Medical Officers Private Sector Award and I'm only going on memory that just says that the allowance won't be more than a certain figure. There's a few awards like that I think.

MR HOUSE: Maybe that's the way to go. We'll attend to that one too.

COMMISSIONER WATLING: Well you can easily relate it to a percentage of a classification within this award - shall not exceed -

MR HOUSE: But it may - well we wouldn't pick one a few dollars less - it might be a few dollars higher, you see, that's the -

COMMISSIONER WATLING: Well it really depends at the end of the day what the salary levels are in this award as well, so it wouldn't be decided until the end.

MR HOUSE: Yes. But we're not too sure about that either are we?

COMMISSIONER WATLING: Anyway -

MR HOUSE: We agree with the point you've made, Mr Commissioner.

COMMISSIONER WATLING: - I just raise the question. You know, if the whole thrust of your submission is to put everything in this award relating to medical practitioners, then why do we direct them somewhere else? Maybe if you just take that point on board. You might not do anything with it but - anyway -

MR HOUSE: Well I think it's amenable to change so we can do that.

Turning to, if I may, clause 32 - Sick leave. As you would be aware - and we've discussed briefly in the registered agreement - there is provision for hospital doctors which is the normal sort of - so many - it's 28 days, 28 working days per year accumulative in general terms.

COMMISSIONER WATLING: Is this the precise clause that's in the agreement?

MR HOUSE: No, sir. We've reduced the 28 days down to 20 working days accumulative and this is for all members or all medical practitioners covered by the award and provided for accumulation at the rate of, we say, 1.66 but it really should be 1-2/3rds days because it's 19 - 1.66 is 19 point something days a year and 1.67 is just over 20 days, but that's a technicality. But what we've tried to do is standardise the leave provisions for everyone and make it more simple and in approach anyway accords with the standards in approach in other jurisdictions.

However we've also allowed, if you like, immediate access in the first year to sick leave on a pro rata basis. We've extended or catered for part-time employees and again I'll talk about it later, there's a problem of when you fall sick on a day that you don't normally work we wouldn't see that you'd be entitled to sick leave or sick pay on that day. The sickness would have to coincide with the normal day that you would attend as a part-time employee. So there's two aspects, there's the part-time employee would accrue sick leave on a pro rata basis. If the person was half time then they'd accrue 10 days per year but that those days would only apply if the person fell sick on a day that they were normally -

COMMISSIONER WATLING: Required to work?

MR HOUSE: Yes. Now whether we've adequately dealt with that, it's really when we get to this clause 35 that is coming up soon that some of these things might crystallise. Now the rest of the clause (2), (3) and (4) accord with what exists at the moment and what we believe is community standards, that's requirement to notify the controlling authority, provide evidence of sickness or confirmation of sickness and that sick leave doesn't apply when the person is entitled to workers'

compensation except where I go into a mine field at the bottom concerning the interaction of sick leave and workers' compensation where the salary or the workers' compensation doesn't measure up to the salary.

Now I've tried to look at the jurisdictional aspects of this commission and the Workers' Compensation Act, including CCH and the relevant acts, but I haven't been able to clarify in my mind whether we were asking the commission to do something beyond its powers. I've discussed it with colleagues and it's been suggested, which I'm not attracted to, we could have changed the clause to one going to accident pay which has been done in some places.

COMMISSIONER WATLING: Well the simple fact is the act quite clearly states that we can't deal with workers' compensation matters. It will boil down to whether or not this is make up pay for a workers' compensation matter.

MR HOUSE: Well that's what it is intended to be, sir. That's not intended to interfere with the Workers' Compensation Act, it's intended to be -

COMMISSIONER WATLING: But some people may well argue that the amount of money you receive whilst on workers' compensation is governed by a separate act of parliament.

MR HOUSE: Yes, that's what I was conscious of.

COMMISSIONER WATLING: And it's not up to us to override what that act says.

MR HOUSE: Yes.

COMMISSIONER WATLING: And that act quite clearly deals with the amount of payment that one should receive whilst on workers' compensation.

MR HOUSE: Well whether it's similar but it has been suggested to me .... discussed, waiting time in some awards they've approached it, not necessarily in this jurisdiction, by putting accident pay in.

COMMISSIONER WATLING: Well we do get into this argument of whether is off work and whether it's covered by the Workers' Compensation Act. If it is then that act quite clearly states what the payments shall be.

MR HOUSE: And without committing .... the accident pay would seem to be the same thing really.

COMMISSIONER WATLING: Well if one is receiving workers' compensation for this particular thing it would be covered by the Workers' Compensation Act.



MR HOUSE: Yes.

COMMISSIONER WATLING: See, our act is quite specific. Unlike some other acts, our act is quite specific in relation to workers' compensation and long service leave. So what you'd be asking me to do is to go further than that which is prescribed under the Workers' Compensation Act for the payment of.

MR HOUSE: In thinking about all this the commonwealth act doesn't allow the commonwealth commission to interfere with the commonwealth superannuation fund or whatever it's called now. However it seems that the 3 per cent award superannuation has been inserted - I'm not sure whether it's been inserted but it's certainly paid over and above the normal commonwealth superannuation. Now maybe the commonwealth itself decided to do that. It's a while since I've been in that area. Rather than let the commission -

COMMISSIONER WATLING: What are you saying, that the commonwealth are paying, in addition to their superannuation, the 3 per cent occupational superannuation?

MR HOUSE: Yes.

COMMISSIONER WATLING: Well that's what happens in the state government.

MR HOUSE: Yes, well if -

COMMISSIONER WATLING: The same thing happens here -

MR HOUSE: I'm not sure whether -

COMMISSIONER WATLING: - in addition to RBF.

MR HOUSE: But if that was put in the award by the commission, the federal commission, whether that was something that conflicted with - again it's a make up on the -

COMMISSIONER WATLING: No, it isn't. In fact, the whole thrust of the 3 per cent occupational superannuation was in lieu of a pay increase and instead of employees getting a pay increase of 3 per cent the commission decided that it would be given to employees but in the form of superannuation. And that's why the 3 per cent is the employee's money that the employer has to pay into the fund because it's in lieu of a pay increase. That's how it came about.

MR HOUSE: Yes, I understand that.

COMMISSIONER WATLING: Well it's a different form of one receiving a wage increase. It's not to surpass or supersede or cut across any other act. In fact -

MR HOUSE: What if the commonwealth though said: we don't agree with that; we're adequately providing for our employees' superannuation under the Commonwealth Superannuation Act and that's as much as we're going to pay.

COMMISSIONER WATLING: Well, in fact, that argument probably will surface in time when the federal government seek to do it by legislation and you may well find that in future that - and looking down the track - superannuation matters may be excluded from the award domain. In fact, until the 3 per cent occupational superannuation came about under the Tasmanian Act we couldn't deal with super and, in fact, when other people through the country got 3 per cent occupational superannuation there was some delay here because our act specifically said: this commission shall not deal with superannuation. So they amended the act to insert a new clause and it was very carefully worded to limit us in dealing with certain matters of occupational superannuation. But it was excluded from our domain when the commission first started. So you might find in the future if it's all going to be done by national legislation covering the country, then some of these issues will be examined.

But I think it is slightly different if you're saying, right, well the Workers' Compensation Act says how much you will get on workers' compensation and it's got a formula for averaging over the previous 12 months et cetera. And then the award goes on to say: irrespective of what the act decides and the method of payment then you shall get top up payment. So it would be an interesting argument. Anyway I'm not making any finding on it but I'd just be curious about the argument anyway, I would think. I'd want to hear some substantive submission on this question as to whether or not it was being inserted to even override another act. And I'm not too sure it would have any - it would be applicable anyway because of the averaging concept over the previous 12 months, including overtime which is currently still under our act. But anyway it's your case, I've just given you a preliminary comment on it.

