

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, 22 December 1992
Continued from 21/12/92

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: Alterations to appearances?

MS. K. PAMMENTER: Yes, Mr Commissioner, Miss Cox is unavailable today and won't be appearing today - thank you.

COMMISSIONER WATLING: Right, well, Mr House, we'll move to level 5.

MR HOUSE: If the commission pleases before we do that, yesterday in the context of our submissions in respect of the proposed position classification standards for the various levels and grades of medical practitioner it became apparent that our view that progression through the various consultant grades, that is from level 4, grade 1 to level 4 grade 5 based on years of experience as a specialist required further consideration.

As you will be aware the current award provides for three classes of specialist medical practitioner, which are defined as follows: class 1 is a medical practitioner and has at least 6 years postgraduate experience in the practice of medicine, holds a higher qualification appropriate to his speciality and has at least 2 years practical experience in that speciality.

Class 2 is a medical practitioner and has had at least 9 years postgraduate experience in the practice of medicine, holds a senior qualification appropriate to his speciality and has at least 5 years practical experience in that speciality. And class 3 is a medical practitioner and has at least 11 years postgraduate experience in the practice of medicine, holds a senior qualification and has at least 8 years practical experience in that specialty subsequent to gaining such a senior qualification. So we've got three tiers of 2, 5 and 8 years specialist experience in the current award.

Having carefully reconsidered the relevance of experience in the provision of medical services, we do not believe it is something has become obsolete or inappropriate in the structural efficiency award modernisation process. In other words, we say that experience gained in the various facets of specialist medical practice continues to have an impact in terms of the value of services provided by practitioners at the senior levels of our proposed structure. And we also say this continues to be recognised in the various industrial jurisdictions throughout Australia.

However, we do not believe that it is appropriate to continue with three classes of specialist medical practitioner in the manner currently prescribed in the award, given the continuum of skills and professional responsibilities that have to be undertaken at the staff specialist level.

In order to put some precision or clearer focus on our

thinking, Dr Senator and I have endeavoured to assess the periods it normally takes for specialist medical practitioners to establish their credentials in their required fields of endeavour in seeking to achieve standards of professional excellence and peer recognition. This again hasn't been an easy task and we're really looking what we see as best fits situations rather than what might be clearly defined in, say, the position classification standards.

At the fundamental level of becoming proficient in the area of medical service delivery, whether it be in terms of a health service facility, a region, or on a state-wide basis, we would expect that at least 2 years experience would be required including effective participation in the various committee structures. A further 2 years would be needed to develop an executive role in such processes and it would normally an overall period of 7 years before a clear leadership role was established.

An important aspect of this role is the responsibility for giving effect to training and curriculum development and at least 2 years would be required for initiating changes in this area. Achieving substantial change would require a much longer period of more than 5 years of planning, implementation and evaluation. This corresponds to the arrangements and is recognised by medical schools where the accreditation process runs 2, 3, 5 - I'll read that again - this corresponds to the arrangements in and is recognised by medical schools where the accreditation process runs 2, 3, 5 or 10-year cycles.

This of course is influenced by a 3-year turnover period for medical students and up to 4 years for resident medical practitioners. In considering research activities normally some months would be required to set up a project on site and a further 2 or 3 years before results are available. Research grant cycles are usually in terms of 1 to 3 years. Some areas such as epidemiological - I can't get that word - research would normally take longer, say, 7 to 10 years including a 1 to 2 year start up phase. It would be unusual for practitioner to have published much in the way of papers, books or chapters in the first 2 years of specialist practice and it would take another 2 to 5 years to be in a position to participate effectively in the peer review process.

It would be at least 2 years after qualifying before a specialist practitioner was in a position to make noteworthy contributions to professional bodies or the general advancement of public health. In the area of invited lectures it would normally require 5 to 7 years of experience in a speciality to achieve recognition in a - sorry - in a speciality. To achieve recognition at an international level at least 10 years would be required.

Also, eligibility for sabbatical leave does not occur before 5 years service and a further 2 years would elapse before a tangible benefit or return to the health system would be apparent. Some 2 years would be necessary to fully come to grips with all aspects of clinical budgeting and a further 2 years to become fully efficient in cost centre budgeting and determining priorities in complex clinical situations, having mastered all the information systems available.

In considering all these aspects as well as the development of clinical expertise and excellence, we would submit, Mr Commissioner, that it is appropriate and reasonable to have that 7 years experience should be a requirement before a career consultant is able to achieve the maximum of the salary range. We do not believe the public interest would be served by establishing a shorter period given the spectrum of areas involved and the need to provide a suitable framework for salary recognition of professional development in a public health context.

As I said yesterday, the only variable alternative - viable alternative - would seem to me to be the introduction of a system of individual contracts with some sort of performance pay system not subject to the scrutiny of this commission as has occurred in New Zealand and is contemplated in Victoria. I recently attended a forum in which -

COMMISSIONER WATLING: And probably in Tasmania under the new legislation.

MR HOUSE: Well we would hope not, sir.

COMMISSIONER WATLING: That's if they get 60 per cent of the people voting in favour of it.

MR HOUSE: Yes, well I -

COMMISSIONER WATLING: If and when it's ever proclaimed.

MR HOUSE: Yes, well I didn't - I considered that the Tasmanian option from an - from an outsider's point of view was far less repugnant to us than that, say, in New Zealand anyway.

COMMISSIONER WATLING: No comment.

MR HOUSE: In the New Zealand context I recently attended a forum as did Dr Senator in which the executive director of the New Zealand Specialist Medical Practitioners Association outlined the shortcomings and abuses of the individual contract system that's being imposed on the work force in that country and in that regard, particularly overseas doctors come in and are offered contracts that fall short of even - even

the norm without having knowledge so that they think it's the norm and they find out it's not and there's not much they can do about it.

Mr Commissioner, my little discourse there was probably from a lay person's point of view having discussed it overnight with Dr Senator, but if the commission pleases, I'd call upon Dr Senator to flesh out some of these areas that are difficult to describe in precise terms unless you've actually been there.

COMMISSIONER WATLING: Well I think my line of questioning yesterday was really to get some argument from you as to why I should go down that path as opposed to telling me that's what your claim is and that's the reason why I was questioning you. I want to know why the reasons because obviously the employer is going to put up reasons for doing something else and I want to be able to refer to your reasons and their reasons when arriving at my decision. So I - I'm sort of really the devil's advocate to try and bring this forward.

MR HOUSE: Yes.

COMMISSIONER WATLING: Because at some stage I'm going to make a decision and I've got to have the reasons for doing it and I think this morning you've endeavoured to put forward reasons for - for this scale. Now obviously the employer might have reasons for not doing it, but at least we've heard your reasons and why you want it -

MR HOUSE: Yes.

COMMISSIONER WATLING: - which is certainly a bit clearer to me this morning than it was yesterday.

MR HOUSE: Thank you. Well should we leave it till later in the work value or would you like to make a few.

DR SENATOR: I'd like to make a few comments.

COMMISSIONER WATLING: Dr Senator?

DR SENATOR: Mr Commissioner, in view of what transpired yesterday and further to Mr House's comments this morning I think it may be of some value to give some examples in support of our claim for these particular experiential steps that form part of our claim.

I can't necessarily indicate that in every specialist area that precisely the same steps - well defined steps - occur, nor that in the range of responsibilities covered by consultants or specialists that each of the areas that they're involved with develop according to a formula and this, as we indicated yesterday, makes it somewhat difficult to - to be - or to put forward a claim of which might be perceived to be

too prescriptive. And again, it makes it extremely difficult, I believe for the employer to be able to encapsulate the different degree of complexity in - in straight forward position statements at the time of appointment, promotion or advancement.

However, as Mr House has indicated it may be of some value to, sir, to have at least a feel for how the services may develop and how in the different areas, in particular specialities, and I'm happy to provide you with some - some experiences on my own behalf having set up a specialist department in this state some 12 years ago - coming on 13 years ago - and to indicate that there is some relevance to those barriers that we've suggested of 2, 4, 7 and perhaps 10 years.

I'd like to focus perhaps on three issues which fall within the scope of the group standard that is attached to our classification standards, and I'd like to specifically address those areas of clinical services, of research, and perhaps committee involvement as a - perhaps as a marker of specialists and professional input into the shape of services overall within health service facilities.

Now at the outset I have to also confess that these experiences have to be orientated from the point of view of the principal teaching hospital where most of my activities have in fact taken place, but I am perhaps in a fortunate position to be able to talk also about cross-regional services because my department is heavily involved in those too - and indeed state-wide services.

As I've indicated I don't necessarily expect anybody to believe that every specialist employed in this state - in the public system has a timetable that he observes in relation to this. There is air of a continuum of development and achievement on which one builds and one hasn't in the - in the - the contract of employment, if you wish, a commitment to reach certain definable targets because these targets as I've indicated do in fact have an arbitrary - an arbitrary basis and cannot be necessarily evaluated in a very simple prescriptive form.

Just turning firstly to - in terms of clinical services - I can indicate that on my own experience - and this is with a department which virtually came into being at the time of my appointment had been split from a joint department - that it took some 2 years at least to - to fully cement in place the range and initial scope of the services in that department to organise the simple things like the clinics that were to be conducted, how they were to be staffed, how the booking systems were to be organised, how the medical record systems were to accommodate the speciality area in which I was involved, and of course there has been further evolution of

the clinical services - these need to be evaluated from time to time and some changes to the - to the staffing and the - the nature of those outpatient clinics.

Some changes have to be made in relation to absorbing other allied health professional input into the conduct of ward rounds and discharge planning exercises and indeed the clinics themselves. So that - that task of - of establishing the basis for the clinical services and infrastructure that's required for them took between 2 and 4 years to - to bring to fruition. However, as I've indicated, that has still an element of further evolution and development associated with it.

In my own experience it has been 4 to 7 years to extend the scope of those services beyond just my - our own health care facility at the Royal Hobart Hospital to include the services particularly to the northwest coast and the west coast where there was an identified deficiency in services which became apparent over the first 2 or 4 years in which our department was providing services locally.

It also took that period of time to - to set up those services and gain the confidence of the - the remainder of the medical profession who up till that point in time required an extensive education process so that referral - appropriate referral could take place to gain their confidence so that they believed that something useful in terms of outcome would derive from specialist referral to those services.

That not only applied to the - to the medical specialists but also to the infrastructural support staff such as diabetes, nurse educators, podiatrists and dietitians at these outposts and prior to that 4-year period none of those centres had such personnel and it was part of the responsibilities of the specialists in place in the principal teaching hospital to argue strongly for the employment of such infrastructure to form multidisciplinary teams, put them in place, have enough confidence generated within the local medical communities so that those facilities could be used appropriately for the welfare of the patients.

Parallel with that was the development of interest groups in the speciality which were attended by not only medical staff deriving from the specialist - the specialist department but also from general practitioners, also the - the allied health professionals and - and programs of regular meetings of these people as interest groups really took place only after 4 years and have gradually gained a level of sophistication and an air of some permanence and evolution and development even evolving further beyond the 10-year period.

And it's only really with those sort of activities that any form of forward planning exercises could be embarked upon and

in my own experience that has taken at least 7 to 10 years to put some of those plans into place and then to be given the very arduous exercise of evaluation to ensure that what had been put into place was in fact helpful and, if necessary, any changes could be implemented.

So that's a very broad view on - on the clinical services. Obviously in parallel and continuing throughout that period was this constant need for in-service training, not only of allied health professional staff but also general practitioners through correspondence about their patients and more and more reliant after 4 years became obvious from the general practitioner community on the consultants within the department - they relied more on advice and guidance that a confidence had been built, that the referral systems were appropriate and - and non-threatening to anybody within the system and were likely to reap benefit for the patients under - under joint management.

So that's a thumbnail sketch of the clinical services and I'd like to make some brief comments about research activities and we have in the course of the development of the professional classification standards used the terms, laboratory, clinical and epidemiological research, and they do have slightly different requirements and I'm sure you understand that epidemiological research which is basically population based may have quite a different time frame from doing basic labtop-type researches as in the case of laboratories or dealing with small groups of - of clinic patients who may be exposed to, for example, drug trials or other trials of new technologies that come along.

I have been involved in all types of research. Perhaps my research experience has been principally in the epidemiological field, but there have been projects going on in my own department which also fall into the category of laboratory or clinical research. And just to give you some idea of the relevance of these particular experiential markers that we've recommended, it has been our experience, and I believe this is - this is common to other specialty areas. The first 2 to 4 years is spent setting up the infrastructure which is capable of carrying out such projects and also forging a team which may be cross-disciplinary to ensure that the - that the right emphasis and the right scope of expertise is available to input into the - design the implementation and the evaluation of - of such research projects.

An example of clinical research would be - would be the trial of new therapeutic agents. One area that we're not specifically involved with would be the area of new treatments - new types of cancer drugs and new programs of cancer drugs coming in and one of the features of the trials of those sorts of agent is that they tend to be conducted on a multi-centre basis that are - from around the nation.

There are perhaps a number of teaching hospitals that are chosen and indicate their preparedness to participate in such studies, and it is my observation that such studies involving multi-centre trials are rarely offered to centres where there is not a specialist in place for - for under perhaps 4 years. The successful conduct of these types of studies requires a commitment that there will be some - some tenure and some permanence about the - about the structure of the department participating in such ventures.

And it may be 4 to 7 years if they are sophisticated comparative programs before these - before a centre is fully recognised and adopted as a - a player in such multi-centre projects. And, of course, there is a period, depending on the outcome of these trials, with groups of patients. There's a period of evaluation before these new technologies might be put in place, and it may take in excess of 10 years before they are.

That, in itself, involves perhaps different means of assessing the patient's requirements, categorising them so that the correct patient selection takes place for the more widespread use of these new programs of treatment coming on line. And then these principles in such multi-centre trials would be called upon to take part in this ongoing evaluation process. To perhaps bear the responsibility of presentation to peer groups nationally and internationally, and to then participate in further forward planning of refinements of these projects in a continuing evolutionary fashion.

Now the things that slow down the progress of such programs, they are barriers that have to be confronted by any researcher, but basically they involve, firstly, an approval process for these programs to take place within the centre; and that in itself involves the step of having peer judgment over the merit of the proposal, and then the passage through ethics approval.

And those can often take some months, perhaps a longer period of time than is taken in finding the funding for such projects if that is not guaranteed by the national perspective of such trials. So the funding cycle is extremely important, because based on the funding cycle will be the barriers of employing infrastructure staff, technicians, technologists, and other medical specialists, or junior staff to actually implement the actual programs. So the approval process can take anything up to 2 years from the time in which the hypothesis has been generated or the new technology has been proposed.

Following that there is often the delay in conducting the trial and the recruitment of patients, so that it is very unusual for output from these trials, from clinical trials, to

be available before 4 years, and this is often the peak time of publication and review of findings, presentation to peer groups.

If I can just come back to the grant cycle difficulty, and probably the greatest funder of medical research in this country would be the National Health and Research Council. It runs a grant cycle of between 1 and 3 years. So the 3 years is really that which is set aside for programs of studies, whereas the 1 year may be for short term laboratory-type basic research studies. But they do recognise that roughly 3 years is required for many projects, if you like, which are either clinical or epidemiological to be submitted.

Now, it also takes 1 year, or up to 12 months, to actually prepare the grant submission. It's a very complex issue, particularly at a time when money is scarce, and the competitive element exists for shrinking resources. And I think recently there has been quite a bit of publicity about the shortfall in funding where perhaps only 20 per cent to 30 per cent of acceptable projects can, in fact, be funded.

So that the care and attention taken in the preparation of the grant submission becomes even more important, particularly in a place like Tasmania where we perhaps lack the reputation of centres of excellence with large infrastructure for attracting such funds from national fund-giving bodies.

Now, allied to the grant problem is the fact that the reputation of individuals applying for these grants is not something which is ignored, and that often relies on reputation established with previous research, together with recognition by the medical school locally. And it is very unlikely that clinical title which would give some credence to the individual applying for such research grants would be considered by the medical school in less than 2 to 4 years.

They would need to see the performance of the individual not only in the research setting but also in the teaching and training environment, the contribution to curriculum development, the success of such input into the curriculum, in the outcomes of the medical student examinations, and the successful completion of postgraduate qualifications by junior staff under the supervision of the specialist before formalising the clinical status and title of staff specialists, or staff consultants, within the medical school.

Now I would like to just perhaps emphasise some of these points about research by pointing out our own experience in two areas. One which is clinical and one which is epidemiological, from my own personal experience in Tasmania.

There is a rare disorder worldwide which consists of the occurrence in families of tumours affecting various hormone-producing glands in the body, and it is a condition called Multiple Endocrine Neoplasia, and it just so happens that Tasmania has the largest family in the world with this disorder, deriving from a fairly - what I should term - fecund convict last century who had I think 14 children, and this tendency was passed down through 50 per cent of the offspring, and those children in themselves had very extensive families, and we are looking at a kindred in Tasmania of at the moment in excess of 250 affected members out of that one family.

The largest families reported elsewhere in the world are often only in single digits, or at the most 10 to 20 members. And we are in the situation of being able to now describe the whole natural history of this disorder, and also to determine the genetics very specifically with the thought in future that there may be some way of manipulating the genes to prevent this disorder from occurring in other family members. That is, however, some time in the future.

