

**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, 24 September 1992  
continued from 23/9/92

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER WATLING: No alterations to appearances?

MR HOUSE: No, sir.

MISS COX: No, sir.

COMMISSIONER WATLING: No. Right. A couple of housekeeping matters. Sitting hours, a quarter to one and we'll adjourn at 3.30 -

MR HOUSE: Thank you.

COMMISSIONER WATLING: - this afternoon and we'll reconvene this afternoon at 2.15. I thought we'd better have an update of the list from yesterday just so we know where we are.

MR HOUSE: Thank you.

COMMISSIONER WATLING: Maybe we'll just go off the record for a moment and go through the list and then if need be we can read it into the transcript later.

OFF THE RECORD

COMMISSIONER WATLING: Just let the record show that we've updated the list from yesterday, the list being the matters agreed, disagreed matters requiring argument, and the deferred matters for further consideration by the applicants, and we might place today's date on the top of that list, which is the 24th of the 9th 1992 and there's no disagreement is there, as to the contents of that document. Everyone is nodding their head - they agree. There's no disagreement? Right. Well we'll use this as the basis then for today and we know where we're heading as result of the last 2 days of hearing.

MR HOUSE: Fine.

COMMISSIONER WATLING: Good. Mr House?

MR HOUSE: Thank you, Mr Commissioner. At the conclusion of yesterday's proceedings we were discussing clause 20 - rostered on call, and our view that as work-related allowance it should be based on the percentage of salary and our contention that it compensates for responsibilities going beyond the requirement for being available for actual call back in that a medical practitioner is expected to provide advice by telephone on critical aspects of patient care when he or she is rostered to be on call, and it could well be at other times as well.

There was also some debate as to whether on-call responsibilities should be part and parcel of our salary claim

or continue to be compensated by way of allowances, the pros and cons of which might be best addressed in the context of the work-value dimension of our claim which I think is agreed is, in many respects, interrelated with structural efficiency and award modernisation considerations.

In commencing today's submissions, I would like to pick up at subclause 20(c) and clearly indicate that the words 'reimbursement for the rental of a fixed telephone installation' is not a claim for reimbursement of telephone installation costs when a medical practitioner changes address. It was intended to exclude the rental costs of mobile or cellular phones. We would be quite content though, sir, if the commission ruled that the rental costs of all types of phones should be reimbursed, but to the exclusion of installation charges, if this was seen to be more appropriate in this day and age. If I could now turn to -

COMMISSIONER WATLING: So, it still does mean the installation though, does it? Well it says here - the words say -

MR HOUSE: Sorry?

COMMISSIONER WATLING: If it doesn't mean that you're going to have to change the words then, aren't you?

MR HOUSE: No, 'shall be reimbursed for the rental of a fixed telephone installation'. That's the rental - we're trying to distinguish between mobile phones and the normal phone in one's home.

COMMISSIONER WATLING: Yes. So you're really talking about for - the reimbursement of the rental costs associated with a fixed telephone installation -

MR HOUSE: Yes.

COMMISSIONER WATLING: - excluding mobile or cellular telephones.

MR HOUSE: That was our intention, sir.

COMMISSIONER WATLING: Yes, right.

MR HOUSE: The words may - if they are confusing -

COMMISSIONER WATLING: Yes - rental costs.

MR HOUSE: - we might have to put them on the list for further redrafting. I had a think -

COMMISSIONER WATLING: Well even if you put -



MR HOUSE: I had a think about it. I couldn't think of another word 'fixed telephone fixture' -

COMMISSIONER WATLING: Well shall we -

MR HOUSE: - yes -

COMMISSIONER WATLING: Well it could be even 'reimbursed for the costs associated with the rental -

MR HOUSE: Yes.

COMMISSIONER WATLING: - of a fixed telephone installation'. Something like that. Yes. Righto, I get the drift.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right.

MR HOUSE: Thank you. If I could now turn to clause 21 of H.4, deductions from salary. These are provisions replicated from the General Conditions of Service Award. And again, last night, having a look at the commission's latest consolidation which contains the decision in matter T.3799 of 28 May 1992 where the commission reviewed a number of these allowances, I've realised that the rates in H.4 in many cases are not up to date and I would seek leave from the commission to rectify that problem. I also seek leave that if the rates move again - or any of the rates move again prior to the conclusion of the case, that our claim be amended.

COMMISSIONER WATLING: Most of these are done on an annual basis, Mr House.

MR HOUSE: I'm aware of that, sir, but some of them didn't - there are the odd ones that weren't adjusted. I haven't had time to research -

COMMISSIONER WATLING: I was just trying to give you a note of optimism that you'll be finished before the next one.

MR HOUSE: But there may be one or two that are dealt with in a one-off situation and I'm not sure -

COMMISSIONER WATLING: No, they are usually all together, in the General Conditions of Service - all the major ones anyway where there are reimbursements for costs, both to the employer and to the employee.

MR HOUSE: Well I suppose the main thrust of my submission, sir, is that -

COMMISSIONER WATLING: Same as the -

MR HOUSE: - seek alignment with the -

COMMISSIONER WATLING: With the General Conditions of Service.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. What are you doing for board and lodgings now? What happens -

MR HOUSE: What happens with the residents?

DR SENATOR: They pay the GCOS.

COMMISSIONER WATLING: Is it actually used? Is there a need for it?

MR HOUSE: Yes, I'm in -

COMMISSIONER WATLING: So where do you go? Do you just go to the General Conditions of Service Award as per the award? Right.

MR HOUSE: Well we're a party to it, I think, anyway.

DR SENATOR: Yes.

COMMISSIONER WATLING: Yes. Thank you.

MR HOUSE: As I recall, sir, in earlier proceedings, that I think it was agreed that we should - amongst all the parties - formulate an award that's fairly comprehensive.

COMMISSIONER WATLING: Oh, yes, yes. You're required to go there under clause 11 of the current award, anyway. Righto. So really, that's an existing provision -

MR HOUSE: Yes.

COMMISSIONER WATLING: - because you are entitled to it now.

MR HOUSE: Yes, and my examination of the - H.4 and the award in relation to 21, I couldn't identify any differences - I'd better just check. I think - yes - is that right, Gordon? There's nothing in 21 that we're seeking to change from -

COMMISSIONER WATLING: So, would that be an agreed matter?

MR HOUSE: I would hope so. We haven't noted it as a disagreed matter.

DR SENATOR: Commissioner, I have a question mark beside it so I think we'll save it to put it on the disagreed matters.

MR HOUSE: .... against what?

COMMISSIONER WATLING: Righto.

MR HOUSE: I must - before I go on further, to the extent that the General Conditions of Service Award requires in itself - or may require in itself modernisation, if we're going to - or make these provisions compatible with the approach that we're now taking with the Medical Practitioners Award, I just want to say that it seems that that revision will fall to the society and I don't think we can claim to profess any great expertise in the area of the State Service generally, so what we come up with - we're going to have to look at the State Service Act and so on as well -

COMMISSIONER WATLING: So could there be a situation where - say, we go through and finish this exercise and if I was to put this provision in the award and the General Conditions of Service Award changed, are you saying to me that you wish to be aligned with the General Conditions of Service Award all the time?

MR HOUSE: No, what I'm saying is that as we walk through these general provisions, -

COMMISSIONER WATLING: Right.

