

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 4014 of 1993

IN THE MATTER OF an application by the Health Services Union of Australia, Tasmania No. 1 Branch for the making of the Community and Health Services (Public Sector) Award

T. No. 5032 of 1994

IN THE MATTER OF an application by the Minister administering the Tasmanian State Service Act 1984 to vary the Community and Health Services (Public Sector) Award

re recall, on call, close call;
Hours of Work - Day Workers; Time
in Lieu - Holidays with Pay -
Shift Workers; Sick Leave;
Translation Arrangements

COMMISSIONER WATLING

HOBART, 20 April 1994
continued from 19/4/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances please.

MR M. WATSON: If the commission pleases, MARK WATSON; I appear on behalf of the minister administering the Tasmanian State Service Act, and with me is **JOHN McCABE**.

COMMISSIONER WATLING: Good, thank you.

MR T. KLEYN: If the commission pleases, appearing on behalf of the Health Services Union of Australia, Tasmania No.1 Branch - TOM KLEYN.

COMMISSIONER WATLING: Good, thanks, Mr Kleyn.

MR P. AIKEN: If the commission pleases, PETER AIKEN, representing the State Public Services Federation Tasmania.

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

MR WATSON: Commissioner, in my submission yesterday there were two matters that - that were outstanding; they were the decision that I referred to in relation to the nursing matter with regard to the minimum recall period determined, and also some information on cost savings in relation to our application regarding recall. So I'd like to address those two matters first up if I can.

COMMISSIONER WATLING: Yes.

MR WATSON: And then allow Mr Aiken to - to make any comments that he sees fit.

COMMISSIONER WATLING: Right.

MR WATSON: And just in relation to procedure, I just wonder what your views are on how we should approach today - whether you should hear my submission in relation to sick leave as well, then the union's side, and then I just reply to the whole lot, or do you want to treat each matter separately?

COMMISSIONER WATLING: No, I treat each one separately.

MR WATSON: Okay - yes. Okay. Commissioner, I'd just like to table that decision that I referred to yesterday.

COMMISSIONER WATLING: Right, we'll mark this exhibit W.8.

MR WATSON: Now if I can just - just make a couple of preliminary comments; this is a decision of Commissioner Smith and Commissioner Cross.

COMMISSIONER WATLING: So it's of less value than the other one yesterday.

MR WATSON: Well it's not a full bench decision - no.

COMMISSIONER WATLING: So it's diminished by three or five or whatever.

MR WATSON: But nevertheless Commissioner Smith and Commissioner Cross were members of the five member full bench that - of that decision that I handed to you yesterday, and that full bench delegated to Commissioners Smith and Cross the conditions matters to be determined for that case, much the same as the full bench has delegated this issue to you to determine conditions, et cetera. So if I can take you to page 4 of the decision.

COMMISSIONER WATLING: Right.

MR WATSON: Now this decision was written in regard to recall, on call and overtime. Now there's a specific matter - a specific reference in the decision to recall is in - starts in the third paragraph on page 4 - and I quote there:

The next matter which falls for our determination is the minimum period of recall.

In the next paragraph, if I can go to the last sentence there and quote:

This approach tends to reinforce the proposition that if a person is recalled to work then it is only reasonable that a fair payment is made for the disabilities suffered. We hold the view that, against the background of the objectives of structural efficiency, the level of minimum recall should balance the objectives of efficiency and productivity with an appropriate recompense for being recalled to work.

And again, in the second last paragraph in the last sentence, the - or Commissioners Smith and Cross make their decision or determine the matter - quote:

Having regard to the totality of our decision, we have decided that a minimum period of three hours is an appropriate period for the purpose of compensating an employee who is recalled to duty.

So when they talk about there 'the totality of our decision', what that means is that again, as we went through in some detail yesterday, the National Rates Case was a package, that was salaries and conditions together, so that's what they mean there by the totality of the decision.

So that's the only reference to recall in the decision,

commissioner, and that's the one that I referred to yesterday.

COMMISSIONER WATLING: Right, thank you.

MR WATSON: In relation to - to cost efficiencies if our application was to be successful, we have done some - some estimates and we would have to spend a great deal of time on these to get a very precise costing, but I could indicate to you that - that our estimates at this stage based on the call outs that have occurred so far in this financial year, we would stand to save between and 150 and \$200,000 statewide for the agency, if our application was successful.