But the reason for raising this particular project is that it took a full 2 years before there was a realisation that this problem actually existed in Tasmania after my arrival, and it was only a serendipitous observation by a number of specialists that they were seeing patients with this apparent disorder who happened to be related to each other.

So that even though this disorder was present, and perhaps to a most striking degree from an international perspective because of the nature of the disorder it only became apparent after 2 years, and it took a further 2 years to actually coordinate the activities between the various specialists involved and to arrange for suitable facilities to detect and monitor this disorder.

Once having achieved that, the program of investigation has extended since that time - that is 4 years, and continues - but major activity seems to have been in that period from 4 to 10 years after the establishment of an interest, if you wish.

And it's only after 7 or 10 years that we're actually publishing information on this. It's only after that period of time we're coordinating laboratory services internationally in Sweden in the USA to - where we do not have those same facilities locally, and it's only really at this stage that we're receiving international recognition and offers of collaborative projects to extend into the future.

So that's a fairly simple sort of, if you wish, example of clinical research from our own experience. Perhaps our

greatest experience research-wise has been with the establishment of the Tasmanian insulin treated diabetes register and this was only the seventh register in the world to be so created to encompass all patients being treated with insulin in a - an entire community and this stemmed from personal research interests which were present even at the time of taking up employment.

The first attempts to move into this field took at least - took some 2 years in fostering interests with other colleagues locally so that this could be established. The register was set up in - in - at the end of 1984 - that's after 4 years of my - after 4 years following my arrival here and the assumption of my - my position, and that took the organisation of an international conference here in Hobart of experts in the field to endorse the establishment of this project which would have international ramifications. So that the register had its genesis in late - at the beginning of 1985 - it's - in fact its date of recruitment was precisely 4 years from the time of my first appointment here.

And the activity of the register goes on; we've had difficulties in maintaining the ongoing integrity because of difficulties in getting long-term funding. I might tell an apochryphal story at this point about an epidemiologist contributing to one of the most famous population-based studies ever published which was the Framingham study in the United States which looked at a population of a university town, followed these people for a long period of time to determine the risk factors for cardiovascular disease and this study which was inaugurated in the '60s is still held to be one of the benchmark studies of populations and their health with major implications for health care planning both at present and into the future.

I was present at a conference in Cambridge where one of the members of the research team, Dr Bill Cannell, addressed the conference and his first remarks were an apology that he was a relative Johnny-come-lately to this project - he'd only been with it for 17 years, and this was to indicate the long-term nature of such projects and the fact that they - they developed and matured and evolved but they didn't have a natural sort of rise and fall within very precise and brief time limits that might apply to, for example, laboratory or clinically-based research.

However, having dealt with that apochryphal story, I can now only claim nearly 13 years experience with our own - own particular area. It has taken from about the 3 years after we put the process in place for our population-based research before there were important findings stemming from it and now having passed 10 years it's only at that point in time that the national - international recognition has taken place involving me in presentations to international meetings,

invitations to participating the establishment of international conferences dealing with these sorts of areas.

The publication was dismal in the first few years; not dismal from an epidemiologist's point of view, but dismal from the normal traditional publications relating to clinical or laboratory-based research where early results could be anticipated and disseminated. In epidemiological time frames it takes at least 7 to 10 years before any essentially important material will become apparent and then there is a long period of replanning to focus on the - on the novel findings and to exploit those to the full value.

So they're perhaps two examples - one of clinical, one of epidemiological research and how those - those 2, 4, 7, 10 markers might - might be assumed to be perhaps points at which there were discernable changes in the complexity of involvement and the - and the value of such long-term involvement with those particular projects.

I think, as we've suggested, that those 2, 4, 7 year markers are not altogether precise, but examination again of my own involvement in some committees which are influential on - on health care delivery do surprisingly fall into those sorts of time frames. My peer group in Australia from the diabetes point of view is the Australian Diabetes Society and as an indication of the - of an individual's reactions with their peer groups, it was 2 years after I was first appointed before I was first elected to the national council governing that specialty peer group. It was 4 years before I was elected to the executive where I served as secretary for two - for two terms and then it was only after 10 years involvement that I was elected as national vice-president after successfully being re-elected to that council 4 times - the maximum term allowable.

In my second term I was nominated to - to the executive of Diabetes Australia which is the umbrella organising body including all people suffering from diabetes as well as all of the - the medical, scientific and educational groups and fund raising groups involved in that subspecialty and I served on that executive as the representative of the medical, scientific and education wing for 4 years which was the maximum term available.

That representation also led to delegation to the International Diabetes Federation at a - an executive level which only occurred after 4 years and only after 10 years was I in fact privileged to accept invitations to be keynote speakers at International Diabetes Federation meetings from the perspective of organisational involvement as well as for scientific input.

And it's only now that I'm starting to be approached to participate in organising committee work for future conferences to take an executive role in designing programs for future international meetings. Parallel with this and perhaps less esoteric is my own involvement in - in the internal workings of the health service facility and I don't believe that I'm unique in having spent 4 years perhaps contributing to the committee structure within the health service facility of the teaching hospital before being elected by my peers there to - to the joint chairmanship. And it's only after 7 years that I was given possibly the most arduous responsibility which was the secretary to that - the medical advisory committee of the hospital.

And then it took a full 10 years after first employment to be invited to join the - the senior management group of the hospital. So I hope, sir, from those brief comments and illustrations, again not suggesting that this is - this is something that happens to every consultant in every health service facility within this state, to indicate that there are - there are some highlights of one's career in terms of a - of an evolving thing which do relate in some way and in some meaningful fashion, I believe, to these - these markers that - that we've in fact suggested for the gradation of the consultants within level 4. If the commission pleases.

COMMISSIONER WATLING: Thank you. Mr House?

MR HOUSE: Mr Commissioner, I'd like now to turn to our level 5 work level standard. This endeavours to describe and encompass the work of our proposed senior consultant level which we may have to reconsider in the light of some of the discussions we've had concerning the professional issues panel and the State Service Act.

COMMISSIONER WATLING: Well will you need time to do that? Because it really goes - the State Service Act and appointments and promotions will really go to the heart of this.

MR HOUSE: Well, sir, we have given it careful consideration and we believe the - there should continue to be a - a review process based on the criteria that we're putting forward and - and a process involving an advisory committee, if you like, of people qualified to assess people for advancement to this level.

COMMISSIONER WATLING: So should I find that there is conflict with the State Services Act, I should write that level off completely?

MR HOUSE: Yes, in that we're now saying that we believe it should become part of level 4 and that it should be grade 5 -

DR SENATOR: Grade 6.

MR HOUSE: - grade 6 - I'm sorry - in - in level 4.

COMMISSIONER WATLING: Right.

MR HOUSE: Now there are -

COMMISSIONER WATLING: And there -

MR HOUSE: - are two ways that -

COMMISSIONER WATLING: - and you get there through putting in 10 years?

MR HOUSE: Yes, it's - we still believe there'd be the 10-year experiential requirement, even more so having looked at the - some of the matters more closely as we've discussed this morning.

COMMISSIONER WATLING: So the concept of a senior consultant will now move to an automatic progression thing after 10 years?

MR HOUSE: No - we contemplate two ways of dealing with this problem. My preferred option would be that in the way that that's been decided by the South Australian Commission, there would be a barrier placed within the level where people would firstly have to have the 10 years experience, and secondly be recommended by the professional issues panel as being - having the credentials for advancement to grade 6.

The second option, our fallback option, would be that this be a level - a promotional level where you have to achieve promotion in the normal way to the grade. That of course envisages that positions at that grade would be available.

Our argument in support of the third option is that it will bring to this state and certainly I should say retain in this state consultant medical practitioners of the highest order. As I've said on an earlier occasion there is not in the current structure a - a facility or a position that ensures that sort of benefit to the health system is maintained. However, of course we can anticipate arguments about the controlling authority determining what services should be provided in this state or what level of services and not having to pay for services that they don't foresee are required.

COMMISSIONER WATLING: Well what's your answer to that - because I'm more than interested in that type of argument?

MR HOUSE: Well my answer to that is that the medical profession - you get - you get what you pay for in a sense.

COMMISSIONER WATLING: Yes, but why - the argument really is, why should the - the union or the award tell the employer who they must employ? Is the - is it not open to the employer to run the business as the employer sees fit or provide the service that the employer sees fit? It's just like me saying to Goliath Cement that you now have to move into producing crushed metal.

MR HOUSE: Well I understand the employer's argument and I've been in that position myself.

COMMISSIONER WATLING: But hasn't it got some validity?

MR HOUSE: Yes, but I've taken the other extreme in that in the Antarctic Division here in Hobart, the person that heads that division - the medical area of that division - is a world recognised expert in Antarctic medicine and we had an argument over that and what that was worth. The employer says, oh well we - we don't need that. You know that's - that's - if we want to fill this job we don't need a person of that standing and we're not going to pay for that.

All along there's considerable benefit to not only the Commonwealth but to Australia in having a person at that level. Certain work has been undertaken for, say, NASA and there've been benefits both tangible and intangible that have sprung out of the capacity of the Commonwealth to have a person of that standing employed.

Now is that worth anything? Is it worth anything to - to Australia, or in the case of senior consultant in the public health system here - is it worth anything. The employer says, oh well we don't need it. Well, you know, it's a - it's a very difficult - it's a very difficult question.

COMMISSIONER WATLING: Yes well from - you - you know, you're an advocate in this field, you must know and understand the case history and volumes of it in relation to these types of arguments.

MR HOUSE: Yes.

COMMISSIONER WATLING: And -

MR HOUSE: Well, I can say, sir, that's we have the fallback position, but our preferred position is a barrier and people who can clearly demonstrate their worth, their excellence, should be able to proceed to the senior consultant grade, but if the employer and the commission say that that's a blank cheque, well we'll accept a position where the normal

promotional arrangements apply, or if that is the imperative of the State Service Act or whatever constraints apply in this state, so be it.

We're not asking the commission to give us something that's not achievable, but we - we believe that there's justification and benefit in terms of bringing the award process up to date with modern medical practice.

COMMISSIONER WATLING: Is - it's more than that though isn't it? It goes right to the heart of whether the employer can employ or wants to employ certain categories of persons.

MR HOUSE: If I want to be cheeky, the employer does do that - he employ people outside the award and with over-award payments and special arrangements when - when it suits the employer and we've been over that. We're saying that it should be put in place a process in this structure -

COMMISSIONER WATLING: Well it really depends on, you know, if you're making that comment, it really depends on what's an ether it's an over-award payment or whether they're employed via a separate contract and - and it can be done either way. But I'm - I think if that's the case, if the employer wants to do that, well it's really up - up to them. But I'm saying in considering an argument of this nature, you've foreshadowed the employer argument, right, and you've foreshadowed it because you're professional advocate in the field and you know that there are volumes and volumes of case history in relation to this type of thing.

MR HOUSE: That's right.

COMMISSIONER WATLING: And - and therefore if you're mindful of it, what am I supposed to do with it?

MR HOUSE: Well, sir -

COMMISSIONER WATLING: You're saying to me, look, don't take any notice of all that.

MR HOUSE: Well I know about the propensity to appeal in this state which is quite remarkable, I must say, but -

COMMISSIONER WATLING: To appeal?

MR HOUSE: Yes - yes - for the employer to appeal - so -

COMMISSIONER WATLING: Yes, although - although I have to say that in the 8 years - 9 years the commission has been going there's only been about - I don't know - 16 appeals, out of what, a few thousand cases - not many - and I'd have -

MR HOUSE: Well I'm just -

COMMISSIONER WATLING: - I'd have to say half of those came from the union side.

MR HOUSE: - I'm just thinking about the predicament of the teachers, I suppose.

COMMISSIONER WATLING: Oh yes, well - that's not an appeal - they don't get an appeal - they're exercising - well, put it this way, I don't know whether they are - but they've - the columns of the media would have you believe that they're exercising their right to argue under the principle - wage fixing principle incapacity to pay, and you can -

MR HOUSE: But they had - they had their chance to do that.

COMMISSIONER WATLING: No, no, no - they - just whilst we're discussing that, it's probably a technical point, but you can't argue incapacity to pay under the wage fixing principles until you see the decision and therefore they're - their argument during the course of the case was not incapacity to pay at all, it was a public interest argument and - and - and if you read the transcript you'll find the bench spent some time in trying to drag out of them were they trying to argue an incapacity to pay argument, and they said, definitely not. And you will recall the same thing happened during the National Farmers Federation case that it wasn't until the decision was handed down could they argue incapacity to pay because they didn't know what the decision was going to be.

So the wage fixing principles do cater for that, although it's not an appeal and there's - there's no saying that they'll even go along that line. But nevertheless, an incapacity to pay argument is quite an interesting one in that you are required to open up your books completely and show that you have no way of getting any revenue to -

MR HOUSE: Well it's not for me to question the interpretation of the wage fixing principles, but I would have thought that where the union have the claim on the - on the table that that claim could be costed during the course of the case and the employer could make up his mind as to whether he could afford it or not.

COMMISSIONER WATLING: Well that did happen of course.

MR HOUSE: And that's - and I -

COMMISSIONER WATLING: It did happen and -

MR HOUSE: - and I would hope that we don't -

COMMISSIONER WATLING: - some 50-odd million I think was quoted.

MR HOUSE: - experience this - pardon?

COMMISSIONER WATLING: Some 50 to 60 million, I think, was quoted at the time.

MR HOUSE: Yes.

COMMISSIONER WATLING: I notice that they're talking about 20-odd million now. It does vary depending on which paper you read.

MR HOUSE: Well I don't think -

COMMISSIONER WATLING: But anyway apart from that it's a little aside - I'm not too sure that it has anything to do with this, but I'm just -

MR HOUSE: Well it might in the future, but anyway.

COMMISSIONER WATLING: Yes, I'm just making the point that - that, you know, we find ourselves in a situation where you're really asking me to determine - to determine that there be as a mandatory thing a certain level provided for and the employer's required to fill it.

MR HOUSE: No, what I'm asking you, sir, is that to accept the concept, and the employers will no doubt argue against it, but there - there should only be the experience and peer assessment barrier to people advancing to - to this level. Now that - that as I see it is the situation in - in South Australia. It's a situation that's not unusual - not so much in terms of medical practitioners but generally in the Commonwealth where, for example, an electrical fitter and mechanic there may be a barrier in there before they can advance to the level that equates with the electrician special class.

That it's been as a normal area of development in qualifications and skills and as Dr Senator has very ably pointed out this morning, that after 10 years as a consultant their responsibilities, contribution to medical and - sorry - the health system is such that we believe that there should be a further point of salary recognition for that. However, we don't see it as something that the people should have an automatic right to. We're looking for somewhere in between from, you know, the promotional situation and a progression situation.

COMMISSIONER WATLING: So what you're really saying is, that once you apply for and are appointed as a consultant that you

can over a 10-year period progress to the top of the ladder rather than applying for a position, but the progression to the top rung of the ladder is by peer assessment and minimum experience?

MR HOUSE: Yes, yes.

DR SENATOR: Mr Commissioner, one could turn the argument on its head and say that we perhaps have a stronger case if we built in the same process for all the other grades within level 4 as to what we're now proposing. That would perhaps incorporate the concept of having very clear definition or standards for the job that's to be done by each of those grades at a lower level, so -

COMMISSIONER WATLING: So what would happen then if you get to the 7 year level which is Grade 5 and you sit on Grade 5 level until you reach 10 years of service and then after 10 years you make application to go to level 6, who would you make the application to?

DR SENATOR: Well indicating a mechanism rather similar to that proposed in the South Australian and Queensland jurisdictions but adapted for Tasmanian conditions and encompassed in our proposal for a professional issues panel to -

COMMISSIONER WATLING: Yes, but do you make the application to the professional issues panel?

DR SENATOR: No, no, sorry, you make the application to the controlling authority.

COMMISSIONER WATLING: Oh, say.

DR SENATOR: The controlling authority then utilises the services -

COMMISSIONER WATLING: What if the controlling authority doesn't? We get back to our discussion yesterday. If it's an advisory body, what happens if the controlling authority doesn't want to utilise the professional issues panel?

DR SENATOR: Well I believe our intent to incorporate that in the award should -

COMMISSIONER WATLING: Make it mandatory.

DR SENATOR: Yes, should mandate it.

COMMISSIONER WATLING: Well the words don't really suggest that though, do they?

DR SENATOR: Well they don't include that provision, no.

COMMISSIONER WATLING: Yes.

DR SENATOR: And that may need to be addressed, but we believe that it should be a formal process whereby application is made to the controlling authority for -

COMMISSIONER WATLING: Who shall, in turn, refer it to the - this other body -

DR SENATOR: Yes.

COMMISSIONER WATLING: - so that means that body then would -

DR SENATOR: Make recommendation.

COMMISSIONER WATLING: Yes. Now, are the - and then you have to address the issue whether the recommendations were binding on the controlling authority, and then you'd have to ask yourself the question: what if you made a recommendation and it wasn't taken up, and -

DR SENATOR: Well we believe the remedies for that are available within the - under the State Service Act and catered for within the claim of the society - this current claim.

COMMISSIONER WATLING: Yes. So you'd then take it to the Commissioner for Review.

DR SENATOR: Yes.

COMMISSIONER WATLING: Righto.

MR HOUSE: I think the difficulty that we have, Mr Commissioner, is that in South Australia and Queensland that this sort of procedure is accepted by the parties. It hasn't had to be imposed by a third party. It's been well recognised, particularly in Queensland, for a number of years.

