

**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, 17 March 1993  
Continued from 11/2/93

**TRANSCRIPT OF PROCEEDINGS**

Unedited

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**COMMISSIONER WATLING:** I'll take appearances first.

**MR. J. HOUSE:** If the Commission pleases. John House appearing for the Tasmanian Salary of Medical Practitioners' Society. Mr Commissioner, unfortunately Doctor Senator is not available today and with me I have Doctor David Jupe.

**MISS J. COX:** If the Commission pleases. Jane Cox appearing on behalf of the Minister for Public Sector Management, and with me is Kate Pammenter.

**COMMISSIONER WATLING:** Good. Thank you very much. Mr House?

**MR HOUSE:** Thank you, Mr Commissioner. Also I would like to thank you for being able to start at 10 a.m. today.

**COMMISSIONER WATLING:** Yes. Whilst you mention that, have you got a plane to catch this afternoon?

**MR HOUSE:** Not now. I will be returning tomorrow after some other business.

**COMMISSIONER WATLING:** Right. So have you got a set adjournment time? Do you want me to adjourn at a certain time?

**MR HOUSE:** No. I would hope, sir, to get through it all today, and if it's convenient to the Commission and if necessary perhaps, you know, we can sit through till I do that, I'm in your hands. Like, I'd hope to finish  
- - -

**COMMISSIONER WATLING:** Midnight - have it cut off at midnight do you reckon?

**MR HOUSE:** No, I would hope to finish at 4.30.

**COMMISSIONER WATLING:** Righto, no worries. Now how about adjourning for the luncheon period?

**MR HOUSE:** The normal times would suit us.

**COMMISSIONER WATLING:** Yes, from about quarter to one on to - would it be convenient, quarter past two?

**MR HOUSE:** That would be fine, sir.

**COMMISSIONER WATLING:** Righto. Right, go for it.

**MR HOUSE:** Sir, yesterday I received the transcript for the February Hearings, and I've had to go through that last night. I'm hoping that my submission won't be too much all over the place like it has been on previous occasions but I want to try to round off all the matters that have been raised as far as we can today. But before addressing you on deferred or outstanding matters I would like to augment information provided in a couple of earlier exhibits.

COMMISSIONER WAILING: This goes in the big one doesn't it?

MR HOUSE: Yes, sir. I wouldn't intend it to be marked but if it could go please in H.5, not necessarily now, but we would see it going of course in the section marked "Queensland", and I think in the second document in that section is a decision of the 20th August last year, by the Queensland Commission that contained its conclusions on a work value case. Now this gazette, that was the, that was followed by a period of work by the Parties and the Commission in - - - -

COMMISSIONER WAILING: When you say the second document, what are you referring to?

MR HOUSE: In that section - - -

COMMISSIONER WAILING: The one that's already in the document?

MR HOUSE: Yes, yes. There are two documents and, from memory, the first one relates to a decision in relation to an earlier case involving Doctors, and the second one was a more recent case that the Commission handed down its decision on the 20th August last year, and we have, I think, briefly had a look at that decision. Now the Commission has finalised its - well - yes, I'm going to say it, it went to producing a new interim award and there are a number of aspects that the Commission wasn't happy about in the way the application was drafted and the Parties have been working on that and now we have a new award. Now very briefly, as mentioned before, there are a number of items in that decision which we see as pertinent to this case.

First of all both the Queensland case and this case involved the making of a new award in the context of the wage fixing principles. In particular the Queensland case involved evidence going to work value changes over a much shorter period than we will be looking at. While not as vigorously contested, as I expect this case will be, the matter was determined by the Queensland Commission rather than being a consent application. The sections of the Queensland Award which we see are significant are Clause 3.5 and that's on page 255 of the Industrial Gazette, and that's the criteria for appointment to the senior staff/specialist scale. That's a refinement of something we addressed earlier and we note that the Queensland Administrative Arrangements and State Service Act are different to what's in Tasmania, and I'll be talking about that later.



Following that at 3.6, "The method of review of people who aspire to positions of Senior Specialist", and that's a procedural approach there that I won't go through now. And over the page on 257 - sorry, no, I apologise, 256, there's a section called 3.10 "Allowances", and there there's a provision for a director's allowance which goes - it's not quite the same as what we're proposing, sir, in that it talks about Directors of Departments, where we're talking about Head of responsible for a service in a region or throughout the State. And also, as I've discussed earlier, over the page and 257, sub-clause 3 of that allowance section, "Motor Vehicle Allowance".

And finally, in general terms, the Queensland's Commission, the Queensland Commission's decision in relation to overtime for specialists is of general interest in the context of our claim for time off in lieu instead of additional payments.

COMMISSIONER WATLING: So do we know which ones were actually arbitrated and which ones were by consent?

MR HOUSE: The Queensland Government has a policy, sir, that they try to reach a consensus on issues.

COMMISSIONER WATLING: Not a bad way to go.

MR HOUSE: Well I think it's excellent. They're a very professional group to deal with. Now - so normally there's an in-principle agreement, say, that the question of motor vehicle allowance prima facie is a matter that could be extended to staff specialists. The next step in that process is that it goes along to the Commission and the union presents its case and the onus is on the union to make the case and satisfy the Commission as to the merit and as to whether it fits with the wage principles and public interest and so on.

Unless the Government has any greater objections their view, and I hope I'm not misinterpreting or incorrectly describing their view, but as I understand it they don't oppose the matter. That doesn't always happen because, for example, again I'm not sure whether they were - the Government was enthusiastic about, say, overtime for specialists. Certainly they didn't seem to support the time off in lieu approach that was in the claim.

So you get varying degrees of support and on some occasions opposition, but as a matter of policy they don't come along with, if you like, an agreed document on rates. They say to me, for example, "well you make your case." And we, in the light of that case, and if you can satisfy the Commission, then we can accept the outcome.

COMMISSIONER WATLING: But then again, if they don't oppose the case it's virtual consent, if they lay down?



MR HOUSE: Well, yes, yes. That's why I say it's not as vigorously contested, but I think it's not quite consent though.

COMMISSIONER WATLING: No. Well technically it could be argued that it's not consent. But I know myself, people stand before me and put a line and then the employer jumps up and says, "I don't oppose the application". I always ask them do they endorse it then. And sometimes - - - -

MR HOUSE: I don't know what Queensland advocates say to that question, sir?

COMMISSIONER WATLING: It always gets an interesting result because someone has to declare their hand at the end of the day. It's all right to get up and say "I don't oppose it", but when you ask them "Do they support it?".

MR HOUSE: Yes.

COMMISSIONER WATLING: But anyway - - - -

MR HOUSE: Well I'd be misrepresenting the situation if I said that it was a hotly contested matter and that the Commission was also hotly pressed to rule on it. But there are - I can't recall, sir, there were some matters that weren't agreed but they weren't the matters, I think, I've just traversed with you.

Now sir, if I could take you back to H.16 which contained a summary of leave entitlements in the various States and Territories. When I submitted that document I had yet to check the veracity of its contents. I'd like to hand up for information, but not as an exhibit, advice I've received from the South Australian Medical Officers Association and the Victorian Branch of the AMA.

COMMISSIONER WATLING: Right. That was exhibit, which one again Mr House?

MR HOUSE: H.16, from memory, sir.

COMMISSIONER WATLING: 16, yes, I've got it here.

MR HOUSE: I've been in the process of trying to update our Schedules for salaries and conditions for medical practitioners and other - the salary of medical practitioners and other medical practitioners. Sir, if I could take you briefly to the first letter, or minute, received from SASAMOA and to the third item in that document or letter.

COMMISSIONER WATLING: You mean the South Australian Salary and Medical Officers Association?

MR HOUSE: Officers Association.

COMMISSIONER WATLING: I just thought the transcript people might think it's a new country or something. Righto?

MR HOUSE: Sir, there's an item there, "3. Specialist Leave Entitlements", and it says, "Consultants do not receive examination leave". I'd put down "examination leave for both junior and senior staff". It says that they receive study leave, up to 6 months sabbatical leave, paid after 6 years of service however, it's not an Award provision.

COMMISSIONER WATLING: Right. So we should take it out of that column then of H.16?

MR HOUSE: Well if you could amend, I think, on the column relating to "specialists", where - it's the second page, where it says "sabbatical" - the line dealing with "sabbatical leave". It should state that in South Australia there's provision, and not an award provision, for 6 months sabbatical leave after 6 years service which is - - -

COMMISSIONER WATLING: And where do we find that?

MR HOUSE: On the second page headed "Specialist Leave Entitlements", in the column - sorry, the horizontal section, you've got "sick leave, long service leave, conference", and then I've styled it "study" - - -

COMMISSIONER WATLING: So not "sabbatical"?

MR HOUSE: Well in some States it's called "study leave" and some States - - -

COMMISSIONER WATLING: Yes, but we're referring to the exhibit. Like, if you go back on transcript, I was trying to find "sabbatical" which you quoted and you're really talking about "study leave"?

MR HOUSE: Yes, I apologise, sir.

COMMISSIONER WATLING: Because if people are trying to follow it they'll look up the exhibit and they won't see "sabbatical leave". So we're talking about "study leave"?



MR HOUSE: Yes. Now I've got there incorrectly "examination leave, one week per annum prior to exam plus sitting time". Now that was the same as in the "Residents and Registrars", so that's incorrect. There is no examination leave, as I'm informed. However, there is up to six months sabbatical leave, paid sabbatical leave, available after 6 years service. And it also should have an asterisk against it to indicate that it's an non award provision.

COMMISSIONER WATLING: So it's at the discretion of the employer, sabbatical leave in South Australia?

MR HOUSE: Yes.

COMMISSIONER WATLING: Righto.

MR HOUSE: If I could now turn to the letter I've received from the Victorian Branch of the Australian Medical Association which up until recently was respondent to the awards covering medical practitioners in that State and is looking at the option of a Federal Award. There they, I'm advised, that on the - again on that page, headed "Specialist Leave Entitlements", that in fact the Victorian entitlement for annual leave is 4 weeks, that's the Award entitlement, but there is, and what is described, and as of right, "fifth week added for being on call, as there is an as of right 10 per cent allowance on base salaries for that purpose". I think we can forget for the purposes of my exhibit the last bit, but - - -

COMMISSIONER WATLING: So is that quite true. It doesn't increase their taking in accrued amount at the same time they're taking annual leave, it doesn't increase their annual leave?

MR HOUSE: Well again, administratively there must be some document that provides for an additional week's leave.

COMMISSIONER WATLING: That's right. But isn't that - haven't they split up the money - the money amount into a lower amount for money plus an extra week's leave?

MR HOUSE: I'm not sure whether I follow you, sir?

COMMISSIONER WATLING: It's on call, isn't it? What's the - - -

MR HOUSE: Well if, as I understand it, if you are on call, if you are required to be on call, then you're entitled or you're - what's available to you is an additional week's annual leave.

COMMISSIONER WATLING: Righteo. Now what I'm putting to you is that they may not be getting five weeks annual leave. They're getting four weeks annual leave plus an amount equivalent to one week for which they've accrued for being on call?

MR HOUSE: Yes.

COMMISSIONER WATLING. Now can I take that a step further. It seems to me instead of getting, say, for the sake of this discussion, say, ten dollars an hour for being on call, they've split it up into a certain amount of money, a lesser amount of money, plus an extra week. It's only a different method for formulating the on call allowance?

MR HOUSE: Well that could well be the case but in - I can't remember the exact formula, but in the ACT, for example, before State matching, there was an arrangement that you got an extra half day annual leave for so many periods of being on call or working on the weekends. That normally - this was a matter debated before a Full Bench of the Federal Commission, when we chose to adopt the New South Wales approach where all senior doctors got five weeks annual leave, that's just in the Award as such, so that we had to address the Federal Commission as to what was the actual reality in the ACT about people getting what annual leave did they actually get. And both sides indicated to the Full Bench that in the ACT people who were hospital doctors anyway were getting - were, and some of the community doctors, were accruing, if you like, a five week entitlement as a matter of course.

COMMISSIONER WATLING: But I'm obviously going to have to address this question here, and in fact it will make a difference here as to whether the matter goes to a Full Bench.

MR HOUSE: I detected that, sir.

COMMISSIONER WATLING: That's right. And so I'm trying to ascertain whether or not we're really saying "It's 4 weeks annual leave plus an additional amount of time off equivalent to one week which will be taken at the same time as annual leave." Now there's a big difference.

MR HOUSE: Yes. Well - - -



COMMISSIONER WATLING: Now to the uninitiated it mightn't sound anything, but in actual fact it is.