MR HOUSE: - well there's the terms - the extensive use of the term 'officer', but that's just an editorial thing, but there may be some matters that arise that occur to you in particular and to others that might be better expressed in terms of putting it into our award.

COMMISSIONER WATLING: Yes. Right.

MR HOUSE: That's - perhaps would have dimensions going beyond just drafting. We may do something that does damage to the general provisions without realising it and I was just protecting myself I suppose by saying that I'm not - as I said yesterday - I'm on a learning curve regarding the Tasmanian approach to the public sector.

COMMISSIONER WATLING: Right.

MR HOUSE: It just may be an unnecessary point to make, but it's something I thought about last night when I was trying to come to grips with how we were going to proceed with - to produce a better document.

COMMISSIONER WATLING: Well, I think through the course of your submission, the free flow between the bench and yourself, I'm really indicating to you that maybe you might have to have a look at - I don't want to tell you how to run your case - but I'm just sort of highlighting some things that you may



wish to look at in greater depth and I prefer to do that than let you go and then for me to write a decision some months later saying, well I wish he had addressed me on this, or I wish he had addressed me on that. I know -

MR HOUSE: Well I appreciate that.

COMMISSIONER WATLING: - when I was on your side of the bar table, one thing that really used to annoy me was when there was no flow from the bench and then you get the decision and the decision said: Had he addressed me on this or on that; or had he informed of this, that and the other thing - which I could have -

MR HOUSE: Well in may case, I might make an assumption that you've understood what I was trying to say.

COMMISSIONER WATLING: Yes, that's right. So I think I'm trying to raise those things as we go through and let's face it, if it's not part of the subject matter of the application, I can't just put it in anyway. If -

MR HOUSE: Yes. Well, really, I wasn't complaining or leading, but I was trying to say that I don't - it may be that we have some further difficulties about that - this section that deals with the general conditions because I'm not familiar with it.

COMMISSIONER WATLING: You probably will in the long run because the public - there's no doubt about it that the public sector proper are going under - having a look at a model conditions of service arrangement and a full bench of this commission has told them that they've got to deliver by the 25th - this matter, otherwise they'll be looking at the question of separating the wage rates from the conditions of service. Now, -

MR HOUSE: Well that will be another matter that impacts.

COMMISSIONER WATLING: Well I think it will because I think you will be finding the employer - let's not worry about your agency, but the employer will be arguing that there be standardisation of certain conditions of employment.

MR HOUSE: Yes.

COMMISSIONER WATLING: Now even though you are not party to that full bench matter, I'd have to say one couldn't totally disregard it because -

MR HOUSE: We'll be roped in somehow.

COMMISSIONER WATLING: Well I - yes, I think -

MR HOUSE: Yes.

COMMISSIONER WATLING: - it will be of such significance that it will have a long-term impact down the line and - because the employer, irrespective of the Health Department just being one agency - the employer, the Minister administering the State Service Act will probably want to see conditions in a more standardised form.

MR HOUSE: Yes.

COMMISSIONER WATLING: And I think even just to eliminate, you know, discrimination in the area of conditions, or working for one employer. So, that's the problem they had in that earlier case where something like the operational services area, there's seven different base tradesmen's rates applying in the public sector with the one employer. You have to question the logic of that.

MR HOUSE: Well -

COMMISSIONER WATLING: But anyway -

MR HOUSE: - I'll be going on to propose, in some cases, some modifications to the general conditions that we see as more appropriate to our members which may run contrary to this trend of evening things up.

COMMISSIONER WATLING: Yes. It'd still pay you to keep an eye on this other one, I'd suggest -

MR HOUSE: Yes.

COMMISSIONER WATLING: - even though -

MR HOUSE: I try to.

COMMISSIONER WATLING: - you are not involved in it. I think it will have an impact down the line.

MR HOUSE: Yes. I try to keep apprised of all industrial matters here now.

COMMISSIONER WATLING: Right. So -

MR HOUSE: Clause 22 - Protective Clothing. Here - looking at that one it doesn't appear to be directly taken from the General Conditions of Service Award. I thought perhaps it may - I didn't bring down with me the Hospital Employees Award which I should have. Dr Senator advised me that he thought it comes from the State Service Regulations and I'm not sure where one -

MISS COX: John - ....



DR SENATOR: It's already there.

MR HOUSE: It's already there.

MISS COX: Yes ....

MR HOUSE: So that's - thank you, Jane. So - well that one's just a reproduction of - I looked everywhere. I should have looked at our own award.

COMMISSIONER WATLING: Current provisions?

MR HOUSE: Yes. It shows you how confused I can get. Clauses 23 - Meal allowances; 24 - Travelling Allowances are similar to those determined for other people employed in the Tasmanian Public Service sector, as I understand, however, -

COMMISSIONER WATLING: They're the ones that you observe now?

MR HOUSE: Yes, sir. However, we should draw the commission's attention to subclause 24(a)(vi) at the top of page 27 of H.4 which differs somewhat from paragraph 2.9 of section (p) of clause 8 of the General Conditions of Service Award. We submit that where a medical practitioner uses his or her private motor vehicle on recall or return to duty, kilometreage allowance should be paid. In an endeavour to remove any ambiguity in our claim, I seek leave to amend the wording of the claim to read:

Unless otherwise directed by the controlling authority, kilometreage on duty in the case of call back or return to duty or to fulfil professional service responsibilities shall be from the point of receipt of the call back -

COMMISSIONER WATLING: So if they are down at the golf club, they get paid from the golf club to the - back to work, not from their home back to work?

MR HOUSE: I was going to go on to pick up - :

- or the officer's usual place of residence, whichever is the nearer, by the most direct route to the officer's place of employment for the purpose of fulfilling the call back and return to the officer's destination or place of residence whichever is the shorter by the most direct route.

COMMISSIONER WATLING: Right. Have you got those words there?

MR HOUSE: I've got -

COMMISSIONER WATLING: My shorthand's not all that good. Have you got it written down there?

MR HOUSE: Yes, I can pass onto your associate -

COMMISSIONER WATLING: Yes. We might get a copy now so that we can look at the words. Have you got - ? We'll just turn off the record.

OFF THE RECORD

COMMISSIONER WATLING: Right, I've got that addition to - alteration to clause - subclause (vi), Mr House.

MR HOUSE: In support of our claim, I would like to take the commission to the part of Exhibit H.5 which contains work-value decisions of the Industrial Conciliation and Arbitration Commission of Queensland and specifically to the second decision which is a recent decision handed down by a full bench on the 20th of August last. I refer to the bottom of the fifth page of the decision or page 11 of the Industrial Gazette to the Queensland Commission's findings in respect of motor vehicle allowance which - and if the commission pleases, I'd like to just read through that section. It refers, in the Queensland Award, subclause - or the claim, I'm sorry - :

Subclause (3) (Motor Vehicle Allowance) -

and the full bench says:

This provision seeks the payment of an allowance for the use of a private motor vehicle in the course of official duties including recalls. The quantum of the allowance proposed is in accordance with general public service rulings. Consideration of this allowance must also be made within the context of paragraph (a) of the New Allowance provision.

Which the commission reproduces in another section of its decision, and it's similar, I think, to that of this commission.

The Crown had no difficulty with the aspect of payment for use on official business but left the entitlement for recalls to the Commission's determination.