COMMISSIONER WATLING: Yes. But I think - well, the difference is here that we have some very formal legislation in relation to state employees and we even have a Commissioner for Review and appeal mechanisms and everything in relation to state servants, so -

MR HOUSE: Yes.

COMMISSIONER WATLING: - we've got a fairly sophisticated sort of arrangement here and so it's not quite the same especially under that act where the employer has certain rights as well - can even, in certain circumstances, determine the rates of pay.

MR HOUSE: And the Minister for Health is not the employer.

COMMISSIONER WATLING: That's right. Yes. So, that's the big issue really, isn't it?

MR HOUSE: Yes.

COMMISSIONER WATLING: So, it's not quite the same and therefore I always get a bit toey when you compare other states, because we've got other restricting factors.

MR HOUSE: I wasn't seeking to say that because it's in other states that we should pick it up.

COMMISSIONER WATLING: No, I take it on board, but I just make comment.

MR HOUSE: I was just saying that this is a concept. It's not something that we've just dreamt up.

COMMISSIONER WATLING: No.

MR HOUSE: That's -

COMMISSIONER WATLING: No. Well, I'm more than interested in the mechanism as well because, you know, I can anticipate the employer's argument as much as you can, but it's now turning from one of moving to another level to an automatic progression with a barrier at the top end, so it's slightly different and therefore you - certainly if you were going to another level -

MR HOUSE: Yes.

COMMISSIONER WATLING: - you'd have to say it's on application and the job has to be advertised and people can apply and you'd have to follow the normal procedures as per the State Service Act. But -

MR HOUSE: Well even if there was that process, we believe that in one way or another people have to be professionally assessed against their criteria.

COMMISSIONER WATLING: Yes. Well, see, if it was a level, the interviewing panel, whoever they may be, would do it in accordance with the State Service Act. Whoever they called on to assist them doing it is really their business. They may well call on a group of people that you might have in mind - I don't know - but the difference is that it would have to be open for all to apply - they'd have to be given the opportunity and then the best candidate would win.

The other alternative view would be that the employer not fill the position at all, but I suppose in this way the employer wouldn't have to fill it either if it didn't take any notice of the recommendations of, say, the review panel. It gets down to the question of whether it is mandatory at the end to fill that position or whether it's a position that sits there that may or may not be filled.

MR HOUSE: Well medical practitioners being what they are and employers being what they are, I can quite see situations such I've mentioned in the Antarctic Division which has been remedied through the Federal Commission where why should the employer pay if they don't have to.

COMMISSIONER WATLING: Well there's -

MR HOUSE: That's really the nub of our argument -

COMMISSIONER WATLING: Yes.

MR HOUSE: - that the specialist will persist for his own professional reasons in pursuing these things -

COMMISSIONER WATLING: That's right.

MR HOUSE: - and the employer will say, 'Well, that's great', until they leave.

COMMISSIONER WATLING: That's right. Well that happens nearly everywhere, doesn't it?

MR HOUSE: Yes.

COMMISSIONER WATLING: But prior to all - well, I've got the drift of where you are going on this now. It's -

MR HOUSE: Thank you, sir. Well the definition of a medical practitioner at - which will now be this grade is -

COMMISSIONER WATLING: Right. So, we'd better change the chart - we'd better change your chart in H.9, so we'll mark that 'Level 4, Grade 6'.

MR HOUSE: Yes.

DR SENATOR: It may be, sir, that in fact the term 'senior consultant' becomes more a local designation rather than symbolising - but - in fact, symbolising the barrier we've proposed rather than being just tied in with a separate level.

COMMISSIONER WATLING: So you might well end up with a classification there of senior consultant. Right. Well anyway, for the sake of operating at the moment, we'll just amend our exhibit and we'll amend Exhibit H.10 as well to say

at 'Level 4, Grade 6', but how it turns out in the end might be classification.

MR HOUSE: In terms of format and presentation it may make the standards look a bit lopsided. We have no specific work level standards for the other grades and we have one for this grade. I have thought about that, only superficially, and my general view was that we still see this important benchmark, under whatever system, a position for a person classified that there should be some clear material that identifies what is required at what we'd see as a very senior level.

On the definition, it says:

A medical practitioner at this level is responsible to senior management for the entire scope of services for a unit, department or service within a health service facility or a health region or a single division of the Agency and provides leadership to ensure optimal response and direction to meet emerging trends in social, environmental, economic, technological, political and professional areas to improve health outcomes. This requires a comprehensive knowledge of relevant health policy and legislation and an understanding of the role of medical practice in primary, secondary and tertiary health services, and the exercise of strategic, conceptual and analytical skills to develop and make sound judgments.

An employee at this level is accountable for and ensures that units or departments are managed within budget whilst maintaining agreed and validated quality performance indicators based on patient outcomes.

The work requires the ability to perform independent research of national and international significance and the capacity to supervise academic research projects.

An employee appointed at or progressing to this level is an exceptional medical practitioner providing independent and very complex specialised services in clinical medicine, teaching or research who has attained national and international standing according to the criteria set out in the guidelines below.

The qualifications and experience

Required re-accreditation of specialist qualifications.

- as Dr Senator pointed to yesterday as an evolving thing at the moment -

- have at least -

COMMISSIONER WATLING: How would they be able to do it now? If I was to put this into the award, say, in the next 6 months, how would they be able to do it?

MR HOUSE: Well, I believe the commitment would be there because I can't envisage a situation where somebody would not satisfy that requirement.

COMMISSIONER WATLING: No. So, if we are saying that they are required -

MR HOUSE: Yes, for what reaccreditation processes are contemporary, but I think we can also without modifying that statement allow that there will be other reaccreditation programs coming on line to which people will need to address.

At least 10 years' experience, as we have discussed:

Extensive experience and demonstrated ability in the principles -

- and that is spelled incorrectly - 'p-l-e-s' -

- and practice of contemporary management.

Highly developed interpersonal, negotiation counselling and advocacy skills to manage a group of professional staff.

Typical Duties

The work involves any or all of the following:

. The provision of expert opinion in rare or very specialised areas of medical practice.

. The identification of realistic targets, establishment of evaluation criteria for and implementation of means to ensure high quality in health outcomes of individual patients and the service.

. The planning, co-ordination, supervision and performance of a wide range of very complex tasks directed towards patient management, teaching, research and service management.

- . The allocation of health resources, based on cost benefits analyses, for individual patients, the service in one or more health regions and with other managers for the whole facility(ies).
- . Cost-centre clinical budgeting.
- . Strategic planning of services and implementation of change.
- . The provision of authoritative advice on a variety of professional or policy matters to the government or its agencies or industry.
- . The representation of the Agency and/or the government on relevant academic and/or professional bodies at state, national or international levels.
- . The development, implementation and evaluation of teaching and training programs for other medical practitioners, medical students and other health professionals.
- . The professional development of other medical practitioners including Consultants.
- . The design, co-ordination and implementation of laboratory, clinical and epidemiological research programs.

COMMISSIONER WATLING: The more you think about that the more you'll have trouble with it.

MR HOUSE: Yes, it seems so. Dr Senator just runs it off. I'll have to go and practise.

Guidelines

COMMISSIONER WATLING: It's going to crop up a few times between now and the end of the case, I think.

MR HOUSE: Yes. I'll make it a priority. On the plane going home, I will just say that:

Guidelines

- . Employees eligible for promotion or appointment at this level will include consultants at level 4 and the Director of Medical Services at the Royal Hobart Hospital.
- . Employees at this level include individuals who perform professionally at a demonstrably higher

level than that required for career-range level 4 Consultants.

I'll have to have another look at the wording here.

Applicants by level 4 Consultants seeking to be promoted to this level will in each case be referred to ...

It would be a Professional Issues Panel, or maybe - depending on further developments in this case - constituted for that purpose, which will make recommendations to the controlling authority. Well, obviously that second guideline will need careful -

COMMISSIONER WATLING: You're probably going to have to reword that, aren't you?

MR HOUSE: - redrafting and consideration, sir.

COMMISSIONER WATLING: You will come back to me on that?

MR HOUSE: Yes.

COMMISSIONER WATLING: So, you are coming back to me on the question of who do they apply to, and what are the procedures after they apply.

MR HOUSE: Yes.

In assessing whether an application for initial appointment or progression to -

- it will be now Grade 6 - level 4, Grade 6 status -

- is appropriate, consideration will be given to the employee's total contribution to the quality of health services within his/her area of professional expertise, and shall, in particular -

COMMISSIONER WATLING: Who will give that consideration? The employer or the employer and the panel, or the panel?

MR HOUSE: Well, the panel and the selection committee, if it is a promotion situation, or if it is not the controlling authority if it is an advancement through the barrier situation.

COMMISSIONER WATLING: Yes. Rather than giving me that off the top of your head at the moment, you might give that consideration?

MR HOUSE: Yes. Thank you. Again I was just thinking -

COMMISSIONER WATLING: Because it's a fairly important question.

MR HOUSE: - of the commonwealth situation.

COMMISSIONER WATLING: Yes. But, then again, if you are writing it into the award we've got to be careful who we are directing this to. Right, well you can come back to me on that.

MR HOUSE: The criteria that we've developed and believe is appropriate, sir, and we've had regard obviously to the development of criteria in other jurisdictions, and the sort of factors we believe should be identified in the Tasmanian health system.

- (i) Professional Qualifications and Awards;
- (ii) Peer recognition of professional excellence;
- (iii) Status in a teaching capacity (both inside and outside the Agency);
- (iv) Publication of peer reviewed papers, books and chapters;
- (v) Contributions to committees in the health industry;
- (vi) Contributions to professional organisations;
- (vii) Peer recognition of independent research achievements;
- (viii) Research grants received;
- (ix) Contribution to a consultancy/advisory role to Agencies relevant to the health industry;
- (x) Invited lectures; and
- (xi) Any other matter relevant to appointment to this level.

So we would see all those criteria as being relevant. Obviously people wouldn't achieve the same weighting in terms of each one unless perhaps they have got 20 years' experience. But I suppose they would have to be capable of demonstrating considerable contribution or performance in a number of those criteria to qualify for the level that we're proposing, and given that the work level standard is, we would hope, a total descriptor. It, in itself, supplements the criteria as to what is expected at this level.

Now, sir, I have incorporated in the standards a separate page, and I wasn't quite sure how to fit this in, but you'll see on the last page a couple of paragraphs headed, 'Translation'. What we're putting forward is based on the translation in the commission's decision regarding model awards. What we are saying is:

Except in circumstances referred to below, employees should not be transferred from the current award to the new award on a point-to-point basis using their current salary level as the determining factor. Such transfer requires strict adherence to classification of the employees according to the classification standards and accurate job descriptions.

Now, given the delays that occur in these things, and I am not only thinking in this state but in the Northern Territory, which I now think it would have been better for us to carefully consider the translation process during that case, rather than come up with some of the problems we're facing now:

However, in the event that the translation process has not been concluded by the commencement date of the new award, employees occupying such positions are to be classified, temporarily, at a level which would attract a salary equal to or immediately above that employee's existing rate of pay. That salary level will continue to apply until that employee's position has been classified in accordance with the classification standards contained in the new award. If the subsequent classification assigned to the employee following consideration of the new job description results in a further increase in salary, that employee shall be entitled to receive the difference calculated retrospectively to the date of operation of the new award. Conversely any amounts received as a consequence of this process which are in excess of that which the new classification would attract will not require a retrospective adjustment on the part of the employee.

Sir, if I can now go to our claim in H.8 where I believe we turn to clause 8 - Salaries. That page is not numbered.

Now, at this stage, sir, we have only got there really the structure, and again it will need to be level 5 would be deleted and we'd put a Grade 6 in the level 4. I haven't yet formally applied for the salaries, as you are aware.

COMMISSIONER WATLING: Yes. Well, that's a separate exercise, I take it.

MR HOUSE: Well that, we believe, would be in the context of our work-value claim. The (a), (b), etc., down to (m). At one stage there was some overlap so one developed that to show the overlap, but it is no longer necessary. Now, 8(b) addresses the salaries for part-time and temporary employees, and we've got:

Part-time employees shall be paid the proportion that the hours worked bear to the normal weekly rate prescribed for an equivalent full-time employee.

Temporary employees shall be paid in the proportion that the hours worked bear to the normal weekly rate prescribed for the equivalent full-time employee, plus a 30% loading in lieu of entitlements as specified in clause 11(C) of this award.

COMMISSIONER WATLING: Let's follow that - 11(c) is an allowance for temporary. Explain that to me. It says 'plus a 30 per cent allowance in lieu of entitlements as specified in 11(c)'. So it's in lieu of.

MR HOUSE: And in 11(c) we say, 'in lieu of entitlements of annual recreation leave and sick leave', etc.

COMMISSIONER WATLING: How did you arrive at the 30 per cent?

MR HOUSE: I thought you'd ask me that one. Well I am well aware that the standard in this state is 20 per cent.

COMMISSIONER WATLING: I thought you might have done a calculation because if you do a calculation you can easily arrive at what it should be.

MR HOUSE: Gordon?

DR SENATOR: Well we did do rough calculations, but I guess the higher rate there reflects a factor of 5 per cent plus for the sabbatical leave entitlement, which isn't common to a lot of other similar provisions in other arrangements.

COMMISSIONER WATLING: That presupposes that temporaries would be entitled to sabbatical leave.

DR SENATOR: Well, there's nothing to prevent the access of temporaries if they are employed for 5 years, and capable of providing services to the system for 2 years following their return.

COMMISSIONER WATLING: So, a temporary employee is entitled to sabbatical?

DR SENATOR: Well, I don't believe there is anything that restricts them from that entitlement, except by virtue of 11(C).

COMMISSIONER WATLING: What does sabbatical leave say?

DR SENATOR: Sabbatical leave - clause 27 which I think it is - that merely comes to the - to those levels of classification - or classification levels, rather than the status as temporary or permanent employee.

COMMISSIONER WATLING: But you'd have to - or you are going to have to address that when you get to it, though, aren't you, as to who is entitled to it.

DR SENATOR: Well, I believe we have in terms of the categories of staff related to their classification, rather than the temporary or -

COMMISSIONER WATLING: The casual or part-timer could come up and ask for sabbatical leave.

DR SENATOR: Well, we don't have casual employment in our award, as far as I know, sir.

COMMISSIONER WATLING: Not at the moment. There might be an argument for the employer who puts up, you see?

DR SENATOR: Well, perhaps it will be. We have made provision for part-time employees to access sabbatical leave on a pro rata basis.

COMMISSIONER WATLING: Yes. Well, what about temporaries?

DR SENATOR: Well, I believe that temporaries are employed on the same -

COMMISSIONER WATLING: But if you look at the definition for a temporary it is very close to being a casual.

DR SENATOR: Well, no, sir.

COMMISSIONER WATLING: They are employed to relieve and do those types of things, aren't they?

DR SENATOR: Well, that's one definition, but also it states, 'is specifically employed for specific duties over a fixed period determined by the controlling authority'. We haven't constrained that to a period less than 5 years.

COMMISSIONER WATLING: No, but say for example you have someone that's employed once a year for 5 years to take your position whilst you take some leave, and you are saying after

5 years that person is entitled to 13 weeks off on full pay on sabbatical?

DR SENATOR: No; because we have made provision for the part-time pro rata basis for sabbatical leave. They may have some entitlement but it may not be as significant.

COMMISSIONER WATLING: That's why when we get to sabbatical I'm going to be trying to find out who is entitled to it. So, which then begs the question back here, how is the 30 per cent calculation done? It may be too low. I don't know. What you'd need to do is to work out really what they would be entitled to and as a temporary, right, and then do the calculation to see what percentage that would be of the person's salary.

DR SENATOR: Okay. We may need to come back to you on that.

COMMISSIONER WATLING: Yes, I think you will, because we must have some logic in the percentage, otherwise -

DR SENATOR: Yes. But, as I have indicated, I think we would hold to - we will also take note of your comment to consider the applicability of sabbatical leave which is an extra component in relation to temporary employment.

COMMISSIONER WATLING: Yes. You see, in relation to temporaries, sabbatical leave - say, for example, if it wasn't open to them - then that calculation shouldn't be taken on board when arriving at the 30 per cent; and then you have to work out what are the arguments that says that it is open to temporaries and open to part-timers, and if it is open to those is it on the same basis as a full-time employee or is it a pro rata amount; and if so, what's the pro rata amount based on.

MR HOUSE: Well, my understanding, sir, is sabbatical leave - and it says there that you have got to have 5 years' continuous service.

COMMISSIONER WATLING: Yes, but it could be for 1 week for 5 years. That would be continuous, could it?

MR HOUSE: I'd think that 'continuous' in the meaning of whatever is in the State Service Act or in the Commonwealth Public Service Act which means, you know, that you work certainly on a weekly basis for the full -

COMMISSIONER WATLING: 'Continuous' would mean whatever the award said it meant. You might have to define it. What is continuous.

