

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, 26 November 1992
Continued from 23/11/92

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances please.

MR J. HOUSE: If the commission pleases, JOHN HOUSE, appearing with DR GORDON SENATOR for the Tasmanian Salaried Medical Practitioners Society.

COMMISSIONER WATLING: Good, thank you very much.

MISS J. COX: If the commissioner pleases, JANE COX, appearing with KATE PAMMENTER representing the Minister administering the Tasmanian State Service Act.

COMMISSIONER WATLING: Good, thank you. Mr House, I understand you want to seek leave of the commission to amend your application.

MR HOUSE: Thank you, sir. If the commission pleases I would like to tender a document that sets out our claim and replaces exhibit H.4.

COMMISSIONER WATLING: Right. We can mark this exhibit H.8. Thank you.

MR HOUSE: Thank you.

COMMISSIONER WATLING: Now the subject matters for the application are contained in clause 3 - the arrangement. Are they the subject matters of your application?

MR HOUSE: That's correct, sir. If I might briefly -

COMMISSIONER WATLING: And your claim is then contained in H.8.

MR HOUSE: That's correct.

COMMISSIONER WATLING: Right. Is there any objection to the application being amended in the form of exhibit H.8 and the subject matters contained therein? Are you objecting to the application being varied?

MISS COX: With respect, Mr Commissioner, we haven't had much time to go through the document. We're unsure of whether other matters have been put in or been replaced.

COMMISSIONER WATLING: Yes, well all I say to you is that I suppose it is their application. You'll have time overnight to consider whether or not you'll need to amend your application tomorrow.

MISS COX: Yes, commissioner.

COMMISSIONER WATLING: So I'll give you that opportunity. But is there any objection to them amending their application at this stage?

MISS COX: No, Mr Commissioner.

COMMISSIONER WATLING: Right. Well, leave is granted and it's granted on the basis that if it does leave something out that was originally in there and the employer feels that it should be in, then they'll amend their application at the start of tomorrow's proceedings.

MISS COX: Thank you.

COMMISSIONER WATLING: Right. Good, thank you. Mr House?

MR HOUSE: Sir, as far as one can be certain about things, we believe that H.8 in terms of content is identical to the matters that we had in H.4.

COMMISSIONER WATLING: That's the subject matters you mean?

MR HOUSE: Yes, the issues.

COMMISSIONER WATLING: The issues, yes.

MR HOUSE: Yes. The main changes have been in terms of rearrangement of the application.

COMMISSIONER WATLING: Of the claim?

MR HOUSE: Of the claim of H.4. For example, we've expanded clause 7 - definitions to include classification standards. We've elaborated on the transfer provision to specify that it covers trainee medical practitioners, which is also a new definition that we've put in the award which basically identifies resident medical practitioners and registrars as trainee medical practitioners. And senior registrar, I've also been reminded, comes within that category.

The hours of work clause has been substantially rearranged to clearly distinguish between medical practitioners on a duty roster and those that are not on a duty roster and in H.4 excess time was in hours of work and we've now given it a specific clause so that it can be easily referred to.

We've again expanded the definition or the heading for the clause previously entitled 'Call Back' to include 'and return to duties'. As, I think, canvassed in previous proceedings we've expanded the maternity leave provision to pick up the commission's decision in relation to parental leave. We've deleted the clause relating to full fixed term contractors, so that has been removed from the claim. That is one, I suppose, substantive change.

And we've also removed the clause relating to salary increments and endeavoured to cover that aspect or how people move between levels and grades in our position classification standards. Also, ordinary hours of work in the definition has been removed and replicated under the hours of work clause. If the commission pleases, we would propose to proceed through H.8 and address the contents anew.

COMMISSIONER WATLING: Right. Now I understand that given H.8 and given earlier proceedings we have - or I understand you have reached agreement on certain matters.

MR HOUSE: That is so.

COMMISSIONER WATLING: And you might just see whether these are the ones that you've agreed on, I'll read them into transcript: the title, the scope, the arrangement, the supersession and savings, parties and persons bound, the definitions of controlling authority, full-time medical practitioner, hourly rate, medical practitioner, post-graduate experience, senior qualification and weekly rate, and clause 10 - removal expenses, and clause 12 - payment of salaries in respect of subclause (a). It's also my understanding that you've completed submissions on clause 12(d), and clause 4 - the operative date. Is that your understanding of the picture to date, Mr House?