MR HOUSE: Without having researched the matter as deeply as I should, my understanding is that it's probably a bit of both in the extra week is there to compensate a person for having, if you like, some disruption to their out of hours life, out of working time life, and of course that could be seen to be an additional reward or remuneration.

COMMISSIONER WATLING: Well it seems from this document you've tendered, it's quite obvious in Victoria they get four weeks leave, right? But - - - -

MR HOUSE: In the Award, yes.

COMMISSIONER WATLING: Yes. But there's - so I'm not going to change it to five weeks because they in fact get four weeks leave, but the letter quite clearly states that they get another week plus a 10 per cent allowance for call back?

MR HOUSE: Yes.

COMMISSIONER WATLING: And they have separated it in Victoria. They have clearly indicated that it's four weeks leave. Now to the person who takes it, obviously they're taking five weeks, but you have to say "What is the other week for? Is the other week for annual leave or is the other week in lieu of on call payment?"

MR HOUSE: Yes.

COMMISSIONER WATLING: It seems in Victoria they're saying "Annual recreation leave is 4 weeks but they do take an extra week plus they get an extra 10 per cent allowance based upon their salary for call back". So it's really a formula and a method of taking call back.

MR HOUSE: Yes. Well there's certainly a tie, a link or association put between call back which is - the situation in South Australia to, four weeks or five weeks if regularly rostered on call. Western Australia, five weeks if rostered but - - -

COMMISSIONER WATLING: It may not create - I have a little trouble with these fairly brief charts in that it really may mean four weeks annual leave plus an additional amount of one week which is taken at the same time. Now that may not be annual leave.

MR HOUSE: I have a further exhibit about on call that I'm posing to tender later but I'm not sure whether it will satisfy this problem. It may go somewhere towards it. In the case of junior staff I've actually quoted the sections out of the Awards and senior staff, they're still a summary format - - - -

COMMISSIONER WATLING: So in your claim for on call, Clause 19 - see, you haven't got - you haven't split yours into any extra leave entitlement for on call, you've just given a certain - certain formula?

MR HOUSE: Yes.

COMMISSIONER WATLING: But if you were really - - -

MR HOUSE: Well we're saying where people are rostered or on call and also - well generally required to provide out of hour services, then we believe that five weeks annual leave is appropriate. And I suppose we draw upon the situation that normally applies for shiftworkers as further support. Now I know that shiftworkers be regarded as different and that we don't have shift provisions in this Award at the moment anyway, but it's not uncommon for people who have their family and social life disrupted to get an additional week's annual leave.

COMMISSIONER WATLING: Yes. Oh, look, I'm not debating that at all.

MR HOUSE: And say the police - the police, for example, might get six weeks - - -

COMMISSIONER WATLING: I'm not debating that at all with you. I suppose at the end of the day it comes down to whether it should fit in the annual leave clause or whether there should be provision made in the on call clause, to say that people shall - what shall people get if they're on call? Do they get one week added to their annual leave plus a payment or do you tamper with the annual leave clause? Now as it stands at the moment, in your claim to me, it seems like you are just claiming a certain amount of money. But really, you're claiming extra leave plus money, but it doesn't show up in your claim as that. You have to somehow work out from the annual leave clause that these people get an extra week's leave. My question at the end of the day will be "Are they getting the extra week's leave for on call. And if they are, should the on call clause state precisely what they get for being on call?" Do you see the point I'm making?

MR HOUSE: Yes, certainly. Because we're saying that in the registered agreement at the moment all the hospital doctors get five weeks leave, and those that are not in hospitals or not in the principal hospitals, that should be extended to medical practitioners, say, in the Royal Derwent or in the Department that may be also rostered on call. So we're using the rostered on call as the basis of satisfying a requirement for five weeks annual leave.

COMMISSIONER WATLING: Yes. But the annual leave clause may say four weeks annual leave but there are add ons, and the add on comes from the call back clause.



MR HOUSE: Yes, or the on call clause.

COMMISSIONER WATLING: On call clause, sorry. And then there is a question then whether or not, if that is the case then the matter may not have to proceed to a Full Bench, because we're not increasing annual leave. We're giving them the same amount of annual leave plus an additional week in lieu of the inconvenience for being on call, which is a different - - - -

MR HOUSE: Yes. Sir, I hadn't thought of it that way but - see again, in the ACT, the community - I think I've mentioned community medical practitioners or salaried general practitioners, if they're on an after hours roster they get an extra week. If they're not on an after hours roster it's four weeks.

COMMISSIONER WATLING: Yes. But I suppose - the only thing that I raise - - -

MR HOUSE: And that's not in the Award, I think, it's just - - - -

COMMISSIONER WATLING: The only thing I raise is whether or not it is really annual leave or whether it's an addition to the annual leave equivalent to a week. Now that's the issue.

MR HOUSE: Well I didn't want to have to do this so early in the proceedings but can I write to you and help me the other Parties on this or - - - -

COMMISSIONER WATLING: Well, yes. I think I gather what you're saying is - - - -

MR HOUSE: Well I'm agreeing with you.

COMMISSIONER WATLING: Yes, that's right.

MR HOUSE: But I haven't - we haven't formulated our claim properly and - - - -

COMMISSIONER WATLING: Well you haven't put it that way in your document and I'm - may be we'll see how the employer addresses that particular question and then I think rather than keeping on doing this, but I think it will boil down - there's no doubt that the employer will address the question of whether we're dealing with an additional week's leave or whether we're dealing - leaving annual leave as four weeks and then applying an additional week, not annual leave, but for being on call.

MR HOUSE: Well certainly we're not saying that - and if there are any 9 to 5 doctors, should get an extra week leave.

COMMISSIONER WATLING: You're saying - you're saying if they're on call they get an extra week's leave?

MR HOUSE: Yes.

COMMISSIONER WATLING: And they only get an extra week for being on call. And I think the - there's no doubt the employer will have to address this because the question will be whether or not the matter goes to a Full Bench based on five weeks annual leave. And there may not be a need for it if we look at it in the other fashion. It means we could be dealing with the whole lot here.

MR HOUSE: Sir, this is where it's going to get messy and I apologise again. But on receiving the transcript for the period prior to Christmas and also just yesterday the transcript for early hearings this year, I've made some further - not significant changes to our claim, and if the Commissioner pleases I'd like to hand up just a few further replacement pages.

COMMISSIONER WATLING: All right. Well we might go off the record and just put those replacement pages in exhibit H.14.



COMMISSIONER WATLING: Thank you. Right. So Mr. House I understand you want to start with Clause 7, Definitions?

MR. HOUSE: That's correct sir and -----

COMMISSIONER WATLING: And specifically page 7A?

MR. HOUSE: Yes, 7A we have sought to draw a distinction between two types of, well the temporary employee for the purposes of this Award doesn't include a trainee medical practitioner. Now while I don't - sorry, I have also tendered a replacement page 9 and that goes to Clause 8, Salaries. And at the end of that Clause there is a proviso, and having read the transcript there was some uncertainty about what the minimum payment of three hours for temporary employee contain, and I have added the words, or I read the whole thing; "Provided that the temporary employee's terms of engagement shall be by the hour with the minimum payment of three hours and then added at the loaded hourly rate for each day worked". That's a point of classification, that clarification.

COMMISSIONER WATLING: So that the loaded hourly rate for each day worked or the loaded hourly rate for each hour worked?

MR. HOUSE: For each hour worked.

COMMISSIONER WATLING: So they'd only get a loading for a day? So we changed -----

MR. HOUSE: Still not right.

COMMISSIONER WATLING: So we change it to hour do we?

MR. HOUSE: Yes.

COMMISSIONER WATLING: All right.

MR. HOUSE: Now if we turn to Clause 17, Hours of Work. The first section Medical Practitioners on a duty roster. Sub-clause 3 given that we've deleted from our claim committee leave.

COMMISSIONER WATLING: That's A.3 you're talking about?

MR. HOUSE: Yes.

COMMISSIONER WATLING: So it's A.(a)(iii)?

MR. HOUSE: Sorry, 13(A)(3)?

COMMISSIONER WATLING: Right, thank you.

COMMISSIONER WATLING: So we are dealing with Clause 13 Hours of Work, on page 12?

MR. HOUSE: 13.

COMMISSIONER WATLING: Specifically we now turn to page 13, number 3?

MR. HOUSE: Yes. Now we have deleted committee leave, but having regard to provision elsewhere in the award, or the claim, it indicates there will be no - sorry, this section indicates there will be no more - no split shifts, then we are making a provision there that in the case of part-time employee who is required by the controlling authority to attend meetings then the inhibition on split shifts doesn't apply. And if we turn to 13(B) and again sub-clause (3) the same provision has been put in there, and that's page 14. Now page 16, and just at the bottom of page 15 that's clause 16, Rest Period, and this is one where when I wrote to you sir I provided a replacement page and now I've provided a further replacement page which makes it confusing.

COMMISSIONER WATLING: No, I'm just dealing with the latest replacement page. So if we all deal with the latest replacement page we won't have to worry about the previous one.

MR. HOUSE: Well this -----

COMMISSIONER WATLING; What is it that you want to address on this page?

MR. HOUSE: Well this one was where there was some discussion sir about how an agreement will be reached between the parties, that is to the shortening a rest period. We decided that the Society needn't or perhaps shouldn't be involved in that process of reaching an agreement. Now that left the employee and the controlling authority, as I understand it, nor recall it, on having a further look at it in the light of the transcript I have endeavoured there to make the Award provision more in line with perhaps what would reality, and there we say that a break of lesser duration can be agreed between the employee and his or her immediate Supervisor to meet emergency situations or requirements of continuity of patient care.



MR. HOUSE: Now I have also had a look at some of the Awards in other jurisdictions about rest periods, and the most part they don't allow any reduction in the rest period, just says "there shall be a rest period of eight hours" and that's it. Now we didn't propose to be that restrictive, however, what I have done there in the next, in the proviso here, which is the second paragraph on page 16, I'm saying provided that where an employee is required to resume duty before having had eight consecutive hours off duty the subsequent hours worked until relief from duty, for eight consecutive hours shall be paid in accordance with Clause 17 of this Award. So in effect they'd be on overtime or penalty rate, it would be a penalty rate which we would hope would act as a disincentive to management, and perhaps even members of the profession, not to allow people to take their full eight hours break.

COMMISSIONER WATLING: Allow them to take their full eight hours?

MR. HOUSE: Pardon?

COMMISSIONER WATLING: Allow them to take it, you said not to take it.

MR. HOUSE: I'm sorry, an incentive to allow, or disincentive not to be able to take it. Now 17(A) further down page 16.

COMMISSIONER WATLING: That's Clause 17, Excess Time?

MR. HOUSE: Yes sir. (A) Medical Practitioners on a Duty Roster: And then (a) again the transcript there was some discussion about how the averaging process would work and we've endeavoured there to say in a case of full-timers that excess time doesn't accrue. Well it's based on a fortnightly minimum, however, in the case of part-time employees we believe that part-timers should be entitled to over-time rates after they have worked thirty-eight hours in any week, given the nature of their employment, and the fact there is no compensation beyond single time rates for excess time worked over and above their part-time ordinary hours up to thirty-eight hours. In our submission a further concession of averaging hours over a fortnight for the purposes of calculating over-time for part-timers is not warranted and be open to abuse. As I understand it the averaging process was designed, at least in part, to meet problems where full-timers were rostered for less than thirty-eight hours in some weeks yet were being paid for those hours and then sometimes claiming over-time in the following week, and this we submit is not a situation likely to arise with part-time employees. The next one sir

relates to Clause 25, Conference Leave, on page 32, and there is I think discussed last time in (a) we have changed our claim from two weeks to one weeks leave per year and then we put in a proviso relating to how the entitlement for a part-timer would apply. I'd planned to summarise sort of our part-time provisions in one group. If I could do that later. Now sir there follows, I am now at page 33, this is one that, well to be specific is the last sub-clause in Conference Leave, and that's (D)25(d) at the top of the page, and looking at I think it was page 583 of transcript, there was some discussion of deficiency of (D) and I was seeking to add at the end of (D) "And that presentation shall be made within three weeks of resuming duty". You will probably recall that -----

COMMISSIONER WATLING: Right, well let's get that down then? "AND that presentation - ?

MR.HOUSE: "--- shall be made within three months of resuming duty".



COMMISSIONER WATLING: Right.