Most witnesses addressed the issue of transport and costs during their evidence. It seems that, whilst Specialists are able to use taxis to transport them to and from work on recalls, the practicality of

using such mode of transport is limited. This is usually dictated by urgency or immediacy of recall. The experience of a number of witnesses was that critical time was lost waiting for the arrival of a taxi -

and then some references to transcript were made -

The practice of all Specialists who gave evidence on recalls was to use their private motor vehicle. Although parking was provided at the health facility, this did not compensate for the cost involved in driving to and from, particularly when several recalls may occur during the same period of on call.

In our view it is appropriate that an allowance is not paid -

sorry -

In our view it is inappropriate that an allowance is not paid given that the reimbursement of taxi fares is available. We recognise that the option of taxi fares should remain open but acknowledge that the delays involved in using taxis does not make this a viable alternative in many circumstances.

The Commission accepts that Medical Officers should be able to claim an allowance for the use of private motor vehicles on official business in accordance with Regulation 42 - Motor Vehicle Allowance of the Public Service Management and Employment Regulations, This is consistent with clause 26 of the RMO's Award. We go further than that award clause and determine that, because of the nature of the work of Senior Medical Staff, such payment is to include all -

sorry -

- to include recalls to duty whilst rostered on call.

A difficulty emerges in terms of those instances where Medical Officers return to duty whilst not officially on call. Several witnesses cited examples of such an occurrence. It usually only involved extreme emergencies. In such circumstances we do not consider that the payment of the allowance should be withheld although we accept the need, as in all circumstances, for proper authorisation procedures. These should



ensure that the recall was necessary and that the use of a private motor vehicle was warranted. In other words, if there is a potential for misuse, it is a matter for management to resolve.

And I'll conclude with the last sentence:

The decisions in relation to this allowance meet the requirements of the Wage Principles as earlier outlined.

And you'll see, sir, the parties there have some redrafting work as well.

And so, sir, it follows that we believe that our proposed subclause as amended, is appropriate in terms of adapting the general kilometreage provision to the particular circumstances of medical practitioners, and we would also submit that the clause is consistent with the commission's principles regarding allowances. However, we also believe that this is another aspect of our claim that is not agreed.

I understand that the rest of clause 24 is agreed, except for subparagraph (ii)(b) - little (b) of section (b) - that's at the top of page 28:

telephone calls to the officer's usual place of work to discharge on-call commitments;

Of course, if our claim regarding telephone rental and official calls got up, that one would probably be redundant, wouldn't it?

DR SENATOR: Not if they are away from their base.

COMMISSIONER WATLING: So -

MR HOUSE: Not if they are away from - no, I'm sorry, sir, I'm advised that it applies really to people away from their home or their base. Sorry, Gordon. Well -

COMMISSIONER WATLING: Right. Well, let's examine that. So, what, do they use a public telephone or someone else's telephone - cellular telephone?

DR SENATOR: Hotel/motel.

COMMISSIONER WATLING: Hotel/motel.

DR SENATOR: Yes. Mr Chairman, - Mr Commissioner - sorry - you'll note within the on-call provision that the rostered on call provision, clause 20, that the current provision of the award and which is duplicated in our claim reads - with the editorial changes to the word 'officer':

A medical practitioner who is rostered on call, and who is directed by the Controlling Authority to remain within close telephone contact in order to hold that medical practitioner in readiness to return to work without delay or within a reasonable time of being recalled, or to attend to telephone enquiries and requests for advice shall be paid -

for - now we have not prescribed what those evaluative terms might be. For example, within a reasonable time of being recalled, but even so, the reference to attention to telephone enquiries and requests for advice does leave open the potential for people not to be at their place of residence for the discharge of their on-call responsibilities. Equally, it means that within the scope of this current clause under consideration, 24, that it is conceivable, particularly with state-wide services and cross regional responsibilities that a medical practitioner may, in fact, be a significant distance from his place of residence, such as to prevent him from taking the telephone calls to discharge his on-call commitments from his place of residence, and this just picks up that.

COMMISSIONER WATLING: But they are required to remain with close telephone contact.

DR SENATOR: Yes.

COMMISSIONER WATLING: Right. Is that the only alteration that's been made to the current award provision?

MR HOUSE: No, sir, there's also an addition of that subclause (d):

airport parking fees incurred by the officer.

Again, I think that's fairly straightforward justification. I'm not aware that there is agreement on that one, but there is disagreement on the one relating to telephone calls.

DR SENATOR: (d) is the current practice but it doesn't appear in the award.

MR HOUSE: I'm also instructed that (d) is the current practice. It certainly is in my own case, but I'm not covered by this award of course, and it can be documented in Canberra by the printout from the voucher machine.

COMMISSIONER WATLING: Right. And (iii), (iv), (v), (vi), (vii) and (viii) are the same - (ix), (x)?

MR HOUSE: Yes, and as I believe there's no disagreement - or there wasn't any disagreement about that. Clause 25 -

COMMISSIONER WATLING: Now, in (iv) would it be usual for a medical practitioner to travel with a judge?

MR HOUSE: I'm not sure about usual, but medical practitioners often have to attend court proceedings. I'd have to defer to Dr Senator again on that one.

DR SENATOR: Mr Commissioner, I have no substantive information on that, but I believe there might be occasions at least for management to accompany a minister -

COMMISSIONER WATLING: Yes, I can understand that.

DR SENATOR: - and I wouldn't preclude the possibility given the status of medical practitioners in relation to expert witness positions that there may be occasions for them to accompany .... a judge. I say no more than that, but it's a question of whether removal -

COMMISSIONER WATLING: Yes. It just seems odd that you'd pick a judge -

DR SENATOR: Sorry?

COMMISSIONER WATLING: It just seems odd that one picks a judge. I didn't know whether, coming from the General Conditions of Service Award, it may -

MISS COX: It's a standard clause.

COMMISSIONER WATLING: Yes - it may have been required to pick up something that happens in the public service proper as opposed to an area of health. Anyway.

MR HOUSE: Clause 25 mirrors section (o) in clause 8 of the General Conditions of Service Award, except that - well this is one where we haven't got the rates up to date. We will attend to that.

COMMISSIONER WATLING: So it's the same as the General Conditions of Service?

MR HOUSE: The rates there are the only thing that differ. As far as I know, it's identical otherwise.

COMMISSIONER WATLING: Yes.

MR HOUSE: Clause 26 - Conference Leave seeks to insert into the award the provision in our registered agreement.

COMMISSIONER WATLING: Maybe we should look at the leave questions together then. It should run on with conference leave, study leave, -



MR HOUSE: Yes.

COMMISSIONER WATLING: - sabbatical leave, examination leave, committee leave - recreation leave is already in, isn't it?

MR HOUSE: We'll have some discussion of that later.

COMMISSIONER WATLING: Sick leave is one that's been - parental leave, bereavement leave - well there's really a couple we'd probably have to look in and we could probably discuss it together. I think it's clause 26 - Conference Leave, 27 - Study Leave, 28 - Sabbatical Leave, and 29 - Examination Leave.

MR HOUSE: And 30 - Committee Leave.

COMMISSIONER WATLING: And 30 - Committee Leave. There's probably a general principle associated with all those together, isn't there?

MR HOUSE: Yes. Well then obviously they -

COMMISSIONER WATLING: You see, you're really taking them from the agreement and now inserting them in the award.

MR HOUSE: Well committee leave is new. The others are all in the agreement, as I recall.

MISS COX: The headings are.

MR HOUSE: Well the exiting provisions that apply get their authority from the registered agreement that the department doesn't want to renegotiate.