MR HOUSE: Well, I agree what the award says, but in terms of the Long Service Leave Act and so on the normal arrangement is that you -

COMMISSIONER WATLING: Well, the Long Service Leave Act in this state says that 8 hours a week or 32 hours a calendar month. And it says that, because it was taken to court and someone ruled that someone that worked less than 38 hours a week - someone that worked 38 hours a week - was working less than 40 hours a week and 40 hours a week was a full-timer and 38 hours a week was a casual. And that - and the decision wasn't appealed -

MR HOUSE:

COMMISSIONER WATLING: Yes, that's right. The decision wasn't appealed and the government decided to change the legislation to make - to put it beyond doubt that you had to work 32 hours a month, so you can see when these - when people start playing around with it, you can come up with all sorts of variations. Was that the -

MR HOUSE: Most public servants are casuals -

COMMISSIONER WATLING: Well it was at the -

MR HOUSE: - on thirty six and a half hours.

COMMISSIONER WATLING: Well the case was at the time when people were going from 40 hours to 38 hours and in this particular industry they'd just gone to 38 hours and it was -

MR HOUSE: But what was the situation of the public servants? Were they in a separate act, were they?

COMMISSIONER WATLING: Yes, public servants here are in a separate act.

MR HOUSE: Right.

COMMISSIONER WATLING: You have the State Long Service Leave and the State Employee Long Service Leave Act. There's two acts.

MR HOUSE: Right.

COMMISSIONER WATLING: So it can be an issue and continuous service is always one. And there's been many an argument about continuous service for state servants, especially when they have a break and they're picked up and put down. In fact, there's been several before the commission in the last year, probably the last day or two.

DR SENATOR: Teachers aides.

COMMISSIONER WATLING: And so it's - anyway, they are little asides, but they're fairly important. So you need to look at the question of what constitutes the 30 per cent. You need to put some argument to me on that.

MR HOUSE: All right. And (b)(iii) - the normal weekly rate means one fifty second of a full-time employee's annual salary exclusive of allowances - plural - and overtime. And here we've got a proviso that's been expanded that the minimum period of daily work for a part-time employee shall be two consecutive hours for no more than one period on any day except where the controlling authority and the employee otherwise agree. So that deals with -

COMMISSIONER WATLING: So the minimum hiring period of two hours and one start each time in a day?

MR HOUSE: Yes, no split shifts.

COMMISSIONER WATLING: Yes. Right.

MR HOUSE: Now the argument for that is perhaps obvious in that the time spent in coming to and fro might be longer than that actually worked, particularly if there's no minimum time people could be employed.

COMMISSIONER WATLING: So there's no minimum payment, just a minimum time?

MR HOUSE: Well, I see what you mean. No, we think -

COMMISSIONER WATLING: I'm saying anything. I'm just asking the question.

MR HOUSE: - we think, sir, as far as a medical practitioner is concerned in terms of patient care anything less than two hours is probably not efficient and viable but -

COMMISSIONER WATLING: Well you have a minimum -

MR HOUSE: - for them to come in for half an hour or an hour and get paid the balance in lieu is probably not a realistic proposition.

COMMISSIONER WATLING: Well, I'll then ask you, in the next proviso, why have you got a minimum of 3 hours pay for a temporary?

MR HOUSE: Well I suppose it's to -

COMMISSIONER WATLING: Do you want to look at it?

MR HOUSE: Well I've got my own views. I don't know whether I've got instructions that - do you want to look at it -

DR SENATOR: Well this was to inhibit casualisation, wasn't it?

MR HOUSE: Yes. Well Doctor Senator's instructed me in the terms of what my views are and that is it's to discourage casualisation.

COMMISSIONER WATLING: Well -

MR HOUSE: I suppose we see it -

COMMISSIONER WATLING: - let's go back to the part-timer then. You're saying that a part-timer can be employed for two hours. Right?

MR HOUSE: Yes.

COMMISSIONER WATLING: Now -

DR SENATOR: That's not quite so, sir. We've actually nominated some minimal hours for part-time employment depending upon the classification of that individual.

COMMISSIONER WATLING: Yes.

DR SENATOR: All we're suggesting on any particular episode of work that there be a minimum of two hours on that occasion.

COMMISSIONER WATLING: So, where have you dealt with that -?

DR SENATOR: Well that's dealt with, sir, under the -

MR HOUSE: In the hours.

DR SENATOR: - hours clause, and that is twelve - sorry, 13(A)(4) and 13(B)(4).

COMMISSIONER WATLING: Well - righto, so you're saying that they have to work forty per fortnight.

DR SENATOR: Yes.

COMMISSIONER WATLING: Right. And a trainee, it's a minimum of thirty per fortnight.

DR SENATOR: Yes.

COMMISSIONER WATLING: Right. Now, back here, under salary clause, you're saying their daily work, right, which must mean hours, right, shall be two consecutive hours. What -

MR HOUSE: Yes. Well, that should be in the hours.

COMMISSIONER WATLING: I just can't work out why you're putting a question of hours of work in the salary column.

DR SENATOR: Well I think, Mr Commissioner, we were trying to, as far as possible, comply with your suggestion that wherever possible we should deal with the full -

COMMISSIONER WATLING: Put the wage rates in the -

DR SENATOR: - full-time, part-time, permanent, temporary where they arose so that they would be clear to anybody just opening to a particular clause, and -

COMMISSIONER WATLING: Yes. Well I don't think I'm saying anything different. I've never said anything different. I'm just working out that this is talking about daily hours of work -

DR SENATOR: Right.

COMMISSIONER WATLING: - and then you've got - and you've pointed out to me that clause 13 talks about hours of work as well, so it might be -

DR SENATOR: Right. Well if we can redraft and shift that into-

COMMISSIONER WATLING: I don't know what it - well unless it has something to do with wages, their salary, does it really?

MR HOUSE: Well it's a drafting error on my part.

COMMISSIONER WATLING: So what you're really -

MR HOUSE: I suppose the question that I was focusing on at the time was the split shift issue and overlooked the -

COMMISSIONER WATLING: It's really hours, isn't it?

MR HOUSE: Yes.

COMMISSIONER WATLING: It's not wages.

MR HOUSE: That's right. So we'd move that.

COMMISSIONER WATLING: That's why I was trying to work out what it meant in terms of salary.

MR HOUSE: Yes, and similarly the - temporary employee, it would be minimum -

COMMISSIONER WATLING: Well you'd have - under hours of work you would have a section for temporary employees, I take it, do you?

MR HOUSE: That's -

DR SENATOR: Not a separate category, sir, since we believed that splitting it up into medical practitioners on or not on a duty roster was a more accurate discriminator.

COMMISSIONER WATLING: Yes. Right.

MR HOUSE: Anyway, as far as temporary employees is concerned our view is that they're really directed towards relieving situations or special project situations than stop gap casual. I think Doctor Senator said: Saturday night special arrangements.

COMMISSIONER WATLING: Yes. So does that proviso then sit comfortably under salaries, the minimum payment?

MR HOUSE: Well either - that's what was buzzing around in my head. I'm not sure. It's like a penalty payment.

COMMISSIONER WATLING: Yes, that's - well it's a minimum hiring period or a minimum payment. The other thing too is, is that minimum payment of 3 hours at the loaded rate?

DR SENATOR: Yes.

MR HOUSE: Yes.

COMMISSIONER WATLING: How do we -

DR SENATOR: That's inclusive of the allowance under 11, sir, yes, yes.

MR HOUSE: Or (b)(ii). Well to be honest, sir, I'm sure where that fits.

COMMISSIONER WATLING: No. So, it's really to do with minimum hiring period for temporary employees, isn't it? Have you got a section just dealing with temporary employees and what they can and can't do?

MR HOUSE: Not separately or -

COMMISSIONER WATLING: Right. Well maybe you've got to deal that then under hours of work for temporary employees.

DR SENATOR: Well I just wonder, as an alternative, sir, whether it fits under (b) Roman numeral little two as a proviso there.

COMMISSIONER WATLING: (b) Roman numeral two.

DR SENATOR: Of a -

COMMISSIONER WATLING: Yes, could well put it in there, yes.

MR HOUSE: Yes. Then if you are going to put it in there, maybe you'd need to clarify a minimum payment of what this minimum payment is because there's all sorts of formulas floating round now. In yesteryear you could say, 'Well that's three times the base rate, plus 30 per cent', but -

MR HOUSE: I thought it was \$3.00 an hour, sir.

COMMISSIONER WATLING: Yes. For someone - I'd think someone would have you think that. I'm sure Treasury would have - be able to work it out that way.

MR HOUSE: Yes.

COMMISSIONER WATLING: They'd definitely tell you that nought means nothing.

MR HOUSE: Run that through their economic model very quickly.

COMMISSIONER WATLING: Righto. Well maybe we need to have a further look at that.

MR HOUSE: The next clause, 9, deals with transfers of - and we've added 'Trainee Medical Practitioners', and we say:

A proposal initiated by the Controlling Authority to transfer trainee medical practitioners shall be limited to such transfers as are necessary to fulfil the established training requirements as set down by bodies recognised by the National Specialists' Qualifications Advisory Committee -

And of course the issue of -

- the Australasian College for Emergency Medicine.

Now, I think we've said before that even if in this state a situation persists where FACEM is not recognised as a high or senior qualifications then there's still people that could be undergoing training in other jurisdictions who come to posts here in Tasmania that would want that training program not to be inhibited or interfered with.

COMMISSIONER WATLING: How does that sit with the State Service Act in relation to transfers?

DR SENATOR: The history of this particular provision, sir, is that it is currently part of the registered agreement between the parties -

COMMISSIONER WATLING: Yes.

DR SENATOR: - and it was the outcome of negotiations between the parties following the promulgation of the State Service Act.

COMMISSIONER WATLING: Yes. But I'm just worried about putting a provision in the award in relation to transfers if it's covered by an act. You might have some problems -

DR SENATOR: Well I mean that was the purpose of putting it into the agreement was to - and registering it before this commission - was to afford the protection which not only applies to ACEM under the circumstances that's been outlined by Mr House, but for all the other programs recognised by NSQAC and this was part of the process by which we attempted to consolidated as much as was possible -

COMMISSIONER WATLING: Yes.

DR SENATOR: - into the award.

COMMISSIONER WATLING: Yes. It's slightly different putting it into an award, of course, than an agreement in that in an award - in an agreement I don't get to consider the merit of it. I have to only consider whether the package is in the public interest or not.

MR HOUSE: But what about the issue if it's in conflict with the State Service Act, what happens there with the agreement?

COMMISSIONER WATLING: Well there is a problem in that with the agreement - when listening to an agreement or an argument in relation to an agreement, that you either have to reject the lot in that it's against the public interest or you accept the lot and there's no provision for arbitration on any issue that may be contained therein, but of course, that is -

MR HOUSE: You couldn't say, 'Well I'll exclude that because I believe it's beyond the jurisdiction' -

COMMISSIONER WATLING: Well I would -

MR HOUSE: - that particular part?

COMMISSIONER WATLING: Well I'm only just raising it because I haven't looked at it, but I do know there are transfer provisions for state servants covered by an Act of Parliament -

MR HOUSE: Yes, yes, I think I'm even aware of that.

COMMISSIONER WATLING: Now, the question will be - if it comes to the crunch - whether this overrides the act. Some people may well argue that it should or would, but if that's the case, I'm still required, under our act to consider a matter that's already mentioned in the State Service Act.

DR SENATOR: Well I think we'd argue that as a part of that structural efficiency process, if you wish, that currently this is the current arrangement and we would indicate that even subjected to the test of merit, as well as public interest, that it can still be sustained.

COMMISSIONER WATLING: Righto.

MR HOUSE: The next one, 10 - Removal Expenses which I think is one of the few things that's agreed. We've just added the word 'removal expenses' - the words - and now reads: All employees under this award. Just to clarify that, I think there was an ambiguity or difficulty before with the words there.

COMMISSIONER WATLING: Right.

MR HOUSE: Now moving to allowances, starting to -

COMMISSIONER WATLING: Do you want to break now?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. This is going to be large one, this one, isn't it?

MR HOUSE: Yes.

COMMISSIONER WATLING: Yes. Right, we'll break now. What, 2.15?

MR HOUSE: Yes.

COMMISSIONER WATLING: And adjourn this afternoon at -

MR HOUSE: 4.45?

COMMISSIONER WATLING: 4.45, right.

LUNCHEON ADJOURNMENT

COMMISSIONER WATLING: Right, Mr House?

MR HOUSE: Mr Commissioner, before the luncheon adjournment we'd advanced to clause 11 of our claim relating to allowances. I should say at the outset we're very mindful of the commission's views about rationalising allowances and have carefully considered this aspect of our claim. However we believe that in the context of particularly the Tasmanian situation it's fairly difficult to roll up some of the allowances that remain in our claim given the nature and size of medical responsibilities or the spectrum of medical responsibilities in this state.

We believe that it's appropriate, as shown in 11(a), that there be a managerial allowance because as we say an employee who is appointed for a fixed period to provide a statewide tertiary level service or services to two or more health regions or to direct a division or program in the northern or north west region should be paid an allowance of 5 per cent.

COMMISSIONER WATLING: So what's a fixed term appointee?

MR HOUSE: As I understand, sir, the normal period is a 2 year period.

COMMISSIONER WATLING: But what's a fixed term employee?

DR SENATOR: Mr Commissioner, this isn't - we don't have fixed term appointments because we've removed that from our claim since we were last before you. But these are responsibilities for a fixed period of time that are superimposed on the normal duties applicable to, in this case, level 4 employees.

COMMISSIONER WATLING: So this talks about an employee appointed for a fixed period of time.

DR SENATOR: No, well it's the duties. For a fixed period to provide those services. It's not in the relation to the appointment of the employee within the public sector in Tasmania. Maybe we can clarify that through a change in words to reflect that the duties are for a fixed period, these super added responsibilities for a fixed period rather than the nature of the employment as such.

COMMISSIONER WATLING: So we're talking about a full time employee -

DR SENATOR: Yes.

COMMISSIONER WATLING: - who is required to perform certain duties.

DR SENATOR: Yes, in addition to those normally required and incorporated within the PCS's for that class of employee. If the commission pleases.

COMMISSIONER WATLING: Right. You can see the problem I have when it says an employee who is appointed for a fixed period of time.

DR SENATOR: Yes, I believe that - we need to redraft that wording but the essence is that the extra responsibilities and duties are what are fixed rather than the appointment of the employee.

COMMISSIONER WATLING: Right.

MR HOUSE: Perhaps we should say an employee who is allocated responsibilities for a fixed period.

COMMISSIONER WATLING: Yes. What sort of employees could do this, part-timers?

DR SENATOR: Yes, there would be no restriction on that.

COMMISSIONER WATLING: Right. So any employee?

DR SENATOR: Yes.

COMMISSIONER WATLING: Right. A temporary?

DR SENATOR: Yes.

MR HOUSE: And that allowance would be 5 per cent of the base salary of a level 4 grade 3 employee for the duration of that appointment and/or the performance of these duties. We secondly provide that an employee who is -

COMMISSIONER WATLING: So what does the and/or mean?

DR SENATOR: Well there the duration of that appointment is really incorrect. It means nomination for those duties and the performance of those duties.

COMMISSIONER WATLING: Right. So we need to change that.

MR HOUSE: The paragraph 2 provides an employee -

COMMISSIONER WATLING: Well before we go on to that, what's the logic of all this, you know? Just give us a run down. What's your argument? I can read what's in the document but what are all the reasons why and how do you substantiate the claim, including the 5 per cent?

MR HOUSE: Okay. Well as I alluded to initially, sir, in some other places it has been possible to provide an extra level in the structure for the performance of these types of duties and responsibilities given, particularly in New South

Wales, in my mind the scale of the hospital system in that state.

In Tasmania it seemed to be, and rightly so, we think, that these duties and responsibilities don't warrant, if you like, a higher or new level classification but are probably more appropriately performed on a fixed term basis by a suitable specialist and that that function be, if you like, reassigned from time to time amongst suitable candidates. Is that what happens?

DR SENATOR: Yes.

MR HOUSE: I'm instructed that that is the situation. Now we contend that it's structurally efficient that that responsibility continue to be rewarded by way of an allowance rather than built in to the salary either at level 4 or create a new level 5. And notwithstanding what we've heard from the bench about, you know, fixing a rate to encompass all the possible - not possible - all the spectrum of functions that we still say that, in carefully considering this, that it is more appropriately recognised or the responsibilities and duties are more appropriately recognised by way of an allowance.

COMMISSIONER WATLING: So would that mean then that, say, someone who was a director or someone - let me look at the chart - go to H.9. Now if someone was a director of medical services at Royal Hobart Hospital would they be eligible for this allowance?

DR SENATOR: This is meant to encompass the clinicians rather than the medical administrators, sir. Perhaps if we made that specific.

COMMISSIONER WATLING: It doesn't say that.

DR SENATOR: No, I suggested that we may clarify that. Perhaps if I may be of assistance. It may be obvious from the PCS's that we've, in fact, absorbed the old director's allowance into the normal duties in level 4. But the pre-existing director's allowances were in recognition of, presumably, permanent appointment for those responsibilities in relation to services within a health service facility. These are -

COMMISSIONER WATLING: I asked you earlier does it go to all employees or any employees and you said 'Yes'.

DR SENATOR: I assumed then you were talking about whether they were permanent or temporary, part-time or full-time.

COMMISSIONER WATLING: No, I was talking about all or any. I was trying to work out who got it, who was eligible for it. I just threw in a couple of examples.

DR SENATOR: Well, I'm sorry, I thought you were specifically requesting me to - whether that encompassed the permanent or temporary nature of the employment and whether it was full-time or part-time.