MR HOUSE: Certainly, that's correct, sir.

COMMISSIONER WATLING: Right. And that's your understanding is it, Miss Cox?

MISS COX: Yes, Mr Commissioner.

COMMISSIONER WATLING: Thank you. Right, well we start from that position. So it really then takes us to clause 7 - definitions which a number of them, as I stated earlier, you've agreed. You might start addressing the ones you haven't agreed.

MR HOUSE: Sir, the first definition appearing is, career medical practitioner, and that means a medical practitioner appointed as such, not being a medical practitioner in training. And we have added, 'who has had at least 3 years post graduate experience'. In the previous claim the structure we -

COMMISSIONER WATLING: Well, we won't refer back to that now. We'll go straight on.

MR HOUSE: Well, that means, sir, that -

COMMISSIONER WATLING: It's gone.

MR HOUSE: - the import of that is that they all start off at the same point in the - in the structure. We believe that having carefully considered the duties of, and responsibilities or professional requirements of career medical practitioners that 3 years post-graduate experience is an appropriate requirement for this category of employee.

The next definition not agreed is that of consultant, which means a medical practitioner appointed as such who holds a senior qualification appropriate to the speciality or is a Fellow of the Australasian College of Emergency Medicine, or holds a masters degree in health and/or administration, or is a Fellow of the Australian College of General Practitioners; such qualifications being relevant to the position in which that person is employed.

The - the definition, in our view, should be expanded to provide for the employment of consultant specialists who may not be recognised as such by the NASQAC requirements. We believe that the - the public health system should have the capacity to employ people qualified, where appropriate, in the areas - as specialists in the areas we've indicated and the society believes that, for example, in the area of administration that qualifications such as Master of Public Health or Master of Business Administration are qualifications that are relevant to the public health system. However, we do, as will become evident later on in our submissions, build in certain safeguards concerning the non-NASQAC qualifications.

Turning to deputy director of medical services, we see this is a medical practitioner appointed as such, who has at least 4 years post-graduate experience in the practice of medicine. Again, in the society's judgment, that a minimum of 4 years is appropriate for a person holding a position of that responsibility.

Director - I don't believe that one has changed. It means a medical practitioner appointed as such, who, in addition to holding a senior qualification relevant to his or her speciality, is placed in charge of a department, service division, unit or program in a health service facility or region.

COMMISSIONER WATLING: So are you talking about a senior qualification as defined there?

MR HOUSE: Yes, that's correct, sir. A director of medical services -

COMMISSIONER WATLING: Can I just ask you a question on that?

MR HOUSE: Sorry.

COMMISSIONER WATLING: Why have you, sort of, gone for the position where a deputy director of medical services requires at least 4 years experience, but a director you haven't chosen to address the question of experience?

MR HOUSE: Well a director -

COMMISSIONER WATLING: I'm not saying you should, but I'm just - I'd like to know why couldn't you have a deputy director - it might be whiz-kid after sort of, you know, one or 2 years coming - of post-graduate experience - why does it have to be 4?

MR HOUSE: Well, sir, it's really in the sense, a local title for a consultant at level 4 and that is defined in the position classification standards, so the person would have more than 4 years post-graduate experience.

COMMISSIONER WATLING: How many years?

DR SENATOR: Oh, it's probably about 8, but it's - should have at least 2 years post-graduate after the post-graduate qualifications.

MR HOUSE: I'm reminded that a person would have at least 2 years experience as a consultant which could be, say, 8 years post-graduate experience from the initial qualification as a medical practitioner.

COMMISSIONER WATLING: You're not saying they have to be a consultant before they be a deputy director though; are you?

MR HOUSE: No. I'm again reminded that a director only - as defined - only applies to clinical services. Consultant in charge of an area -

COMMISSIONER WATLING: Does it say that there? Does it say that there?

MR HOUSE: Not there, but it - well in charge of a department, service division, unit or program in a health service facility or region. That's what it's intended to indicate, that it would be a consultant in charge of a - an area of medicine. I'm sorry - it may be also a career medical practitioner at the senior level, the fact that the maximum of that stream, which would be ahead of the minimum of a deputy director of medical services.

COMMISSIONER WATLING: You might explain to me why could you be a director after having 1 year post-graduate experience?

MR HOUSE: Post -

COMMISSIONER WATLING: Dr Senator is nodding his head - no. Can you explain to me why?