MR. HOUSE: There is a similar provision that has been put in in relation to sabbatical leave but unfortunately I overlooked that one in relation to Conference Leave. The next alteration relates to Clause 26, Study Leave. And the first sub-clause (a) that provides there has been added a proviso after paragraphs 1 and 2, again dealing with the part-time employees position or entitlement for study leave.

COMMISSIONER WATLING: So in relation to study leave if you had a part-timer that was working one hour a week they would still get the study leave of one hour?

MR. HOUSE: Yes, provided - yes, well they'd get pro rata, so one thirty-eighth of either eight hours or one-thirty-eighth of ten days a year. The next one sir is still study leave at page 34. No, sorry, I'm now moving on to sabbatical leave which I wanted to address.

COMMISSIONER WATLING: That's Clause 27, Sabbatical Leave, page 34?

MR. HOUSE: Yes, 34,35, pages 34 and 35. Right, at the risk of losing track of everything I might try to deal with that now.

COMMISSIONER WATLING: Oh yes, I think it would be a lot easier if you just follow the programme?

MR. HOUSE: Yes.

COMMISSIONER WATLING: And just go to each Clause, because if we do that we are going to address - we will address those issues anyway.

MR. HOUSE: I totally agree as long as I don't lose my thread. Well in terms of sabbatical leave we now seek to restrict such leave to people who have the capacity to provide service to the public health system for more than two years prior to their statutory retirement date, that's the proviso at the bottom of page 34. We felt with the uncertainty of our previous clause that was the most certain situation. Now that says "Provided that such leave will not be allowed within a two year full-time equivalent employment period exclusive of any accrued - " I'm sorry, I should go to 27(A) first, "At a period of thirteen weeks sabbatical leave shall be allowed upon the completion of the equivalent of five years of continuous full-time service within the State health system in not more than three periods of four weeks or more than at any twelve month period" so that a part-timer working half-time would have

to complete ten years service. Yes, it's been pointed out to me that it's ambiguous and now when I think about it it's not compatible with our provision that sabbatical leave would be based on the - would be based on the if you like the ordinary time that the part-timer would work so that they would be hit both ways in the sense that it would take them twice as long to get it and then they'd only get half the pay. So again I apologise for chopping around but I think the heavy type in (A) should be deleted. It should be "shall be a period of thirteen weeks sabbatical leave shall be allowed upon the completion of five years of continuous service within the State health system, not more than in three periods of four weeks or more for any twelve month period" because what we are saying over the page "provided that payment of salary for such leave for a part-time employee will not exceed that for the number of days in the ordinary hours of work on each of those days the part-time employee would be required to work at the time of application for the leave".



COMMISSIONER WATLING: So a part-timer working thirteen - part-timer working one hour a week would go on sabbatical of thirteen times one at their normal hourly rate?

MR. HOUSE: Yes.

COMMISSIONER WATLING: Otherwise they would go on thirteen weeks after ten years - just say for example if you were making the equivalent they would go on - they'd only get half the pay that they normally would get.

MR. HOUSE: So they'd be penalised twice.

COMMISSIONER WATLING: They'd get, they could go on thirteen weeks at one weeks - one days pay per week and they would have to probably go nearly all their working life to - before they could get sabbatical. Because they would have to put in the time equivalent and then only get paid one hour for thirteen weeks.

MR. HOUSE: Yes. So the accrual time, or the time before you reached - you get an entitlement would be the same for the full-timer but the actual leave granted then would have accord with a proportion of your working time to the time of a full-timer.

COMMISSIONER WATLING: Well you are really getting sabbatical on a pro rata basis.

MR. HOUSE: Yes, yes. Turning back to the proviso after 27(A) "Provided that such leave will not be allowed within a two year full-time equivalent employment period exclusive of any accrued annual and long-service leave entitlements before the statutory retirement age for the employee".

COMMISSIONER WATLING: SO it would just be a two year period now?

MR. HOUSE: Yes, a two year period but that's two years of actual service, because we have endeavoured to exclude annual - there may be an accumulation of annual and long-service leave which means that you know in the final two years the person might not provide much service at all. Now sir, whether we are really happy about that I'm not sure, but in other States I'm not aware of any formal obligations to give on-going service as a condition of accessing sabbatical leave, but at least in some States where I have dealt with it, there is an expectation that this would be the case all other things being equal. And should we believe that on the grounds for sabbatical leave really are a return to the employer as well as a return to the employee. Now page 35, there is some discussion in the transcript about our introduction of the term "permanent" in the proviso at the top of that page. Now whether I have overcome

those difficulties I have substituted the adjective "permanent" to saying a "full-time" or "part-time" employee, who immediately before becoming a full-time or part-time employee was a temporary employee not receiving an allowance in lieu of such entitlement shall be credited to that employee at the time of becoming an employee a period of service qualifying for this entitlement as if the employee's total continuous service from the date of first reporting for duty as a temporary employee had been service as a full-time or part-time employee. It is quite a mouthful but we are assuming that and we are hoping that "full-time" and "part-time" employees are different anyway from temporary employees. Now at (c), subsection (c) of the same Clause we have added "the entitlement for such sabbatical leave shall be thirteen weeks paid leave for all eligible employees". That's para. 1 and then a proviso of relating to how a part-time employee would be dealt with. Page 37, and we are still on sabbatical leave, and paragraph (e)(i), or sorry, (e)(ii) we've added there "arrange to present to a relevant peer professional group details of the knowledge gained from such leave within three months of returning from the leave". And that's consistent -----



MR.HOUSE: --- at the conference leave one mentioned earlier and then (f) Sabbatical leave may be accumulated up to a maximum of twenty-six weeks entitlement subject to the approval of the controlling authority to permit an extended programme of research or study". And the (f) proviso, first proviso, "That any unused entitlement is to be taken within five years of accumulation which may be and it should be immediately prior - " I apologise for that "- immediately prior to the next accumulation". Now the second proviso, "Provided further that no subsequent accumulation in excess of twenty-six weeks may occur". Now hopefully sir that gets over the ambiguity that was present in our previous construction. An examination leave Clause 28(A), there are two provisos dealing with the treatment of part-time people in terms of accessing examination leave. Page 38.

COMMISSIONER WATLING: Does that read right, the second proviso, in 28 does it? Sorry, the first proviso in 28?

MR. HOUSE: Well the main intent there is really that there is an examination on days or times when a part-time employee is not normally required to work, and the examination will be attended in their own time.

COMMISSIONER WATLING: Yes, but what does "will be" "shall be paid" mean?

MR. HOUSE: Oh I'm sorry. "There will be", should obviously be out. Page 38, Clause 30, Recreation Leave. Sub-Clause (A) in the second proviso, provides for treatment of part-time employees, in terms of recreation leave. Page 40, similarly, in terms of partial entitlements, part-time employees, that's the proviso in sub-clause (G). Now recreation leave allowance, Clause 31, at the bottom of the page, sub-clause (B) and the proviso, I'm not sure - (b) of the proviso, "In no case where the allowance is calculated on the basis of seventeen five point five per cent of normal salary, shall it exceed the allowance which would be payable in respect of the salary range for a level 1, grade whatever, employee on and from the First day of October in respect of all annual leave accrued during the preceding twelve months". When this matter is ultimately determined we would expect that the salary cap for the leave loading would closely approximate the State's standard. If this is not possible at the time we may have to opt for a set amount which the Department has advised me is currently Four Hundred and Seventy-Seven Dollars Twenty. In other words there is no intention to increase the amount or should be implied in that construction we have put there.

COMMISSIONER WATLING: Have you put it, like based it every time the wages go up the loading goes up?

MR.HOUSE: Well that was something that troubled me in that the wages mightn't go up for some time, well the Award wages, the other option I looked at, and again and I didn't want to offend any State's standards, was the Commonwealth option where it is related to average weekly earnings.

COMMISSIONER WATLING: Well the seventeen and a half per cent loading in this State has been under very close scrutiny in the last few years so -----



MR. HOUSE: Yes, and in Victoria.

COMMISSIONER WATLING: I think it would end up being a mammoth case if it was to depart from the standard?

MR. HOUSE: Yes, I could see all those sorts of difficulties. So what we have achieved there I think is to try to make this Award stand alone rather than rely on some other Award, and -----

COMMISSIONER WATLING: The only point I was making through my question was that if you put other than a flat amount in the Award when the rates of pay increase it automatically increases the annual leave loading, maximum.

MR. HOUSE: Well obviously we see that as desirable, whether that's going to bring about another incapacity to pay case for us I'm not sure.

COMMISSIONER WATLING: You might have incapacity to receive such little amount.

MR. HOUSE: Well the intent is two-fold, one is to comply with whatever the State standard is, and two, to try to relate it to this Award.

COMMISSIONER WATLING: Right, I get the drift.

MR. HOUSE: Now, Sick Leave, which is Clause 32, commencing at the bottom of page 41, now we've totally re-cast this Clause to try to make it more readable. The format, as distinct from the content, followed is that of Clause 55, of the Nurses (Tasmanian) Public Sector Award 1992, which I thought was probably better, more easily absorbed than what we had before. Now we have endeavoured to avoid conflict or overlap with the provisions of the Workers' Compensation Act and say at the outset in (A)(i) "Or an employee shall (1) not be entitled to pay leave of absence for any period in respect of which he/she is entitled to Workers' Compensation".

COMMISSIONER WATLING: Let's go back to (A), you have got there in brackets (Inclusive of allowances prescribed in Clause 11), so we go to Clause 11.

MR. HOUSE: The managerial allowance qualifications allowance.

COMMISSIONER WATLING: Right.

MR. HOUSE: But exclusive of any penalty payments.

COMMISSIONER WATLING: Right.

MR. HOUSE: Now the other constraints (2) relate to the normal requirement to inform the controlling authority of the illness, and provide satisfactory evidence of that. And (4) there is a typing error there, should read "not except in sub-clause (B) hereof be entitled to in any one year to leave" and should read "in excess" instead of "to excess" "of one hundred and fifty-two hours provided that in the first year of service an employee shall only be entitled to twelve hours forty minutes for each completed month of service". I think we had one point six-six. I can't remember but there was twelve hours forty minutes is a better way of expressing than what we had before. And then there is a proviso for a part-time employees pro rata, then (b) provision for accumulation, straight accumulation from year to year, and somewhere around here in our earlier one we had a sub-clause (D) that sort makeup pay. We have deleted that and it seems to be inconsistent with my examination of the Workers' Compensation Act. Now we've maintained our claim for impairment leave of fifty-two weeks which would only apply in the absence of Workers' Compensation or the absence of safe employment. Now we submit this is consistent both with Award modernisation and the conditions of employment principle, in that the direct and indirect costs of granting this claim we submit would be negligible. And I have been advised by the Department, and they can correct me if I've got it wrong, that there has been no claim for impairment leave in this State in the last three years. I'm still not sure about whether there has been any Workers' Compensation claims.

MISS COX: Including measles.

MR. HOUSE: Right, I am advised that there have been Workers' Compensation claims. Now I've unfortunately no local statistics on the incidence of nosocomial infection of health workers or the community generally in this State but I do have some figures for the A.C.T. which has a population of some two hundred and eighty-five thousand, and I'd like to -----

COMMISSIONER WATLING: So we take these figures and double them do we?

MR. HOUSE: Yes, roughly. If I may I'd like to tender an Exhibit.

COMMISSIONER WATLING: And that will be marked Exhibit H.18.

MR. HOUSE: Now sir this is an extract from an activity report by the A.C.T. Board of Health and for the December quarter, 1992. I've put in one table out of that report, which is Diseases Notified in the A.C.T. September and December quarters of 1991 and 1992. Now I've had only this morning



discussions with Dr. Jupe and he in turn with some of his colleagues and we have endeavoured to pick out those diseases which might or would fall within the terms of our impairment leave provisions, and primarily sir taking them in order as they appear on the table, and this is where people, health workers, I am talking health workers generally now, because of the question of indirect costs of this claim if it is granted, salmonella, is a disease where people may be a carrier but we are advised that that possibility of people being carriers is quite infinitesimal but there you see that we've got in the A.C.T. about a dozen cases a year for the whole community. So given that's an infinitesimal chance of being a chronic carrier that that would be a negligible possibility. And it's perhaps reminded of one per cent chance of being a carrier. Then we go to shigella, there was only a couple of cases a year in the A.C.T. there and there is just about nil prospect of people being a carrier and therefore not being able to continue after recovery, perform their duties in the health system. Of course one of the more prominent ones there is H.I.V. A.I.D.S. Here we have got in the A.C.T. for '91, or the second half of '91, eleven cases, and the second half of '92 seven cases, so I suppose it could be a dozen or more cases in the A.C.T. I think that's right, all up. Now the chances of a health worker contracting H.I.V. A.I.D.S. would be hopefully much less than the community at large.