MR HOUSE: I'd have to seek instructions.

COMMISSIONER WATLING: Yes, you just have a look at it.

MR HOUSE: But in terms of - I'll just make this an aside. If this provision is going to facilitate an appeal against your decision I think we need to carefully consider -

COMMISSIONER WATLING: The employers might agree to it.

MR HOUSE: Pardon?

COMMISSIONER WATLING: The employers might agree to it.

MR HOUSE: Yes.

MISS COX: We're very generous.

MR HOUSE: If there's a basis for some sort of technical appeal we would seek to avoid that situation. That's all I'm - we've got the incapacity to pay one and that's enough.

COMMISSIONER WATLING: Well we might have a rerun of that as well. So that was a new bit that you are seeking to insert?

MR HOUSE: Yes, that's (d), I've jumped ahead of myself. Well the references at paragraph (iv): shall not be paid sick leave, in effect, during the period they're entitled to workers' compensation. But then we've got the proviso, if you like, for a top up.

COMMISSIONER WATLING: Yes.

MR HOUSE: So (d) is the one that we need to carefully consider. (b) we've put in a proviso that if a person is not receiving, what we propose, the 20 per cent loading on base pay as a temporary employee, then any accumulated sick leave entitlements will be credited to the employee at the time of becoming a permanent employee.

COMMISSIONER WATLING: Right. Would that situation actually exist? Do all temporaries have to get the loading?

MR HOUSE: Well as I understand - I've been instructed there could be temporary employees in the system now not getting the loading.

COMMISSIONER WATLING: Yes, but I'm talking about after making this award. You're requiring all temporary employees, through the making of this award, to get a loading, aren't you?

MR HOUSE: Yes, but if the commission does agree to the loading they will have accumulated sick leave entitlements, particularly if they're long term employees.

COMMISSIONER WATLING: Right. So you're saying that there's some temporaries out there at the moment that have a bank of sick leave credits.

MR HOUSE: Before we go on to that, what about real temporary employee?

DR SENATOR: What, locums and people like that?

MR HOUSE: Yes.

DR SENATOR: Yes, there are locums in the system who are being paid a loading ....

MR HOUSE: But are they accumulating sick leave?

DR SENATOR: Presumably. They're being employed under the award.

MR HOUSE: Well I'm instructed that their - I can't put it any higher than this without knowledge of the system - could well be locums who are entitled to sick leave. And the other area is the junior staff or the trainee medical practitioners are classified as temporaries - we've had that debate - who would be accumulating sick leave and if our arguments in terms of whether they're temporaries or not temporaries or something else don't succeed, and if, say - and we'd hope not - they were given a 20 per cent loading and their leave entitlements went - we don't know what sort of arguments are going to come from the other end of the bench - that those sick leave entitlements be preserved.

COMMISSIONER WATLING: All right. Where do I find your definition of 'temporary employee' in the new document?

MR HOUSE: In the definitions.

COMMISSIONER WATLING: Right.

MR HOUSE: And we've inserted 'trainee medical practitioner' to try to distinguish. It's on page 7, sir, at the bottom.

COMMISSIONER WATLING: Right.

MR HOUSE: 'Temporary employee' means a medical practitioner who (a) is specifically employed to relieve a full-time or part-time medical practitioner for specific periods or leave or is specifically employed for specific duties over a fixed period determined by the controlling authority. And then we've got 'trainee medical practitioner' means: a resident medical practitioner, registrar or senior registrar, and then - where do we go to distinguish - in the award - trainee.

DR SENATOR: ....

COMMISSIONER WATLING: So under this proposal all temporary employees would get a 20 per cent loading in lieu of annual leave, sick leave, and you've got -

MR HOUSE: And leave loading.

COMMISSIONER WATLING: - leave loading.

MR HOUSE: Yes. Well we would - we are not making a submission to the effect that trainee medical practitioners be categorised as temporary employees, quite the contrary, but if that was - turned out to be the case,

COMMISSIONER WATLING: Couldn't they fall within (b) of your definition?

MR HOUSE: Yes, and I'm trying to look for another part where we have endeavoured to distinguish -

COMMISSIONER WATLING: Because they could be specifically employed for specific duties over a fixed period.

MR HOUSE: Well they are subject to, you know, the training program. I'm sorry to do this, but can we come back to you on that and clarify it?

COMMISSIONER WATLING: Yes.

MR HOUSE: I'm sure in my mind that we're trying to distinguish -

COMMISSIONER WATLING: Yes, but -

MR HOUSE: - the trainees from the temporaries somewhere in - where it was relevant within the award.

COMMISSIONER WATLING: Yes. But in terms of the definition you could see how these people could be classed as temporaries, -

MR HOUSE: Yes.

COMMISSIONER WATLING: - by definition.

MR HOUSE: Well we were trying to -

COMMISSIONER WATLING: They'll only fit exactly to the definition you've written.

MR HOUSE: Yes. It's been a vexing matter, not only within these proceedings but within -

COMMISSIONER WATLING: So what you're really telling me then is that a temporary employee does not include a trainee medical practitioner.

MR HOUSE: Certainly not from our perspective -

COMMISSIONER WATLING: Yes.

MR HOUSE: - and I want to make it clear, we're not seeking the 20 per cent for the trainee -

COMMISSIONER WATLING: For those people.

MR HOUSE: - medical practitioners. We're seeking the - whatever leave entitlements that the -

COMMISSIONER WATLING: For the temporaries.

MR HOUSE: - full-timers get that are appropriate and it's not all leave entitlements, but certainly recreation leave and sick leave should be paid to trainee medical - should be available, I should say - paid sick and recreation leave should be payable to trainee medical practitioners.

COMMISSIONER WATLING: So, really then there needs to be a (c) in the definitions which says that - and does not include a trainee medical practitioner as defined.

MR HOUSE: Yes, for the sake of completeness, certainly.

COMMISSIONER WATLING: Anyway you were going to come back to that.

MR HOUSE: But any other temporary employees that have accredited - have accrued sick leave, that accrued sick leave would remain at the time of any introduction of a loading. Of course no further sick leave would accrue if the loading was brought in.

COMMISSIONER WATLING: That's right. And those who had accrued sick leave at - prior to the making of this award would have it preserved anyway by the savings provision, but you want to be more specific about that.

MR HOUSE: Yes. Now, sir, (c) and (d) reflect the existing arrangements.

COMMISSIONER WATLING: No, (d) is an existing arrangement, is it? You just told me (d) -

MR HOUSE: (d) -

COMMISSIONER WATLING: - (d) wasn't.

MR HOUSE: Sorry, (c). (d) is one we've got to look at, and we have a proviso that a period of leave of absence granted to an employee under this subclause shall not exceed 52 weeks in respect to the same injury or illness. When we come to it -

COMMISSIONER WATLING: So, are you saying that you can't get workers' compensation in excess of 52 weeks or you can't get make up pay in excess of 52 weeks?

MR HOUSE: Make up pay.

COMMISSIONER WATLING: Or whatever you want to call it, yes.

MR HOUSE: Accident pay.

COMMISSIONER WATLING: Anyway -

MR HOUSE: So that really -

COMMISSIONER WATLING: - you're going to have a look at that anyway.