MR HOUSE: Well it's - it is confined to the - apart from the maximum of the career medical practitioner, it's confined to the consultant group.

COMMISSIONER WATLING: No it doesn't - where does that say?

MR HOUSE: Well, the classifications standards, sir. This - I understand what your problem is, but we've endeavoured in the classification standards to clarify how the structure should work as we see it, and I think it goes beyond what might be put in a definition.

COMMISSIONER WATLING: Right, so you're saying that maybe I should hold off on my questions until I see the classification structure?

MR HOUSE: Yes, sir. If - if you still feel that that definition is deficient or ambiguous in the light of - of further submissions -

COMMISSIONER WATLING: Right.

MR HOUSE: - we'd be happy to try to improve them. We wouldn't be seeking to change the import of it but make it clearer.

COMMISSIONER WATLING: Right.

MR HOUSE: The next one, sir, is director of medical services, is a medical practitioner appointed as such who has at least 9 years post-graduate experience in the practice of medicine, with at least 5 years practical experience in health and/or administration. Here again we've endeavoured to build into that classification considerable medical experience, but also considerable experience in the area of health administration.

We believe that under structural efficiency - and I personally believe going beyond this state that attention should be given to improving the standards of medical administration, given that the way the country is going now that we need very capable medical administrators given budgetary constraints all those sorts of things that I'm sure you're very well aware of. In New South Wales now, medical administrators, I believe, can be sacked if they don't meet their budget. We have -

COMMISSIONER WATLING: So you have to be a medical practitioner to be a medical - a director of medical services; That's compulsory?

MR HOUSE: That is our submission, sir, that we believe that you need a balance of medical knowledge, experience, qualifications, and that should be supplemented by training and qualifications in administration. There are aspects of -

COMMISSIONER WATLING: But to be a medical director you don't have any - under this definition you wouldn't have to have any qualifications in administration?

MR HOUSE: A director?

COMMISSIONER WATLING: No, the director of medical services. You may not have any experience in administration under this definition?

MR HOUSE: The director of medical services; experience or qualifications, sir?

COMMISSIONER WATLING: Both.

MR HOUSE: Well it says 5 years practical experience in health and/or administration.

COMMISSIONER WATLING: Yes, the point - I think you've missed the point completely that I'm making. That you - you could be a director of medical services without having any administrative experience or qualification?

MR HOUSE: Yes, well I've missed the point.

COMMISSIONER WATLING: Well, it says here - say, for example, if you had someone that had - you've got to be a medical practitioner - point one?

MR HOUSE: Yes, yes.

COMMISSIONER WATLING: You've got to have 5 years post-graduate experience in the practice of medicine?

MR HOUSE: Yes - not -

COMMISSIONER WATLING: Within the last 5 years, right, in health, and it says, and/or. So all I'm - the point I'm making is that you - you may be appointed to the position under your definition by having no administrative experience whatsoever. Well that's what the words say anyway.

MR HOUSE: I think I'd like you to address that.

DR SENATOR: Well, I think the - Mr Commissioner -

COMMISSIONER WATLING: Or am I misinterpreting the words?

DR SENATOR: No, no.

COMMISSIONER WATLING: So my - my interpretation is correct?

DR SENATOR: I don't know that your interpretation is correct.

COMMISSIONER WATLING: Well, maybe you should enlighten me because that's how I'm reading it at the moment.

DR SENATOR: Right.

COMMISSIONER WATLING: Because it says, and/or. So, you could have someone who's a medical practitioner, has only - has completed the years of experience in - in medicine, right - and that's it. Or you could have a medical practitioner who has completed a certain number of years in medicine and some in administration.

DR SENATOR: I think we were relying very much on our classification standards, Mr Commissioner, to - to indicate that there was administrative or managerial responsibilities in graduates with 9 years post-graduate experience.

COMMISSIONER WATLING: Yes, but - well - yes, well I haven't got to that yet, but -

DR SENATOR: The problem arises -

COMMISSIONER WATLING: - there may be some conflict then between the definition and - and the classification standards. All - all I'm really asking the question for is to ascertain whether or not it would be possible to have a medical practitioner go through and have at least 9 years post-graduate experience in health only and be the director of medical services.

DR SENATOR: Well I believe the - the intent of this definition is probably then clearer, Mr Commissioner, if we exclude the words 'and/or'.