COMMISSIONER WATLING: Would that be a Workers' Compensation matter than?

MR. HOUSE: As I understand, yes, but the Workers' Compensation, again as I understand, **has** got a cap on it of about ninety-five thousand so that once the Workers' Compensation is exhausted we'd be looking to either impairment leave or safe employment. We're not seeking to displace the or interfere with the Workers' Compensation. And that's hopefully covered in the first preamble, or the first part of our Sick Leave Clause.

COMMISSIONER WATLING: How long do they get for impairment leave?

MR. HOUSE: At the moment it is twelve weeks and our claim is fifty-two sir.

COMMISSIONER WATLING: What Clause do I find that in?

MISS COX: Page 42, little (c) at the bottom.

COMMISSIONER WATLING: Oh right, I see it. So this would be fifty-two weeks on full pay at?

MR. HOUSE: Yes sir, if - which could be offset

by safe employment. I mentioned last time the Doctor who contracted H.I.V. in South Australia, now I have now been informed that he is working in medical records in an Adelaide Hospital at his original salary level.

COMMISSIONER WATLING: Yes but the principle of it I am interested in, in that you can have, you can use up the maximum of Workers' Compensation and it may be falling within that Act, and then on top of that you can claim another fifty-two weeks on full pay?

MR. HOUSE: Yes.

COMMISSIONER WATLING: When one has been fully compensated in accordance with the law.

MR. HOUSE: Well now that's where the difficulty is, although in the further sub-clause -----

COMMISSIONER WATLING: Can I just say to you that my concern would be putting something in an Award that would have the effect of over-riding the Workers' Compensation Act, and the new Act is very specific in relation to that, at least the amendments, and if the law says that you are entitled to so much Workers' Compensation why should the Award then say you are entitled to something in excess of what Parliament has decided? And the question would be then whether or not the Award could be ultra vires the Act, because the Act would say what the entitlement is as opposed to the Award, and anything that we can put -----

MR. HOUSE: Well my reading of the Act it didn't necessarily say that that was - excluded any other payments, like you could, surely you could perhaps take a case and civil law for further damages if you like.

COMMISSIONER WATLING: That's right, and you have to then prove that the employer's negligence that you sort of contracted this, so you do have a right in civil law but I'm really talking about in terms of having an extra amount, that's another years salary, paid on top of the amount owing under legislation. And the question is - will definitely be whether or not the Act over-rides the Award provision?

MR. HOUSE: Yes, well I've been reminded and correctly so, that we see a difference here sir in that the person in the case of a medical practitioner may be quite capable of working but because the person is infected or can infect others is not able to continue to perform his or her functions as a Medical Practitioner in pre-existing field.



COMMISSIONER WATLING: Well wouldn't that still, if they are not able to go back to work, right, it would be covered by Workers' Compensation. If they are able to go back to work, right, isn't that very similar to any other Workers' Compensation matter where the employer may be required to either provide light duties or a re-arrangement of the work or something of that nature? What's the difference?

MR. HOUSE: Well we've provided a clause for that to happen but if it doesn't happen then we believe that the impairment leave should be granted.

COMMISSIONER WATLING: So then if it doesn't happen what are the alternatives, the alternatives are for the employer to say well we can't continue with your employment? Right? Because you can't carry out the duties for which you were employed, so then you are suggesting that there should be compensaiton placed in the Award of an amount equivalent to fifty-two weeks pay?

MR. HOUSE: Yes. Well that's one interpretation.

COMMISSIONER WATLING: Well is that the right interpretation?

MR. HOUSE: Well I suppose the desired -----

COMMISSIONER WATLING: Is that what you see it as being, put it that way? Because I don't want to get the wrong interpretation of it. Isn't this a penalty on the employer for not providing alternative employemtn?

MR. HOUSE: Yes.

COMMISSIONER WATLING: Now what happens if there is just no alternatives, like we see this nearly every day unfortunately, where someone goes back to work after being on Workers' Compensation, and then usually the Doctor says well the person is fit for light duties, and they get out there to Pasmenco and there is no such thing, right, so then the employer says "Well look I'm sorry I just don't have those sort of jobs and therefore I can't continue with your employment because you can't do the jobs for which you were originally employed".

MR. HOUSE: Well we're asking for twelve months income maintenance I suppose. But if I can just, to the extent it is relevant, the South Australian Doctor is working in the medical records prior to that he received some Workers' Compensation payments in that State, in South Australia, they reduce after a period of time, I think twelve months, there is no sort of cap but it goes down over time.

I haven't identified which of these that are deferred matters, as we have gone along, and I have just looked around and here it is. We essentially agree with the Commission's list that is helpfully provided. There has been some touching up or finessing of some of the other paragraphs in the light of difficulties that I have identified in the transcript but they are more editorial I contend, the deferred matters there are the essential things where the argument hasn't been put or put properly.

COMMISSIONER WATLING: Well I take it you can address these on the way through.

MR. HOUSE: Yes, thank you.

COMMISSIONER WATLING: SO this Sick Leave was one of those deferred matters wasn't it?

MR. HOUSE: Yes, well I would like to, if the Commission pleases, say that I have completed what I have to say on that.

COMMISSIONER WATLING: Right, We'll have the next one then.

MR. HOUSE: And Sabbatical Leave. In relation to Sick Leave Clause it was, you will recall, makeup pay, well we are not asking for that any more except perhaps income agencies, a form of makeup pay exclusive from outside of Workers' Compensation. Sir, if I could take you to page 51, which is in the Parental Leave section, it's on page 50 there is sub-clause (m) Return to Work after Maternity Leave. And then at the end a proviso, "Provided that the controlling authority will be responsible for ensuring that the employee receives any training necessary to perform the full duties required by such" and some of the versions have got "safe employment". Well the word "safe" should be deleted, so "- required by such employment" and "for the cost of such training".

COMMISSIONER WATLING: What does that mean? It was meant to send people to safe employment?

MR. HOUSE: I'm sorry?

COMMISSIONER WATLING: Wasn't that meant to make sure that people received - lost the plot here? You're trying to take "safe" out are you?

MR. HOUSE: Yes, I think that was our intent. It's "To a position which he held immediately - ?. This is (ii) (m)(ii) "An employee upon returning to work after Maternity Leave, or the expiration of the notice required by paragraph (i) hereof shall be entitled to the position which she held immediately



before proceeding on Maternity Leave or in the case of an employee who was transferred to safe employment pursuant to sub-clause (f) to a position which she held immediately before such transfer, or in relation to an employee who has worked part-time during the pregnancy, to pregnancy, the position she held immediately before commencing such part-time work". So what we are saying is that where it is not possible to put a person back in their original job then they are put in another job then they get adequate -----

COMMISSIONER WATLING: Training.

MR. HOUSE: Training. That was I think the intent, the safe employment passed, it is after that. The next replacement page is page 70 and that deals with bereavement leave.

COMMISSIONER WATLING: SO there is nothing that we have to deal with up to page 70?

MR. HOUSE: Not that I could see sir. Sorry, it's page 71, but Clause 34, Bereavement Leave, sub-clause (a) is on page 70, and then on page 71 at the top we have two provisos to deal essentially with part-time employees.

COMMISSIONER WATLING: What's the second bit mean? If you are having a rostered day off and keep in mind that you have accrued it, and you don't get paid it?

MR. HOUSE: Yes.

COMMISSIONER WATLING: The only reason you get a rostered day off is if you have accrued the rostered day off and therefore you are taking time off on pay because you work excess hours to accrue a day, so are you saying that -----

MR. HOUSE: I had a discussion of this on the last occasion.

COMMISSIONER WATLING: Well are you saying that a person that is not rostered for duty on that day won't be paid, so they take it off in their own time?

MR. HOUSE: That's the intent.

COMMISSIONER WATLING: BUT it says "provided further that no employee shall be paid for a rostered day off"? So they might be on a rostered day off because they have accrued certain hours, and therefore they would be entitled to be paid for it, surely? But I think you are really saying that a person that's not rostered to work on the day in question shall not receive pay for it?

MR. HOUSE: That's so.

COMMISSIONER WATLING: But that's different to a rostered day off?

MR. HOUSE: Well when I was looking at this last night I - do Doctors get a rostered day off?

MISS COX: No. They have usual days off, I mean the normal days off like we have weekends.

COMMISSIONER WATLING: What about those people that under your programme that will be able to take time off in lieu? They will be rostered off?

MR. HOUSE: Yes.

COMMISSIONER WATLING: So they won't get paid for it? And in fact the only reason they are taking a rostered day off is because they have actually accrued it, it's there in the bank?

MR. HOUSE: Well it should be provided "Further, no employee shall be paid for a day they, or paid for time they are not rostered to work". But then not everyone is rostered.

COMMISSIONER WATLING: No, you are really saying that an employee shall be paid for a day or days, right, if they would not normally work on those days?

MR. HOUSE: Yes.

COMMISSIONER WATLING: That's what you are really saying. So if I don't work on a Wednesday and the funeral is on a Wednesday I don't get paid?

MR. HOUSE: Yes.

DR. JUPE: So we say no employee shall be paid except for days normally worked?

COMMISSIONER WATLING: No, I think you have got to turn it around and say that they don't get paid if they use the benefits of this Clause on days that they are not required to work. You know we can come up with some words but I think it is totally different to what the words say there.



COMMISSIONER WATLING: Maybe we've just got to have a look at that. Anyway it is only an editorial thing, but I think I get what you're saying. You're certainly not saying that they don't get paid if they go to the funeral on their rostered day off?

MR HOUSE: No.

COMMISSIONER WATLING: And the rostered day off may be because they've worked excess overtime under your proposal and they're taking the day off which means they should be paid for that day.

MR HOUSE: Mmm.

COMMISSIONER WATLING: And the other thing too is that you just don't know how the averaging concept might work either under your proposal and therefore, you might have a system whereby you have an arrangement for rostered days off, nineteen day month. You could under what you're saying here --

MR HOUSE: Mmm.

COMMISSIONER WATLING: --the way that you've written the clause. So you could develop a work programme that would give regular rostered days off. They might work forty-two hours one week, sort of thirty odd, or another forty the next week. So they've got excess hours, which build up to having a day off a month on pay.

MR HOUSE: We might have shift workers.

COMMISSIONER WATLING: You could have shift workers, yes, I don't know. But sticking with your proposal and just your claim, you could have work systems and work patterns which allow for rostered days off.

MR HOUSE: Mm. Fine, I thank you for that. If we could move to, please, to clause 35 on that same page 71 and I think as we foreshadowed last time we see that it would be helpful in the Award if we had a convenient reference or focal point for leave entitlements for part time employees and there we merely listed the relevant clauses and in (b) we've maintained our reference to holidays with pay as described in the State Service Regulations. In the absence of agreement without colleagues over whether at this late stage a clause relating to holidays with pay should be inserted, I don't think it is appropriate that we seek to amend our claim at this stage of proceedings without agreement from the other side. So we're stuck with that.

COMMISSIONER WATLING: Can I say then if you're looking at this type of verbage why do you use the word 'public holidays' on page 16?

MR HOUSE: Page ?

COMMISSIONER WATLING: 16.

MR HOUSE: It slipped through if we have, because ---

COMMISSIONER WATLING: Yes and you use it later on in the proviso as well.

MR HOUSE: Yes, well I'll correct that. I'm sorry, it's just up until the Commission informed me I wasn't aware of the fact that there is no Act in this State and you just develop a mine set for - you know----

COMMISSIONER WATLING: We have the Bank Holidays Act.

MR HOUSE: Yes.

COMMISSIONER WATLING: And all other holidays are gained through awards. We don't have a Public Holidays Act like New South Wales, or a number of other States.

MR HOUSE: Mmm.

COMMISSIONER WATLING: So we just have holidays with pay. So you're talking about the holidays with pay and those holidays prescribed in the Tasmanian State Services Regulation. Now those regulations don't describe public holidays, do they? I don't know.

MR HOUSE: They describe holidays, or days that are holidays for the public sector.

COMMISSIONER WATLING: Yes. Which may or may not be public holidays?

MR HOUSE: Yes, it could be that the Commonwealth, for example, gives another day at Christmas.