MR HOUSE: Yes. Now we come to the further claim and this is in terms of impairment leave which is the provision in the registered agreement which provides for 12 weeks special paid leave in the case of a person or medical practitioner in this case contracting nosocomial infection. We are seeking probably a significant increase here of a period of up to 52 weeks. Now, the justification for this that we believe obviously that the existing arrangement is - of 12 weeks is clearly inadequate and this has been borne out by some experiences we've had in other states where a medical practitioner - well there was no such leave in this state, the state I'm talking about - the medical practitioner was - more or less contracted HIV - was more or less left sort of hanging after his sick leave ran out and there was not - unfortunately, not the fault of the award or perhaps anyone in particular - the person was - his distress was added to by, you know, a lack of clarity as to just what his entitlements were. Now, -

COMMISSIONER WATLING: If it's a work-related illness or disease, wouldn't it be covered by workers' compensation?

MR HOUSE: Well, the key element here is that - as I'm instructed and reminded - that the situation is that they may not be suffering to the degree that they can't work, but as medical practitioners what - they're not normally in a position to carry on their normal duties, so there's that aspect to it and we do in the next clause provide that wherever practicable they could be transferred to a mutually agreed safe employment in another area as a medical practitioner classified at the same level, grade and salary for the duration of the period of the risk, but that doesn't answer your question in that I'm not, again, aware of whether they're entitled to workers' compensation or not.

DR SENATOR: ....

MR HOUSE: Well we're asking for 52 weeks off.

COMMISSIONER WATLING: One would think if you want 52 weeks off and it wasn't covered by workers' compensation, it would be a bit strange. If it's bad enough to have up to 52 weeks off and you get a medical practitioner saying that it's bad enough to have leave of up to 52 weeks.

DR SENATOR: ....

MR HOUSE: Yes, but we're asking for 52 weeks and if they're entitled to workers' compensation - but at the moment they're entitled to - I know it's a registered agreement, but they're entitled to 12 weeks off, paid leave and -

COMMISSIONER WATLING: Yes, but I have to say, it's not going to weigh - a registered agreement is not going to weigh heavy on me. Look, let's face it -

MR HOUSE: No, does that conflict with -

COMMISSIONER WATLING: - one of the reasons why the agreement -

MR HOUSE: - does that conflict with the -

COMMISSIONER WATLING: Well can I just make the point about the registered agreement so we clarify all this.

MR HOUSE: Yes.

COMMISSIONER WATLING: One of the reasons the registered agreement came before me as a registered agreement is that I can only accept it or reject in toto. I don't have any say in it, and I can only look at whether or not it's in the public interest. We're now seeking to put it in an award and it has to be tested, you see. Now when it was registered under that section of the act, I'm somewhat restricted in the way in which I handle it and let's face it that was one of the reasons why it was put up as a registered agreement.

MR HOUSE: But did that - does that affect the jurisdictional problem though?

COMMISSIONER WATLING: Well I'm going to go out of my way to see whether or not we're going to conflict with something that may well be covered by another Act of Parliament, namely the Workers' Compensation Act and if it is, it won't be in -

MR HOUSE: Yes.

COMMISSIONER WATLING: - because it would be contrary and ultra vires that act.

MR HOUSE: Yes.



COMMISSIONER WATLING: And it's as simple as that. But one would think that if you're - if there's an injury or illness arising out of or in the course of one's employment, you'd have to say prima facie it would be covered by workers' compensation and the provisions of the Workers' Compensation Act.

MR HOUSE: Well, we accept that, but I'd still like to - if that isn't an impediment, endeavour to justify the claim within the terms of the wage fixing principles and -

COMMISSIONER WATLING: Yes. I think my questioning is really is to find out whether it is covered by the Workers' Compensation Act now. I'm just trying to get to the bottom of it, or whether the employee would have a claim for this under the Workers' Compensation Act.

MR HOUSE: Well there's a question - a person can still work but they can't work in the normal role, but they could, for example, be put on a project within the hospital to look at quality assurance or something like that and continue to work in that situation where they're not exposed to the hands on clinician duties.

COMMISSIONER WATLING: Yes. But you've got to keep in mind that this is a claim for 52 weeks leave - up to 52 weeks leave we're talking about.

MR HOUSE: That's right.

COMMISSIONER WATLING: And I can understand your situation where you might be arguing that the person be placed on lighter duties or different duties or in a position of safety, but we're actually claiming leave for this.

MR HOUSE: Well, we're really saying - and again when I was looking at it - that it would be better if it could be mutually agreed between the controlling authority and the employee that they be put on other duties. I can remember some years ago where a colleague unfortunately had cancer - there were more than one occasions - and the person preferred to come in and work rather than stay at home. They would be entitled to sick leave, but to keep himself occupied they would come in and perform what duties that he could. Now that is the desired situation and that the controlling authority and the employee both get some benefit. That's our really preferred position. We can't - we're not God. We can't really -

COMMISSIONER WATLING: No.

MR HOUSE: - now - so in a sense -

COMMISSIONER WATLING: Well it -

MR HOUSE: - if that doesn't happen then our claim might be the wrong way around, but our claim would be for 52 weeks rather than 12 weeks at the moment. Now, we recognise that that's got to meet the wage fixing principles and that relates to two matters, the question of negligible cost and flow on and in terms of the -

COMMISSIONER WATLING: And indeed whether it's a compensational matter under the Workers' Compensation Act.

MR HOUSE: Yes.

COMMISSIONER WATLING: Now that's the first one - that's first hurdle you've got to get over.

MR HOUSE: Yes, well - yes, but normally - look, I'm reminded that one of the issues is proof that the infection arose out of the employment.

COMMISSIONER WATLING: Yes.

MR HOUSE: Now, I don't know - I'm not an expert in workers' compensation dealings, except you know I know people take some time to get the money, but in - experience has shown that with health workers it's normally fairly clear - when they get a needle stick that, you know, they're under some risk and it's - you know, they administer the AZT and all that pretty much straight away, so most instances would be fairly clear in that regard I would say and again they're the instances we're looking at I suppose in trying to draft this provision.

Well all I can say, sir, is that I can try to seek further advice to give you a proper submission on the question of the jurisdiction matter -

COMMISSIONER WATLING: It would be interesting to know whether there's even a claim made.

MR HOUSE: - but I'll probably have to get legal advice. I can't -

COMMISSIONER WATLING: Yes. Well it would be interesting to see whether any claim's been made on the employer for such things, in terms of workers' compensation.

MR HOUSE: Well, in - yes, well I could talk to colleagues in other states -

COMMISSIONER WATLING: Yes.

MR HOUSE: - about their experiences.

COMMISSIONER WATLING: Well you might even talk to the employer and find out whether or not there's been any incident

of this been brought within the bounds of the Workers' Compensation Act and -

MR HOUSE: Well there's been a case of a nurse and a doctor in South Australia.

COMMISSIONER WATLING: Both under workers' compensation?

MR HOUSE: I don't know.

COMMISSIONER WATLING: Yes.

MR HOUSE: And the suggestion was, in the case of the doctor, was that no-one did anything much to help him and it was only when he approached his union that his case was looked at because it was fairly devastating on him and his family.

COMMISSIONER WATLING: Was it treated as workers' compensation?

MR HOUSE: I don't know, I'd have to -

COMMISSIONER WATLING: Check that - right. Right, well you might have a look at that because I'm more than interested in that specific point.

MR HOUSE: Yes. You'd prefer to hear about that first -

COMMISSIONER WATLING: Yes -

MR HOUSE: - rather than -

COMMISSIONER WATLING: - yes, because if - you might find even after doing that research you might be barking up the wrong tree.