COMMISSIONER WATLING: Right, so it's with at least 5 years practical experience in health administration.

DR SENATOR: If the commission pleases.

COMMISSIONER WATLING: So will we amend -

MR HOUSE: Well -

COMMISSIONER WATLING: - amend the document in that form?

MR HOUSE: Yes, if the commission pleases. What Dr Senator said was - I suppose I didn't focus enough on the 'and/or', but -

COMMISSIONER WATLING: That's the point I was making.

MR HOUSE: - it is my understanding of what we were trying to say, because as will hopefully be demonstrated in the position classification standards, that we'd be looking for people with those sorts of attributes in this - this area.

COMMISSIONER WATLING: You're looking for a balance between both?

MR HOUSE: The balance - yes, the balance between both, and certainly a commitment to both.

COMMISSIONER WATLING: Right.

MR HOUSE: Sir, the next one, employee, replaces the previous and existing references in the existing award to officer. On reflection we believe that employee is appropriate in terms of modernising the award. Experience in a specialty -

COMMISSIONER WATLING: Interested - in just passing, I understand the police are also arguing that they shouldn't be referred to police officers any more. Interesting too.

MR HOUSE: Yes.

COMMISSIONER WATLING: There's an area where you thought they would have been.

MR HOUSE: Well the police force is becoming more - that everyone that works in that area are all now in the one group and under the one award and -

COMMISSIONER WATLING: Yes, so it's - but I just make that comment in passing.

MR HOUSE: Yes.

COMMISSIONER WATLING: We did have a case one day where the Fire Brigade Union told us that they continued to use the word 'officer' because they were a rank organisation and a number of people agreed with them from the back of the hearing room which I thought was quite unfair.

MR HOUSE: Sir, Dr Senator has indicated that we might - or we will carefully look at the definition of director, if we could address you -

COMMISSIONER WATLING: So you want to come back to that?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. Right, so we'd better start a list here of the first part of our list on matters on which you've reserved your position and you're going to come back to, so that would be the definition of director of medical services?

MR HOUSE: No - director, I'm sorry.

COMMISSIONER WATLING: It was just straight director.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right.

MR HOUSE: The next definition, sir, is the experience and the speciality, and we say this means relevant practical experience in that speciality including accredited advanced training for the appropriate higher or senior qualification in that speciality. And here again we add in - or wish to include, 'or in accident and emergency medicine or in health - we've got and/or administration'. Do you want to delete the 'and/or'?

COMMISSIONER WATLING: So you're really saying the three - or a few things then. You're saying, appropriate higher - training for the appropriate higher or senior qualification at speciality, or, accident and emergency service, or, in health, and/or administration - you're seeing that as a separate thing? Health and administration as a separate -

MR HOUSE: Well, in this context we were thinking about - what I call departmental medical officers - those in departments that are administering health programs.

COMMISSIONER WATLING: I'm not too sure what you're saying - this or this or this and/or this. I'm not too sure what it really means then. It's in health and administration, or it's either in health or administration - one or the other.

MR HOUSE: Well, personally I'd prefer health administration. I have no instructions, but what - what we're talking about - again I'll have to go to the Commonwealth terms, that doctors that are administering a Commonwealth health program or an area of regulation such as the therapeutic goods administration - so we're - we're endeavouring with limits which we'll address later to address that area, given that we're trying to put together an integrated and flexible structure.

COMMISSIONER WATLING: Can you get an appropriate or senior qualification in health administration?

MR HOUSE: Yes, there's Master of Public Health.

COMMISSIONER WATLING: So I take -

MR HOUSE: And there's FRACMA - Fellow of the Australian Royal College of Administrators.

COMMISSIONER WATLING: So we are then talking about health administration.

MR HOUSE: Well, we also believe that a Master of Business Administration from a recognised university would -

COMMISSIONER WATLING: So we could be talking about, in health administration or administration?

MR HOUSE: Yes.

COMMISSIONER WATLING: So it could be - so we're really talking about the two forms of administration. It could be general administration or health administration. So we might need to put after the words 'or in health administration, or general administration.

MR HOUSE: Yes.

COMMISSIONER WATLING: Now, with general administration we'd be talking about a higher qualification or degree. It might be -

MR HOUSE: Well, we're seeing it's got to be at least a master's degree.

COMMISSIONER WATLING: Yes, Bachelor of Business Studies or something - Master of Business Studies, yes.