COMMISSIONER WATLING: Yes. The same with the State Government at Eastertime, Easter Tuesday. That's not a public holiday

MR HOUSE: No. Well --

COMMISSIONER WATLING: Anyway --

MR HOUSE: ---we don't intend that people covered by this award would be treated differently to anyone else in this respect, but --

COMMISSIONER WATLING: So if you go to 71(a) now, the proviso, you speak about public holidays again.

MR HOUSE : Yes, well I've crossed that out.

COMMISSIONER WATLING: So you're really talking about --



MR HOUSE: Being a holiday with pay.

COMMISSIONER WATLING: 'Holiday' is prescribed by the Tasmanian State Services Regulation?

MR HOUSE: Yes. Now over the page on 72, well we've deleted clause 38 in relation to job sharing from our claim. However we believe it is still appropriate in the case of clause 36, relief, that there be a proviso that where ever practical a part time employee sharing the same duties will agree to provide relief for each other. That's a bit vague I know, but again it is a thing we see as being desirable and should assist. So the employer --

COMMISSIONER WATLING: Just run that past me. If you have part timers employed and one works from 9.00 to 12.00 and another one comes in from 12.00 to 1.00, or say from 12.00 to 4.00 ---

MR HOUSE: Yes.

COMMISSIONER WATLING: -- you're saying that the first person has to provide the afternoon relief?

MR HOUSE: Wherever practicable, yes.

COMMISSIONER WATLING: So you're saying that the employee has to find another employee to fill the afternoon session?

MR HOUSE: No.

DOCTOR JUPE: Work practices are often fairly flexible and duties are not necessarily designated at specific times. There is scope in some areas of employment for people to take up the more essential duties during periods of leave and leave less essential duties till after leave of a colleague has passed. So if you were doing a mix of essential work, research work, personal study and other duties during the ordinary period of employment and a colleague went on leave those things which were inessential in your mix of work would be dropped for you to take on, in the time you normally worked, those essential duties that you could take up for a colleague. Now it won't always happen. If a surgeon goes on duty and has specific operating times to fill then will be a need to have an additional person, but for example where somebody in a diagnostic service might go on leave it might be perfectly possible for a part timer to take up those essential duties.

COMMISSIONER: Now does that go to the part timer employing someone to do that?

DOCTOR JUPE: No, I don't believe that.

MR HOUSE: That is not the intention at all. That didn't occur to me, but now you raise it it is not closed off by that.

COMMISSIONER WATLING: No, in fact it seems to encourage that now the employees will start employing people. So it is up to the employee to provide relief. Now provide relief is employing someone, isn't it?

MR HOUSE: Mmm.

COMMISSIONER WATLING: Or are you really saying that this person may take on a different role?

MR HOUSE: Maybe 'cover the duties of' would be a better form of words.

COMMISSIONER WATLING: Yes, that's what you're realling talking about, covering the duties.

MR HOUSE: Yes.

COMMISSIONER WATLING: The way it is written there it means that they've got to provide the relief.

MR HOUSE: Mr Commissioner, that completes going through the replacement pages. Now if you can go to the matters listed as deferred matters, I can try to deal with them sequentially in our list. Right. I'm going to say something --

COMMISSIONER WATLING: Now which ones are we talking about? The ones that --

MR HOUSE: The professional issues panel.

COMMISSIONER WATLING: Yes.

MR HOUSE: We've dealt with I think the rest periods.

COMMISSIONER WATLING: Mmm.

MR HOUSE: Excess time, we need to talk about that perhaps briefly. Rostered on call, certainly. Perhaps that's --

COMMISSIONER WATLING: they're the three?

MR HOUSE: Yes. Oh I've missed something, I'm sorry. I sent some - the first three pages of the PCSs and on the third page I made a change in the guidelines for the group standard, second paragraph in the new second sentence.

COMMISSIONER WATLING: That is not included in this document H.14

MR HOUSE: No, it's in - it was attached to the letter, just the first three pages of the PCSs at the back of the replacement pages as distinct from the complete document, is that right?



COMMISSIONER WATLING: Yes.

MR HOUSE: If we look at the guidelines, that's the group standard guidelines and we have added in there:

"When assessing ---"

Sorry, the second paragraph the second sentence --

"When assessing the experience of part time employees regard shall be had to the ratio of part time ordinary hours worked by such employees to the ordinary hours worked by equivalent full time employees."

Now that's the result of a number of difficulties that have arisen in the Northern Territory over treatment of qualifications and experience in the translation of medical practitioners into a new structure including the treatment of prior experience as a part time employee. I have attempted to amend the classification standard to reflect again the pro rata concept in assessing such experience. However I have used the words 'regard shall be had' to allow some scope for say outside research or teaching activities of a part time specialist medical practitioner not to be automatically excluded from any assessment of prior experience.

Now again it probably could be tighter and more precise, but I've tried to reflect the thrust and concept of what we believe is appropriate. At the very least the Commissioner is quite correct in that if you don't try to deal with the translation arrangements beforehand you get into all sorts of strife as I'm finding to my regret and we believe that that should be clarified one way or the other in the award. Again we're probably not serving our interests, but at least it is clear, hopefully.

COMMISSIONER WATLING: Right, so we take out pages then of ---

MR HOUSE: I'll just put the first three there, sir, so that -- it is just easier to do away with the first three and replace them.

COMMISSIONER WATLING: Okay.

MS PAMMENTER: It is replacing H.10, is it?

MR HOUSE: Yes, it is H.10 I'm reminded, thank you. Special issues pack. Sir, if I could now turn to the vexed question of the professional issues panel. My reading of the State Service Act and all the relevant amendments I could find does not appear to rule out such a panel, especially in an advisory capacity in relation to appointments or promotions and if I could turn to the State Service Act, which I hope I have a reasonably up to date version

and if I could go to Part VI 'Appointments, Promotions, Retirements and Transfers'. And firstly, there is Section 34(1), which says:

"Any appointment of a person as a permanent employee, or promotion of a permanent employee to a position in the State Service (a) shall be made in accordance with the merit principle and employment instructions issued by the Commissioner --"

and 'the Commissioner' is defined in the definition as 'the Commissioner for Public employment.'

"--and shall be made by the Minister on behalf of the Crown."

And this is reinforced by subsection 36(3), which says:

"The head of the agency making the selection to fill a vacancy under subsection (1)(b) or subsection (2) shall ensure that the merit principle and the employment instructions are complied with."

Now subsection 31(2) says:

"The Minister may --"

Sorry, subsection 34 (2):

"The Minister may, by instrument in writing signed by him, delegate to the head of an agency and to such other persons nominated by the head of an agency all or part of his power of appointment or promotion in respect of positions in that agency on such terms and conditions as he may determine."

So the head of an agency may appoint or promote an employee in accordance with instructions issued by the Commissioner of Public Employment, or on such terms and conditions determined by the head of the relevant agency.

However Section 33A says:

"The head of the agency's powers of appointment or promotion may not be delegated further."

There's another caveat, subsection 34(2)(a) says:

"The Minister may, by instrument in writing, revoke wholly or in part, or vary a delegation made to him under this section."



Subsection 34(3):

"The power of appointment or promotion delegated to the head of the agency, or other person, when exercised by the head of that agency, or that other person, shall for all purposes be deemed to have been exercised by the Minister."

And finally, subsection 37(1):

"A person shall not be appointed as a permanent employee, or a permanent employee shall not be promoted to a vacancy in a position in the State Service unless he possesses such educational qualifications and meets other requirements, including health and physical fitness as determined by the Commissioner as being required for that vacancy."

So, sir, we believe that at the very least the Commissioner for Public Employment could adopt a set of excellence criteria for appointment, or promotion to a senior consultant position.

Now Section 42 of the Industrial Relations Act prevents this Commission from imposing either an advisory body, advisory panel I should say, or a set of selection criteria on the Commissioner for Public Employment and the Head of Agency, or the Minister. Then, as I have said earlier I do not see any impediment, or even inconsistency to the Commission recommending, or endorsing a set of criteria in the context of that being an integral part in, hopefully, its determination of the work value for the senior consultant position.

COMMISSIONER WATLING: Right, I'll give you a scenario: if the Commissioner for Public Employment sets criteria for appointment and promotion in the particular area that you're now dealing with and the employer, through the controlling authority, decides to establish a panel to do some interviews and to appoint hopefully the right person to the job. Now there is no requirement under that Act for the employer to take any notice of that panel if it was to be established, right? And the thing that I'm a little concerned about is if the employer doesn't establish -- if you were to put it in the Award and the employer doesn't establish the panel the employer is in breach of the Award. The employer may not want an advisory panel to advise him or her or the interviewing panel on who should get the job, but the employer would be in breach of the Award for not establishing it. If they are not going to take any notice of it and it has no power or teeth or anything of that nature, why would you go ahead and establish it only to find that the employer would then be in breach of it? What is the use of it? You see the Act is quite clear on how appointments and promotions shall be made, but we're setting up by the

Award, not by the Act, by the Award another mechanism. Now it could end up that the criteria for selection established by the advisory panel could be totally inconsistent with the criteria established by the Commissioner for Public Employment.

MR HOUSE: Well if, sir, you were persuaded by our criteria and you see that as being a reasonable reflection of the work value of a senior consultant and those are the sort of things that the Commission had regard to in assessing the work value and perhaps amongst other things and you say you've set the rate x dollars on the basis of people meeting at least some of those criteria, then in accordance with the merit principle wouldn't the head of the agency have to have regard to what the Commission saw as being factors in determining that level, or that grade, or that ---?

COMMISSIONER WATLING: What the employer would have to do if the Award said: "Look a Level VI - this is the criteria for a level VI and this is the amount of money for level VI" - right, if the employer is going to put them on a level VI then they have to pay that amount of wage rate. But the employer might determine that they only want a level V. The Professional Issues Panel might say: "Well we think, we the Professional Issues Panel think that it should be a level VI", right? If there is any dispute over what it should be one might end up before the Commissioner for Review as to the inappropriateness of the classification. But I'm just determining, and will determine, a rate of pay for the classification criteria. I'm not saying that the employer has to put ten people on that classification, or has to put one person on that classification. All I say is that to get this rate of pay you have to be able to do this type of work, or you can be called upon to do that type of work. Now if there is any conflict over that, then it will end up probably being a job for the Commissioner for Review. Now then you have to say: "What role then does this professional issues panel play?" We might be setting up something that perpetuates a bun fight between the Commissioner for Public Employment, the Commissioner for Review, the Head of Agency and indeed the Award. I know you've given the Professional Issues Panel lots of things to do including examining -----

MR HOUSE: It is going to talk about some of the other matters, but --

COMMISSIONER WATLING: Some of the things.

MR HOUSE: Yes.

COMMISSIONER WATLING: But then again I still raise this question, I have this nagging thing in the back of my mind: why does the Award by law set up an advisory panel and if it is true to its word it will have no teeth, it will only



be advisory? So what happens if the advisory panel has ten or twenty meetings in a year and the employer, the Head of Agency says: "Well look, I don't care what you decide. Under the Act I'm charged with the responsibility of this and I don't want an advisory panel to advise me. You can set it up. You can have as many meetings as you like, but I'll tell you now I'm not going to take any notice of it."?

MR HOUSE: Well governments have been known to do that anyway.

COMMISSIONER WATLING: Well I don't disagree with that. It happens regularly.

MR HOUSE: Yes.

COMMISSIONER WATLING: But that is the point I'm making. It would be different if you were setting up a body that had teeth and could decide issues, but of course we're not able to do that.

MR HOUSE: No.

COMMISSIONER WATLING: Because the State Services Act says who will do it. So it won't have any teeth. It can do no more than advise and if the person that is required to take the advice, the Head of Agency, doesn't want to then it means nothing. That's the reality of it.

MR HOUSE: The problem is that we have, we've put in - we're proposing, we've put in our claim for a senior consultant position and even if it is a promotable position, or there is a barrier or whatever, let's not get away from it. There are elements in it of personal classification and excellence. There may be higher responsibilities in terms of teaching and general guidance of other consultants, but there is also this test that you've got to have proven yourself as an outstanding medical practitioner. It doesn't matter how good an administrator you might be, or whatever. You've got to have the marks on the board.

COMMISSIONER WATLING: Mmm.

MR HOUSE: Now how is that going to be assessed? That's the real issue. Like, I could be on the interviewing panel as a public servant and here, you know, how am I going to assess all this?

COMMISSIONER WATLING: Well it might be said that that's the role for the Commissioner of Public Employment to set the criteria.