MR HOUSE: Yes.

COMMISSIONER WATLING: But if you do that research and come back and find a), that it's not covered by workers' compensation, you know, and you've got a problem with this particular thing, it's certainly not covered by the act, then you will then proceed to show me why you want it in the award then because it isn't covered by something else.

MR HOUSE: Yes.

COMMISSIONER WATLING: And you want protection for your employees - your members.

MR HOUSE: Yes, and I was wanting to try and justify it under the principles.

COMMISSIONER WATLING: Yes, well I think, you know, first things first -

MR HOUSE: Fine.

COMMISSIONER WATLING: - let's get the technical aspect of whether or not it's appropriate to even put it in there for starters, because I'm - I'd have to say to you I'm pretty loathe to put anything in the award -

MR HOUSE: Mm.

COMMISSIONER WATLING: - that is covered another act of parliament in terms of workers' compensation in this particular case. And as it stands if it was covered by another act of parliament it would be ultra vires the act anyway and wouldn't have any force in law.

MR HOUSE: Yes, yes.

COMMISSIONER WATLING: So it's not going to mean anything.

MR HOUSE: Well one of the sort of fallback motivations of putting it in the award obviously is that we prefer it in the award than the registered agreement so that would fall away too.

COMMISSIONER WATLING: Yes, that's right - the effect of it in the agreement - if it came to the crunch it would depend on whether it was ultra vires in another act of parliament specifically dealing with that subject matter.

MR HOUSE: Mm.

COMMISSIONER WATLING: Now I can understand a claim that was saying, look for safety positions for people and or those people that may have this and have returned to work for rehabilitation -

MR HOUSE: Mm.

COMMISSIONER WATLING: - but this is slightly different - this is leave we're asking for - the first part of it is about leave, it's not -

MR HOUSE: Yes.

COMMISSIONER WATLING: - the second part is relating to whether or not they can be put in a safe area or on light duties but that's if after or when they've returned to work, or haven't left work but have this problem and are not eligible for workers' compensation.

Now the thrust of the clause is just the opposite - the thrust of this clause is for up to 52 weeks' leave.

You could have a situation where it could even be looked at on the basis that where an employee wasn't eligible for workers' compensation in accordance with the act something might happen.

MR HOUSE: Mm. If someone's getting workers' compensation then are they automatically entitled to be on leave?

COMMISSIONER WATLING: Well if they were getting workers' compensation they're getting weekly payments based on an averaging concept of their wage rates, plus overtime, for the previous 12 months. Now our state - some people argue that our state Workers' Compensation Act is the most generous in Australia because it includes all overtime as well -

MR HOUSE: Mm.

COMMISSIONER WATLING: - which is currently under review, but nevertheless it does -

MR HOUSE: On call, recall payments?

COMMISSIONER WATLING: Well I can't say precisely because it's not my field of expertise, but one of the things the act does say is averaging of the wages including overtime for the previous 12 months. And in fact it has been argued in some quarters that some people can make more money during down times on workers' compensation - e.g., the meat industry when tallies are down.

MR HOUSE: Mm.

COMMISSIONER WATLING: But anyway, like, you know, that's something that you'd need to look at. But it - if - if you were saying that someone wasn't eligible for leave, they had this problem - they weren't eligible for workers' compensation, they had this problem and there was some recognition that they should be at work for either rehabilitation purposes, et cetera, et cetera, then the award may go on to talk about them being placed on specific duties or specialist duties for a period.

But certainly that would - could only apply if they weren't eligible for Workers' Compensation Act - workers' compensation - and you don't know what the rehabilitation agreement may be in relation to payments made under that act either. In fact you might get them - the doctors saying, well they shouldn't be there.

MR HOUSE: Mm.

COMMISSIONER WATLING: They should be away - I don't know.

MR HOUSE: Well, sir -

COMMISSIONER WATLING: It's an interesting preliminary matter when debating this subject I think.

MR HOUSE: Yes, yes. Well, sir, obviously we'll need a little time so that if the commission pleases I won't be able to reconstruct this by tomorrow -

COMMISSIONER WATLING: No, well -

MR HOUSE: - I'd probably have to need - I'd have to get legal advice.

COMMISSIONER WATLING: Yes. But it would be worth finding out from the employer too, and I'd ask the employer to cooperate in this matter to see whether or not it has been subject to workers' compensation proceedings before, or whether there is some internal view that - that the department has and the employer has in relation to claims of this nature, because you might be able to sort it out reasonably quickly. You may have had people claim workers' compensation before.

There may be something on record, I don't know. It may be recognised as such and might not be a big issue and therefore it mightn't be a big lengthy exercise as far as you're concerned. But it - it certainly would be checking -

MR HOUSE: Mm.

COMMISSIONER WATLING: - worth checking even with experts in the workers' compensation area to see whether it's compensatable.

MR HOUSE: Sir, I'd like then to move to the clause 33 at the bottom of page 44. Now obviously this is a reproduction of the commission's test case decision of last year. We've also noted that the Medical Practitioners (Private Sector) Award has been varied to incorporate the parental leave provisions and we've had regard to that.

Now most of the overall structure and content is more or less a direct reproduction, as I've said, of the commission's decision and again I'd just wish to go to the particular variations that we've made to identify those, and again I say we don't see that this is just an automatic inclusion, it's up to the commission to decide whether it's appropriate to have these provisions in - in the award. We would say for the sake of completeness, as we said before, that it's appropriate that these provisions replace - well instead of putting the maternity leave provisions that are in the - .... the registered agreement that it would be appropriate to bring the

award up to date by having what is now a standard set by the commission in this particular area.

So the first variation that we've made to the test case decision appears on page 47 and that goes to what we were talking about before - (f), transfer to safe employment. And there we say that:

Where in the opinion of a medical practitioner,  
illness -

- should be 'or' -

- risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, where practicable, be transferred to a suitable mutually agreed position as a Medical Practitioner classified under this award at the same level, grade and salary rate until the commencement of maternity leave.

And we also add the proviso:

- that the Controlling Authority will be responsible for ensuring that the employee receives any training necessary to perform the full duties required by such safe employment and for the cost of such training.

Now firstly we -

COMMISSIONER WATLING: All of (f) is new is it?

MR HOUSE: Well it's new in the sense that we are saying that the safe employment has got to be similar - similarly classified to the employment a person had previously.

COMMISSIONER WATLING: So what part are you actually changing - that's what I'm trying to find out.

MR HOUSE: Well the test case decision just provides for transfer to a safe job at the rate and on the conditions attaching to that job.

COMMISSIONER WATLING: So it's a reasonable -

MR HOUSE: Which may - I think we had a discussion at some stage whether it was in this context as to what the job might be, because another context -

COMMISSIONER WATLING: What if there's not a position there at that level?

MR HOUSE: Well it goes on to reproduce what is in the test case decision. The controlling -

If the transfer to safe employment is not practicable, the employee may, or the Controlling Authority may require the employee to take leave for such period as is certified as necessary by a medical practitioner.

COMMISSIONER WATLING: Mm. But - so there's a substantial change there in relation to (f)?

MR HOUSE: Yes. We're saying that the job must be comparable to the previous job, whereas the -

COMMISSIONER WATLING: The full bench didn't say that.

MR HOUSE: - the full bench didn't say that.

COMMISSIONER WATLING: Nor nationally.

MR HOUSE: No. So -

COMMISSIONER WATLING: So you've got every full bench decision around this country against you.