COMMISSIONER WATLING: Right. Well we need to then clearly inform the commission exactly who this allowance is to apply to, being very descriptive because certainly in the debate it will make some significant difference. Because my next question was going to be, does that mean then in any salary rate we deduct an equivalent amount for those people that have managerial responsibilities in their position or classification standard.

DR SENATOR: The distinguishing feature here, sir, is that these responsibilities aren't those usually associated with those incorporated within the classification standards that we've submitted to the commission. These are additional responsibilities and also they are for a fixed period of time. They're not a permanent arrangement. They're subject to ongoing delegation but they're usually given to a particular employee on the basis that they will be subject to review and continuation maybe at the discretion of the controlling authority.

COMMISSIONER WATLING: Well why wouldn't the person doing the work be then classified at the appropriate rate of pay whilst doing the work?

DR SENATOR: Well that would be fine had we decided to go the New South Wales path and incorporate these specifically, we believe, Tasmanian dimensions within the PCS's. We've chosen to do it this way on the basis that it does not distort the model of our structure by allowing that any one no matter what grade perhaps within the level 4 structure might be delegated these responsibilities. And then dealing with it on a percentage basis would be some reward for that but would not lead to any distortion of the model by virtue of leapfrogging.

COMMISSIONER WATLING: So we're talking about anyone in level 4 could be asked to do this.

DR SENATOR: Yes.

COMMISSIONER WATLING: So that's except those that are deputies and those that are directors.

DR SENATOR: Yes. I believe it may be more useful to define it specifically in terms of the level 4 consultants.

COMMISSIONER WATLING: Right. Now can anyone in the level 4 consultants be chosen to do something like this?

DR SENATOR: Appointed to do those, yes.

COMMISSIONER WATLING: Right, so we're starting to narrow it down now to those people.

DR SENATOR: Yes.

COMMISSIONER WATLING: Now why have you chosen not to involve this in your classification standard? Why did you - what was the reason behind this because we're going to get into the stage very shortly, after we finish this general discussion, I'm going to ask Mr House to address the wage fixing principles on your allowances and specifically that principle that says no new allowances shall be created.

DR SENATOR: Well already existing within our award is the capacity for higher duties and more responsible duties allowances and also the director's allowances. We've chosen to roll up the director's responsibilities as they apply within the same health service facility within the professional classification standard. You will note however that we have omitted any reference to MRDA's or HDA's.

COMMISSIONER WATLING: That's because you've got classification standards in the award and people should be appointed at the appropriate level.

DR SENATOR: Yes, but bearing in mind however that we had the difficulty here that some of these duties and responsibilities as they have evolved are more appropriately dealt with as temporary responsibilities and duties even though the employees themselves may be permanent.

COMMISSIONER WATLING: But if the classification standard said that anyone in this level 4 may be called upon to do work for a fixed period of time, then it could quite easily be catered for in the classification standard.

DR SENATOR: Well very possibly. We were concerned however by the distortion of the model and the progression that because of the temporary nature of some of these duties and responsibilities that what we would find would be people, sort of - well there would be some individuals who would be doing more and carrying more of the responsibilities and that wouldn't be necessarily be reflected by the grading within the classification structure that we've proposed.

COMMISSIONER WATLING: Yes, but then you could have a situation where if everyone could be called upon to - in level 4 - to undertake that work and it was part of their classification standard, then when work valuing it, right,

there's more of a reason to have a closer look at the work they do because they could be required to do this type of work.

DR SENATOR: Well I think that the reality of this is that these allowances would apply to a very small number of individuals and it's a question of whether one adopts a broadbrush approach to everybody to cater for a very small number of individuals or whether it's appropriate to accept that this is a very small group and to cater specifically for them.

COMMISSIONER WATLING: Well I would still question that everyone from level 4 can be called on to do this sort of work - why doesn't it appear in the classification standard?

DR SENATOR: Well specifically in relation to the - to the responsibilities which are referred to in the - in paragraph 2 - these divisional heads, if you like, may not necessarily only be full-time employees, but may be employed as visiting medical officers and indeed there may be any number between nought and four in this state who may be able to - who may be requested to - to provide these services or to be employed to additionally to their normal work to accept those responsibilities.

At the present time, I might add, that this that's at paragraph 2 would only apply to one individual in this state and to suggest that the PCS's pick this up as a routine for all level 4 employees who I would think would amount to perhaps 60 or 70 at the present time, we would believe in danger of distorting the model particularly as these responsibilities are by appointment - these extra additional responsibilities are by appointment for a fixed 2-year term.

In relation to paragraph 1 I again would be - well on this occasion I would be guessing, but I would say that the number of individuals involved in - in current employment who'd be required for those types of services at this present time would be less than a half a dozen.

COMMISSIONER WATLING: But they'd all be capable of being pulled of the system and being given a task for 2 years.

DR SENATOR: Well it's not a question of being pulled out of the system, sir. I think the essential point is that they carry on doing all of the duties and responsibilities which hopefully will stack up against the classification standard for level 4. In addition they're given these extra additional responsibilities for a fixed period of time.

COMMISSIONER WATLING: So how can they completely do all the work then for the level if they're going to do this?

DR SENATOR: Well - yes, well -

COMMISSIONER WATLING: It's physically impossible.

DR SENATOR: No, well it isn't physically impossible because there are people at the present time who are doing it. Now the question of whether they're doing it to the satisfaction of all concerned may be something that can be debated, but from personal experience -

COMMISSIONER WATLING: Right. So I put to you then, if I find that it doesn't come within the wage fixing principles then you - you obviously don't want to put it in the classification standards, so I should forget the lot?

DR SENATOR: No, well I believe that the - the society's position - a far less desirable one, would be that they then be addressed in terms of the work value.

COMMISSIONER WATLING: Well you're not going to get two bites of the cherry here. You - you've got to make up your mind because once I finish the argument on this allowance it's gone and - so - and you won't know that - that end result until I write my decision.

DR SENATOR: Yes, well presumably we may have undesirably perhaps a second bite of the cherry when we hear from the other side with regard to the - their current views on HDA and MRDAs which I notice is part of the claim.

COMMISSIONER WATLING: Right. Well maybe on this particular allowance you can take me to the wage fixing principles and the - and the logic behind choosing 5 per cent.

MR HOUSE: Certainly, sir. Well just to recap a bit of what has been discussed so far; in terms of incorporating these functions into the position classification standards at level 4, the standards as we believe should reflect what are regularly performed duties and responsibilities. As Dr Senator has said, if we incorporate, if you like, incidental functions or functions that are performed for a fixed term by a limited number of consultants, then we - we believe that this would distort the structure.

Now - and this decision wasn't taken lightly given, as I said before, previous views of commission on the need to rationalise allowances. Now as to how this - these allowances accord with the wage fixing principles, the - we again will have to rely on the point that under structural efficiency we believe that it was more efficient to recognise and remunerate these duties by way of an allowance. As I understand it -

COMMISSIONER WATLING: Well take me to the principles. Take me to the principles where it says that.

MR HOUSE: Well, I'm instructed that this is already paid by way of an allowance.

COMMISSIONER WATLING: Take me to the principles that say this. Take me to the managerial allowance principle or where it says the managerial allowance at the award at the moment.

DR SENATOR: Mr Commissioner, we already had the - the directors allowance provision within the current award.

COMMISSIONER WATLING: Take me to the managerial allowance.

DR SENATOR: Well I mean - well, as I say, we have directors allowance and we have more responsible duties and higher duties allowances.

COMMISSIONER WATLING: Where does this line up with the director's allowance?

DR SENATOR: This - the first level of the managerial allowance is - is of approximately that value depending upon the classification of the individual.

COMMISSIONER WATLING: No, I'm not - that's not the question. Where does the directors allowance line up with this managerial allowance?

DR SENATOR: I'm sorry, I don't understand what you're getting at.

COMMISSIONER WATLING: Well - well I'll try and put it simpler. Is there a directors allowance in the award?

DR SENATOR: Yes.

COMMISSIONER WATLING: Managerial allowance in the award?

DR SENATOR: No, but that -

COMMISSIONER WATLING: Yes or no - there's no, right.

DR SENATOR: Okay, no. We believe however that -

COMMISSIONER WATLING: Does the managerial allowance provide a reward in exactly the same terms as the directors allowance?

DR SENATOR: No.

COMMISSIONER WATLING: Take me to the principles in relation to allowances and show me where you're implementing this new allowance in accordance with the wage fixing principles.

DR SENATOR: Right, well perhaps while Mr House is - is - is taking note of that, I would indicate that technically we have used a new term here, that we believe that the managerial allowance really is a specification of the more responsible duties allowance and higher duties allowances as allowed for currently.

COMMISSIONER WATLING: No, totally different. You or I have to understand what a higher duties allowance has been constructed for. Under the old system, it would mean that if you took over someone else's job or position you would go either to another rate or receive an allowance in lieu of that.

Now with the new restructured award we have a system whereby employees are classified in accordance with the standard described in the award. Right? It doesn't exist in the current award, it's left to the employer's discretion. Now if you have people appropriately classified and even under your own submission just prior to lunch, it spoke about the translation and how people have to be appropriately classified in accordance with the standards.

Now prima facie, there - if someone is classified in accordance with the standard described in the award, it could be argued that there's no need for a higher duties allowance if it's accurately described, and, if they were doing work at another level they would be reclassified at the higher level in accordance with the work description - so there's no duty - no need for a higher duties allowance. And that's why higher duties allowances have and are disappearing because the concept is that if you're doing the work at level 4 and you're at currently at level 3, you should be classified at level 4, and in fact this gives people an argument now in the award to be appropriately classified, whereas before there was no argument because the awards were silent

So the higher duties allowance has - has nothing to do with this allowance. I could understand an argument that said it may be to do with the directors allowance, but the directors allowance doesn't relate to, or line up, with the managerial allowance as you've described it.

DR SENATOR: Well the other -

COMMISSIONER WATLING: It must be something new.

DR SENATOR: Well I think the other - other aspect of this is that there are people currently attracting an allowance particularly in relation to paragraph 2 who are full-time employees. Now that at the present time is being paid on the basis of a - a more responsible duties allowance and, as I say, it's currently in place and we were looking for a vehicle in which that could be regularised and unfortunately it would

appear that we may be - may be as you've pointed out, in breach of the wage fixing principles.

COMMISSIONER WATLING: I haven't pointed that out - I just asked you to address the question. I haven't made any ruling on it. I just want to be - make sure that I hear submissions on it because it would be more than interesting I would think.

DR SENATOR: Okay, well as I say, in relation to those - the duties of the heads of division at the Royal Hobart Hospital or program of the southern health region, that already there are people performing these functions, they - and a minority of those are in fact full time employees covered by the award and the quantum that is presented as part of our claim is in fact less than the current rate of remuneration pitched at - at - at current Class 3 specialist.

COMMISSIONER WATLING: Mm. Well I'm not worried about the rate the moment - I haven't got to the rate. I haven't even got past the principle of the thing.

DR SENATOR: No, but I took on board your comment about how these rates line up with directors allowances and - and what is currently in place.

COMMISSIONER WATLING: Mm - right, well we'll just stick with the allowance at the moment and I'll get to the amounts and after that. So what do we say in relation to the allowances and the principles?

MR HOUSE: Well the principles say that no other - apart from expense allowances that may be adjusted having regard to expenses - that no other new allowances shall be created unless changes in work have occurred or new work or conditions have arisen. Where changes have occurred or new work and conditions have arisen the question of new allowances, if any, shall be determined in accordance with the relative principle.

COMMISSIONER WATLING: Now what's the relevant principle?

MR HOUSE: Well it may be the work-value principle.

COMMISSIONER WATLING: That's right.

MR HOUSE: Principally the work-value principle, but I suppose we took some latitude in considering that the structural efficiency principle might also impact on this question. That's not to say that when we come to work value that we won't endeavour to address the duties and responsibilities attached to this function. However I don't think we should mislead this commission - we certainly wouldn't intend to do so - that this is some new function that's - that's suddenly popped up. We - we say that, as Dr Senator has said, that currently it's been - or the functions

are being remunerated and recognised in perhaps a more ad hoc fashion than - than we consider as appropriate when we come to look at properly restructuring the award.

Now all I can say, sir, is it boils down to whether these functions should be - which are limited and for - and not regularly performed by all consultants - should be built in - into the salary which is one option, or whether it's more appropriate from not only a remuneration point of view but from a cost effective point of view in terms of an allowance to be confined to those - those people actually being required to perform the duties which I think Dr Senator said certainly wouldn't exceed eight or 10 people at the very - at the very most.

COMMISSIONER WATLING: Right - so does that mean then we leave it to the work value?

MR HOUSE: Well, strictly speaking under the principles, yes, however I believe that it shouldn't be confined to the work value, it should be confined - it should also be contemplated or considered in terms of the design of our new structure and the proposal we have to try to bring this award up to date.

COMMISSIONER WATLING: Well say for example that we do the work-value component and -

MR HOUSE: But obviously -

COMMISSIONER WATLING: - and - and I have a look at it and you've put a claim before me for 'X' amount of dollars, I might well say, well I'm going to grant your claim of 'X' amount of dollars but included in that people will be required to do this, that and the other thing. And when it gets to work value I've got to consider under the work-value principle whether or not it's appropriate that it be bound up in one wage rate or whether any new allowances should be created because they are specific or stand out by themselves or there's a reason for it. Now that will only come after the work-value case surely.

MR HOUSE: Well, commissioner, again I'm in a state of confusion - which is not unusual. I thought that this case was to be dealt with in one - one hit.

COMMISSIONER WATLING: It is.

MR HOUSE: Well as I understand the commission's decision when it comes out will encompass the total box and dice that we won't have any opportunity to say, well the commission has ruled on these sorts of aspects therefore we take these into account in - in - in developing our work-value case - indeed, I don't think I was going that far, I had in mind at one stage that we might at least hear something from the other side as

to their views' on, say, the PCS's or whatever before we embarked on our work-value case. But as I understand it, that really won't be - and correct me if I'm wrong - that won't be the case, we will -

COMMISSIONER WATLING: That was the -

MR HOUSE: - put our - yes -

COMMISSIONER WATLING: - that was the agreed position.

MR HOUSE: - okay, I'm not debating that. So in those terms I'm going ahead that, you know, here is our view on the award.

COMMISSIONER WATLING: Yes.

MR HOUSE: Now, alright, we've got to justify our position under the principles, I say that when - in designing this award Dr Senator and I spent many hours to try to produce a document that reflects not only what we want, but what is the situation - what is efficient in terms of staffing the public hospital system. So - now for right or for wrong we decided that these incidental functions - functions that are of limited application to a limited number of people are something that are probably best still dealt with by way of an allowance and that allowance ought to be regularise.

Now in terms of - that's - that's one part of it - in terms of - I would have thought justification for that approach and more importantly how much that function is worth would be dealt with in - in the work-value context.

COMMISSIONER WATLING: Well what does the work-value principle say about allowances? You took me to the first one - right - and you told me that the principles say that no new allowances would be created unless it's for new work and then it's dealt with in accordance with the relevant principle.

MR HOUSE: Yes, yes.

COMMISSIONER WATLING: Now the relevant principle is work value - right - now what does that principle say about allowances?

MR HOUSE: It requires that it be demonstrated to the commission a significant net addition in the duties and responsibilities and possibly the significant change under which the conditions of the work is performed, from memory.

COMMISSIONER WATLING: That's right. Now does it say anything about allowances?

MR HOUSE: Well I've left my principles back in the hotel - I'll be honest with you, sir - but I - my understanding is from the previous consideration of allowances that - that allowances for work-related allowances have the same considerations applied to them as to salaries.

COMMISSIONER WATLING: But it would be possible under any work-value case to say, look, the bulk of the work is done here and therefore it would be inappropriate to include this work for which an allowance may be more appropriate.

Right. Now if we haven't got to examining this - or we haven't got to the stage where we're examining the work as part of the work value at this stage, who's to say that - that during the course of the work-value component that we don't know, there might even be agreement that there be a higher rate of pay in the classification streams on the basis that all employees at certain levels may be required from time to time to do that work, even though at this time 1, 2 or 3 might be doing it. Now how do we know that? Or are you just arguing this in isolation because if -

MR HOUSE: Well -

COMMISSIONER WATLING: - if you're arguing it in isolation, I'm going to then have to rule on the thing in isolation.

MR HOUSE: Well I'm arguing it in isolation in terms of the efficiency of the approach as against remunerating everyone for a function that's quite limited or -

COMMISSIONER WATLING: Well what about - what about the other side - they might say, well, we want greater flexibility to be able to offer this to anyone.

MR HOUSE: Well this is - this is the difficulty we have in terms of not knowing, sir, what the other side thinks at all.

COMMISSIONER WATLING: Well then -

MR HOUSE: Now -

COMMISSIONER WATLING: - well that's probably why I'm suggesting that may be it's horses for courses and you argue it at the appropriate spot.

DR SENATOR: Can I just clarify one point, sir, the - particularly in relation to paragraph 2; when we talk about a division or program, that they are in themselves restricted. There are only in relation to the Royal Hobart Hospital a potential for four divisions which are surgery, medicine, family and child health and diagnostic functions.

Now the difficulty that we face here is that not only are we restricted to those four possibilities at the Royal Hobart Hospital - and this is part of government policy that the hospital should - should in fact run these programs on behalf of the region, that they - that is the essential focus for them, and the regional responsibility is superimposed on the - on the hospital basis, but that there are a variety of - of employees who may in fact provide that service and it - it is not just a function related to those medical practitioners covered by the award but those responsibilities can also be assumed by selection by visiting medical practitioners.