COMMISSIONER WATLING: Right. So -

MR HOUSE: Now, as part of the award modernisation process, we wanted to -

COMMISSIONER WATLING: You want to get them in the award.

MR HOUSE: - put it all into the award if we can.

COMMISSIONER WATLING: Right. The question is whether I refer it somewhere else or whether -

MR HOUSE: That's - yes, sir. We, of course, defer to your view on that. I think the position between the parties was that - identical that we could perhaps address you on the matter initially, but -

COMMISSIONER WATLING: And then I -

MR HOUSE: - and you might determine -

COMMISSIONER WATLING: Yes, in the intervening period.

MR HOUSE: - where it should go in light of that.

COMMISSIONER WATLING: Well I think that might be the idea. Maybe if I hear argument - you might have some agreement - you might say, well, on those -

MR HOUSE: That's right.

COMMISSIONER WATLING: - on those four or five issues it just goes straight off to a full bench.

MR HOUSE: Well -

COMMISSIONER WATLING: Have you discussed it. Have you got some view with the employer?

MR HOUSE: Well, we have - well there's not agreement between us on some of the matters there. I'm not sure about the depth of that disagreement. I'm not sure about the extent that the commission is going to be required to arbitrate. I rather suspect that it could end up with a full bench, but I'm not in a position to make a definitive statement, sir.

COMMISSIONER WATLING: Well I think it's not so much a question at this stage as to the contents of it. The question really is whether those leave matters should be referred to a full bench and let the full bench look at the contents and the parties can argue out the contents there. The question is not so much about the contents of it, it's whether or not those leave matters should be referred to a full bench.

MR HOUSE: Well, sir, let's take -

COMMISSIONER WATLING: Because if we decide that it -

MR HOUSE: - let's take annual leave. The -

COMMISSIONER WATLING: Well I think certain things - let's face it, certain things that are determined and are standard I personally think that there's a problem. Things like bereavement leave - parental leave is currently before a full bench, annual leave has already been established unless you are seeking to depart from the norm, and if you, then -

MR HOUSE: Well it depends on what the norm is, sir.

COMMISSIONER WATLING: Well the norm is it could be anything over 4 weeks I suppose.

MR HOUSE: Well I could make the submission that in the case of people -

COMMISSIONER WATLING: In case of shift workers it could be 5 weeks, you see.

MR HOUSE: Yes. Well that - I'm talking about the medical - salaried medical area. Indeed, in one state, it is 6 weeks and we're not seeking 6 weeks, but there is recognition of the sort of things of additional requirements outside of normal working hours or interference with the private life.

COMMISSIONER WATLING: Yes, but you're getting paid for that, aren't you?

MR HOUSE: Well they are -

COMMISSIONER WATLING: Call backs and things like that you're saying.

MR HOUSE: Well all I'm saying is that there is a recognition in other jurisdictions in terms of annual leave.

COMMISSIONER WATLING: Right. So, you're seeking to increase the quantum of annual leave?

MR HOUSE: Well the annual leave, as I understand it, is for those people that do suffer disturbance or -

COMMISSIONER WATLING: No, hang on, it's just a simple question based on whether you're trying to increase the annual leave from the current provision that applies.

DR SENATOR: Only in relation to the ....

COMMISSIONER WATLING: I don't want to get into the merit of it.

MR HOUSE: We won't get that one up.

COMMISSIONER WATLING: I mightn't be listening to it.

DR SENATOR: The point is that those .... long .... people .... 36.3/4-hour week to the 38-hour week and we're seeking just to standardise the provision across (c).

MR HOUSE: Well, sir, as I'm instructed, it is a full bench matter.

COMMISSIONER WATLING: Yes. Right. Right, well, that's fair enough. We won't waste our time on things. Recreational leave. Sick leave - are you departing from the normal sick leave?



MR HOUSE: We're seeking to standardise sick leave. We've got categories -

COMMISSIONER WATLING: That's the current provision you're operating under now in relation to sick leave?

MR HOUSE: Well you've got two provisions in the agreement. One that refers to what I'll call departmental medical officers and that refers to all other medical officers. The departmental medical one follows what applies in the public service and the other is related perhaps more to the health industry. We're seeking to put all our members under the same provisions and that is the latter.

COMMISSIONER WATLING: So you want the department people to get the same as you via the agreement at the moment?

MR HOUSE: Yes, sir. Now our assessment is that that will not add to cost, but again I would -

COMMISSIONER WATLING: Yes, well I don't really want to get into the merit of it because I won't be listening to them -

MR HOUSE: Sorry?

COMMISSIONER WATLING: - may not be listening to the merit of it. I'm just trying to establish in my own mind -

MR HOUSE: Well that's -

COMMISSIONER WATLING: - whether or not this is another matter that departs from the norm and therefore should be referred. I think it would be inappropriate for me to get into the merit -

MR HOUSE: I'm sorry.

COMMISSIONER WATLING: - if it's going to be referred somewhere else.

MR HOUSE: Yes. Well that's - I'm sorry.

COMMISSIONER WATLING: Yes. So, you are seeking to alter the provision of sick leave.

MR HOUSE: Standardise it, yes.

COMMISSIONER WATLING: Righto. Well I will think .... it - your clause 34 - Maternity Leave which you've now changed to parental leave.

MR HOUSE: Yes.

COMMISSIONER WATLING: That matter is already before a full bench waiting a decision, so - I don't know when that will be down. So maybe that's one that won't be before a full bench because it already has been before a full bench.

MR HOUSE: Well that's so and we really haven't had any discussion with our friends at the other end of the bar table about the parental leave.

COMMISSIONER WATLING: Yes. Right. Well you're going to be bound by the full bench decision anyway I would think, because it was for the whole - for all awards of the commission including -

MR HOUSE: Yes, we'd see no reason why not -

COMMISSIONER WATLING: - including yours.

MR HOUSE: - it's standard in the Commonwealth provisions.

COMMISSIONER WATLING: Righto. So we're looking at conference leave; we're looking at study leave; we're looking at sabbatical leave; examination leave; -

MR HOUSE: We're not trying to change anything in sabbatical leave, are we?

DR SENATOR: Mm?

MR HOUSE: Sabbatical leave, we're not changing -

DR SENATOR: Well we're looking for flexibility.

MR HOUSE: Well, -

COMMISSIONER WATLING: The other thing that we've got to be reasonably careful of here is sabbatical leave, and something like - things like sabbatical leave, they haven't been in the award before. They've been in the agreement. The test in relation to the agreement is I can only look whether or not it's in the public interest, and I have to accept or reject. I don't have any discretion. So the test really has only been a public interest test.

MR HOUSE: Yes.

COMMISSIONER WATLING: See, in registering an agreement you - I'm not at liberty to scout around in the field. I can only either accept it or reject it based on the public interest argument. Probably under the proposed new legislation that the government are putting forward where you don't have to have any public interest in these matters anymore, it might be a different test.

MISS COX: Does that mean, Mr Commissioner, that if we want to incorporate in the award, we don't hear argument on it or a full bench doesn't hear argument on it?

COMMISSIONER WATLING: No, well I'm pointing out, even though it was contained in an agreement, it may not automatically flow into the award because it hasn't stood the test, because if you register it as an agreement, the bench is bound by the provision in the act that says you accept it or reject it based on one criteria and that being the public interest.