COMMISSIONER WATLING: Two hundred and fifty thousand to -

MR WATSON: One hundred and fifty to 200,000.

COMMISSIONER WATLING: Right.

MR WATSON: And that would be on the basis of the reduction from 4 hours to 3 hours and there would be further - there would be the potential for further savings if our application was successful in relation to the subsequent recall issue.

COMMISSIONER WATLING: Right.

MR WATSON: Now that's - that - they were the two matters that were outstanding from yesterday, commissioner.

COMMISSIONER WATLING: Just while on that, and I notice that you're saying that it's - could be a saving from 100,000 to 200,000 a year, what have you done as management to sort of alleviate the necessity for call back; how have you engineered the cost away over the years?

MR WATSON: Well I think, in general terms and -

COMMISSIONER WATLING: Can I just say that I think that you have a responsibility as management to make sure that call back is not something that's used excessively and I think you have a role in terms of management to tighten up the use of call back.

MR WATSON: Yes, I agree with that one hundred per cent, commissioner, and in fact if I could refer you back to that decision of Commissioners Smith and Cross, they - they actually make those sort of statements in the decision. If we go back to page 4 - just bear with me for a sec -

COMMISSIONER WATLING: Is that the second last line of the paragraph that you quote to me?

MR WATSON: I'm just - I know it's in there somewhere.

COMMISSIONER WATLING: It's in the second last paragraph if you're looking for it - it says -

MR WATSON: Oh, yes.

COMMISSIONER WATLING:

- clearly it's a function of management to ensure that recall periods are used efficiently.

MR WATSON: Yes, yes. So - so that -

COMMISSIONER WATLING: Not frivolous.

MR WATSON: - yes, that's right, commissioner. Thank you for that. That - so that's - you know, they've made their observations well and we don't - we don't deny that.

COMMISSIONER WATLING: So what have you done to - to make sure that that doesn't happen and what reviews have you carried out in terms of making sure that it's used efficiently and not used frivolously?

MR WATSON: Well I guess what I can say to that is, that we have in a number of areas not necessarily solely initiated by definitely been a significant party to agreements, as Mr Aiken referred to yesterday, to put in shift arrangements which would -

COMMISSIONER WATLING: Yes, but that's in three areas and -

MR WATSON: No, but it's also happened on the north-west coast and it's also happened in some areas of the LGH.

COMMISSIONER WATLING: Right.

MR WATSON: So it's not specifically defined to the Royal.

COMMISSIONER WATLING: So in terms of call back and the use of call back within the system, what percentage would that be? The percentage of call back in those areas - because we heard - excuse me - evidence yesterday that we were talking about four and five employees in those areas. Now I would have thought that call back goes beyond four and five employees and - and I'm just trying to weigh up how much weight really I should put on those - those comments made by Mr Aiken as well, because are we looking at large numbers?

MR WATSON: In relation to call back?

COMMISSIONER WATLING: Mm.

MR WATSON: Well in relation to the number of employees that actually get called back do you mean?

COMMISSIONER WATLING: Mm.

MR WATSON: I don't have that information - I can get it for you but I don't have it with me today in relation to say, okay well we have 500 people statewide who get called back for different reasons. I don't - I can certainly get it for you but I don't have it today.

COMMISSIONER WATLING: And the areas that were quoted yesterday - you might be going address it your - well - in private, in that case I won't sort of pester you with it, but I would have been interested to find out what percentage of the employees on call back or used the call back system fell within the areas that Mr Aiken quoted yesterday or whether that was indicative of the whole of the service. It may well be that the areas that Mr Aiken raised yesterday as change areas may only be five or 10% of the whole of the system.

MR WATSON: Yes. Yes, okay, I understand what you mean there. Just - just going back to the other - the other ways that we may have ensured that there is no frivolous access or - or - I won't say abuse - but just in relation to that management issue, and I think Mrs Griffiths referred to it yesterday, but we've also got a system wheresomeone who is on call would - would report to the switch when they get there so as the switch knows that they're in the hospital and they also report to the switch when they're going so as to make sure that there's no further calls to alleviate the problem where they might go home, say, and then have to immediately come back, so that's another system which you'll find is fairly common within the hospitals, that - that to alleviate that system where they might go home and immediately get called back.

COMMISSIONER WATLING: Mm.

MR WATSON: So - but I can address that question that you just asked but I can't do it on the spot now.

COMMISSIONER WATLING: Mm - right.

MR WATSON: Okay, thank you.