COMMISSIONER WATLING: Well I'm not worried about that.

DR SENATOR: Well I can understand - I'm merely clarifying just who the people are that currently can be required to carry out these additional functions. So that - so that it's not -

COMMISSIONER WATLING: Right, well - well let's get the -

DR SENATOR: - open ended in the sense that a number of different - that an expanding group might be able to access this allowance.

COMMISSIONER WATLING: Well let's go to 2; if someone is appointed for a fixed term to perform the duties of director - why don't they get the director's rate?

DR SENATOR: No, this is a director or head of a division - it's not a director of a unit or a - or a service, that's already incorporated within the PCS's. This is in relation specifically to a - to a named division at the Royal Hobart Hospital which are the four that I've just referred to. These aren't, say, Department of Cardiology or Department of -

COMMISSIONER WATLING: Who - who says?

DR SENATOR: - Diabetes.

COMMISSIONER WATLING: Well what do the words say?

DR SENATOR: It says, director or head of a division. The divisions are clearly - are - well if they need to be inserted into this claim to be specific, well so be it, but I don't believe that that in fact is - is in anyway meaning to read a director of - as we understand under the current director's allowance provision of the current award.

COMMISSIONER WATLING: So if some - you've got in your chart - go to H.9 -

DR SENATOR: Yes.

COMMISSIONER WATLING: - are you talking about a career medical practitioner?

DR SENATOR: No.

COMMISSIONER WATLING: Who are you talking about?

DR SENATOR: We're talking about consultants level 4 again, sir.

COMMISSIONER WATLING: Right, so if a consultant is - in charge of what?

DR SENATOR: A division - a nominated division of either medicine, surgery, obstetrics and gynaecology or family and child health or - sorry - it should be medicine, surgery, family and child health or diagnostic services - they are the four nominated divisions at the Royal Hobart Hospital which are in fact programs of the southern health region at the present time.

COMMISSIONER WATLING: Yes.

DR SENATOR: There are other programs of the southern health region but none of those relate to the services being provided at the Royal Hobart Hospital. They are - they are such things as aged care and mental health care and others also.

COMMISSIONER WATLING: Well do you think the wording could be a lot clearer there?

DR SENATOR: Well, yes, I think it would be very useful if we nominated those actual divisional titles in respect of the Royal Hobart Hospital and -

COMMISSIONER WATLING: So, why do you put 'director or'?

DR SENATOR: Well it's just a question of how they might be titled. I was merely leaving it more open, that there may be a change in style at any stage and I didn't want that to become a technical problem that would interfere with the interpretation of the award.

COMMISSIONER WATLING: Well you can see how the word 'director' is going to get horribly confused.

DR SENATOR: Well I see no problem in leaving out the term 'director', leaving it as 'head' and in brackets putting 'however titled' which may in fact clarify the situation.

COMMISSIONER WATLING: Yes. So, it's head of a division or head of a program?

DR SENATOR: Yes, if they're medically qualified. I alluded to the fact that not present in the Royal Hobart Hospital but other nominated programs such as mental care and aged care. Now if they happen to be individuals employed under the award, we believe that this managerial allowance would also apply to them. Currently, I might add, that none of those incumbents have programs which aren't based at the Royal Hobart Hospital. In other words, outside the range of medicine, surgery, family and child health, and diagnostic services are in fact medically qualified and therefore would not be covered by this award.

COMMISSIONER WATLING: Right. Well for starters I'd have to say I think it's worth, on this particular allowance for starters, to adjourn the issue and clarify the verbiage because if there's problems with one, there's problems with two for starters. So, let's not confuse the issue any more and let's adjourn that matter and you come back to me on it.

DR SENATOR: Thank you, Mr Commissioner.

COMMISSIONER WATLING: Right. Then we'll know precisely who we're talking about and be quite accurate in whom we are referring to and who applies for it and who can apply for it. Righto, qualification allowance.

MR HOUSE: Thank you, sir. Again, this is not a new allowance, but - and I suppose runs into the same sorts of difficulties. Currently, the clause 9 of the existing award says a medical practitioner Class I or a medical practitioner Class II who holds either a qualification - a higher qualification or part I of a senior qualification appropriate to the normal duties of his position shall be paid an allowance of up to \$1,269 per annum as the controlling authority may in each case determine.

Again, in the interests of award restructuring and award modernisation and in terms of the new structure that we've developed and in terms of our perchant for allowances to be expressed in terms of a percentage of salary rather than a fixed annual amount and that goes to my part beyond that jurisdiction. We've decided to revamp the qualification allowance provision and we say that there should be an allowance for 5 per cent of base salary paid to a medical practitioner following the presentation of evidence of successful completion of all examinations required for postgraduate qualification relevant to the employment of the medical practitioner and after some agonising we're still, given this morning's discussions, as approved by the controlling authority.

We say that the qualification must contribute to the performance of the functions of the position in question. Now we say that a registrar level 2, Grade 2 who is not appointed

- and the words 'or promoted' should be added in there, sir, to a position of senior registrar level 3.

COMMISSIONER WATLING: Well where do you want me to alter your document?

MR HOUSE: I'm sorry, after 'who is not appointed' there should be the words 'or promoted' to a position of senior registrar level 3.

COMMISSIONER WATLING: So he gets an allowance because there's not a job available?

MR HOUSE: Yes, but he is qualified.

COMMISSIONER WATLING: Why should he do that?

MR HOUSE: Well basically we believe there should be a recognition of the fact that the person is qualified and capable of performing at that higher level which I think was the intent of the earlier provision. Certainly, it's not an unusual situation in other awards.

COMMISSIONER WATLING: So, I should discount any figure during the work-value case for those people who have completed all their exams?

MR HOUSE: Well it depends on whether discounting occurs.

COMMISSIONER WATLING: That's right, yes. That's what you've got to work out. So it's not included in - not going to be included in the wage rate? It's not going to be included in the wage rate that they are - ?

MR HOUSE: Well, sir, the - I understand what you say. In the New South Wales Award, for example, -

COMMISSIONER WATLING: Now, don't worry about the New South Wales award, just tell me why -

MR HOUSE: Well I think it's -

COMMISSIONER WATLING: - you want it here. We're not -

MR HOUSE: Well there's no double counting.

COMMISSIONER WATLING: Well we're not into comparative wage justice argument. We're - just tell me why you want it here and -

MR HOUSE: Can I - I just want to say that there's no double counting, that when a person with the full qualifications, if you like, at the registrar level moves to the senior registrar level then the allowance is automatically absorbed. That's -

COMMISSIONER WATLING: But there may be no position at the senior registrar level. It's a promotable position, isn't it?

MR HOUSE: Yes. Well we would say that in terms of work value and performance that a registrar with the completion of the qualifications should have some recognition of that level of attainment, that if and when the person's promoted as a senior registrar, of course, that is automatically subsumed and I wasn't alluding to CWJ as much as it's specifically in the New South Wales, that as stated, that that allowance is no longer to safeguard against a double counting. So it's a question of whether - what value that the commission or the employer puts on the fact that a person has got - has completed all the examinations for the postgraduate qualification.

COMMISSIONER WATLING: So to go from a registrar level 2-I to level 2-II is a promotable position.

DR SENATOR: We've covered that in the PCS's - we've accelerated progression of one step. We've got the problem here that there may not be a specific position available for somebody who, for all intents and purposes has all the qualifications which relate to level 3.

COMMISSIONER WATLING: Yes, so what? That's the point I'm making.

DR SENATOR: Well we still believe that that person would be functioning at a higher level. We've rolled up the -

COMMISSIONER WATLING: So you want me to -

DR SENATOR: - registrar level into 2 grades now.

COMMISSIONER WATLING: - you want me to adopt the argument that I should pay people on qualifications gained as opposed to qualifications used.

DR SENATOR: Well we believe within the course of their functioning that they would in fact be utilising those qualifications to be the benefit of -

COMMISSIONER WATLING: But are they required to by the employer to use them?

DR SENATOR: Well they're certainly required to by the - well by the of the service requirements. Whether it is stipulated by the employer as part of the job description is open to some debate.

COMMISSIONER WATLING: So, isn't it this an avenue only to get around the people being appointed to certain levels?

DR SENATOR: No. Well it would appear that way if that quantum being sought would in fact remove any distinction. However, the quantum being sought is - falls well short of the difference between level 2 Grade 2 and level 3.

COMMISSIONER WATLING: Well we don't know that.

DR SENATOR: Well, I think it's useful to even foreshadow at this time that that will be the case if - from this side of the bench, sir.

MR HOUSE: on call recall and the functions of - you know, on the roster and all that.

DR SENATOR: Yes. Well the other possibility here for the employer is to utilise such registrars who have their full qualification to share on call recall responsibilities with specialists rather than with other junior staff.

MR HOUSE: Well, sir, we can only say that, from our perspective, as Doctor Senator has said, we believe it does impact on the level of work or level of responsibility that can be accepted at the registrar level. We're not asking for the full higher duties as Doctor Senator has mentioned, but we believe that in terms of the worth of the qualifications that again it's appropriately recognised by way of an allowance. If there was to be any discounting it certainly, I don't think should happen at the senior registrar level because the salaries which we'll put for that level absorb any notion that we had of an allowance.

There's no - I must say again, no double counting, so the focus has got to be on the registrar as distinct - the 2 groups of registrar that has not completed all of his or her examinations as against the registrar that has. I think I'm correct in saying there will be a category of registrar that has completed all the examinations but is still required to satisfy certain requirements of some colleges to achieve experience -

DR SENATOR: Specialised recognition of

MR HOUSE: Yes, specialised recognition by way of demonstrated practice hours or experience. So, I'm -

COMMISSIONER WATLING: So, really the main thrust is because they hold - they've passed their exams and they can't get into a senior registrar's position, they've got to get an allowance.

MR HOUSE: Well - yes, we would submit, sir, that there should be some recognition of the fact that they've achieved that level and as Doctor Senator said that in terms of their providing coverage for specialist or consultant around the clock services, we believe the employer has a capacity to utilise these people having regard to the fact that they've passed their exams, an in-house system where you've got a limited number of qualified people, then this -

COMMISSIONER WATLING: So what's the difference in putting another level in there - another grade in the level? That's what me might as well do.

DR SENATOR: Well only on the basis that there's an expectation that anybody perhaps after 3 years registrar position would achieve that situation of completing all examinations successfully. Again, I think we need to put this into context. It would probably be the small minority of people completing the third or fourth of registrar employment that would have in fact achieved their postgraduate qualification.

COMMISSIONER WATLING: Right. Well it doesn't alter the fact that if you - if there's no position, you still want them to get the money even though there's no position.

DR SENATOR: Well I think we've indicated, sir, that it's not to bring them into line with the salary of a senior registrar.

COMMISSIONER WATLING: No, I know, but it's giving them an amount of money above their classification standard.

DR SENATOR: Yes.

COMMISSIONER WATLING: Purely for the reason that they can't be appointed or their not appointed at another level.

DR SENATOR: No, I think we've put forward the notion that they are providing a level of services which by virtue of the achievement of their postgraduate qualification enhances health services delivery.

COMMISSIONER WATLING: But the employer only wants a certain level - we get back to this argument -

DR SENATOR: Well I believe the employer wants the best quality services that money can afford.

COMMISSIONER WATLING: Well the employer makes an appointment at a certain level and there's a certain amount of money paid for appointment at that level. If they don't want to make an appointment at the next level, why do they - why should there be an allowance?

DR SENATOR: Well I mean, there's all sorts of factors here apart from the quality of services being provided and it's to do, I understand, with issues which I feel a little bit nervous about introducing, such as, retention of people within the system and this equally applies to the senior registrar the reason why we put that in because it we're looking at the structural integrity of the entire health service structure and making sure that there aren't huge gaps.

COMMISSIONER WATLING: Well if the employer wants to retain someone, won't they make them - appoint them at the appropriate level for a senior registrar?

DR SENATOR: No, well there may be other restrictions on their capacity to open a position of senior registrar such as the college requirements for an approved position which they have been ratified at that level.

COMMISSIONER WATLING: Well, they can take that up with the college.

DR SENATOR: Well, true enough, but I mean there may -

COMMISSIONER WATLING: I don't have any control over what the college do. I am looking at the contract of employment.

DR SENATOR: Yes, we understand that, sir. The difficulty there is that the delay in getting the post approved is such that that person essentially is lost to the system. He goes elsewhere. We know that there are a peculiar type of, in our estimation of temporary employee, and under those circumstances and based on what we know of those individuals in those types of positions, then obviously there is a heightened sense of mobility which may be exercised by those individuals.

MR HOUSE: Well, sir, the same sort of concepts are built into the next two paragraphs.

COMMISSIONER WATLING: You are going to address me at some stage on the specific philosophy of percentage associations as opposed to a flat rate for allowances.

MR HOUSE: Thank you for reminding me of that. But, if I can just complete the - there's some corrections again unfortunately we have to make. The second paragraph there should read: 'A Career Medical Practitioner Level 2 or Level 3' instead of Grade 1, 'who is not appointed to or does not progress to Level 3 or 4', and the word 'respectively should be added after '4', until he/she is appointed or progresses to Level 4', and 3 -

COMMISSIONER WATLING: Right, well, look, you make the necessary amendments and give them to me on the next day of sitting. My shorthand isn't all that good.

MR HOUSE: Well, if I could just read the last one:

3. A Deputy Director of Medical Services

(i) at Level 2 or 3 at the North West Regional Hospital, Repatriation General Hospital or Royal Derwent Hospital; or

(ii) at Launceston General Hospital or Royal Hobart Hospital at Level 2, until he/she is appointed or progresses to Level 4.

Now, again the same - or in terms of the career medical practitioner - there we believe there should be some recognition of the achievement of relevant postgraduate qualifications, and in terms of the deputy director of medical services, given our view that there should be encouragement for people to get the relevant administrative, or obtain administrative qualifications, either directly in the health area or through and MBA majoring in health of hospital administration.

Now, as to the issue of a percentage basis, a flat rate approach, we believe that the flat rate approach - and I know we will get into some arguments about what ought to be adjusted in stage wage cases - but I think that's probably become irrelevant now. That the percentage approach lends itself more to adjustments that keep up to date with salary movements, and the flat rate not only tends not to be adjusted but it also - it's origins become obscured in time - as the years pass, and we are going to get to some further discussion about that in terms of the on-call situation a little later on.

Now, the 5 per cent as to the specific figure, was we felt the best fit again in terms of how that would slot into our structure, and having regard to the relationship between the current flat annual allowance and the current salaries. Sir, I am advised that it actually approximates to half an increment, which I think was probably the intention of the original, or the existing allowance, whenever that was -

COMMISSIONER WATLING: How do you make -

MR HOUSE: Pardon?

COMMISSIONER WATLING: On what basis do you make that assertion?

MR HOUSE: Well, again at the risk of introducing CWJ, that has been the approach in New Zealand.

COMMISSIONER WATLING: Well, if that's the case, you will take me to the allowance at some stage of the game and follow the path of how it was developed and why it was developed, and how it related to half an increment; otherwise the statement is nothing more than an assertion.

MR HOUSE: Well why it is an assertion is not due to any disrespect to this commission, sir, it's due to the fact that I don't have a history, nor I think do we have but I will check again the relevant records of how the allowance came about. But, I hear what you say, and I will endeavour to look at that again. Indeed, just to digress momentarily, I'm having some difficulty in even looking at datum point issues in terms of the history of this award. Sir, if we could move on to -

COMMISSIONER WATLING: Are you going to address the question in relation to if it's an allowance for gaining a qualification, why does the allowance mean different things to different people in terms of money. If the principle is right that one gets an allowance for achieving an extra qualification, why are some people more equal than others?

DR SENATOR: Well, substantially, there is little difference, sir, when the actual steps are looked at between which these allowances operate. We had no desire to make them different. We chose a median point which would have been an alternative approach to choosing the quantum in relation to a particular level. But there was no intent necessarily to discriminate significantly between the dollar amounts approximating that percentage amount.

The concept of a percentage amount was just to ensure its integrity in relation to the movement in salaries should that occur in the future. But we can re-examine that in relation to a best fit, in relation to a specific level, and justify that level as being used as the basis on which the calculation is made.

COMMISSIONER WATLING: Well often in the past allowances have been awarded in flat amounts on the basis that if the disability or the philosophy related to the allowance is right, then all should receive the same remuneration.

DR SENATOR: Yes. Yes, well I accept that principle, sir, it is just in practice when we look at where those actually occur you'll see that it is common that they involve levels 2 and 3 in all cases. And indeed the - under the work value we'll be arguing that the increments present in that scale would, in fact, mean that these came very close. But we can be more

precise to reflect the need for it to - to them being the same in all cases.

MR HOUSE: If I can now turn to the allowance for temporary medical practitioner which we've already touched upon. Again the intent was to cover all the allowances in the one apart from on call allowances, I should say, in the one section but for completeness we're again proposing a 30 per cent loading which we're to further address the commission as to how that 30 per cent was determined. But in broad terms, as it says, it's in lieu of entitlements of annual recreation leave, sick leave except for impairment leave under subclause (e) of clause 32 of the award, sabbatical leave, conference leave, study leave and long service leave. Moving to -

COMMISSIONER WATLING: Well this is going to be justified, I hope.