MR HOUSE: That's right and we're suggesting the criteria ought to be what we're proposing and hopefully what the Commission - at the very least whatever the Commission decides on what the criteria, after hearing submissions

from both sides, that --

COMMISSIONER WATLING: So if, for example, I decided the criteria was x, y, z and it was clearly spelt out in the Award then the employer would be required to follow the Award.

MR HOUSE: Well is that permissible under Section 42 of the Act?

COMMISSIONER WATLING: Well, I'm not here to interpret the Act, because it could mean all sorts of things at the moment. But, nevertheless, all I do say is that the rate of pay that would be applicable for that job would be placed in the Award. Just because it is in the Award it is not compulsory for everyone to go on it.

MR HOUSE: No.

COMMISSIONER WATLING: Right. So that means that the employer would decide whether they want one or ten persons on that.

MR HOUSE: We accept that.

COMMISSIONER WATLING: And if the Award established the criteria then the employer would be required to take notice of the criteria, right? Who the employer set up to be part of the interviewing panel to make the appointment at that level is really up to the employer in accordance with the provisions of the State Services Act and Regulations.

MR HOUSE: Mmm.

COMMISSIONER WATLING: Now the Professional Issues Panel wouldn't sit in judgment on that at all. If the employer was wise the employer might seek advice from experts in the area as a matter of practice and course, but it doesn't necessarily mean because you put something in the Award of a professional issues advisory panel that they will get any job or task to do, because they are only advisory and can only really be advisory because the State Services Act says the head of agency does it.

DOCTOR JUPE: Mr Commissioner, I guess the import of this is that there are value judgments to be made about this promotion which --

COMMISSIONER WATLING: I agree.

DOCTOR JUPE: -- can't be set down in black and white. They are value judgments about the relative worth of publications rather than the volume of publications and that worth can only really be judged by one's peers. So there is a requirement for, in order to assess an individual against the criterion, for that to be done by a number of one's professional peers. Now I take your point that ---



COMMISSIONER WATLING: I don't disagree with that by the way.

DOCTOR JUPE: No, I can hear that.

COMMISSIONER WATLING: And I think it is good and wise practice for that to happen, but all I'm saying is that I'm dealing in an environment that may conflict with another act of Parliament.

DOCTOR JUPE: I understand that.

COMMISSIONER WATLING: And if it was me waving the magic wand I'd probably say I think it is very wise for one's peers to put forward good solid reports on some of these things so people can make judgments, but then again I can't ignore the fact that the State Services Act says that the Commissioner for Review, the Commissioner for Public Employment and the Head of Agency have certain rights and that's enshrined in an Act.

COMMISSIONER WATLING: And the only thing is if I say, "Rightio, we'll put the Professional Issues panel in" and if the employer doesn't want to use it, (a) he doesn't have to use it because we can't make this compulsory because the Act says the employer decides. How he decides and where he gathers the relevant information from and assesses it is really something the employer has to establish or satisfy himself, but that's the problem I'm trying to come to grips with.

DR JUPE: Can we not insist that a professional affairs panel assess people, I mean, what the employer does with that information clearly we can't insist on.

COMMISSIONER WATLING: Well, the only trouble is that - that Section of the Act, even the bits that Mr House has quoted, says the Commissioner for Public Employment will do that. He'll establish it. Now that's the problem I face - you see? Now to really give this panel teeth you really have to make it mandatory that they do the job. Everything's sent to them, they do the job and their recommendation -

MR HOUSE: As in Queensland?

COMMISSIONER WATLING: Yes.

MR HOUSE: It goes forward to the Minister in his State.

COMMISSIONER WATLING: That's it. Yes. And they have direct access to the Minister, but under the State Service Act there's a slightly different role.

DR JUPE: We're looking at them to establish people's credentials but of course that won't necessarily establish their credibility as employees.

COMMISSIONER WATLING: Well I don't disagree with those comments, but all I'm saying is that I'm trying to grapple with the situation where an Act of Parliament says something different. Now I think you may well be right in your assessment and that it may not end up with the best but then again how do I - I'm not the law maker in terms of deciding the Act. And you know one can only rely on the good sense of the employer in those circumstances to make sure they set something up internally. You may even get agreement with the employer as to how something will happen between the organisation and the employer. It may be exactly what you desire but at this moment the Act, as I read it, the State Services Act give a certain role to the Commissioner for



Public Employment and the Head of Agency and for that matter the Commissioner for Review.

MR HOUSE: Yes well it would be good if we could negotiate something.

COMMISSIONER WATLING: But a wise employer certainly would do.

MR HOUSE: I can understand the employer's position about, you know, they determine how many positions there are but I can't understand a position where they say, you know, "We don't want any of these criteria. We don't even want any advise on those sorts of things. We'll just pick who we like" but so be it.

COMMISSIONER WATLING: It may well be the stance of an employer during a formal case like this but in reality it may be something different.

MR HOUSE: Yes.

COMMISSIONER WATLING: I'd have to say I think if I was a "Manager" that had to do certain things I'd want to involve the people who had grass root's knowledge of it. But it would still be up to the individual, I suppose, at the end of the day whether they wanted to do that. I certainly think it has merit in terms of seeking advice off people who may know and who are qualified in the field or in the area. But the only trouble is there is an Act of Parliament that says how is shall be dealt with. You know you can put so much in an award that says "this is the criteria" and this will attract \$78,000. But at the end of the day if there's a job at that level someone has to conduct the interviews and make the appointment under that Act of Parliament and whoever they take advice off I suppose it could be argued, it's up to them. Now -

MR HOUSE: Yes but if the merit principle applies one would think as far as professional excellence goes anyway, that this would be the best way of determining it, but anyway -

COMMISSIONER WATLING: Well, you know, the only thing is that if I put it in the Award I'd have to say "what does it mean?" So what if you establish a committee and the employer says "well thanks for your report" and immediately throws it in the waste paper basket. The employer will establish the committee because the employer won't want to be in breach of the Award but what will it do? Because

I can't give it teeth to do anything because it conflicts with another Act of Parliament. I can't give them the right to make the appointments for example. Now that's the ultimate. They do the review. This panel does the review and then it says "Look, here's Susie Jane here. I would recommend Susie Jane for the job." And that's it. Final. Now they're the only thing I raise and just bring to the surface because it will be something that I'm going to have to grapple with and, you know, but then again, internally and as an organisation with the employer you may have an agreed mechanism - right? And - amongst the organisations of how it will take place. In fact, you might even find the Commissioner for Review and the Head of Agency might well agree to this format. They might adopt it as there own.

MR HOUSE: Yes.

COMMISSIONER WATLING: Maybe there needs to be negotiations at that level. How will it happen? Even if there's an exchange of letters on it.

MR HOUSE: Will that be a convenient time sir?

COMMISSIONER WATLING: I think so.

MR HOUSE: Thank you.

COMMISSIONER WATLING: 2.15?

THE LUNCHEON ADJOURNMENT



HEARING RESUMES AFTER LUNCHEON ADJOURNMENT

COMMISSIONER WATLING: Mr House?

MR HOUSE: Thank you Mr Commissioner. Before the luncheon adjournment we'd just been discussing the possible role and perhaps the impediments to that role of the Professional Issues panel in terms of appointments and promotions. Of course, as you're well aware, we've proposed a number of other functions in relation to that panel. Probably with similar - we understand similar possible difficulties. As to the proposed role of the Professional Issues panel in advising on matters of contention such as qualifications, sabbatical leave, programmes and other grievances, it is not clear to me whether these matters are beyond the commission's jurisdiction in making award provisions. Certainly there is managerial prerogative and the Commissioner for Review. On the other hand there is, of course, the charter of the commission to prevent and settle disputes and as you've pointed out, disputes regarding professional matters may be brought before the commission and expert evidence called where necessary.

Usually, in my experience anyway, formal grievance and dispute settlement procedures are inserted into awards as agreed procedures. So I am unaware of the extent to which tribunals have imposed a detail of a procedure on one or all parties.

We can only repeat that in the society's view access to a Professional Issues panel would go amiss in settling some problems that arise from time to time in the medical area. And I do not think adding such a step in the process is an intrusion into management prerogative any more than the procedure itself.

By way of example, and that's all it is, of the possible role of the Professional Issues panel, I would like to tender advice I've obtained from the Royal Australian College of Medical Administrators -

COMMISSIONER WATLING: This is Exhibit H.19.

MR HOUSE: I came across this, not quite by chance but in connection with another matter I was dealing with in another jurisdiction. And this is basically a summary of the sort of programme that the College sets out in terms of people seeking to get FRACMA. Now the relevance of this, of course, is in our view, a question of the other or non NASQAC recognized qualifications being given some weight within

the award. We've issue - are well aware are proposing that going beyond FRACMA we would see that other qualifications, such as a Master of Public Health and an appropriate Masters Business Administration would, we believe, be appropriate in terms of improving the standard of medical administration in these days of difficult budgetary situations and staffing and so on. Now sir, this is a general handout that's given to people who enquire about it and I made a specific enquiry and it sets out the current programme for FRACMA as amended in 1992. And says involves the completion of the following components: Approved clinical experience of three years. We have no difficulty with that. Accredited supervised administrative experience of three years. Again that's appropriate. Now the next one is the important one - Theoretical studies involving an approved Master's programme equivalent to the Master of Health Administration conducted by the University of New South Wales. And (d) a case study approximately 7,000 words in length on a health administrative problem encountered during the period of supervised experience. A written examination in the subject "Advances in Health Care". And (f) final oral examinations involving a general fever to establish the candidate's knowledge and expertise in the area of health administration.

Now, I'm informed by the Registrar that an appropriate - if you have undergone an appropriate Master's degree that degree, even - it doesn't have to be a Master of Health Administration, it can be a Master of Business Administration with specialisation or focus on health administration, is capable of being recognized as a component going some way towards qualifying a Fellow of the Royal Australian College of Medical Administrators -



MR HOUSE: Now the point is, of course, that it's possible for anyone, I suppose, to ring up the College and indicate what qualification you've got and ask them for a view as to how that would be held by the College but in the absence of any clear advice from the College, it may be that the Professional Issues panel can look at that qualification, look at the associated experience and so on and then advise the controlling authority in the light of what is required of the Tasmanian Health system in particular and express a view on the qualification.

Now you could say "well perhaps you don't need the Professional Issues panel to do that". In some cases that probably would be so. In other cases, where there's a degree of contention about the worth of the qualification, we believe that that would probably be facilitated by the panel. Now of course you're right, the controlling authority can just throw that in the bin and probably will do with FACEM but there you go. I've endeavoured to try to give a specific example of what the Professional Issues panel might do given the - you know we have been a little bit abstract about it.

Now the next item in the deferred matters was Clause 17 Excess Time. And specifically of course 17(A)(a). Now I've already discussed the question of averaging and our view in terms of a part-time employee but I think there was some confusion in our wording regarding how the averaging would apply in terms of full-time employees and just to endeavour to clarify that we've added in the second line. And I'll read it : Subject to sub-clause 12(B) - "All time worked in excess of the prescribed" and then we've added "fortnightly minimum" and then the bit about part-time "or outside the prescribed spread of hours shall be paid for as follows" and then there's provided the penalty rates and that's where public holiday erroneously pops up. So, as I said this morning, we believe that situations - and I think it was part of the second tier, where people don't work thirty eight hours in, say, the first week of the pay period then that deficit should be made up in the following week prior to any overtime payments being available.

Sir, if we could now turn to perhaps the most contentious one, today anyway, and that's Clause 19 - Rostered on Call. That commences on the bottom of page 20. This clause is, as I've indicated, seeks to link on-call payments to salary other than a flat amount approach which exists at the moment. I would like to tender an exhibit which is designed to set out the situation regarding on-call payments in other jurisdictions.

COMMISSIONER WATLING: I will mark this exhibit H.20

MR HOUSE: Thank you sir. Now the first two pages are a summary of the on-call provisions for residents and registrar which I've specifically prepared. And the last page - the origins of this are interesting in that the New Zealand Association of Staff's Specialists was currently, believe it or not, undertaking an arbitration in New Zealand. Now we all thought that arbitration had gone in New Zealand but apparently because of the nature of their award which specifies access to arbitration and probably other considerations, they still have an entitlement to arbitration as do the police.



MR HOUSE: - across the Tasman. They're fighting - our colleagues in New Zealand are fighting to retain that right to arbitration and that's part of the case. Now it's convenient to me of having supplied this information peace-meal and over the phone that for Ian Powell the Executive Director to provide me with his summary for his case.