MR HOUSE: No, a master's degree.

COMMISSIONER WATLING: Yes.

MR HOUSE: Well, sir, we -

COMMISSIONER WATLING: Or general business administration.

MR HOUSE: Yes, we'd seek leave to incorporate those words.

COMMISSIONER WATLING: Right.

MR HOUSE: So it would read -

COMMISSIONER WATLING: I have no problems with that.

MR HOUSE: - 'or in accident and emergency medicine or in health administration or general business administration'.

COMMISSIONER WATLING: Right.

MR HOUSE: We're agreed on the full-time medical practitioner. Now health services facility means: an establishment providing any service relating to the maintenance or improvement of the health and well-being or restoration to health and well-being of persons or the prevention of disease in - sorry - in or injury to persons and without limiting the foregoing includes any hospital, medical, paramedical, mental health, community health, environmental health or other health service.

Sir, the origins of that definition - there's a definition in the Health Regional Boards Act 1991 which says - (3)(1) in this act unless the contrary intention appears there's the definitions of board employee and then follows the definitions of board employee and then follows the definition of health service, means: any service relating to the maintenance or improvement of the health and well-being or restoration to health and well-being of persons or the prevention of disease in or injury to persons and without limiting the foregoing includes any hospital, medical, paramedical, mental health, community health, environmental health or other service - in parenthesis - including any service of a class or description prescribed by the regulations. End of that definition. And as far as possible I've tried to plagiarise or replicate what's in that Health Act.

There has been some difficulty between the parties about references to hospitals in our proposed - or our claim. I've endeavoured to overcome that by incorporating that fairly wide definition, but still specific to the public health system. Higher qualification means: such qualification applicable to the speciality concerned obtained by medical practitioners subsequent to graduation and which is recognised by the National Specialist Qualification Advisory Committee. I think that one speaks for itself. I'm not clear why we have difficulty over that one.

We're agreed on hourly rate. We've now included a new definition of medical administrator which means: a medical practitioner appointed to the position of director or deputy director of medical services. Medical practitioner is agreed, sir. Enquiries were made of the Medical Council as to what types of registration apply under the Medical Act in Tasmania, and we were given general advice rather than, you know, this is the law type advice, that the words should be a person holding full - and there should be a comma after 'full' - limited, provisional and temporary registration under the Medical Act 1959.

Now, as I understand it, their provisional and temporary registration may be granted to people that are otherwise entitled to full registration but they've - the medical board needs to make further enquiries or requires further papers from overseas to, you know, be certain that the application for registration accords with the act. So we've - and that's distinct from a doctor with overseas qualifications that may not be recognised in Australia, but thus has to undergo a further examination in this country.

But for the sake of completeness we've expanded that definition with it, but given that it was an agreed matter if there was a difficulty we could quite easily continue with the previous definition. Part-time employee means: a medical practitioner other than a full-time medical practitioner engaged to work regularly in each pay period for less hours than an equivalently classified full-time employee - and we've added - but does not include an employee engaged upon casual work or a temporary employee. Now the reasons for the additions of those words are that, as I think I've indicated, the society is very much opposed to casualisation of the profession which goes beyond the usual trade union arguments that you might hear, but I'm speaking from a -

COMMISSIONER WATLING: Couldn't you have a temporary employee being a part-time employee? Isn't a temporary a part-timer? In fact, you could have a temporary being a full-timer.

MR HOUSE: Yes, we have no difficulty with a temporary employee being a part-time employee. I'm talking about, as I think I said before, a practice of moonlighting that goes on in some other places.

COMMISSIONER WATLING: Well, do you define temporary employee?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right.

MR HOUSE: We say full-time or part-time, and we say that people who are not trainees may be employed for fixed periods.

COMMISSIONER WATLING: Yes. If you've got a full-time employee and a part-time employee and you have - do you have casual employees?

DR SENATOR: No.

MR HOUSE: No.

COMMISSIONER WATLING: Could a temporary employee be - who is engaged for a fixed period be in the true sense of the word a casual? Because a casual could be a person who is employed

for a specific task or for a specific time and once the time and the task - all the task has been completed, then the contract is completed.

MR HOUSE: Yes. We have no difficulty with that. What - if I can just put it in the vernacular - I'm opposed to is the idea of trainee medical practitioners in, say, the Royal Derwent, if they are there, going and doing Saturday nights at the Royal Hobart. Which is the sort of thing that does occur in some other states, after working, you know, 60, 70 hours in the hospital and then going and working elsewhere.