MR HOUSE: Yes. Well we - you're quite right, it's a fairly difficult argument to sustain other than to say that we believe that it's desirable that the medical practitioner's skills can continue to be utilised in - in - at an equivalent level. But if - if - it's difficult, I suppose, to know in the case of a medical practitioner how far - and I'm not saying this in any elitist sense, I've just had a person found surplus in Canberra - a medical practitioner who was offered a job as a clerical worker and she - well it wasn't because she didn't want to be a clerical worker she wanted to continue to be a doctor. So she decided to take the redundancy package.

Yes, and I'm also grateful to Dr Senator who reminded me about the accreditation requirements for trainee medical practitioners, that it may be necessary for them to continue on to maintain their accredited training. So if, you know, the resident medical officer - if they're transferred to some other position, say, even as a career medical officer -

COMMISSIONER WATLING: They might have to put their career on hold then.

MR HOUSE: Well, if that happens I think in some cases they have to start again.

COMMISSIONER WATLING: Well we can't do anything about that - how does the employer control that in relation to pregnancy?



MR HOUSE: Well the issue, I suppose -

COMMISSIONER WATLING: Issue an administrative instruction.

MR HOUSE: - is to what extent - to what extent is a person not disadvantaged by becoming pregnant.

COMMISSIONER WATLING: Yes, but this says though, in all fairness, it says that they get transferred to a safe area if there's - if they're ill -

MR HOUSE: Yes.

COMMISSIONER WATLING: - or if there's some, you know, risk attached.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. Now I think this doesn't come into play until those sorts of issues crop up, a), until they're ill or they're in a position of risk.

MR HOUSE: Mm.

COMMISSIONER WATLING: So you're saying that they then have to go to - to virtually exactly the same position and it's exactly the same level, exactly the same rate of remuneration -

MR HOUSE: Yes.

COMMISSIONER WATLING: - when that may not be the thing.

MR HOUSE: Where practicable - that's what we're saying.

COMMISSIONER WATLING: Well why don't you leave it to the full bench decision then if that's - that's your thrust? You want to alter the full bench decision for a certain reason. You just want to get the higher rate of pay or something do you?

MR HOUSE: Well that would obviously be one aspect of it, but the other aspect is that we don't want the person, say, to be transferred as the receptionist out on the counter. I mean I'm not saying that -

COMMISSIONER WATLING: Well you see it may well end up being the safest place for that person.

And say it is the safest place, are you then saying that the employer then must continue to pay them at the level that they were previously?

MR HOUSE: No, we're not saying that. We're saying that it should be a position classified under this award. But I take your point that there may be a more safer position not classified under this award.

COMMISSIONER WATLING: Say, for example, this person may have been employed under this particular award, was sent to an area that may be covered by the Hospital Scientists Award doing some - even research work. So you're saying that they couldn't do research work because that work is not covered by this award.

MR HOUSE: Well that's our claim but -

DR SENATOR: ....

MR HOUSE: Yes, but what if the person wants - is prepared to take a job in the laboratory?

DR SENATOR: Well we don't believe that that would be exploiting their value as a medical employee - medical qualified practitioner.

COMMISSIONER WATLING: See, the real crunch thing with this is, it says here: where practicable be transferred to a suitably mutually agreed position. So say you get people mutually agreeing, you say that they have to mutually agree within certain confines.

MR HOUSE: Sir, I don't know what to say other than that they are my instructions.

COMMISSIONER WATLING: Right. I hear you loud and clear. Right, where have you made the other alterations?

MR HOUSE: Well there's a similar provision on page 51 where a person returns to work after maternity leave, and the test case decision says -

COMMISSIONER WATLING: Now which bit are we talking about, page 51 what?

MR HOUSE: I'm sorry, on page 51 the second - the paragraph commencing - it's (m)(ii) on the previous page and the last paragraph there where .... : (m) Return to work after maternity leave. An employee shall confirm her intention of returning to work by notice in writing to the controlling authority given not less than 4 weeks prior to the expiration of her period of maternity leave.

That's as in the text case decision: an employee upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof shall be entitled to the position which she held immediately prior to proceeding

on maternity leave or in the case of an employee who was transferred to safe employment pursuant to subclause (f) hereof to a position which he held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

Now that's consistent with the full bench and now it's here where we change: where such positions no longer exist but there are other positions available for which the employee satisfies the classification standards under this award she shall be entitled to a position as nearly comparable in level or grade and salary to that of her former employment.

So we've added again the issue of a job as a medical practitioner within the classification standards that -

COMMISSIONER WATLING: So are the actual words that you've - that are different.

MR HOUSE: The actual words are: satisfies the classification standards under this award.

COMMISSIONER WATLING: Thank you.

MR HOUSE: Now the test case says there are other positions available for which the employee - and then it says: is qualified and the duties of which he is capable of performing, she shall be entitled to a position as nearly comparable in status and pay - and we say, level, grade and salary, to that of her former employment. So there's the same sort of thrust there to the previous issue. And then we've added a proviso that it's .... test case decision provided that the controlling authority will be responsible for ensuring that the employee receives any training necessary to perform the full duties required by such safe employment.

DR SENATOR: It shouldn't have safe employment.

MR HOUSE: - such employment -

DR SENATOR: Yes, such employment.

MR HOUSE: - and for the cost of such training. And that obviously puts another further obligation on the employer. Now in the following subclause (n), replacement employees, this provides that the replacement employee - this sections requires that the replacement employee be informed of the temporary nature of the employment and the rights of the employee who has been replaced and that's in the - follows the full bench decision. It's only at paragraph four where we've added: subject to clause 36 of this award nothing this part shall be construed as requiring the controlling authority to engage a replacement employee, and here we've called up clause

36 which is one where we talk about responsibilities on the controlling authority to provide relief where continuity of service needs to be maintained.

So, we're saying it's the obligation of the controlling authority to consider the requirements of continuity of service provision, but at the same time it's still the decision of the controlling authority as to whether they engage a replacement employee.

My view is that this decision - parental leave decision in itself is not injured by that because the decision doesn't require people - the controlling authority to engage replacement employees in this part, however, we would say that in terms of leave generally there is an obligation in this area to consider the maintenance of service provision.

Now, a similar introduction has been added to corresponding paragraphs in other parts of clause 33 where it talks about replacement, for example, on page 57 the same thing has been inserted - about the middle of the page. On page 64, the same part of that page, and finally on page 70 down - just before bereavement leave.

Now the only other change we've made is on page 69, again in an attempt to protect the position of a trainee medical practitioner. In (k) there, nature of part-time of work there's been a proviso added that the work assigned to a trainee medical practitioner shall not prejudice that employee's training program.

COMMISSIONER WATLING: Is that the only new bit there -

MR HOUSE: Yes, sir.

COMMISSIONER WATLING: - is in (k).

MR HOUSE: Now we have - it's just an editorial matter. Where there is a reference to medical - registered medical practitioner in the full bench decision, we've deleted 'registered' because in our award medical practitioner means registered medical practitioner.

If I could now turn to bereavement leave. Now the provisions we've got here appear at clause 9 of the registered agreement, but in the registered agreement the provision is confined to doctors employed in hospitals. Now consistent with other aspects of our claim, e.g. the 38 hours a week being universal, we seek uniform conditions for all employees covered by the award where practicable. Now up to 3 ordinary days per year bereavement leave is consistent with community and, as I'm informed, State Service standards and we submit that the cost of granting this claim is negligible and the risk of flow on is zero. The standard requirements of

providing proof and the question of relationships I think are consistent with state standards.

Now, sir, we come to the problem area. Now, I agonised over this one and I'm not sure whether I got very far, but if I could -

COMMISSIONER WATLING: What's this suppose to cover? Is it annual leave?