MR HOUSE: That must have been a .... example.

COMMISSIONER WATLING: Yes. And of course if you don't get any public interest argument it's up to the bench then to formulate a view as to whether it's in the public interest. If it is - or isn't then you do with it what you will, but I think when it goes into an award it's a totally different kettle of fish and therefore it could be argued that even though it was in an agreement, when you're putting it in an award it has the effect of being nearly a test for all other awards.

MR HOUSE: Is this a first award principle you're talking about or -

COMMISSIONER WATLING: Well, it could be - it could be part of the structural efficiency argument as well in that you're removing from agreements into an award provision.

MR HOUSE: Well we have a SEP argument to put on that one in itself.

COMMISSIONER WATLING: Yes. So let's say - we're up to examination - examination leave, committee leave, rec. leave - you're trying to alter, and - and sick leave.

MR HOUSE: Mm.

COMMISSIONER WATLING: Right. Bereavement leave is the one that you're applying now, is it?

MR HOUSE: Sir, we're seeking to pick up the - or -

COMMISSIONER WATLING: Right.

MR HOUSE: - reflecting the award - the state standard.

COMMISSIONER WATLING: Yes, rightio. That's fair enough. Well given those seven matters, I suppose my task would be to hear argument as to whether a matter should be referred to a full bench and whether the parties have a view on it. At the end of the day I'd probably have to make some decision just on this question alone, and then I could do that, you know, over



the next couple of weeks and then I'd have to hand down a written decision if it was to go to a full bench, or even if it didn't, I'd have to tell you why.

MR HOUSE: Do you want to hear argument about it?

COMMISSIONER WATLING: Yes, I think we should hear your view on what should happen to these matters including the employer's view.

MR HOUSE: Well I suppose, sir, our view is that if that is a requirement of the act then that should be the course of action to be followed. It seems to me that any variation in this area upwards or downwards, depending on how you look at it, would require testing before a full bench under the commission's - the Tasmanian Industrial Relations Act.

It's probably better that if we're going to put to a full bench one or two matters, that the range of matters be considered for the overall impact on either side. Without getting into any merit argument we've, as I've indicated before, I suppose one component that perhaps a reasonably discrete component in the structural efficiency exercise - and that it may be appropriately sort of separated off and given that you indicated me - to me the other day that the composition of the full bench would include yourself -

COMMISSIONER WATLING: Well hang on, just let me clarify that - don't put words into my mouth - what I said -

MR HOUSE: Well my interpretation -

COMMISSIONER WATLING: Well don't misinterpret me, listen very carefully to what I say, and that is, that if it was referred to the full bench -

MR HOUSE: Yes.

COMMISSIONER WATLING: - it's up to the president to decide who's on the full bench -

MR HOUSE: Yes.

COMMISSIONER WATLING: - that there has been a practice in the past - right -

MR HOUSE: Yes.

COMMISSIONER WATLING: - for the president to place the person whose major portfolio it is on - on that bench. Now I don't want you to get -

MR HOUSE: Well that's what I was trying to say, I -

COMMISSIONER WATLING: Yes, well -

MR HOUSE: - I should have said that -

COMMISSIONER WATLING: - I'm not saying that I'm on it, because the president has the right to say who's on it.

MR HOUSE: Well, it would be our submission, sir, that if the matter is referred to the president to consider whether a full bench should be constituted, that for obvious reasons it would be the society's view that - that without putting any duress on the commission or the president that it would be desirable for you to be part of that full bench.

COMMISSIONER WATLING: Well I'm sure the president will take all those things into consideration if he has to select a bench, but it's finally his decision.

MR HOUSE: Yes. If the commission pleases.

COMMISSIONER WATLING: Okay. Miss Cox?

MISS COX: Mr Commissioner, certainly from the government's point of view, we would have no problems and would probably welcome all these matters being referred to a full bench. With regard to bereavement leave, that I think is before the full bench public sector now as part of the conditions of service, I think.

COMMISSIONER WATLING: Well they haven't put it to us yet - we're having trouble with getting the government to put it - to claim on the unions at this stage.

MISS COX: I understand it's going to be part of it at some stage.

COMMISSIONER WATLING: Alright. So the bereavement leave also you -

MISS COX: And maternity leave, we would see - that's - has been before a full bench.

COMMISSIONER WATLING: Or paternity.

MISS COX: Parental leave.

COMMISSIONER WATLING: Parental leave, yes.

MISS COX: With regard to the other forms of leave - conference leave, study leave, sabbatical leave, examination leave and annual leave, the society are attempting to improve current leave provisions and we would be very mindful of the possible flow-on effect in other areas of the health industry. At a time - we're trying to rationalise and standardise leave

provisions across the whole of the government, so we would certainly welcome these matters going to a full bench.

COMMISSIONER WATLING: Alright. Any further comment on those - that argument?

MR HOUSE: No, sir.

COMMISSIONER WATLING: Rightio, well I will reserve my decision on the question of whether those ten, now, leave matters, if you add parental leave and bereavement leave, go to a full bench and I'll hand down a written decision in due course, either recommending or not recommending they go to a full bench.

MR HOUSE: Well I'm moving to, if the commission pleases, clause 32 - Recreation Leave Allowance. In this area we're proposing a change to limiting the application of recreation leave allowance to only officers classified at or below level 7 in our proposed structure. We believe that this is a significant concession on the part of the society in terms of award restructuring and endeavouring to rationalise the allowance situation.

COMMISSIONER WATLING: So when you say 'only goes to', it only goes to those employees classified at -

MR HOUSE: Levels -

COMMISSIONER WATLING: - below level 7?

MR HOUSE: At or below -

COMMISSIONER WATLING: Yes.

MR HOUSE: - level 7.

COMMISSIONER WATLING: So from level 8 onwards they won't get recreational leave loading?

MR HOUSE: That is what we're proposing, sir.

COMMISSIONER WATLING: Right. So where do I actually find that in the words?

MR HOUSE: At the opening preamble to the clause - the proposed clause - during a period of recreation leave, only officers classified at or below level 7 shall be paid an allowance by way of additional salary calculated at the rate of 17.1/2% of that officer's normal salary plus where applicable any allowance of a permanent nature payable to such officer and deemed by the controlling authority to be in the nature of additional salary.



COMMISSIONER WATLING: So it's up to the employer to determine?

MR HOUSE: Yes, sir.

COMMISSIONER WATLING: Why is that?

MR HOUSE: Well we've got the use of the word 'deemed' there. I understand - or I am instructed it's a current provision but I think generally there's been some acquiescence to the exercise of management prerogative in terms of what is the normal pay and what is, you know, extraneous pay.

COMMISSIONER WATLING: Why can't we write in what they're entitled to? Why do we let the employer do it?

MR HOUSE: Well has there been a difficulty - I'll ask Gordon - Dr Senator to comment.

COMMISSIONER WATLING: See, it's alright to say that it's the existing provision - it's not the existing provision - you're changing it.

DR SENATOR: Well, Mr Commissioner, I think it's only been changed in relation to limiting the -

COMMISSIONER WATLING: Yes, but still a -

DR SENATOR: - the allowance, but not the remainder of -

COMMISSIONER WATLING: - that's right, it's still a change, and therefore it's all up for grabs and we're all re-examining what it says. So -

DR SENATOR: Well, I think, Mr Commissioner, the society's view would be that where we can be more specific we probably ought to be.