COMMISSIONER WATLING: Right, now, Mr Aiken, do you want to respond to that part of Mr Watson's submission and then we can go on to Mr Kleyn.

MR AIKEN: Sure, thanks, Mr Commissioner, look, firstly with exhibit W.8, I'd probably at this stage to make comment on that. As I indicated yesterday, I don't have a great deal of knowledge with respect to nursing and conditions and this is the first time I've actually seen this decision - I'd need some time to look through it. What I might do is actually

defer to my colleague, Mr Kleyn, to comment on that, which no doubt he will do as part of his submission, purely on the basis that I don't have the expertise. However, in relation to the comments regarding the savings - the potential savings - of 100 - it was 150,000 - to 200 - I - I believe - that that actually is quite minuscule when you consider the whole state - or budget for the Department for Community and Health Services, when we're thinking somewhere in the vicinity of - and correct me if I'm wrong - \$400 million per annum - that the saving is minuscule. However, what I - if we look at those savings, what has to be taken into account is the savings that have already been achieved as evidenced by my witnesses yesterday, that they certainly have through generating the modified shift systems saved the department extra money to - in those costs, and that has been to their instigation.

In relation to the question that you raised about percentages - what people on call - I could answer that question myself, but certainly that those few areas - I mentioned five yesterday - is an indication that people aren't actually rorting the system - it's not a cost exercise. The provision of costs this morning, I would submit is it supports my contention yesterday that what we're experiencing is actually money grabbing or money saving exercise from the department, no more, no less than that - that the employees actually have demonstrated there willingness to address the systems internally and to - to move on, I would ask you to have regard to those calls - those modified shift systems and apart from - I think I would leave it that, if the commission pleases.

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

MR KLEYN: Thank you. If the commission pleases, the Department of Community Health Services has lodged an application to vary the conditions of employment in respect to call back, on call and close call. Now the Health Services Union opposes this application and submits that the clauses that are currently in the Hospital Employees (Public Sector) Award namely, the call back, remote call and close call, should be inserted into the new Community and Health Services Public Sector Award.

It's our view that the department has seen fit to attack the conditions of employment of their employees at a time when those same employees have spent a considerable amount of time, a considerable amount of effort, reorganising their work and undergoing significant workplace change and reform in order to improve the efficiency and effectiveness of the agency.

Since the memorandum of understanding was signed in October 1992, the employees in the agency - right throughout the agency - have undergone significant work reorganisation, they've undergone a process that has caused them considerable

stress, it's been on top of their normal workloads, and they've entered into this process in the spirit of goodwill and with a great deal of cooperation.

It has always been the view of the Health Services Union, certainly, and it's members, that we've been prepared to cooperate with the department in seeking improvements and - and efficiencies and improvements in productivity in accordance with the structural efficiency principle and other processes. But it's not been our view that simply cutting the conditions of employees is the appropriate way to - to - to improve efficiency. We see that as merely an exercise in cutting costs rather than an exercise in improving the efficiency of the organisation.

During the time since the MOU there have been numerous reviews. I would say that the bulk of the employees in the agency have been reviewed, examined, re-examined, re-reviewed on numerous occasions and the process continues. All through this process the employees have cooperated. We've been able to provide nominees for various working parties, we've provided training to those people to participate in those working parties and the - virtually the whole of the health agency is being reviewed in some way, shape or form. As part of the MOU we have agreed to a number of reviews of other - of major reviews, for example, the introduction of cook-chill in the Royal Hobart Hospital, which in itself has - will generate considerable savings for the agency. The Willow Court and Royal Derwent facilities are undergoing dramatic downsizing programs which again will save the agency a considerable amount of money. A number of services on the north-west coast have been privatised or are in the process of privatising, and I understand - I think the Mersey Hospital is in the process of being privatised and that could generate considerable savings again.

So if you look at the entire health - health service, well to go on - I could go on a bit further and say that Douglas Parker Rehabilitation Centre has been transferred and St John's Park is also in the process of being transferred to the private sector, so if you look at the entire health agency, there have been a significant number of changes, all of which have cooperated with - in - and there have been significant savings made. We don't see that an attack on the conditions of employment of those employees is an appropriate way to - to improve the efficiencies further.