MR HOUSE: Yes, sir, as I -

COMMISSIONER WATLING: You're not just going to throw it at me -

MR HOUSE: - said to you we - well, you mean in principle justify because we've got to address you in terms of how we've reached the 30 per cent.

COMMISSIONER WATLING: Yes, well why have you got 30 per cent in lieu of long service leave? Why would this award be dealing with a long service leave matter when that's subject to a special act? In fact, it's specifically excluded under our act.

MR HOUSE: As I understand it the temporary employees wouldn't qualify for long service leave.

COMMISSIONER WATLING: Well have you checked that? These are temporary employees as defined under this award. And secondly, what about our act? It says that we can't deal with long service leave matters so we're now building a rate in to compensate for long service leave.

MR HOUSE: Well on the first question other than the building industry I'm not aware of temporary employees - there may be some other areas - that are entitled to some accumulation of long service leave. But I'm speaking from general knowledge rather than particular knowledge of the situation in this state.

On the question of this award dealing with matters of long service leave I think all we're saying is or all we're - we're not asking the commission necessarily to express a view one way or the other about whether long service leave - well

endorse, I should say - whether long service leave should be paid or compensated or forgotten about.

COMMISSIONER WATLING: Yes, you are. You're saying that I've got to give them 30 per cent in lieu of that. And if they're not entitled to it why should they be compensated for it? And if they're not entitled to study leave why should they be compensated for it? If they not entitled to conference leave or sabbatical leave why should they be compensated for it?

MR HOUSE: Well my answer to that is that we don't believe that even in these days of flexibility and enlightenment that employers ought to have the opportunity to employ people on a temporary basis and avoid the sort of award or even non award provisions that apply to full-time or permanent part-time people. The whole thrust of what we're putting here is that it's going to cost roughly the same to employ people on a temporary basis as on a permanent basis. So that is our position.

COMMISSIONER WATLING: So you're saying to me that they're entitled to long service leave, they're entitled to study leave, they're entitled to conference leave and sabbatical leave, right?

MR HOUSE: Well if they were full-time people or permanent people they would be. If you want to replace full-time people with temporary people then built in to their remuneration must be a recognition that you should reward them according to the

COMMISSIONER WATLING: Well not all full-time people get long service leave.

MR HOUSE: Well prima facie they've got more of an entitlement than temporary people.

COMMISSIONER WATLING: Well you'll have to do better than that. Come on. You're not really serious in that, are you? Not every full-time employee is entitled to long service leave. Indeed even in casual employment, even in the private sector where these people only have to work 32 hours a month it's not tabulated for the sake of their loading because not everyone's entitled to it. You're only entitled to it after you've done 15 years, indeed, in the private sector and after 10 years in the public sector and you're only entitled to pro rata after 7, and only for very strict reasons. And not every full-time employee is entitled to sabbatical leave. They're only entitled to it after they've completed 5 years of continuous service of something. What about conference leave - haven't got to that yet - study leave?

MR HOUSE: Well I'd have to seek instruction, sir.

COMMISSIONER WATLING: Yes, I think you'd better. I certainly want to know how you get that 30 per cent.

MR HOUSE: Yes, we've taken that on board.

COMMISSIONER WATLING: Well when do we actually get to address this particular point because once we leave here we don't deal with it any more, do we?

MR HOUSE: It comes up obliquely in some other areas, as I recall. And impairment leave, Gordon.

DR SENATOR: Yes, I mean there's cross reference back to this provision in all of those other leave entitlement areas.

COMMISSIONER WATLING: That's what I mean. That's what I mean, we don't deal with it in any other way. This is the key clause.

DR SENATOR: Well can we defer -

MR HOUSE: Well I'll seek instructions this evening.

COMMISSIONER WATLING: And you can see that a lot of those - a lot of the answers to these questions will be based on who's eligible for those sorts of provisions.

MR HOUSE: Well in terms of long service leave I still have some difficulty in that obviously if you don't get the years up and didn't - your employer disposes of his business after 9 years and the new employer takes over the business you might lose your long service leave.

COMMISSIONER WATLING: It's covered by the act, that's why it's not dealt with in the award.

MR HOUSE: The transition of business provision.

COMMISSIONER WATLING: Yes.

MR HOUSE: Well, you see, I haven't got the full grip of the

COMMISSIONER WATLING: That's why I'm trying to give you a nod and a wink. Maybe you should look at the Long Service Leave Act. And plus also you want to have a look at our act - and when I say our act, the Industrial Relations Act - in relation to dealing with long service leave matters and matters that come under the Long Service Leave Act. Otherwise we'd have every award of this commission having a loading including long service leave. We don't, there's not one award in this jurisdiction that has a loading that looks at long service leave.

They all relate to sick leave, annual leave and public holidays or holidays with leave. And if you want to include all the others you'll have to show me that sabbatical is open to all employees. Now there's a qualifying period. There might be a qualifying period for conference leave, there might be a qualifying period for study leave, so it's not open to all employees unless they reach a qualifying period. The one thing that is open to all and that is sick leave from day one, public holidays and annual leave or holidays with pay. We don't mention those here, do we?

MR HOUSE: Not public holidays.

COMMISSIONER WATLING: Well holidays with pay.

MR HOUSE: No.

COMMISSIONER WATLING: So we haven't taken that into your calculations so you might want to take one or two off and add a couple in. But those three things, in particular, all employees, full-time employees, are eligible for them from day one in any given year.

MR HOUSE: Well we can return to that first thing tomorrow.

COMMISSIONER WATLING: Right.

MR HOUSE: Thank you. Moving to our claim, clause 12 - Payment of salaries, for full-time employees salaries shall be paid fortnightly by electronic funds transfer or other non cash mode of payment at the discretion of the controlling authority. I'm reminded that that's an agreed matter.

COMMISSIONER WATLING: Well I know it might be an agreed matter but I just have a few questions to raise in relation to it. What does it really mean?

MR HOUSE: Well my understanding was that perhaps in the second tier or something years ago they decided that they'd abolish the payment of salaries by cash.

COMMISSIONER WATLING: Well if I go to my local grocery shop and say I have an electronic funds transfer, will that buy me anything? I think what you really need to clarify in this that they shall be paid their salary fortnightly by what day in the week, right? And if it's going to be transferred where's it going to be transferred - into a bank account. If it's going to be transferred into a bank account who chooses the bank account? Right? Now they're fundamental questions that need to be asked.

MR HOUSE: Like back in the days where you shopped at the company store.

COMMISSIONER WATLING: That's right. We get salary shall be paid fortnightly by electronic transfer. It's a new currency, is it? That it should be paid fortnightly either by electronic transfer or by some other mode into a bank account, I take it, of the employee's choice or nominated by the employee or is it only bank accounts? Can credit unions be involved?

MS PAMMENTER: I think they can, Mr Commissioner.

COMMISSIONER WATLING: Yes, well it doesn't say that here. It just says this is at the discretion of the employer, what they do with it. They might send it to Berkleys Bank and pick it up from there. So you need to look at that.

MR HOUSE: Right The next one -

COMMISSIONER WATLING: So the hours of work for a part-timer can be averaged, can they?

MR HOUSE: This is (c), is it?

COMMISSIONER WATLING: (b).

MR HOUSE: (b).

COMMISSIONER WATLING: Clause 13 deals with hours of work, right?

MR HOUSE: Yes.

COMMISSIONER WATLING: Do you deal with part-timers, hours of work for part-timers?

MR HOUSE: Hopefully so.

DR SENATOR: It's under (a)(3), sir.

COMMISSIONER WATLING: (a)(3), right. So this (b) at the top of the page that we're looking at provides for them to average their hours of work over a fortnight, doesn't it?

MR HOUSE: Yes.

COMMISSIONER WATLING: Now why would that be contained in this clause as opposed to the hours of work clause? This is dealing with payment of salaries, isn't it?

DR SENATOR: Yes -

MR HOUSE: Well from memory that was a deficiency of our previous claim, that there wasn't a complementary, if you like, this is for full-time -

COMMISSIONER WATLING: Yes.

MR HOUSE: - if I can put the part-time question aside - the question of averaging hours over a fortnight for full-time people, which I recall was part of the commission's handling of the 38 hour week issue. We did have a provision for averaging the hours of work but nothing said what would happen in terms of the pay.

COMMISSIONER WATLING: Yes, but I'm just trying to work out whether the hours of work clause allows it to be averaged over

MR HOUSE: Well hopefully because that was what was put in place previously by proceedings before this commission. It hasn't gone

DR SENATOR: No, it's incumbent in the first paragraph under 13(a)(1), the use of the term average of 76 hours per fortnight.

COMMISSIONER WATLING: For full-time employees. We're talking about part-time employees.

DR SENATOR: Well (b) at the top of the page, sir, I think is still full-time employees.

MR HOUSE: No, that's full-time. We haven't dealt with - we haven't provided for averaging for part-time employees.

COMMISSIONER WATLING: Right.

MR HOUSE: But we provided for the full-time employee both in terms of the hours of work and the method of payment.

COMMISSIONER WATLING: Right. So you're not averaging part-time employees' hours.

MR HOUSE: Well we rightly or wrongly, I must frankly say, we contemplate it but -

COMMISSIONER WATLING: Well what does an employee mean?

MR HOUSE: - on your feet now I wouldn't have thought it would be necessary.

COMMISSIONER WATLING: We talk about an employee, right? So that's a full-time employee or a part-time employee?

DR SENATOR: Well under (b), sir, it's under full-time employees which is a subheading under clause 12.

MR HOUSE: And then in 13(a)(1) we say for a full-time employee.

COMMISSIONER WATLING: Right. Now part-time employees.

MR HOUSE: Part-time employees we haven't contemplated the need for any averaging approach.

COMMISSIONER WATLING: Right, that's fair enough.

MR HOUSE: And in terms of - we say there in (c) of clause 12 that they'll be paid 1-38th of the weekly rate for the classification covering employees performing similar work on a full-time basis under the terms of the award. Similarly if there - we encompass the requirements of the clause dealing with parental leave. We also provide for penalty rates to be available to part-time or to be paid to part-time employees. You might note, sir, that on careful reflection we've removed any reference to the employer's right or otherwise to make deductions from pay. There was some discussion about that in the earlier phase.

COMMISSIONER WATLING: Now I notice in (d) you've got a penalty of 10 per cent here.

MR HOUSE: Yes, we've persisted with that. Instead of 3 days we've provided 10 days and I've been reminded that in all the circumstances there's also a 3 month notice period - sorry, up to 3 months notice period so that we don't believe that the requirements of that subclause or paragraph should present any great problems in terms of paying all the monies legally due.

COMMISSIONER WATLING: Well what's it really for? What's the penalty for I mean, there are important questions here that we need to consider. Why are you saying that they get a penalty of?

DR SENATOR: Well I believe, Mr Commissioner, that this is a sanction on the employer to make sure that they fulfil their rights and obligations to the employees.

COMMISSIONER WATLING: That's what I was frightened you'd say. Now the award can't provide for penalties for a breach of the award, right? However the award may be able to provide a payment to compensate employees for waiting for their money. But the act says what penalty the employer shall pay or be up for if there is a breach of the award.

And that's why in certain awards you're looking at waiting time. But if it's meant to mean that the award is imposing a penalty on the employer for breaching the award and not sending it out in time, then it's beyond the jurisdiction of the commission. But the commission can decide that employees should be compensated for waiting for their money.

DR SENATOR: Well can we remedy that by substituting the word 'compensation' on the second last line for 'a penalty of'?

COMMISSIONER WATLING: Yes. You might just want to have a look at some things in relation to waiting time because depending on the way in which it is written it may or may not apply. And I'm prepared to elaborate on that later if necessary. There have been some notable cases on this particular matter and it could be stated that employees have to wait at their place of employment for the money. Anyway I think you'd better be a bit careful on this, and the other thing too is that there have been a number of rulings in relation to it being not a penalty against the employer but an amount to compensate employees for waiting for their money. You see, a slight difference.

DR SENATOR: I'll wash my mouth out, sir.

COMMISSIONER WATLING: But it could mean - see, what it could mean is that the employer could still be liable for a breach of the award. You see?

DR SENATOR: Yes.

MR HOUSE: On top of.

COMMISSIONER WATLING: Yes. So you've just got to - any way I'm happy to elaborate on that if you want me to.

MR HOUSE: Now before I complete that clause I'd just like to note that the commission's information we've deleted references to salary increments and fixed term contractors. Moving to hours of work we've endeavoured to restructure this clause to - break it into two parts - medical practitioners on a duty roster - more than two parts, but two principal parts - medical practitioners on a duty roster and medical practitioners not on a duty roster. The commission will recall that under our previous construction there was some confusion as between the two groups given that it was really separated into junior staff and senior staff. So that we've -

COMMISSIONER WATLING: So what do you define as a duty roster? You define it, do you?

MR HOUSE: I'm not sure we have, sir.

COMMISSIONER WATLING: Yes. So are we talking about a duty roster that's a work pattern or are we talking about a duty roster that's a piece of paper?

MR HOUSE: I suppose we're talking about a schedule, that's a piece of paper which determines the periods that people - it sets out the periods which period are required to work as

principally determined by the controlling authority in consultation with the employees, as I understand.

COMMISSIONER WATLING: Right.

MR HOUSE: So I'm not sure -

COMMISSIONER WATLING: The reason it comes to my mind is that I've just been through a major review in the nursing homes and we've had to clearly define whether we're talking about the roster as being a work pattern or whether we're talking about documenting that roster on a piece of paper. Can you see the subtleties of that?

MR HOUSE: Yes.

COMMISSIONER WATLING: Now if we're looking at the duty roster we take it that some people will be on roster and some people will not be on roster. You then have to say, well, what is a duty roster? So it's obviously some sort of work pattern between the hours of 7.00 in the morning and 7.00 in the afternoon and it's documented and people feature on the document or in the document. Is that - does that just sort of -

MR HOUSE: That's my understanding, sir, of -

COMMISSIONER WATLING: See, because you could be on duty and you could be told what hours you work but it's just not documented so it's worth trying to work out whether we're talking about the work pattern or we're talking about the piece of paper, the roster.

MR HOUSE: Well I understand that it's probably both, but certainly needs to be documented -

COMMISSIONER WATLING: Yes.

MR HOUSE: - in the hospital setting.

COMMISSIONER WATLING: You may get some assistance in this area from an award that's to be handed down tomorrow.

MR HOUSE: Right.

COMMISSIONER WATLING: We spent some time on this very question.

MR HOUSE: This is the Nursing Homes Award, is it? So I can watch out for it.

COMMISSIONER WATLING: Yes. We spent some time on defining what a roster is. We talked about a roster being - and that was section was agreed so I'm not betraying any confidence

here. But we're talking about it's a work pattern, it's done between these hours, you see, and then later on we talk about certain things that have to be mandatory for this roster, whether it's rotating or non rotating, whether you can work a series of hours within the roster, can you work double enders or if you do what are the breaks, or if not what are the penalties that apply. And also we then talk about the work patterns being documented so no-one gets confused with the work pattern as opposed to the piece of papers. But anyway you're saying -

MR HOUSE: Without going into any detail does that decision look at the question of shift work pattern which will be relevant, I think, to this matter?

COMMISSIONER WATLING: Yes, it completely defines the patterns that can be worked in the roster.

MR HOUSE: Well the other side better have a look at it.

COMMISSIONER WATLING: You might find it very helpful as it gets into the minimum requirements of this as well.

MR HOUSE: Well it would seem we need a definition of a duty roster or we could need which is something which is not on any of our lists, I don't think.

COMMISSIONER WATLING: No. See, if you look at the opening points, point number 1 in both the duty roster and the - the people on duty roster and the people not on duty roster, they're nearly identical, aren't they? Seventy six hours in a fortnight averaged -

DR SENATOR: No, they're not identical, sir, there are some very important crucial differences. There is scope for agreement and there is scope for work on Saturdays and Sundays for the people not on a formal duty roster, two crucial changes, I believe.

COMMISSIONER WATLING: Well that's all the more reason to define what a duty roster is. It's not the piece of paper; it's a work pattern.

MR HOUSE: Yes. Well without going through it all other than to say that we've - as Dr Senator said -

COMMISSIONER WATLING: It might be worth just - before you commit yourself to any of this - all I say is that there's been hours and hours and hours put on this other one.

MR HOUSE: Yes, well I have to read the decision but basically we're not trying to introduce anything new in terms of this -

COMMISSIONER WATLING: No, but I'm really at looking at making it clear because I just asked you the question, is the duty roster the piece of paper or is the duty roster the work pattern?

MR HOUSE: Well I think it's primarily the work pattern because that's what's actually required to be done and happen.

COMMISSIONER WATLING: Right. Now does it contain -

MR HOUSE: But then normally there's also the need for that to be proclaimed with a little 'p' -

COMMISSIONER WATLING: That's right.

MR HOUSE: - so that everyone knows what is expected of them.

COMMISSIONER WATLING: It needs to be documented. The work pattern needs to be documented for the individuals.

MR HOUSE: And really it's a question of communication with the people.

COMMISSIONER WATLING: I totally agree.

MR HOUSE: Now whether this clause says it or not -

COMMISSIONER WATLING: I haven't been through it but I just pre-empt my comments.

MR HOUSE: It's not explicit -

COMMISSIONER WATLING: I only got to the heading.