COMMISSIONER WATLING: Yes. Why do we put the 'controlling authority'? Why don't we put 'the Salaried Medical Practitioners Society deems it'? Don't you want to have a lick at this as well?

DR SENATOR: Yes. Well, Mr Commissioner, we're not aware of any current problems, but -

COMMISSIONER WATLING: No, but I - I think I'm highlighting a principle and the principle is - is it up to the employer to determine award provisions?

DR SENATOR: No, well it's a - obviously it's a - that's the role of the commission.

COMMISSIONER WATLING: Yes well - and it should probably be stated clearly in the contract of employment. What you're doing is, you're handing over your right to someone else and that's why I asked the question, why shouldn't we put the Salaried Medical Practitioners Society in there? They're equal partners in this contract.

DR SENATOR: Mm. Mr Chairman, if we -

COMMISSIONER WATLING: It raises - it just raises an interesting debate which it never ceases to amaze me, in the public sector I hear 'the employers this, the employers that, the employers the other thing', but you go to every public sector award and it gives the employer the authority to do things. But I say, well don't come along here and complain. It's a - you know, people come along here and acquiesce to the fact that the employer is allowed to determine it.

DR SENATOR: Mm.

COMMISSIONER WATLING: Well, fair enough.

DR SENATOR: Well -

COMMISSIONER WATLING: Don't complain about the employer, the award says they're entitled to do it.

DR SENATOR: Mr Commissioner, we'll be pleased to remove all words after -

COMMISSIONER WATLING: I'm not telling you you have to, but I'm just raising the question - you might want to consider it. It really is a matter of principle that your organisation has to consider. And how many of these things does the employer determine.

DR SENATOR: Mr Commissioner, perhaps we may have leave to put this on the deferred list for further consideration?

COMMISSIONER WATLING: Yes, you might - I think you should have a look at the whole philosophy of the employer determining these things. There may be some things in administration that they may need to, but I think on questions like this, it should be very clear, it's 17.1/2% of what. Either it's the base rate plus all work-related allowances or it's a base rate plus 'XYZ' allowance, and I think it should be clearly stated, it's 17.1/2% of what, and then everyone knows what it is and it's not at the whim of the employer or the union that it varies.

Anyway, you might have a - just a closer look at that in terms of the fundamental principle.

DR SENATOR: Yes well, Mr Commissioner, we had addressed the principle in the preamble in the sense that what we're - the - what we're endeavouring to do by in fact limiting this recreating allowance to that particular level was to - to reinforce the concept of the professional nature of the group above that classification and therefore the society would agree that the reference to the one-sided authority rather argues against that - the equality of the parties in that particular provision and re-entrenches the - perhaps the master-servant relationship.

COMMISSIONER WATLING: Alright. I think - I put the employer on notice - in things like this, I think it should very clearly stipulate who gets it and how it's calculated, and it should be here in the award, and it shouldn't be left flexible for some people at some stage of the game, depending on whether they're in favour or out of favour to get an additional amount. And that's what happens and can happen. But I think if it's meant to be 17.1/2% of the base rate as described in clause 8 - Salaries - plus this allowance, that allowance, on call allowance, or whatever, should be quite easily stipulated, or it might say, 17.1/2% of the base rate including clause 8 - Salaries - including this, that and the other thing but excluding 'XYZ', so there's no argument about what it says.

It's a bit like a number of awards where we put in ordinary rate of pay for the purpose of 3% occupational superannuation. We define ordinary rate of pay quite specifically, including exclusions.

DR SENATOR: Mm.

COMMISSIONER WATLING: So then it can't be tampered with or played with - everyone knows how it's calculated, otherwise it can lead to industrial disputes where an employer says, oh for you, I think you can get that allowance included; no, I'm a bit offside with you - I don't like you - you don't get it. That's the only point I'm making. Anyway, you might just consider that 32 preamble.

MR HOUSE: Sir, the proviso shown there, we believe is consistent with the standard provisions.

COMMISSIONER WATLING: Right.

MR HOUSE: Without going to merit, I must correct an early omission about sick leave too. Miss Cox is correct, that we, in - well I didn't point out that we are seeking an improvement in that area in terms of impairment leave. I just wanted to correct that oversight.

DR SENATOR: But we consider it's compensated for by the ....



MR HOUSE: Yes, but it's still an ask. So that's clause (e) - subclause (e) - Impairment leave.

COMMISSIONER WATLING: Rightio.

MR HOUSE: I just overlooked that.

COMMISSIONER WATLING: Rightio. So it brings us on to 36 then - Relief.

MR HOUSE: Yes. I just - I just got there at the same time.

COMMISSIONER WATLING: So -

MR HOUSE: Well in - in the case of many members there - in Tasmania in particular, there are difficulties in taking relief because of the unavailability of people to fill the gap, as it were, and this clause endeavours to place greater onus on the part - on the controlling authority to provide for relief, given that the controlling authority is also concerned about officers who have accumulated large amounts of untaken leave and they're seeking to prevent that occurring in the future.

I think it's been an area of some - some tension between the employer and the society and this is a - their attempt to address.

COMMISSIONER WATLING: Would it be - would it be possible for the employer to say, well I don't want to provide any relief, and would that negate the person observing the provision of the award?

DR SENATOR: Mr Commissioner, I understand your question to mean whether there is a - whether a person due an entitlement under the award would feel obliged to forego that entitlement.

COMMISSIONER WATLING: No, I'm not obliged to - the person would still have the entitlement under the award whether the employer provided relief or not, surely.

DR SENATOR: It's a question then whether the employee would then choose to exercise that - that right under the award and I can speak from personal experience and say that right has been forgone.

COMMISSIONER WATLING: Yes, but is that - that may be then a personal decision as opposed to an award decision though. You'd be still entitled to it.

DR SENATOR: Yes, but the entitlement has no - has no validity if it can't be exercised.

COMMISSIONER WATLING: Well it can be. It's your choice that you don't exercise it.

DR SENATOR: It's a choice, sir, placed on professional responsibility.

COMMISSIONER WATLING: Otherwise the employer would be in breach of the award.

DR SENATOR: I mean it's very possible for the employer at any - any time to say that we won't provide any - any relief, hence - hence it then comes down to the individual which takes prominence - the award provision or his own professional instincts. We would argue that in many cases that undue pressure or perhaps the implication of moral pressure is brought to bear to influence the exercise of award entitlement by society members.

COMMISSIONER WATLING: So should the award entitlement then, if that sort of pressure is put on, be converted to money?

DR SENATOR: Well I think there's a significant occupational, health and safety consideration in these situations. I don't believe that it's in the interests of the - of operations of the health care delivery system that one makes contingency for particular people to have no access to leave entitlement at any time because of the lack of appropriate relief provisions.

COMMISSIONER WATLING: I can see what you're getting at, but I'm just trying to think it through in my own mind.

DR SENATOR: I mean we went -

COMMISSIONER WATLING: I can understand the pressure that would go on, but I - from where I sit I'm not too sure that it denies you a - a legal right in terms of the contract of employment.

DR SENATOR: No, there's - that's not the issue. The issue is one of professional instinct and in certain instances of course there may be the capacity to take that entitlement and then come back and find that a service or a whole service or department is in total disarray as a result of exercising that leave entitlement. We're endeavouring under this proposal to - to place the onus fairly equally between the parties. We're not saying the - a controlling authority need - need carry the entire brunt of this, that it's done in consultation with the individual and/or his supervisor to provide such relief.