Now the exhibit doesn't overwhelmingly support our case for rates linked to salary, particularly in the case of junior staff, but in any event I think it's useful the commission to be provided with this background material, given our claim in this area. Now I don't propose to go through them all except to highlight one. The junior staff in Victoria, Western Australia and the Northern Territory the on-call rates are linked directly to salary and in New South Wales, Victoria and Western Australia no distinction is drawn between remote and close calls. Now you will recall that we are proposing to remove that distinction in our claim with the availability of pagers and mobile phones we see that the need to be confined to one's residence no longer seems imperative.

I should say that on the third page of the New Zealand document should have a heading indicating that it refers to senior medical practitioners. You'll see from this document that in all States except Tasmania, on-call rates for senior medical practitioners are expressed in terms of a percentage of salary. The ACT has the same all-purpose allowance as in New South Wales.

COMMISSIONER WATLING: Are they by consent or by arbitration?

MR HOUSE: All of these or the ACT?

COMMISSIONER WATLING: All of these. You're saying they're all, except Tasmania, are a percentage of salary. Any been arbitrated?

MR HOUSE: Not that I'm aware of sir. Again with the South Australian one that came out of a work value case.

COMMISSIONER WATLING: An agreed matter?

MR HOUSE: Yes. To be honest with you yes. They're not contested in the way the matters are here.

COMMISSIONER WATLING: So the actual principle wasn't up for debate?

MR HOUSE: Well one - I think it's a bit like - they're

not all the same. In some of them the question has been that the parties have acquiesced or the employers have acquiesced and said "well it's up to you to satisfy the commission" in the way that I said about Queensland this morning, so that there's been a consensus reached between the parties subject to the matter going and being tested in the commission. In South Australia there was a requirement to provide extensive work value cases and I understand, before Judge Stanley, to justify the award restructuring and salary allowances and the additional, as mentioned there, five percent continuous duty allowance. But I'd be misleading the Commission if I said that those are matters of vigorous debate and putting an extreme onus on the commission to rule on one way or the other.

The New South Wales - I'm not sure of whether you're aware of the sorry history of that one - it used to be twenty percent of salary. It was a matter that was worked out between the parties and implemented administratively and only came to the attention of President Fisher in the New South Wales' work value case and he was not very impressed to say the least and it's now seventeen point four percent because he said well it wasn't to be adjusted in terms of the work value increase.

COMMISSIONER WATLING: And it's interesting to note that that's their rate for excess time too.

MR HOUSE: Well it's an all-up rate, sir. It - theoretically a specialist should be available whenever to perform services and the seventeen point four percent provides for that. There's no hours clause. It's -

COMMISSIONER WATLING: Well what's the excess time there for?

MR HOUSE: Well what I'm endeavouring to say, sir, is that it's one way, seventeen point four percent, which counts for superannuation and so on. There's just the one - it used to be twenty percent - seventeen point four. It is supposed to be reimbursement for all purposes of out-of-hours' work.

COMMISSIONER WATLING: Right but that's the point I'm making. You have got a claim for excess hours of really a penalty rate.

MR HOUSE: Yes.

COMMISSIONER WATLING: On top of this claim for a percentage on-call hours.



MR HOUSE: Oh, yes. Yes, well we've settled for 17.4 for - - - -

COMMISSIONER WATLING: Whereas New South Wales - - -

MR HOUSE: I think that would be costly.

COMMISSIONER WATLING: Yes, but I'm not disagreeing. The point that I'm making is that that 17.4 per cent is a combined rate, it includes everything.

MR HOUSE: Yes.

COMMISSIONER WATLING: It's not just call back.

MR HOUSE: Yes. Well we contemplated that and then we thought the expense might be too much.

COMMISSIONER WATLING: No, but I'm - don't mislead me. You're putting this up as an - what on-call and call-back is in New South Wales. I'm saying to you it's not quite factual because it includes more than on-call and call-back?

MR HOUSE: Yes.

COMMISSIONER HOUSE: Right. That's the point I'm making. So New South Wales is - we must look at it in a suspect sort of way in relation to your claim?

MR HOUSE: Yes. It's - it's certainly not clear cut, but they have chosen a percentage approach for - - - -

COMMISSIONER WATLING: Well that might be because of other reasons. They might have bundled a whole series of things up and put it in a package and - - - -

MR HOUSE: Well I should have researched what the situation was before.

COMMISSIONER WATLING: What would be relevant in this case would be for me to know the percentage amount for on-call. But of course that would be very hard to determine because it's bundled up in a rate and it may not be clearly identifiable.

MR HOUSE: When we've got an argument for the Federal Commission about this, and in terms of whether it's counted for purposes of redundancy package, the employers are saying, "Well overtime works as time, or any activities associated with out of hours work, shouldn't be counted", we've accepted that, but we are looking at what component might be what. I don't think I should go any further than that seeing as it's still in a negotiation stage, and even so it would be an estimate on our part. Sir, now concerns being raised - - - -

COMMISSIONER WATLING: Can I just then - let's go down to Victoria where, we've said in New South Wales we haven't been able to really determine the rate for sort of on-call because - now what about Victoria, what's that 10 per cent?

MR HOUSE: That's the 10 per cent we were talking about this morning.

COMMISSIONER WATLING: Just on-call. What does the rest of the stuff mean after that?

MR HOUSE: For call-back, payment of weekly salary for travelling time plus time and a half, that's the New Zealand way apparently, time for weekends and public holidays respectively, that time and a half would apply, you know, for the normal - during the week, and double time for weekends and public holidays. And then they say there's a further continuous duty allowance where there is a requirement to remain on duty when patients needs so require.

COMMISSIONER WATLING: And do they get extra leave in Victoria?

MR HOUSE: Yes. That's - this morning we were talking about it. That there's the one where - there's the 10 per cent plus the one week extra leave by administrative action.

COMMISSIONER WATLING: Righto. Now Queensland?

MR HOUSE: Well there's on-call payment of 90 per cent of one hour's pay. That's for the whole of the on-call period which is - I think it's 6 p.m. to 8 in the morning, at night, and the rest time in the day, that's what I've got here - sorry.

COMMISSIONER WATLING: So is that 90 per cent of one hour  
- - - -

MR HOUSE: One hour's pay.

COMMISSIONER WATLING: So if the hour's pay is 10 bucks they get nine dollars - - - -

MR HOUSE: For the whole period.

COMMISSIONER WATLING: For the whole period?

MR HOUSE: Yes.

COMMISSIONER WATLING: So that's very similar to Tasmania in that it can be a set amount?

MR HOUSE: Yes, but it's linked to pay.

COMMISSIONER WATLING: Linked to pay, yes. Righto.

MR HOUSE: That's the point that we like. Or 45 per cent for Saturday, Sunday and public holiday or 6 p.m to 8.30, I should have said. Now the call-back payments of time and a half of the hourly rate in the evenings and Saturdays with a minimum of two hours payment for the first call and a minimum of one hour pay for each subsequent call-back in any 24 hours. But that's if you're called backed within



the first two hours then you can't claim another hour. It's got to be outside the first two hours, and double time for Sunday and public holidays. In Western Australia, which is the one I wanted to refer to, it's the same for juniors and seniors, sir, so can I go to the actual Western Australian Provision on page 2 at the bottom of page 2, and I've actually quoted a clause there, and it says:

"A medical officer rostered on call shall be paid an hourly allowance equal to 18.75 per cent of the ordinary hourly full-time salary rate prescribed from time to time under Clause 8, salaries for a medical officer level 5."

Well, sir, it would be a different level in the specialist one but it's a rate, a set rate, within the structure.

"Provided that payment in accordance with this paragraph shall not be made with respect to any period for which payment is otherwise made in accordance with the provisions of this Clause when the medical officer is recalled to work."

And that's sub-clause 15(b) of the Metropolitan Teaching Hospitals Salaries and Conditions of Service Award 1986, Medical Officers. Now I was going to talk a bit later about the problems of overlap and double counting. But that one, I should say, is the only one where there is a specific reference to - that you don't continue to receive on-call when you're actually recalled, as far as I could find.

MR. HOUSE: Now the -

COMMISSIONER WATLING: So in fact it's the same rate that applies to everyone, the same as Tasmania?

MR. HOUSE: Yes.

COMMISSIONER WATLING: It's a percentage of a rate?

MR. HOUSE: It's a percentage of a salary, salary rate, of one of the points, taking up your point, the disability falls evenly on everyone, but it's a percentage. It's a percentage that we like.

COMMISSIONER WATLING: Yes, but it's not a percentage of the individual salary, it's a flat amount, because you just get 18.75 per cent of a set rate.

MR. HOUSE: Yes.

COMMISSIONER WATLING: And everyone gets that rate whether they're on a hundred thousand or whether they're on fifty thousand.

MR. HOUSE: Yes.

COMMISSIONER WATLING: Now you're claiming a percentage on the individual's salary.

MR. HOUSE: Yes, at a certain point. We've set, I think fixed a point now, we're saying one and a half hours - well we've got two but -

COMMISSIONER WATLING: Yes, you've got two.

MR. HOUSE: Yes. Well we've come part of the way there. At one and a half hours a night, this with junior staff, Monday to Friday, which is, you know, a flat rate for the period, and with the senior staff, if they're on call roster for one and three or less, seven and a half per cent, a base salary of a level 4, grade 3. If permanently on call, they're on a one and two roster, seventeen and a half per cent, and a base salary of a level 4, grade 3. We're not really opposed to the sort of construction of a flat rate in the sense other than we believe it should be linked to salary.

COMMISSIONER WATLING: But if you were to link it to a percentage rate to one salary level, the effect would be one rate for all.

MR. HOUSE: Yes.

COMMISSIONER WATLING: Well what's the difference?

MR. HOUSE: Well we believe that three dollars fifty two, or



whatever it is, just sits there.

COMMISSIONER WATLING: Yes.

MR. HOUSE: And doesn't necessarily get adjusted.

COMMISSIONER WATLING: Well whose fault is that? That's the applicant's fault. The wage fixing guidelines have allowed things to be varied year after year. We haven't seen any application from the Salaried Medical Practitioners Society. In fact this Commission regularly adjusts allowances in the public sector when applications are made. In fact the General Conditions of Service Award -

MR. HOUSE: Well we weren't, sir, casting any aspersions on the Commission about not doing it. What I am saying is given my experience in this area then we probably would certainly not go ahead as a consent matter.

COMMISSIONER WATLING: But the wage fixing guidelines allow allowances to be varied but you've just got to take the case.

MR. HOUSE: You're right, we're being lazy.

COMMISSIONER WATLING: I thought you'd got the drift.

MR. HOUSE: Mm?

COMMISSIONER WATLING: I thought you'd got the drift.

MR. HOUSE: In South Australia there they have an on call allowance of five per cent of annual salary plus an additional -

COMMISSIONER WATLING: So would that be the main argument? What's the main argument for linking it? Is the main argument for linking it to a percentage based on that you don't want to make application to vary it from time to time?

MR. HOUSE: Well we believe in terms of award modernisation that it's appropriate that it be linked to salary and that is our main argument but I'm not going to deny what we've just talked about. Our approach is that's the way we believe it should be done and we've tried to do it at negligible cost.

COMMISSIONER WATLING: In the Western Australian one, they've only got one rate for on call. You're seeking a couple of rates for on call.

MR. HOUSE: Yes.

COMMISSIONER WATLING: What's the argument in relation to two rates?

MR. HOUSE: Well primarily I think it relates to the incidence of on call in terms of junior staff and senior staff. Now -

DR. JUPE: Do you want me to answer that?

MR. HOUSE: Well you can advise me.

DR. JUPE: Well you're paying for expertise. The difference between the junior staff on the one hand against the senior staff.

MR. HOUSE: Well the Commissioner is not impressed with that argument and I have run that one.

DR. JUPE: The other thing about that is that we'd be delighted with that Western Australia figure. It costs them about three times more than anybody else. You don't pay the cleaner the same as what you pay the administrators.

MR. HOUSE: Well, sir, I am instructed, and this has been the case in the Northern Territory as well, that having a senior registrar or a specialist on call and recall is far more efficient and productive than a resident or a junior registrar. This has been said to me outside this case that the specialist can identify and deal with problems much more quickly and much more confidently without the need to seek further advice than - and I'm not putting the junior staff down, this is to reality as I'm informed in an argument that I've had in the Northern Territory about specialists because of peculiarities in Alice Springs, they're having to roster specialists on as registrars because there are not enough registrars and there's some argument about what they should be paid, whether they should be paid as registrars or as specialists.



MR. HOUSE: But I am aware that you have some reservations about that and particularly in terms of on call.