The - another issue that I would like to raise is the creation of this new award, in fact. I mean Mr Watson from the department mentioned yesterday that we're a forefront of workplace reform in this agency - that we are way out in front in terms of workplace reform and award restructuring, and it seems to me that we should be looking at this award in an innovative way - not simply a matter of let's look at the - at

some conditions that we have had in our mind for a number of years and let's try - use the award to - to reduce them. So it's our view that - I accept - well I don't accept the argument that Mr Watson put that we should look at the total. If we're going to look at the total salaries and wages package of the award then perhaps it would have been a more appropriate way to look at - to come to the commission with a total package rather than the department looking at the conditions that were contained in the Memorandum of Understanding in isolation to - to the other conditions and salaries in the award.

So in one respect we were - we are prepared to accept that we can look at the total package, like all the conditions and all the salaries, but we acceded to the department's request that we look at the memorandum of understanding conditions in isolation. So to argue that this is a total package, I think that the department should have - should have actually practised what they are now preaching in this commission.

So as well as that, I'm going for workplace reform and all the changes -

COMMISSIONER WATLING: Can I just make a point on that; that there's no doubt in my mind that these issues that I'm dealing with are separate issues and I am looking at them in isolation because it is part of the memorandum of understanding.

MR KLEYN: Yes, I understand that and -

COMMISSIONER WATLING: And I would have preferred to have dealt with all the conditions together, but it's not up to me to interfere with your agreement - your memorandum of understanding. If you've agreed to that then I'll be just looking at these issues because it is part of your memorandum of understanding to look at them separately and first.

MR KLEYN: Mm. Yes. The reason I raise that, Mr Commissioner, is that Mr Watson from the department put the view that we are looking at a total package of conditions and salaries. Now we're not actually; we're looking at a number of conditions matters in isolation to those and as a result of that agreement we - we are, I suppose bound to do that.

The - to go on, the HSUA accepts that the agency needs to look at how services are delivered. We have - we accept that the department has a responsibility to taxpayers and we've accepted that, you know, we need to continue to look at the better - best way to deliver health services.

I concede that there have been some difficulties between us but generally speaking I think we've cooperated throughout all the processes that we've undergone. I submit that the application today is simply a matter of cutting workers'

conditions and it does not result in any more efficient operation. I contend that the reduction in the current conditions is not conducting a review. The - Mr Watson stated yesterday that as part of - I think it was exhibit W.3 - that the attachment to the memorandum of understanding indicates that we are prepared to conduct a review of a number of conditions in the award. Now it is not - it is my view that conducting a review is not simply coming to the negotiation table and saying, well look, this is our - our proposal - these are the conditions that we want to reduce. I would have thought that perhaps, and certainly in line with the submission put forward by Mr Aiken yesterday that a review could well - should well - have been an investigation into the administration of call back, into the use of call back, into the necessity for call back and there may well have been some meaningful discussions about how best it could have been administered.

I submit that the application put to the commission by the department is inconsistent with the wage fixing principles laid down by the Industrial Relations Commission last October and endorsed by this commission in December last year.

Now those principles under which this award is being restructured provides for, and I quote:

A framework through which it is intended that parties to an award cooperate positively in a fundamental review of that award with a view to implementing measures to improve the efficiency of industry and provide employees with access to more varied, fulfilling and better paid jobs.

Those principles go on to - well the National Wage Case decision goes on to list the issues that parties should consider - for example - skill related career paths, and we're looking at - we've looked at that in the context of the wages clause that we put into the award last week and looking at other issues with regard to perhaps multiskilling and also the trainee levels that we still have to deal with.

Appropriate relativities which we've also considered, flexibility - there is nowhere in those principles that conditions of employment - or cutting conditions of employment is an appropriate means to enhancing the efficiency of industry. In fact reading the National Wage Case, it seems to me reasonably clear that employers may well have to wear a slight increase in costs in the short term to achieve the longer term benefits.

The purpose of the - in my - in the view of the HSUA, the purpose of the process of award restructuring and structural efficiency is to transform the workplace from one of mistrust between employer and employee to one of mutual trust. For too

long, I would submit, that we've had a situation throughout - well, I suppose throughout the country in a lot of industries where there has been a lack of cooperation in - in introducing efficiencies. It's generally been a them versus us attitude from both sides, and the whole process that we've been going through, perhaps since about since early 1980 has been to break that down.

We on - I would submit that we have been prepared to cooperate with the department and I believe that we will continue to be prepared to cooperate with the department on the basis that the department shows goodwill on their side and doesn't really seek to reduce the conditions of employment.