MR HOUSE: - however it says that each employee shall work in accordance with a duty roster to be drawn up. At least this is (2) - I've jumped ahead a bit - at least 4 weeks in advance. And the roster will indicate the days and times which employees shall work, the employees ordinary weekly hours and may include any additional rostered hours of duty. The roster shall be as mutually agreed between the controlling authority and the majority of employees, and it did say to be included in the roster. We believe it would be more accurately stated as the majority of employees affected by any change in the roster because for any hospital, as I understand it, there'd be a number of rosters.

COMMISSIONER WATLING: Are they rotating rosters or non rotating rosters?

DR SENATOR: Sir, they rotate within themselves. That change is necessary on the basis that there may be, for example, within a duty roster or, if you like, if we've got a number of duty rosters, one may be medical and one may be surgical, and

if there's a change to a medical roster it may not have any impact on the surgical roster but it may just affect the employees within that same shared duties as part of that rotation.

COMMISSIONER WATLING: But it would have to be contained somewhere - if you want it to be rotating you can have a non rotating roster where the employer could just put everyone on a certain shift every day. Now if you want it to be a rotating roster the contract would have to talk about it being a rotating roster unless the majority of employees decide otherwise.

DR SENATOR: Well they're a mixture actually by common usage of non rotating and rotating rosters.

COMMISSIONER WATLING: So say someone doesn't want - say I work in a section where I want a rotating roster, how do I go about getting it?

DR SENATOR: Well that's an area that customarily - if it is not subject to a rotating roster arrangement then it would be necessary, under our proposal, for the majority of employees so affected to change that situation subject to managerial prerogative.

COMMISSIONER WATLING: So the majority could vote in favour of a rotating roster?

DR SENATOR: Yes, but that wouldn't necessarily mean they'd get it. It would be up to management to decide that that's in the best interests of the service.

COMMISSIONER WATLING: Yes. Normally when it comes to rosters it's usually mandatory to be one unless something happens.

DR SENATOR: Well that's essentially true. I think I've indicated before in these proceedings before that we do have some unusual arrangements of back filling within - between groups to cover exigencies and without necessarily formal arrangements for that being in place.

COMMISSIONER WATLING: But in those circumstances in other areas where they're pulled into a system to fill a gap, then usually a special penalty prevails.

DR SENATOR: Yes, well - yes, as I've said, these are unusual circumstances where by the - there's an internal arrangement which we may never know about which management may never know about.

MR HOUSE: Going back to 13(a)(1), sir, in relation to the second proviso: Provided always that the maximum number of

hours rostered shall not exceed 70 in any one week, 136 in any one fortnight or 268 in any two consecutive fortnightly periods, and we've added: For any trainee medical practitioner unless a greater number of hours is required by the body responsible for the approval of the training program. As I understand it that would be very much the exception. However we felt that it was necessary to provide for that possibility.

DR SENATOR: Yes, I think the only exception would arise where the college requirement is for certain experience which might not be achieved because of throughput or case mix within the hours that were stipulated. The hours have been not just hours that have been dreamt up by the society but take credence of certain occupational and health safety aspects as they apply to trainees in hospitals in this country and overseas and are sensitive to case law that's been developed, particularly in relation to the now famous case in New York where litigation was pursued on the basis of performance of functions at hours other than what was considered to be safe for the employees. These issues of ours have, in fact, been part of proceedings before this commission in another matter.

MR HOUSE: Under proviso in relation to 13(a)(2), we now have: Provided that except in a genuine emergency or counter disaster situation the roster shall not be changed until after 4 weeks notice further provided that an employee's place on such roster shall not be changed except subject to the availability of the employee on 1 weeks notice of such change or payment of the penalty rates more particularly set forth in subclause 17(a) of this award. So we've endeavoured to be more specific in terms of the penalty rates -

If I call - recall correctly, we weren't as specific before as we've - in terms of paragraph 4, we provided that subject to subparagraph 1 - 'L' sorry - subparagraph (1)(iii) of Part D of clause 33 - it's the parental leave clause of this award, the minimum hours for part-time career medical practitioners on a duty roster shall be 40 per fortnight. In the case of part-time trainee medical practitioners the minimum hours shall be 30 per fortnight.

Our submission there is that again it's our judgment that it's appropriate that for people that are permanently attached to the hospital, and in this case career medical practitioners, should be required to work 40 hours a fortnight. We did consider 20 per week, but to provide the - some flexibility or concessions to what we can expect from the representatives of the controlling authority we've accepted that 40 - 40 per fortnight is the appropriate minimum.

In terms of the trainees, we - we would submit that the minimum should be 30 per fortnight. I suppose we again are

apprehensive about anything less being - opening the door to the possibility of exploitation and casualisation in this area.

I can anticipate that the - the employers will argue that there shouldn't be any restriction or restraint, demarcation or whatever - they might say. I can only respond to that in terms of that we - we believe we've been in the scheme of things and considering the - the nature of professional work in this area reasonably flexible. We're not - we haven't attached too many conditions other than that in terms of employment of part-time people.

For example, we're not asking for any overtime to be paid within the hours of normal - the full-time equivalent, full-time person, would work. We're not asking for any loading for the absence of pro rata leave entitlements for any periods of overtime that might be worked so that - well ultimately it's - it will be the question of how the commission sees it, but I can only say that we believe certainly at this stage of the award modernisation process and in the current industrial climate that we believe some care needs to be taken in terms of how part-time employment will be introduced into the new award or the modernised award. And we would be concerned if it was open slather for the employer.

And the proviso there, I understand immediately under 4 is the same other than the second - the end of the second line - we've replaced 'may be varied' by 'may be reduced'. So even there we've given some further flexibility.

COMMISSIONER WATLING: Where does the employee feature in this?

MR HOUSE: Well, if the employee was a member of the society, obviously his or her wishes would be taken into account, however obviously on the other hand if they were not I suppose it would be another example of union tyranny, sir.

COMMISSIONER WATLING: Yes, but I - it is the contract of employment between the employer and the employee, but the employee doesn't get to say in it. It's not a written agreement between the employee, the controlling authority and the employee's organisation.

MR HOUSE: Well -

COMMISSIONER WATLING: It's only between the two bodies, the -

MR HOUSE: Well if there was a 60 per cent vote, sir, well we'd have to consider it wouldn't we?

DR SENATOR: It's a question, sir, whether there's an extra dimension of this of the - of the - the principle of minimum floor level, if you like, on part-time employment which is a matter between the parties. I take - I take your point that obviously the employee has to come in somewhere, but the principle -

COMMISSIONER WATLING: Well the employee is a party to the award. The employees are parties to the award.

DR SENATOR: Yes.

COMMISSIONER WATLING: They're represented by an organisation.

DR SENATOR: Yes.

COMMISSIONER WATLING: So -

DR SENATOR: But not all employees are necessarily represented by the organisation.

COMMISSIONER WATLING: But the award binds the employee.

DR SENATOR: Yes.

COMMISSIONER WATLING: The employees are a party to the award and the organisation is a party to the award - they hold equal status in relation to the award.

DR SENATOR: Yes. I think this would probably be better expressed as the agreement between the controlling authority, the employee and the employee organisation.

COMMISSIONER WATLING: Yes. Does it have to be with all three?

DR SENATOR: Yes.

MR HOUSE: Yes. Again, as we've discussed it before, sir, but there's potential for duress - do you want the job or don't you. I might now turn to medical practitioners not on a duty roster, and in the first paragraph there we believe we've made a significant change or are proposing a significant innovation in terms that this category of medical practitioner, primarily the - what's known as the senior staff or consultant area.

COMMISSIONER WATLING: So would all the people that work - and I notice in the previous one, duty roster - do all the people that then work outside the span hours do it on overtime rates as opposed to any shift loadings.

DR SENATOR: Yes.

MR HOUSE: Yes, there's no shift provisions in the award at this stage.

COMMISSIONER WATLING: Is there - is there a requirement for a 24-hour service?

DR SENATOR: Yes.

MR HOUSE: There are two - there are two aspects at least - two aspects to this argument. I think we - the society has no 'in principle' objection to shift - some shift arrangements being brought in, however there is - there has been a - was it last Christmas or the Christmas before - Christmas 2 years ago some industrial difficulties arose you'll probably recall, sir, over the question of shift work.

There are, I think, apart from questions of acceptance or otherwise of shift work, differences between the parties - or there have been in the past, in relation to the provisions that would govern the shift work, but also again it comes to the - the size of the public health system in Tasmania and the numbers of people that are employed as to how firstly it might be introduced, and secondly, how extensively it might be introduced.

I think there have been some studies done in the past on the issue and so in the absence of resolution of that difficulty, people primarily will be - a junior, I should say, trainee grades, and career medical practitioners who if and when they're introduced would be rostered on overtime for - for 24-hour coverage at normally time and a quarter as distinct from time and a half in most other places. there has been some discussion in the press, I think, about the cost of that.

COMMISSIONER WATLING: Twenty five per cent as opposed to normal 15 per cent for shift.

MR HOUSE: Yes, well we were asked to put it that way -

MR:

MR HOUSE: - I hear that too. I was talking in the overtime context.

COMMISSIONER WATLING: Yes, but that's what it means. The general principle on shift around this country is 15 per cent.

MR HOUSE: Yes, yes, but that's still within your normal hours - out of hours. Like if you work your 38 hours on the midnight to dawn shift you get the 15 per cent, but if then you go beyond that -

COMMISSIONER WATLING: Oh, yes.

MR HOUSE: - you'd go into overtime.

COMMISSIONER WATLING: Well the same as you would during any - if you're working straight day work - once you work -

MR HOUSE: Yes.

COMMISSIONER WATLING: - in excess of the span of hours or outside your daily hours -

MR HOUSE: Yes.

COMMISSIONER WATLING: - it - but it would - just talking normally, you're doing your normal shift.

DR SENATOR: We understand that the - well from - from review of the Tasmanian system that - that the cost is one element which may make more attractive the concept of shift work arrangements, but as Mr House has indicated there are certain other difficulties which go to the economies of scale that - that there are in fact on examination only 2 or 3 confined areas within the whole of the state health system which would be amenable to the type of rostering arrangements which would satisfy service requirements which might be accommodated by - by a shift-based operation rather than day workers working extended hours.

But there the difficulties are in recruiting extra personnel to cover the - the shift cycle and it's not just a question of attraction of extra personnel, it's also bound up with the requirements of the colleges for approved training programs to ensure they do in fact get the right sort of training. So they're some of the problems and I'm sure we're going to confront these in the course - further course of these proceedings noting that shift work arrangements are in fact on the - the claim.

COMMISSIONER WATLING: Oh, that's right, they are too, yes.

MR HOUSE: Well the question of shifts and all that sort of thing is a very complex area and as Dr Senator said probably been quite considerable discussion when that comes about in terms of the employers claims.

COMMISSIONER WATLING: Well after the nursing homes, I'm full bottle on shifts.

MR HOUSE: Well we'd better duck for cover then.

COMMISSIONER WATLING: That's why we really went away from the concept of shift work and went to sort of rostered employees and non-rostered employees.

MR HOUSE: Yes. Is it time and a quarter for overtime in the nursing home area?

COMMISSIONER WATLING: It's 15 per cent shift and then you get extra money for working outside and you get extra money if you're called in to fill the gap and - which wasn't your normal gap - you come in to fill up a position.

MR HOUSE: But in the - for example in the Bureau of Meteorology - it's an area I've had a bit of - I won't say a lot of experience in terms of shift work - this is around the clock 7 days a week, 10 in 4 rosters or something - I can't remember. If you were required to remain - your shift is finished and you're required to remain to do another shift then you're on overtime.

COMMISSIONER WATLING: Well these things happen - you have to get pretty specific when you start getting into rosters.

MR HOUSE: But at more than time and a quarter - that was the - as I was saying in terms of (b)(i) that what I've called the - the senior staff, we're proposing in the interest of structural efficiency that - that the work still be performed in 38 hours a week or 76 hours a fortnight over a 5-day week, but given - or in circumstances of agreement between the controlling authority and the employee affected, the 5 days may include Saturday and/or Sunday. So that a senior medical practitioner may be available on the weekends at no extra cost -

COMMISSIONER WATLING: So does - it says - says in here somewhere -

MR HOUSE: - to the employer.

COMMISSIONER WATLING: - that - that they can only have five starts does it?

MR HOUSE: The existing award is a Monday to Friday arrangement.

COMMISSIONER WATLING: Yes, but when you just said generally worked Monday to Friday - right -

DR SENATOR: There may be up to seven starts, sir.

COMMISSIONER WATLING: Yes, right, that was the point I was getting - under this verbiage there could be seven starts.

MR HOUSE: Sorry, I missed -

COMMISSIONER WATLING: When - I just think you said - what twiggged my thought process was when you said 5 days, under this -

MR HOUSE: Any 5 days in the 7 was what I -

COMMISSIONER WATLING: Well you could have any 7 out of 7 under this thing.

MR HOUSE: Yes, well thank you. It's more - it's even more flexible, but I imagine the normal arrangement would be any five wouldn't it?

COMMISSIONER WATLING: Oh, depending on what industry - yes.

MR HOUSE: Well depending on what sort of medical situation developed in - in the hospital too, I suppose.

DR SENATOR: Well it's really, sir, that I believe considerable concession in this claim by the society was in recognition of certain work practices that involved for example operating lists on Fridays where there would be a requirement for the patient to be seen post-operatively as part of the duty of care, and because the current award is rather silent on routine work to be performed outside the usual spread of either hours or days of work, we felt that there was a call for more specificity but at the same time did allow for this what we consider to be considerable concession.

COMMISSIONER WATLING: Right. What rate of pay would normally apply on a Saturday if - or a Sunday?

DR SENATOR: Well the award is silent here, sir, so that - and as you are aware there was some concern expressed by the - by the department in that now, I think, infamous rorts document which promulgated, but that was up to management to decide how that would be dealt with. I think there would be circumstances in which it would be - it would have been dealt with as callback - self-initiated callback - which would have attracted penalty payment.

COMMISSIONER WATLING: Do you think we should -

DR SENATOR: Or if - if it were - well, I guess the other way - I couldn't be certain about this, but if it exceeded, if those hours are in excess of the normal working week, then - and were claimed as ordinary hours then it would have been dealt with up till now as time off in lieu, but I don't know that there's been any identification of the moieties that were dealt with either fashion due to lack of appropriate documentation.

COMMISSIONER WATLING: Yes, right. So even if you were - say you were a medical practitioner on duty roster, even under

this provision there'd be no dealing with the Saturday or Sunday work?

DR SENATOR: The people on a duty roster - that would be basically the -

COMMISSIONER WATLING: Monday to Friday.

DR SENATOR: - the trainees -

COMMISSIONER WATLING: Yes.

DR SENATOR: - but they would be - they would automatically attract a penalty for Saturday or Sunday work no matter whether it was considered to be routine or otherwise.

COMMISSIONER WATLING: Yes, so how do we find that clause - where do we find that clause in the award?

DR SENATOR: Well I think that's address under the penalty provisions, sir, in -

COMMISSIONER WATLING: Right.

MR HOUSE: Seventeen.

COMMISSIONER WATLING: Seventeen.

DR SENATOR: - in 17 and 18.

COMMISSIONER WATLING: Right. So that's callback?

MR HOUSE: In 17 - 17(a) and 17(b).

COMMISSIONER WATLING: Excess time.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right.

MR HOUSE: But in terms of talking about the medical practitioners not on a duty roster, we're primarily talking about the consultants and other non-trainee people which are not normally on a roster - not in - not at all, I should say.

DR SENATOR: Well maybe a roster, but it's an agreed - agreed working program - a global working program between the management and the individual but it's - it's - I'd have to look at the nursing homes decision to be handed down to see what the criteria adopted were, but I guess in some senses it could be categorised as a roster but certainly not of the prescriptive nature of that applying to the trainees.

COMMISSIONER WATLING: Yes. Certainly in nursing - nursing homes will end up where people who traditionally work day work will be non-rostered employees. Rostered employees will work outside the hours - span of hours but non-rostered employees may have a work pattern which is documented.

DR SENATOR: Yes. Yes, that roughly is the current situation, at least as it applies in the health service facility in which I'm employed.

MR HOUSE: Sir, I'm wondering if - whether we should - I should complete (b) or continue with the paragraph 2 tomorrow?

COMMISSIONER WATLING: Well it might be an appropriate time to break. I think we've had enough today. What time do you want to get started tomorrow?

MR HOUSE: Well it can be any time, sir, either normal time or earlier, but I'd seek the commission's indulgence to leave to catch the plane at 3.30.

COMMISSIONER WATLING: So the plane leaves at 3.30?

MR HOUSE: No, it leaves at a quarter to 5.

COMMISSIONER WATLING: So you want to leave here at 3.30?

MR HOUSE: Leave the commission -

COMMISSIONER WATLING: Right.

MR HOUSE: - and so I can have - confer with Dr Senator on the way out and so on.

COMMISSIONER WATLING: Right.

MR HOUSE: Yes.

COMMISSIONER WATLING: Well we'll get started at 10.30 and we'll adjourn at 3.30.

MR HOUSE: Thank you.

COMMISSIONER WATLING: And if it's appropriate or you reach the right spot in your submission, it might be a little earlier.

MR HOUSE: Right.

COMMISSIONER WATLING: Right. Good, thank you.

HEARING ADJOURNED