We would also indicate, Mr Commissioner, that if in the course of finalising this matter that we make provision for the employment of appropriately qualified individuals of senior registrar level that they would form a natural pool to provide such relief. If the commission pleases.



MR HOUSE: And the next one, sir, clause 34 I understand is a general provision.

COMMISSIONER WATLING: Which one?

MR HOUSE: 37, I am sorry, leave without pay. That's a state service standard, as I am instructed. Termination of employment - if you will excuse us for a moment, please?

COMMISSIONER WATLING: Yes.

MR HOUSE: I apologise, sir, for not being ready for this one, but my memory has been refreshed that the current termination of employment provision is another matter in our registered agreement. I was aware that it was somewhere, but I couldn't find it in the award.

That provision is in clause 10, and provides for one month's notice on either side, or by the payment or forfeiture of one month's wages, as the case may be; and, of course, it doesn't affect the normal rights of employers of summary dismissal in certain circumstances.

COMMISSIONER WATLING: Right, so it is 4 weeks up to 12 weeks' notice. Yes.

MR HOUSE: And now we are going -

COMMISSIONER WATLING: Can I just pose the question. Say, for example, he gave 6 weeks' notice, could the employer then say, well, look, I want you to go in 4 weeks?

MR HOUSE: Yes. This was somewhat -

COMMISSIONER WATLING: So, what's the relevance of up to 12 weeks?

DR SENATOR: Mr Commissioner, we believe that this was a compatible concept of structural efficiency, that there may be very highly specialised areas covered by very few individuals or perhaps a single individual in whom it may be extremely difficult to go through the normal procedures of replacement and continuity of service, without having additional time in which to do so.

And also on the other side, of course, it may be that because of the normal advertising and recruitment practices, that it may be more difficult for an individual in such a specialist area to change employment within a limited time frame.

COMMISSIONER WATLING: I can understand that, and that is perfectly logical, but I am just wondering whether it is still possible for even someone to give 12 weeks' notice and then



plan their arrangement that they are going to take on a job, say, in 12 weeks' time and they are doing the right thing by the employer by giving 12 weeks' notice, can the employer say, well, look, I want you to go in 4?

DR SENATOR: Yes, I believe that capacity still exists.

COMMISSIONER WATLING: So would that be treated then as a dismissal, or what?

DR SENATOR: I think it would be a termination of employment. I don't think it would necessarily fall into the category of a dismissal.

We would hope, Mr Commissioner, that this is perhaps one of those areas where agreement may be reached which is mutually satisfactory to the parties.

COMMISSIONER WATLING: Good.

MR HOUSE: Clause 39 - Abandonment of Employment: we would submit -

COMMISSIONER WATLING: So, can I just say on that, payment inclusive of all - it is supposed to be permanent allowances, I take it.

MR HOUSE: Yes.

COMMISSIONER WATLING: Does that include telephone rental and things like that?

DR SENATOR: Mr Commissioner, I think that what you are asking us is whether we could specify the permanent allowances, and if we can have leave to -

COMMISSIONER WATLING: Yes. We'll put 38 on the deferred matter list, and we'll put 'define permanent allowances'. Right - 39?

MR HOUSE: 30, as I understand it, is a standard provision of the state service. Similarly, 40 reflects the policy within the state service. 41, again I understand is the -

COMMISSIONER WATLING: Does that come from your agreement, does it?

MR HOUSE: Well, as I am instructed, sir, 41 - Grievance and Dispute Settlement Procedure conforms with the procedure applied generally in the state service, except for the proviso under subclause (a), and that goes to the questions of a professional nature being referred to the appropriate body that would be able to determine such matters.

That could well be the Review Panel, but in circumstances where we might get a system of conjoined appointments in this state that Review Panel would have to include a nominee from the University of Tasmania medical school.

So we have got the normal procedures in relation to what I will try and classify as disputes over matters within the award or over matters concerning nonprofessional activities, and where there is a dispute over the professional conduct of a member that would go to a separate body to determine and resolve, hopefully, the dispute.

COMMISSIONER WATLING: Say, for example, a dismissal was to take place over some purported professional misconduct, are you saying before the termination can take place in accordance with the previous clause that this panel must be set up and people have to operate through the panel? Is that what it means?

MR HOUSE: Yes. Well, a person - I am not sure - might be put on other duties, but the actual dismissal over alleged professional misconduct we would contend would have to be reviewed. We wouldn't see that process being unduly delayed.

COMMISSIONER WATLING: So, if that was the case, do you think then there could be a conflict with clause 38 - Termination of Employment, or would you think there needs to be some cross reference, or does one override the other, and if so, which one?

MR HOUSE: Yes, to the extent -

COMMISSIONER WATLING: Because, certainly in 38 -

MR HOUSE: Yes, to the extent that there might be argument about whether it is a professional matter or whether it is what I call the sort of hand in the till sort of situation. There needs to be some clearer -

COMMISSIONER WATLING: It could be argued under this provision that the employer would be in breach of the award if they dismiss someone and didn't go through the panel, or - yes, the panel, under the disputes procedure.

MR HOUSE: Yes.

COMMISSIONER WATLING: And then there would be some argument about whether or not one clause would override another clause and which one had superiority, unless there was reference from one to the other. Is that a deferred matter, do you think?

MR HOUSE: Yes, if the commission pleases.

COMMISSIONER WATLING: So the proviso in 41 -

MR HOUSE: The proviso as I understand it, sir, is not agreed.

COMMISSIONER WATLING: It probably doesn't surprise me because it probably does beg the questions that I'm sort of raising at well. So that means you're really going to have to then look at 30 - the proviso in conjunction with 38, aren't you?

MR HOUSE: Yes. Yes.

COMMISSIONER WATLING: So you're deferring 41 with the proviso to consider in conjunction with 38.

DR SENATOR: Mr Commissioner, although it's true we haven't really changed the substance of the remainder of the clause 41 in (a), we've endeavoured to indicate the normal line management in relation to particular officers.

COMMISSIONER WATLING: Right.

DR SENATOR: But that clarification was not meant to interfere with the thrust of clause 41.

MR HOUSE: Moving onto -

DR SENATOR: The move to alternative duties is new too.

MR HOUSE: Do you want to -

DR SENATOR: Mr Commissioner, also in relation to 41(f) the society has included provision there for the controlling authority to require that the officer - or medical practitioner in question undertake alternative duties where the grievance dispute relates to professional misconduct or the provision of patient care.

COMMISSIONER WATLING: So could that be cleaning the toilets?

DR SENATOR: Well if that's what our classification standards, I suppose so under the -

COMMISSIONER WATLING: Well, no, you want to be careful of that because the way that that's worded, it says: Undertake duties. It doesn't say what. It could be gardening, but as long as you are undertaking duties - it doesn't talk about, does it, at a similar level and a similar remuneration or a lesser remuneration or the same status or standard, so it could be out doing the gardening.

DR SENATOR: Mr Chairman, if we could ask that that be put on the deferred list.



COMMISSIONER WATLING: So we'll put (f) on the list as well. So, 41(f). This is tantamount to a suspension or a standing aside provision and you've sort of - you could nearly write something on that in its own right because, you know - can this go on for 12 months? Could it go on for - how do you get out of this suspension thing? Can you be suspended until the enquiry takes place which mightn't be for another year or two. It begs all these sorts of questions. I can see what you're trying to get at and moving one out of the arena and one could logically argue that that might be right, but it nearly is a suspension procedure.