MR HOUSE: Leave entitlements - 35?

COMMISSIONER WATLING: Well leave entitlements, is that all leave mentioned every where and any where in this document?

MR HOUSE: Yes. We believe for part-time employees, as defined, and we see them as not temporary and not casual that they're permanent part-time employees, work as full-time employees but subject to certain minimum hours and that subject to the requirements of leave - accessing leave that apply to full-time people in the various categories, that they can also be apply for, say, sabbatical leave. Now I've carefully considered that in light of our discussion last time about what I included in the 20 per cent loading for temporary employees, but as I've said before, we are not attracted to any sort of concept that part-time employees are not - or don't have the same obligations or whatever to the hospital system and don't have the same rights of professional development as other - as full-time employees.

COMMISSIONER WATLING: Right. Just - you mention sabbatical leave and you get 13 weeks sabbatical leave after 5 years.

MR HOUSE: That's so.

COMMISSIONER WATLING: Right. If you were a part-timer you get 13 weeks sabbatical leave after 5 years -

MR HOUSE: Yes.

COMMISSIONER WATLING: - does that 5 years mean 5 years in time -

MR HOUSE: Yes.

COMMISSIONER WATLING: - or does it mean the 5 - or the equivalent amount of work that a full-timer would put in as in 5 years, you see it might be 10 years before they can get sabbatical leave?

MR HOUSE: We're saying that where a part-time, say, works half time for 5 years then they will be entitled to 13 weeks off at half pay sabbatical leave.

COMMISSIONER WATLING: Right. So one person's got to 5 years  
-

MR HOUSE: Full-time.

COMMISSIONER WATLING: - at, say, 38 hours a week.

MR HOUSE: Yes.

COMMISSIONER WATLING: And the other one can do 5 years at 16 hours a week.

MR HOUSE: I never thought - if a person was a specialist, 20.

COMMISSIONER WATLING: Well, 20.

MR HOUSE: Yes.

COMMISSIONER WATLING: So, one can get the 13 weeks for putting in less time?

MR HOUSE: Yes, but gets remunerated at a lower rate for those 13 weeks. But I understand what you're saying -

COMMISSIONER WATLING: I'm just trying to work out whether you're saying -

MR HOUSE: I was conscious of this and I'm just trying to think. In the Commonwealth there's a provision that if you work less than 20 hours a week you've got to do 2 years and I'm just trying to remember what it was - but if you work more than 20 hours - oh, increments - increments that if you work less than 20 hours, you have to work 2 years to get an increment and if you work over 20 hours you get an increment for the one year.

COMMISSIONER WATLING: Right. So, this 35 is going to tell us how we're going to calculate all these leave -

MR HOUSE: Well with the commission's indulgence I've tried - there are inherent problems that I'm sure you've struck - that you see already apart from the one you've mentioned.

COMMISSIONER WATLING: Well what about the ones that we talked about this morning, say, study leave. Is there any need to have a formula for study leave? Or exam leave? Because you were saying to me this morning that whilst every they are sitting the exam they get paid the hours that they sit.

MR HOUSE: Yes. Well the main problem with this clause, sir, as drafted at the moment - I think it came out of the nurses - Miss Cox reminded me, but I thought it came from somewhere

else - is that really it's not clear that - just take annual leave, the simplest one. It says, you know, part-time - there's, say, a 40-hour week, you've got 20 hours over 40, that's a half, times the leave entitlements for a full-time person so that would be 2 weeks full - annual leave on full pay. Our intention is that they get 4 weeks annual leave on half pay.

COMMISSIONER WATLING: On half pay.

MR HOUSE: So the formula is, even in that basic way, deficient, so whether - now I looked up various other awards to try to find out how pro rata was precisely defined and I didn't find any that - they were better in this in some respects, but worse in other respects in that it was so much gobbledy-gook that, you know, it was difficult to understand. The formula was a fairly simple one, and I've tried - if I could hand up to the bench - it needn't be an exhibit - another go.

COMMISSIONER WATLING: Well we'll just - we won't mark it at this stage.

MR HOUSE: No. Now, I've - instead of having this per annum and including periods of annual leave, I think - while the per annum may advantage some people, I think it's better just to say part-time hours worked per fortnight over the standard hours for a fortnight, times the full-time leave entitlements. Like, some people mightn't work part-time for a full - per annum, so, you know, then there's the question of how you do that, so we're prepared to - well we think in the interests of simplicity and user friendliness, that even the deficient formula would be better expressed just as what their, you know, pay period arrangement is, and given that also the part-time hours can be averaged over a fortnight, you can work more in one fortnight and less in the next - more in one week and less in the next.

Now an attempt to overcome this ambiguity about whether you get 2 weeks leave on full pay or 4 weeks on half pay, I've put in a proviso that the periods of leave shall be in accordance with this award and payments will be pro rata in accordance with the ratio of part-time hours worked to the standard hours worked by an equivalent full-time employee. Now, there's an internal contradiction, I suppose, if you want to interpret the formula in one way, but we believe that that in the absence of something more precise that I've yet to find - a way to express our concept of pro rata.

COMMISSIONER WATLING: Would the problem sort of be assisted if you were to actually include in the specific clause that affected a part-time employee a method of calculating for part-time employee, because some of these - the next question

that I'm going to be asking is what clause or how many clauses in the award would be affected by this formula?

Now there are a number that we discussed this morning that if your philosophy comes through it won't be affected now; a part-timer will not have to be calculated on this method, so we're only probably looking at things like sick leave, annual leave, maybe even sabbatical leave.

MR HOUSE: Well, sir, yes, I'm quite happy - we've tried to cross-reference forward to this one and cross-reference back for the sake of completeness and stand alone utility. On - on the question of whether we're giving part-time employees access to - my words, not yours - too many leave entitlements. I'd like to point out that we have incorporated into our concept of part-time employment the concession in that where a part-time employee is, say, contracted - and I don't want to use - shouldn't use that word - is allocated 20 hours or 40 hours a fortnight and it so transpires that that person has worked 50 hours a fortnight fairly regularly. That person doesn't accrue any leave entitlements - extra leave entitlements under this pro rata formula for those extra 10 hours they're working a fortnight.

We haven't sought to build in a 20% loading; that work is done at single time so that the employer is getting those services without having to pay the whatever per cent on-cost for the leave.

Now in the swings and roundabouts we would say that the part-time employee in return for that should be regarded not as any sort of second-class citizen but having, you know, at least the capacity to apply for these other - they might even be, you know, special privileges as someone said in terms of leave for medical practitioners. But, you know, we have some difficulty in making these concessions and not asking for things that we've - well personally I've asked and achieved elsewhere in terms of part-time employee.

Like I've been trying to make the part-time employee thing structurally efficient and not put impediments other than the minimum hours which we've had some debate about that, but I believe there are sound reasons, you know, in terms of health care and preventing casualisation which I've discussed before about all that rather than trying to make life difficult for the employer. So that - that - my submission is that subject to us having a look at those - the way the leave is constructed and how we've put it, that prima facie that the part-time employee should have a pro rata entitlement and that entitlement is the same periods of leave but at the - their normal pay rate and not loaded for any overtime - or it's not overtime - any excess time that they've worked beyond their allocated hours as a - as a reasonable position to take.



COMMISSIONER WATLING: Right. Let's do this exercise: what leave do you want this formula to apply to - and I've got a few here - does it apply to annual leave?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right, well let's tick them off.

MR HOUSE: Where's my list?

COMMISSIONER WATLING: Annual leave?