COMMISSIONER WATLING: So, you're trying -

MR HOUSE: Is a casual in the real sense -

COMMISSIONER WATLING: So is this - are you trying to restrict people from working or something?

MR HOUSE: I'm trying to preclude what I consider to be casualisation of the medical profession.

COMMISSIONER WATLING: If the - but if they regularly worked wouldn't they be part-timers? See, the nature of a part-timer's work is that they regularly work on a set number of days or a set number of hours per week or per pay period.

MR HOUSE: Well, it's quite convenient to the employer in some places to have an arrangement where doctors fill in on a casual basis and they get paid so much an hour -

COMMISSIONER WATLING: You don't have casuals here though.

MR HOUSE: Pardon?

COMMISSIONER WATLING: You don't have casuals in here.

MR HOUSE: I'm saying that even where, in some states it's not in the award or anything but that it is developing as a practice and as far as we are concerned we don't countenance in this award.

COMMISSIONER WATLING: Yes. I'm just trying to work out what does it really mean; because, if I was employed as a temporary under the State Service Act, right - in fact, if the Bill goes through as it is the award won't have any effect on them, anyway - but that's another argument.

But, if I am a temporary employee under the act, what's to stop the employer from actually employing me as a part-timer? My status, in terms of the State Service Act might be a 'temporary', but my contract with the employer would be a part-time contract.

MR HOUSE: Well, we can't do much about it, other than to say that your part-time contract should be a permanent part-time contract. If they want to employ you on Saturday nights every, whatever, and that's specified, well we can't do much about that, I suppose. But we can endeavour to preclude from this award a situation where - and has happened in this state - there has been advertisements, but not by the employer - the controlling authority - but another controlling authority, for people to work in a certain hospital here at so many dollars per hour on a casual basis. And, needless to say, we put a stop to that through another union, because it wasn't provided for in the award - a federal award.

COMMISSIONER WATLING: Right. So, when you get to then the award rate and the rate of pay, aren't you going to have difficulty with temporary employees? Because temporary employees you are saying are really casuals. You're saying that the employer can employ casuals by your very definition of temporary employees.

MR HOUSE: I realised that at the time. It is a difficult - you see, I suppose what we are looking at is the locums - that's really the nub of it - or if there is some specific project that needs to be done. Now that could be done on a part-time basis, 2, 3 days a week advising the government on a particular aspect of what needs to be done in the system or how the act should be amended. They like to use - you have got to provide some flexibility that people's skills and qualifications can be drawn upon to meet those sorts of circumstances.

COMMISSIONER WATLING: Yes. Well, I am just trying to sort it out in my mind. Why have we gone for a part-timer and a temporary, and what is the difference between both in actual fact? Like, I just -

MR HOUSE: Well, the -

COMMISSIONER WATLING: If you read both of them there doesn't seem to be too much of a difference.

MR HOUSE: Well, I -

COMMISSIONER WATLING: Because a temporary employee can be a part-time employee but a part-time employee can't be a temporary. I can't work that out. There's an inconsistency there. How can you be a temporary employee if you are a part-timer, but the definition for part-timer says you can't be a temporary? It doesn't make sense.

DR SENATOR: Mr Commissioner, I understand the dilemma, and I think that the problem may be resolved by leaving that last bit out of there, 'or a temporary employee', on the basis - and going to your statement - that the temporary employee

definition makes provision for full time or part time and, therefore, is on all fours with the part-time employee, and as we have provided for under a subsequent clause under the part-time provisions, that we protect against casualisation of the service - which is really basically what we were trying to do.

COMMISSIONER WATLING: Right, so in the area now you could have a full-timer, you could have a part-timer who regularly works, right?

DR SENATOR: Yes.

COMMISSIONER WATLING: You could have a temporary who is a part-timer for leave only and you could have a temporary who is engaged for a fixed period.

DR SENATOR: Yes; which may be part-time or full-time.

COMMISSIONER WATLING: Yes, that's right. Now - so I have got all the categories in my mind - if I take you back to the part-time definition, what do you mean then by the words, 'but does not include an employee engaged upon casual work'?