DR SENATOR: Yes. Well, Mr Commissioner, I think we tried to pick that up in subclause (d) -

COMMISSIONER WATLING: Yes.

DR SENATOR: - that those procedures be completed within 7 days.

COMMISSIONER WATLING: Yes, but that could refer to the procedures of - arising out of the proviso of (a) couldn't it?

DR SENATOR: Well, steps (a) to (c).

COMMISSIONER WATLING: Yes. Yes. Anyway you've put it on the deferred list to have a deeper look at it.

MR HOUSE: Mr Commissioner, moving to what is the last clause in H.4 as it stands at this stage, 42 - Structural Efficiency. The facilitative provisions I'm sure you are very aware of that are being inserted into awards these days. This facilitative clause which, as I understand it, is not agreed, is the view of several unions representing doctors as being appropriate for medical practitioner awards throughout Australia and so far we've had it accepted in the federal jurisdiction in Queensland by the employer and will shortly go to the commission and in the Northern Territory the - I should say, the ACT which is the federal jurisdiction. You will probably pick it up. It hasn't been replicated in Victoria as it wasn't sought in Victoria.

COMMISSIONER WATLING: Why was that the case?

MR HOUSE: Pardon?

COMMISSIONER WATLING: Why was that the case?

MR HOUSE: I'd have to go off the record to respond to that one, sir.

COMMISSIONER WATLING: Well, that's probably why I asked. Righto, I get the message.

MR HOUSE: I can give an answer to the effect that it wasn't picked in Victoria because of a rejection of it by a tribunal or even the matter being put before a tribunal, if that assists the commission.

COMMISSIONER WATLING: Yes, it does.

MR HOUSE: The main aspects that perhaps differ from what the government rep sees as an appropriate standard provision for this state is that we do put some particular conditions on employers being able to direct people to do duties perhaps wider than what was the previous requirements. We're not setting - we're not trying to cement in any sort of demarcation or prevent multiskilling and greater flexibility, other than to protect, in particular, trainees who are - have certain commitments under their accredited training programs that they must fulfil, so we - you can see there in the task, broadening - in addition to the normal words that are not designed - these extra:

- duties are not designed to promote deskilling.

We have added:

- or would invalidate or be in conflict with an accredited training programme in a speciality or discipline -

we have an argument about 'or discipline' anyway -

- as defined by the National Specialist Qualification Advisory Committee of Australia, or be in conflict with the officer's clinical privileges.

There's another situation. Dr Senator would be better able to apprise you on this, but I'll try. The other situations where a medical practitioner may be qualified in a certain area but it's some years since he or she have been practising and we would be concerned if situations arose where the employer said, 'Well you've got that qualification, you go and do it'. So, we'd hope that sort of situation wouldn't arise, but we're trying to protect that in particular. That's probably picked up - well it is picked up in (ii) - (c)(ii). So I don't know - I think I should - as this stage I'll say it, even if I am out of order. It may occur to you why didn't we implement this in the VMO agreement.

COMMISSIONER WATLING: No, I'm not worried about the VMO agreement.

MR HOUSE: Okay. Well -

COMMISSIONER WATLING: It has nothing to do with this matter.

MR HOUSE: Thank you. All I - it was just to the effect, sir, that -

COMMISSIONER WATLING: Each case stands on -

MR HOUSE: - I don't want to talk about the VMO matter but this -

COMMISSIONER WATLING: Each case stands alone as far as I'm concerned, so you -

MR HOUSE: - this we believe is in the absence of any other - any suggested improvement, we believe that this is the appropriate one to go in awards covering medical practitioners.

COMMISSIONER WATLING: It will be of interest for you to know anyway that under the act any private arbitration can't be used as case history in any other matter before the commission. That's a requirement of the act.

MR HOUSE: Thank you.

COMMISSIONER WATLING: So -

MR HOUSE: It was just when I raised Victoria -

COMMISSIONER WATLING: Righto. Well I wouldn't be -

MR HOUSE: - well I thought - well, you know, it might occur to you, well why are we inconsistent. Well this is - we believe this is the - in terms of our federal approach, is the appropriate one to deal with the promotion of structural efficiency in the area of medical practice.

DR SENATOR: Mr Commissioner, might I just make a couple of points about (c) -

COMMISSIONER WATLING: Right.

DR SENATOR: - first of all to make a correction there. That should read 'National Specialist Qualification Advisory Council - '

COMMISSIONER WATLING: Council. Right.

DR SENATOR: Secondly, just to clarify the use of the term 'clinical privileges' which really is almost the equivalent in the medical practitioner sector to the specifics related to the change tasks to be performed which is agreed between the parties following the medical staff selection process. So



clinical privileges isn't really privileged. It's really the contract of duties.

COMMISSIONER WATLING: Duties.

DR SENATOR: And at this point of time, we're developing more sophisticated approaches to defining those clinical privileges within this state which is to the great extent peer driven, and any transgression of those boundaries of responsibilities, if you like, we believe should be considered seriously in this of task broadening.

COMMISSIONER WATLING: Good. Thank you. Right. Anything further?

MR HOUSE: If the commission pleases, that completes this stage of the society's substantive submission.

COMMISSIONER WATLING: Right.

MR HOUSE: We now have -

COMMISSIONER WATLING: Can I just say to you that in another matter that you may want to put on your deferred list will be the translation arrangement from any old scheme to a new scheme, the implementation and translation process, and how you would translate one from the current award provision to your scheme, or the scheme that you are suggesting which might come in under number (2) as well, because I think that any new system - levels of classes et cetera - you'd have to have some implementation and translation process.

MR HOUSE: Sir, I'm instructed to ask as to what is the commission's view in terms of what's left of the registered agreement. Does that continue on, or what -

COMMISSIONER WATLING: Well the -

MR HOUSE: - happens with that.

COMMISSIONER WATLING: The registered agreement continues on.

MR HOUSE: Is it superseded by the new award or what?

COMMISSIONER WATLING: No, the registered agreement will prevail over any award provision until one party gives notice in accordance with the act to withdraw from the agreement.

MR HOUSE: Well we have a difficulty in, if you like, initiating action to rescind that agreement because of certain other things in the agreement that we wouldn't want rubbed out.

COMMISSIONER WATLING: Well the situation is that the agreement has a life, right, and people -

MR HOUSE: Which has expired.

COMMISSIONER WATLING: - are entitled to give notice - a certain period of notice prior to the expiry of the agreement so as it concludes at the end of the agreement, and if it doesn't have a written life in the agreement, the act says it shall be no longer than 3 years - right - so - and then -

MR HOUSE: Well that -

COMMISSIONER WATLING: - it will continue after it expires, but one party by giving - I think it's 30 days' notice - can withdraw from it and then it no longer exists, but you can't do that during the life of the agreement. So -

MR HOUSE: Well the agreement came into operation on the 9th of May 1988 and had a -

COMMISSIONER WATLING: Well prima facie then it's -

MR HOUSE: - a period of 3 years, as you've said, is the maximum.

COMMISSIONER WATLING: Yes. So, prima facie it's out of date and therefore - we might just go off the record for a moment.

OFF THE RECORD

COMMISSIONER WATLING: This matter will now stand adjourned until Monday the 23rd of November, commencing at 10.30. Thank you.

HEARING ADJOURNED