MR HOUSE: Yes.

COMMISSIONER WATLING: Sick leave?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right.

MR HOUSE: But there's that problem about when the sick - when they - what days the sickness occurs, but -

COMMISSIONER WATLING: Ye, but apart from that you want the formula to apply to sick leave?

MR HOUSE: Yes.

COMMISSIONER WATLING: Do you want it to apply to conference leave?

MR HOUSE: Yes.

COMMISSIONER WATLING: Well you don't do you? Because aren't you saying that even if they're part-time employees and they're required by the employer to go to the conference then they're to be paid for the time they're at the conference?

MR HOUSE: No, that's committee leave.

COMMISSIONER WATLING: Right. So not conference leave?

MR HOUSE: No, conference - conference leave is the leave available primarily to level 4 medical practitioners to attend conferences - that's the 1 week - that's the one we've come back from 2 weeks to 1 week.

COMMISSIONER WATLING: Yes, but say - so you're saying that a full-timer can go to half the conference and a part-timer can go to half the - a full-timer can go to all the conference and a part-timer can go to half the conference?

MR HOUSE: No, the - the - this is where it's very confusing - that they're entitled to 1 week's conference leave we're

submitting, and they would be paid in accordance with whatever their allocated hours are for that week.

COMMISSIONER WATLING: Right. So you want it to go to conference leave. Sabbatical leave?

MR HOUSE: Yes - subject to, you know, requirements we've put in terms of getting sabbatical leave.

COMMISSIONER WATLING: Right. Do you want it to go to committee leave?

MR HOUSE: Well the committee leave - this is the one that we've got to look at.

COMMISSIONER WATLING: So there's a question mark on committee leave?

MR HOUSE: Well if - they would - as - as we've said, they would not get paid for more than 7.6 hours a day.

COMMISSIONER WATLING: Yes, but this formula you're looking at may not necessarily apply?

MR HOUSE: The formula wouldn't work for this, no.

COMMISSIONER WATLING: Right. What about public holidays?

MR HOUSE: Well again if their normal day of working doesn't arise on a public holiday they wouldn't be paid.

COMMISSIONER WATLING: Right.

MR HOUSE: So the formula -

COMMISSIONER WATLING: Right, so it doesn't apply to public holidays?

MR HOUSE: No.

COMMISSIONER WATLING: Or not public holidays, holidays with pay, I should say.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right - how about examination leave?

MR HOUSE: Well again that falls in - if - if the examination -

COMMISSIONER WATLING: Falls into the conference - committee leave category doesn't it?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right - we'll put a question mark by that one. What about bereavement leave?

MR HOUSE: Again that's if the bereavement arises over the period that they would normally be working -

COMMISSIONER WATLING: On work - right.

MR HOUSE: - then yes, but if it was -

COMMISSIONER WATLING: So it doesn't apply to - the formula doesn't apply to it?

MR HOUSE: No.

COMMISSIONER WATLING: No, right. Study leave?

MR HOUSE: The formula applies. Yes, the formula applies.

COMMISSIONER WATLING: Right. How about - and given that it's under sort of question at the moment, but impairment leave?

MR HOUSE: Yes, the impairment leave - the formula would apply.

COMMISSIONER WATLING: Right. So when we really get back to the question of this formula and this clause in the award we're going to have to spell out what clauses that this formula would apply.

MR HOUSE: Yes, and try to -

COMMISSIONER WATLING: For the purposes of calculating the following clauses this formula shall be -

MR HOUSE: Yes.

COMMISSIONER WATLING: - the method used. So you're going to have to -

MR HOUSE: Yes. And also we have to provide - make up the appropriate words to cover those where the formula doesn't apply.

COMMISSIONER WATLING: That's right. And you may well have to do that in the clause itself which you've taken on board from this morning anyway - you're going to look at -

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. Now given that you've told me that it would apply to - to, say, sabbatical leave -

MR HOUSE: Mm.

COMMISSIONER WATLING: - talk me through the formula - how I'd work it out if I was the employer.

MR HOUSE: Well you'd look at the proportion of a full-time hours that the part-time employee has been allocated -

COMMISSIONER WATLING: Right - so we've got 13 weeks -

MR HOUSE: - as distinct from actually work -

COMMISSIONER WATLING: - we've got 13 weeks after 5 years?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. And this person would work 38 hours a week for 5 years?

MR HOUSE: Thirty eight a fortnight.

COMMISSIONER WATLING: Thirty eight a week - 76 a fortnight. No, the full-time person.

MR HOUSE: Oh, the full-time person?

COMMISSIONER WATLING: Yes.

MR HOUSE: Yes.

COMMISSIONER WATLING: So 76 in the fortnight.

MR HOUSE: Yes.

COMMISSIONER WATLING: So that - so you've got those sort of figures available for the full-timer and we'll use an example: - someone that works 38 a fortnight.

MR HOUSE: Yes.

COMMISSIONER WATLING: Now using your formula you'd put 38 over 76 and multiply it by full-time leave entitlements?

MR HOUSE: Yes.

COMMISSIONER WATLING: Well the full-time leave entitlements are, what, 13 weeks?

MR HOUSE: Yes - so it's half 13 weeks under that -

COMMISSIONER WATLING: So they'd be entitled to have 6.1/2 weeks sabbatical leave as opposed to 13 weeks sabbatical leave?

MR HOUSE: Mm. That's the problem with the formula as I said in the case of annual leave. So, you know, I've put the proviso in there.

COMMISSIONER WATLING: And in fact if you took that to its conclusion it would 6.1/2 weeks at a rate of -

MR HOUSE: Fifty per cent.

COMMISSIONER WATLING: Yes. But I said that the provider - the periods of leave shall be in accordance with this award which was supposed to mean 13 weeks and the payments will be pro rata. Maybe you can't use a formula if that's what you want. You've got to -

MR HOUSE: It is -

COMMISSIONER WATLING: - you might have to describe in words that the employee - a part-time employee proceeding on sabbatical leave shall receive their - so the full time - or the full amount of leave which is 13 weeks on the rate of pay they would have normally received for the equivalent hours they would work as a part-time employee.

You're really saying they have 13 weeks sabbatical leave at their normal weekly wage had they been employed during that period - or had they been at work during that period.

MR HOUSE: Yes. Well there's all sorts of problems in that what about where the part-time - the part-time hours are varied from time to time?

COMMISSIONER WATLING: Well that's why some clauses talk about the hours they would have worked - or talk about the leave or the hours immediately preceding the leave.

MR HOUSE: Yes. That's right.

COMMISSIONER WATLING: Because let's face it, even that can work in reverse because someone could have their hours reduced by giving appropriate notice, but one would think that there may be then some dispute over that in which case the disputes procedure would be followed and at the end of the day might even end up here. But I'm not too sure that you're going to get a formula like this to work on all those clauses. You may have to just describe in words what they shall receive.

MR HOUSE: In the - I think it's your decision, commissioner, on the private sector award -

COMMISSIONER WATLING: The medical practitioners?

MR HOUSE: Yes - I'm - that's the parental leave one -

COMMISSIONER WATLING: Oh yes.

MR HOUSE: - the existing provision there I looked at, part-time employees engaged to work 20 or more hours a week shall be entitled to annual leave, holidays and sick leave as prescribed in clause 9 - annual leave, clause 16 - holidays with pay, and clause 28 - sick leave; provided that payment therefore shall be made at the rate normally paid to such employee for a similar period of time worked. The wage rates payable per hour shall be 1/40th of the relevant rate set - above set out. And then for less than 20 hours it's the loading.