DR SENATOR: Mr Commissioner, I think that's the intent to prevent perhaps the category of staff that Mr House was indicating, perhaps the Saturday night special, where someone was hauled in just to do a very brief period perhaps once every so often; and really without thought to - on an expediency basis and not with any great thought regarding the quality of patient care. And - I mean this was the basic reason for wishing to protect the health service against the impact on quality that that type of employment might engender.

COMMISSIONER WATLING: But -

DR SENATOR: I do believe -

COMMISSIONER WATLING: - you don't have casuals, though, do you?

DR SENATOR: Right. Right.

COMMISSIONER WATLING: And that would mean if an employer employs someone other than a full-timer, a casual or a temporary, they are in breach of the award.

DR SENATOR: Well, I think that what you are indicating, Mr Commissioner, is that the part-time employee definition is served just as well without the - without even part of that last line - and removal of that term, 'but does not include an employee engaged upon casual work'.

COMMISSIONER WATLING: Yes; because I think it does nothing for the part-timer because you don't have casuals under your

definitions, and therefore if you mention casual work, someone is going to say, 'What is casual work? We don't have casuals. There is no position in the award for casuals'.

So, it is just a matter of the employer will only, under your criteria, will only have the option to employ a full-timer, a part-timer who regularly works, a temporary who relieves a full-timer or a part-timer for specific periods of leave, or a full-timer or a part-timer who is called in for a fixed period. They are the only categories you'd have under your definitions. Anything else would be a breach of the award.

DR SENATOR: Well, that's the intent.

MR HOUSE: Perhaps we were being over-zealous. I'd seek leave to delete the words, 'but does not include an employee engaged upon casual work or a temporary employee' from the end of the definition of 'Part-time Employee'.

The next one, sir, is a new one. We had some difficulty in the last proceedings concerning penalty rate or payment. We've attempted to define it. It means the hourly rate prescribed in the award for time worked in excess of the prescribed weekly minimum, or outside the prescribed spread of hours.

COMMISSIONER WATLING: So, are you saying, that reads penalty rate or penalty payment?

MR HOUSE: Yes.

COMMISSIONER WATLING: So, wherever 'penalty rate' appears and wherever 'penalty payment' appears?

MR HOUSE: Yes.

COMMISSIONER WATLING: So, it is not penalty payment - where 'penalty payment' appears it means that - or where 'payment' appears it means this? You are talking about penalty payment, are you?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right, so we should put 'penalty payment' then. Right, so that word, or that word means this.

DR SENATOR: Mr Commissioner, to be pedantic, then, shouldn't we then expand that to say, 'means the hourly rate or payment respectively prescribed in the award'?

COMMISSIONER WATLING: Yes.

MR HOUSE: Well, if the commission pleases, I seek leave to amend that definition - 'penalty payment means the hourly rate

or payment prescribed in the award for time worked in excess of the prescribed weekly minimum or outside the prescribed spread of hours'.

'Postgraduate experience' is agreed. 'Registrar' is defined as meaning 'a medical practitioner appointed as such at a public hospital who has had at least 3 years practical experience as a resident medical practitioner and is undertaking a course of study for fulfilling approved training requirements'.

COMMISSIONER WATLING: Is there something wrong with that first line; Means 'a medical practitioner appointed as such ...'?

MR HOUSE: Well, that means they -

COMMISSIONER WATLING: '... at a public hospital ...'

MR HOUSE: They would be a person who -

COMMISSIONER WATLING: Aren't they a person appointed as a medical practitioner employed in a public hospital?

MR HOUSE: Well, the import of that I think is that they have to actually be in an approved training position. But I think that isn't always the case, but Dr Senator would have a greater knowledge than me of it.

COMMISSIONER WATLING: So, is - let me run this past you - is a registrar a medical practitioner, as defined?

MR HOUSE: Yes.

MISS COX: They are actually registered - they are registered.

MR HOUSE: To go back to your comment previously, Mr Commissioner, it would not be adequate to describe the registrar only in terms of the 3 years' practical experience as a resident medical practitioner, because as we will subsequently indicate, there is in fact a fourth year level of resident medical practitioner. Hence, a person appointed to a hospital with 3 years postgraduate experience could, in fact, be appointed as a resident medical practitioner.

DR SENATOR: As an alternative to being appointed to a registrar position. I think if -

COMMISSIONER WATLING: But, are you appointed a medical practitioner? You are not appointed -

MR HOUSE: No, it's appointed as a registrar. The 'such' refers to the registrar not the medical practitioner.