COMMISSIONER WATLING: I don't have any reservations, I think what I have done is I have asked the question about what is on call for and on call allowances throughout this country are generally on the basis that someone gets paid a certain amount of money for the inconvenience for being on call.

MR. HOUSE: Yes, restrictive.

COMMISSIONER WATLING: And that is what it is for, that is the purpose of it, even if that inconvenience exists or it doesn't and if it does exist it is a question of whether someone should get an allowance.

MR. HOUSE: Well I am further instructed, sir, without wanting to be impertinent, we would be quite happy to adopt a Western Australian rate as a uniform rate.

COMMISSIONER WATLING: Oh, of course, in fact I would think you would be quite happy to accept higher I have no doubt of that but I am not talking about the Western Australian rate, I am talking about the principle and I was discussing the principle not the 18.75, I never mentioned that. What I was discussing was the principle of one rate, that is what I was discussing, I wasn't discussing the 18.75 nor am I offering it nor am I making any judgment whether it is or is not appropriate, I just make the comment in Western Australia it has one rate, that was the argument, and it is a percentage of a salary, clearly identifiable salary rate, that's the point.

MR. HOUSE: Well I have no instructions but we don't have unfortunately sufficient information in terms of the costings and you know how we might justify our percentage approach in the way that it's - to bring out something that is cost neutral.

COMMISSIONER WATLING: What do you say for example if I were to give you a percentage rate? If I was to give you a percentage rate of a certain salary level it would come out at a flat amount of money for everyone, right?

MR. HOUSE: Yes.

COMMISSIONER WATLING: Your claim is not that, your claim is a flat amount for one group and another flat amount for another group?

MR. HOUSE: That's right.

COMMISSIONER WATLING: Right, so yours is not like the Western Australian one.

MR. HOUSE: Well in terms of the senior staff or medical practitioners not on a duty roster we have endeavoured to take into account the degree of having to participate in on call.

COMMISSIONER WATLING: Yes, righto, well if you want to use the other States in Australia to prove your point now take me to the other States in Australia where they have differentiated.

MR. HOUSE: In South Australia.

COMMISSIONER WATLING: Yes.

MR. HOUSE: There is an on call allowance of 5 per cent plus a 5 per cent continuous duty allowance. Now the continuous duty allowance is where you are on a heavy on call and recall programme, that is one.

COMMISSIONER WATLING: Yes.

MR. HOUSE: And in Queensland, it is not in here but there was what was called a flexibility allowance which again was available to people who had a heavy out of hours work load, which is not quite the same as on call.

COMMISSIONER WATLING: No, I am talking about on call. Take me to the other States in Australia where they have differentiated between employees that are on call.

MR. HOUSE: Well my difficulty, why I am hesitating, sir, is I am not sure in Queensland whether the on call payment of 90 per cent of one hour's pay is tied to a specific rate in the structure. I think it is but -

COMMISSIONER WATLING: Well neither(?) am I, that's why I asked it because I am not to know that from this Exhibit.

MR. HOUSE: No. The Victorian one I am pretty sure it is 10 per cent of salary but I couldn't vouch for that. That's the way it has always been put too me, no one said 10 per cent of specialist class 1 or whatever. New South Wales, obviously that is - I know for sure that that is 17 per cent of what ever salary you are on.

COMMISSIONER WATLING: Yes but that is so odd that it doesn't even conform, that has even got excess time in it, it is in all that rate.

MR. HOUSE: Well I would have to - the Exhibit is deficient in that respect and again perhaps I should have done what I have done with the juniors, actually gone to each clause which I can do for the Commission, actually call



up every clause.

COMMISSIONER WATLING: Righto, we'll continue.

MR. HOUSE: Would you like me to provide you with that information?

COMMISSIONER WATLING: It's your case, not mine.

MR. HOUSE: Well I will provide you and the Department with that information, in fact I was supposed to be preparing a schedule that does summarize all that anyway.

Now, sir, the other problem we have got with this is, which you have quite rightly pointed out, the apparent overlap between being paid to be on call and receiving call back payments which specially led to in principle problems identified by the Commission at page 491 of transcript. I don't know whether I can overcome that problem but I would like to make the following points: Firstly, conscious of the negligible cost requirements of the principles, our claim for a percentage of salary basis for on call payments has as far as we can been constructed conservatively -

MR HOUSE: -- and with a view to not significantly increasing costs over the cost of the present flat dollar amount system. Secondly, as I pointed out, it appears that only in Western Australia that the Awards specify 'no double counting'. Thirdly, we believe it would be administratively cumbersome and costly to discount oncall payments for periods of recall. And lastly, however, if the Commission concludes that there should be no oncall payments during periods of actual recall or call back, we would suggest that the payment for each oncall period, as we have proposed, should be discounted by five percent for every hour of recall.

COMMISSIONER WATLING: I thought the V.M.O. decision might have given you a bit of an insight into my thinking of this?

MR HOUSE: Yes. Well, it certainly gave me an insight. The difficulty we have, sir, is the question of the incidence of recall and whether it's appropriate to roll it up and particularly in terms of people who are on

COMMISSIONER WATLING: You mean on the point of being paid an amount of money whilst oncall and then being called back, that you wouldn't receive both payments, otherwise it would be 'double counting'? How can you be paid for oncall when you're actually not oncall?

MR HOUSE: Well the question is -

COMMISSIONER WATLING: You're actually back on work and being paid as such.

MR HOUSE: Well what - it doesn't deny the approach but what we have is situations where in some cases people are on a one-in-one roster so, you know, every night in a week or one-in-two rosters. That's one problem. You've got others in one-in-five, one night in five, that's in terms of the oncall one.

COMMISSIONER WATLING: So under your programme do you envisage someone getting an oncall allowance of a certain percentage of a couple of salary levels and when they're recalled to be paid their normal hourly rate, plus the oncall allowance?

MR HOUSE: That is the proposal as it stood and that's where the Commission had great difficulties and we discussed that at length and I've just tried to make a submission and it says that we're not sure that apart from N.W.A. that is not the case elsewhere, and secondly that the paperwork associated with discounting, if you like, for



periods of actual recall, maybe burdensome, however if that principle of avoiding a 'double counting' has to be observed we've suggested a proposal where there'd be a discount. But as to rolling it all up, as I say, the incidence of being oncall and the incidence of actual recall may vary and not necessarily uniformly, so you could have one person who is oncall, one-in-five, but has a high level of recall and have another person whose oncall prior to - just about every night and not have a great deal of actual recall. That might be quite distinct from the amount of phone calls and inquiries that are coming through. We've had - they've had this problem in other areas and different hospitals where it differs and the amount of people that are available to cover rosters and to cover recall differs and if everyone just gets the same then there maybe a feeling that the burden not only isn't being shared evenly, it's not being remunerated even. I'm instructed that in a lot of cases it would be unacceptable and I must say I've found that to be the case, in the Northern Territory for example, where some people suffer a very high - they might have only one orthopaedic surgeon and one general surgeon to cover the whole hospital and perhaps a Registrar to share the oncall. In New South Wales, no doubt, they can get away with this 17.4 in that certainly in the major hospitals there's staff resources such that it is possible to share the burden of out of hours work more evenly.

MR. HOUSE: Yet when you get in the smaller Hospitals the more difficult it becomes. Mr. Commissioner I would like to conclude today's submissions by endeavouring to summarise the main aspects of our Award re-structuring claim, having regard to the Commission's principles and in particular to the structural efficiency principle, and terms of conditions changes, negligible cost considerations. Now overall objective has been to try to make the Medical Practitioners a public sector Award, as comprehensive as possible, and with the Commission's assistance along the way technically sound, unambiguous and user friendly. The first area of major change to the Award is our claim for the development of a single four-level structure, with associated classification standards to cover all salaried Medical Practitioners employed in the State Health system. In doing so we propose a reduction from thirty-eight salary levels, or gradations, in the current Award to just thirteen in our proposed Award. In addition to placing all existing groups into the one we have also sought to incorporate a new group which may be described as career Medical Practitioners. The new integrated structure is designed to provide greater flexibility in deployment of staff, better career opportunities, encourage up-grading of skills and qualifications, as well as to provide administrative efficiencies. It may be said that our proposed structure, if adopted, would be the most compact for salaried Medical Practitioners in Australia. Similarly, we are not aware of any other State where position classification standards have been developed for Doctors, and in - it should be - have been developed for Hospital Doctors or all Doctors in the Health system as in the Commonwealth and the A.C.T. such standards, and they are the only other ones that exist to my knowledge, are limited to non-Hospital Doctors.

Consistent with developing a single structure for all employees covered by the Award we are proposing standard working hours of thirty-eight per week to apply and that there be more uniformed entitlements or access to leave provisions where this is justified, where there is justification for removing artificial barriers that presently exist. We have endeavoured to simplify the regime of work related allowance, having regard to the negligible cost criteria and the desirability of absorbing allowances into salary rates wherever practical. We have proposed very flexible arrangements for permanent part-time employment with the only restrictions on that employment being aimed at inhibiting casualisation which as you know we strongly oppose. With this mind we have endeavoured to minimise the on costs of employing part-time people, without discriminating between part-timers and full-timers in terms of essential conditions of employment, as compared with or contrasted with the situation with casuals. We have re-cast the



on-call provisions to - as we have just submitted to you, reflect more closely modern day Award requirements by doing away with distinction between remote and close call and trying to restore a relationship between on-call rates and ordinary time rates.

We have sought to incorporate more flexible leave provisions into the Award, having regard to the negligible cost criteria, sick leave entitlements for example should be standardised at twenty days per year for all, fully cumulative instead of the present complex dual arrangements in the registered agreement.

We have sought contemporary provisions to protect members who may contract diseases that limit their ability to practice. Fortunately so far these cases are rare, but we seek to enable continued employment to be available or alternatively income maintenance for at least twelve months exclusive of Workers' Compensation entitlements. We say sabbatical leave should be capable of being taken in smaller or larger bites depending on individual requirements for professional development programmes. On the other hand we support a limit being imposed on the accumulation of sabbatical leave if it is to serve its purpose, a regular on-going professional development, and provide dividends in terms of improving the health system.

MR J HOUSE: Finally, we have sought to modernise definitions and terminology in the award, provide for parental leave and incorporate relevant general conditions of employment into the award. Again, we submit, at negligible cost. If the Commission pleases.

COMMISSIONER WATLING: Good, thank you. Well, where does this leave us. This now leaves us in deciding the issue that I foreshadowed on the last occasion.

MR. J. HOUSE: That's correct, sir.

COMMISSIONER WATLING: And I want to say that I have arrived at the conclusion that I would desire the employer to present submissions to the Commissions on the submission that have been placed thus far and that goes without saying, we haven't looked at the work value component of this at all even though we've looked at structures, we haven't put any salary rates alongside them. I would like to enter the work value component of this case knowing exactly where the employer is coming from and to that end I'm going to adjourn this hearing to enable the employer to respond to the employee's submission and however, I must say that I will reserve my decision on the submissions put until the conclusion of the work value component. But I just want to be in a position of heading into a major work value case knowing where the employer is coming from. To this stage, I don't know a thing and I would want to hear that. I think it would be unfair on the Commission and the parties if we didn't know the employer's view on the award restructuring side, if I could put it in that context of this claim. Now, that means we've got to consider the length of the adjournment until the employer responds. The first thing I take into consideration is that there is need for both sides to have the complete transcript and therefore I think we're currently one day behind, aren't we, today?

MISS J. COX: Other than -

COMMISSIONER WATLING: Everything until today's?

MR. J. HOUSE: Other than today.

COMMISSIONER WATLING: Yes. Righto. Now, the way things are going that's going to be a couple of weeks down the track, today's transcript. And therefore, it will take some time, in my view, for the employer to pull it altogether. I'd have to say it's not the easiest transcript to follow and in view of the number of adjournments and the number of times we've looked at issues, the number of times that the issues have been revamped, the number of times we have deferred subject matters for further submissions, it's quite complex to follow. One thing we can say, I suppose



is, from today's hearing, H14 is the consolidated document of the employees' claim along with the current H10 as amended by today. So they are the essential documents that we're working off and they're certainly the essential documents I'm working off and the up-to-date picture so far as the employees' claim is concerned.

So I'm - may we just turn off the record and we'll have a look at some dates.

These proceedings will adjourn until Monday the 2nd of August, 1993, commencing at 10.30 p.m. at which the employer will respond to the submissions presented thus far by this Association or the Society, sorry. This matter now stands adjourned.