Now with due respect to the commission I'm not really sure, you know, the ins and outs -

COMMISSIONER WATLING: Are you just looking for the parental leave -

MR HOUSE: No this is the specific - oh, wait a minute - yes - the specific section, 23, after parental leave. It's probably one of the -

COMMISSIONER WATLING: What's the - what's the clause?

MR HOUSE: Twenty three.

COMMISSIONER WATLING: Yes, but what is it?

MR HOUSE: Part-time -

COMMISSIONER WATLING: Bushwalking time or -

MR HOUSE: - employees.

COMMISSIONER WATLING: Yes. Well all I can say to you, that whole award is up for review at the moment.

MR HOUSE: I appreciate that. I'm not being -

COMMISSIONER WATLING: Yes.

MR HOUSE: - critical. All I'm saying is, I've looked at others and I see as many problems as I've had - or that the problems I've had are not necessarily health. The other thing of course is the transitional arrangements, you know, where people go from part-time to full time and full time - what about their leave entitlements then?

COMMISSIONER WATLING: Well -

MR HOUSE: You know, you talked about sabbatical leave that you're going along with a certain rate. All I know in the

Commonwealth if you're a part-time employee and you become a full-time employee then your service at part-time - as a part-time employee counts as if you're a full-time employee. Under some obscure reference to some determination, you know, and that all had to be explained to me.

COMMISSIONER WATLING: Well someone goes on sabbatical leave, they're obviously going to know what their employment status is at the time of going on sabbatical leave, aren't they? They're going -

MR HOUSE: Yes.

COMMISSIONER WATLING: - to know that they're working 20 hours a week?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. Now we're really saying that proceed on sabbatical based on the payment for the hours they were working immediately preceding - their weekly or fortnightly hours immediately preceding on sabbatical leave.

Now one recognises of course you can't the perfect answer because the employer can change the contract of employment by giving appropriate notice, so 2 weeks before proceeding on - or a month proceeding on annual - on sabbatical leave, they may have been working 30 hours a week, but the employer may have given appropriate notice to reduce them to 20 hours a week.

MR HOUSE: And what if their past employment was 2 years full time and then 3 years part-time?

COMMISSIONER WATLING: Well, it's pretty hard to calculate isn't it?

MR HOUSE: Yes.

COMMISSIONER WATLING: You have to - you can only calculate it on the basis of what's happening immediately preceding the leave because that's their contract of employment.

MR HOUSE: I'm instructed that that would probably be better for us to do it that way - the time of application.

COMMISSIONER WATLING: Yes, well it could be - that's the sort of thing I think you've got to look at as opposed to this type of formula.

MR HOUSE: Yes.

COMMISSIONER WATLING: That's why I think you might have to put it down in words how is it done. They shall get this, and it's done then, the calculation is made at this time.

MR HOUSE: Yes. Well we - we're not trying seek any advantage -

COMMISSIONER WATLING: No, I can see that, but -

MR HOUSE: - you know, we're trying to give them a pro rata entitlement - that's -

COMMISSIONER WATLING: That's right -

MR HOUSE: - no more, no less -

COMMISSIONER WATLING: - well I see what you're on about.

MR HOUSE: - but there's all these difficulties.

COMMISSIONER WATLING: Yes well I can see what you're on about; all I'm saying is that if you follow a straight formula as we just did on sabbatical leave then, they end up with 6.1/2 weeks sabbatical -

MR HOUSE: Yes.

COMMISSIONER WATLING: - after 5 years.

MR HOUSE: Yes, that's one of the things that motivated the proviso, but it hasn't overcome the problem.

COMMISSIONER WATLING: Well, no, because we're talking about the period of leave. We really need to get into what they're being paid either immediately prior to proceeding on leave or what was their contract at the time of lodging their application for sabbatical leave. You know -

MR HOUSE: So really suggest that we need a part - a special part-time provision under each leave provision?

COMMISSIONER WATLING: Well there may - yes - there may be a slightly different calculation for each one of these leave things, because certainly on, say, for example, committee leave, you're going to be talking about full time and part-time employees shall receive blah, blah, blah -

MR HOUSE: Yes.

COMMISSIONER WATLING: And under that one you're going - from what you were telling me this morning you're going to be arguing that they both - both full-timers and part-timers get paid when they attend these committees.



So, no formula, but you're still going to have to describe in that clause what the full-timers and part-timers get.

MR HOUSE: It's sort of the user friendly thing, is that it's a matter of preference, I suppose, but I've sort of grown up to like the look of the section that tells you what applies to part-time employees.

COMMISSIONER WATLING: Yes, well I don't disagree with that, but all I say is that's the result of it isn't it?

MR HOUSE: Yes.

COMMISSIONER WATLING: Sometimes it just doesn't work. That's my preferred position. If you ask me what my preferred position would be, I'd say, well look, take me to a part-timers clause and tell me everything that part-timers are entitled to.

MR HOUSE: Yes.

COMMISSIONER WATLING: But sometimes it just doesn't work.

MR HOUSE: Yes.

COMMISSIONER WATLING: Because you've got so many variables and the more - look at all these different forms of leave - it isn't just a straight forward thing and that's where the problems come about, because some - you want to be - you want to treat them a little different - especially the part-timer that may not work on the days that they're required to go to a committee meeting - you're saying well they shall be paid at their normal hourly rate. But it mightn't be part of their - it mightn't be part of their hours.

MR HOUSE: Mm.

COMMISSIONER WATLING: Certainly on sabbatical leave - if you want it for that you're going to have to say, right, they're entitled to 13 weeks - at what rate? It's at the rate of pay that they were receiving when?

MR HOUSE: Yes.

COMMISSIONER WATLING: And that's probably where you've got to then talk about this being, say, sabbatical leave, part-time - full time and part-time employees shall proceed on 13 weeks sabbatical after 5 years. They're both entitled to 13 weeks.

MR HOUSE: But shall be paid pro rata.

COMMISSIONER WATLING: Yes - and there might be another subclause that says a part-timer proceeding on sabbatical

leave shall receive a rate of remuneration whilst on that leave on the basis of salary - the fortnightly salary they were receiving immediately preceding the date on which they lodged their application for sabbatical leave. Now that's quite simple then.

MR HOUSE: Mm.

COMMISSIONER WATLING: Now when you proceed on committee - on - what's another one - conference leave, well you get - what you're saying is that conference leave is open to part-timers and full-time employees.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right, so if it's 1 week conference leave per year then those two groups are entitled to it - full-timers and part-timers. However in the case of part-timers the amount of money they receive whilst on conference leave or at a conference or whilst on conference leave shall be the amount of money they would have received had they been at work and the amount - based on the amount they received immediately prior to that leave.

MR HOUSE: Yes, well, there's even difficulties with the 1 week in that if the part-time employee only works 3 days in a week they are only entitled in effect to 3 days conference leave.

COMMISSIONER WATLING: Yes, but the conference might go for a week.

MR HOUSE: Yes, I know, but they're only entitled to 3 days because they normally only work 3 days.

COMMISSIONER WATLING: Yes, but they could be entitled to go to the conference - the week conference.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right?

MR HOUSE: Yes.

COMMISSIONER WATLING: But the payment they'll receive for that week might only be 3 days pay.

MR HOUSE: Yes - that's the intention.

COMMISSIONER WATLING: Yes. So - but they could still get the week's conference leave.

MR HOUSE: Mm.

COMMISSIONER WATLING: Anyway it might be an appropriate time to break and we'll have a look at it at 10.30 in the morning. Thank you.

HEARING ADJOURNED