COMMISSIONER WATLING: Oh, well. Well, is there a comma missing then somewhere? 'Registrar' means a medical practitioner appointed as such ...'

DR SENATOR: A comma between 'practitioner' and 'appointed' may make that clearer.

COMMISSIONER WATLING: Yes, I think so.

DR SENATOR: I might add that perhaps there is a tautology here in the sense that we specify 'at a public hospital', and it is tautological from the point of view that registrar positions are only available in that setting. So the definition may in fact be again slightly over- exuberant. If the commission pleases.

COMMISSIONER WATLING: Yes. No, I was just getting tangled up a bit without the comma there. I was putting, I was thinking, well, how can you appoint a medical practitioner.

MR HOUSE: Well, just to make sure I have completed that one, sir, if I may repeat it: 'Registrar' means a medical practitioner, appointed as such at a public hospital who has at least three years practical experience as a resident medical practitioner and is undertaking a course of study for fulfilling approved training requirements'.

We then have a definition of a 'resident medical practitioner' means: a medical practitioner, appointed for the purpose of acquiring appropriate postgraduate experience and training or obtaining full registration'. We have added the words, 'and training'. Again I am reminded we should have a comma - 'means a medical practitioner, appointed for the purpose ...'.

The next definition is that of the review panel, and in the interests of efficiency, we have expanded the role of the review panel to, 'A panel' means a panel constituted to determine matters relating to Clause 27(d) of this Award', and you'll see later on that is the clause relating to sabbatical leave. There are difficulties that may arise over the question of appropriate programs for sabbatical leave.

Clause 42 of this award, which is the award which deals with the grievance and dispute-settlement procedures, we see the review panel having a role in terms of problems or disputes that may arise over professional matters. The third one is disputes relating to acceptability and relevance of postgraduate qualifications not recognised by the National Specialist Qualifications Advisory Council held by an employee in relation to his or her classification under this award. Here again -

COMMISSIONER WATLING: So would that mean that they deal with matters such as qualifications in emergency medicine?

MR HOUSE: Yes. And also questions of, if you had -

COMMISSIONER WATLING: Why would I put it in the award if they are going to deal with it?

MR HOUSE: Well, I was going on to say, sir, more specifically, when - I had in mind, anyway, when we drafted that - was qualifications that, say, a Master of Business Administration, from some university either within Australia or outside, that may be contested by the controlling authority.

And it arose I think from discussion we had about the controlling authority approving or deeming or so on certain things, and that did have a qualification approved by the controlling authority - some part of, I can't recall where. So we believed that the review panel may be an appropriate body to determine, or make recommendations, on those sorts of issues.

COMMISSIONER WATLING: So, the employer doesn't have any rights in respect of these matters?

MR HOUSE: Yes. The employer - if you look at the panel composition - there's a medically qualified nominee of the board of the health region, there's -

COMMISSIONER WATLING: But, in normal circumstances, couldn't the employer appoint whoever they like to any position that might fall vacant, based on merit? Why should employees be in a position where they say to the employer, 'You can't appoint Joe Bloggs because I don't think Joe Bloggs has the necessary qualifications'?

MR HOUSE: I think it is the other way around, where the employer says that the qualification is not valid, and the employee may, or the applicant may -

COMMISSIONER WATLING: Then they are not employed, are they? You see, if you are appointed to each of these levels based on merit, then you go for the interview, you get the job. If you don't meet the criteria established you don't get the job.

MR HOUSE: Well, in the Commonwealth there are certain provisions that require mandatory - or at least desirable qualifications - for jobs, and these days I am informed in some areas the applicant's qualifications far exceed the mandatory or desirable qualifications. But that's an aside. We are looking at - if it says required qualification, a Master of Business Administration, and -

COMMISSIONER WATLING: Well, it might be an appropriate time to adjourn now, but I would be interested in this review panel, because even in dealing with disputed matters under this award I'd be interested to know whether they are dealing with the contract of employment and why I should hand over my powers to someone else, when I am not too sure that I have that power to do that under the act, anyway; or whether they are just looking at professional matters - disputes over professional issues - as opposed to general industrial issues, or the contract of employment. So, we might adjourn. We might start on that one tomorrow, eh?

MR HOUSE: Thank you, sir.

COMMISSIONER WATLING: Good. Thank you.

HEARING ADJOURNED