Now Mr Watson referred yesterday to those particular conditions being negotiated and being awarded in times of better economic - in times of a better economic climate. I reject that argument entirely on the basis that it is not an acceptable reason for reducing employees' conditions when there may be a downturn in the economy or when - in - in view of the fact that the department itself has - has not - well, I suppose - to start that again - I reject the argument about cutting employees' conditions in light of the fact of what politicians have done for themselves, and also in light of the fact that inequitable distribution of those cuts across the work force. What we're talking about in a lot of ways and particularly the members that I represent, the - when we're talking about cutting this particular condition, we're cutting conditions of members that are earning in the vicinity of about 24, \$25,000. So - so it's not - I don't accept that argument that in times when the economy starts to go down and in fact there's ample evidence to suggest that it's improving again, so perhaps we should be looking at improvement in the provisions, I don't accept that in the - when the economy goes down we cut the conditions at work - of workers.

Now I turn now to the actual award clause. Now I have a problem with a number of the - well - with the whole thing in respect, but to go through it paragraph by paragraph: paragraph 1 - an employee who is recalled to work overtime without prior notice thereof shall be paid as follows. Now I may need some correction here from - or some guidance from - from Mr Watson here, but it's my understanding that the current provisions provide for an employee being paid call back whether they are notified before or after leaving the premises or not.

Now is it the intention of the department to only pay call back if a person is required to be called back and were not notified prior to it. I mean I know that may seem a bit strange but it seems that if you are on a call back roster

COMMISSIONER WATLING: Right, well we might - he wants to -

MR WATSON: Do you want me to clarify that?

MR KLEYN: Yes, if you wouldn't mind - yes.

MR WATSON: Yes, it's certainly our position that - that if it has been prearranged overtime, if you like, and somebody knows it and they have to come back to work, say, on Saturday at 10 o'clock for 2 hours then that's overtime and not a call back. That's - that's our position and that's the way - that's why the clause is worded that way. I'm sorry if that wasn't clear.

MR KLEYN: Right, okay, okay. So that's just making a distinction between overtime and call back?

MR WATSON: Yes.

MR KLEYN: Right. Right. Okay, with regard to paragraph 1.1, it is our view that the minimum payment of 4 hours is appropriate. We - to refer to the witnesses that spoke yesterday, it's quite clear that the disruption to - to family life is quite considerable, the disruption to - to employees having to get up at any time of the night and return to work is quite considerable and I also refer to a - to that Nurses Award that Mr Watson spoke to, and I'll tender as an exhibit the current award clause in the Tasmanian Nurses Award - public sector award.

COMMISSIONER WATLING: This is HSUA.13.

MR KLEYN: Now I understand that the Australian Industrial Relations Commission did make a decision in fact to reduce the initial call back to 3 hours. This particular exhibit that I tender is from the current award which was a consent award of 19 November 1992. Currently -

COMMISSIONER WATLING: Just go a bit slower - the 19th November -

MR KLEYN: 1992.

COMMISSIONER WATLING: Right.

MR KLEYN: The current award provides for still - and if you look at 'On Call' - sorry - over the page - second page of the - for the first - at the very top of the second page:

(i) For the first recall a minimum payment of four hours' work at the overtime rate applicable to the employee's salary; and

(ii) for each subsequent recall a minimum payment of three hours work at the appropriate overtime rate applicable to the employee's salary.

Now it's my understanding that although the Australian Industrial Relations Commission made that decision to reduce it, it was part of a national - national negotiations - all the award conditions of the - and all the salaries were, I suppose, negotiated as a package, and it's also, I would submit, that it's a national - that the nurses were seeking a national - national rates - we're certainly not seeking national rates within this award - and the nurses achieved considerable salary increases as part of their - part of their award restructuring that certainly is not envisaged in this award. Certainly the discussions that we have had with the department on translation of employees to the new award has generally - the department's response on each and every occasion has been that translation would occur at minimum - minimum cost and would occur as much as possible to the nearest salary point.

To use the Nurses Award and the nurses decision I think is inappropriate given that the - the different jurisdiction, the different - totally different context and the fact that - and also I raise the fact that until - at - at this point in time that decision has not been implemented in Tasmania.

Now -

COMMISSIONER WATLING: So does that mean the parties just didn't draw the orders for it?

MR KLEYN: My understanding is that the - that national decision is to be inserted award by award, or state by state, I - I - I understand, so that at this point in time that hasn't been done. So - now - Mr Watson may be able to provide some guidance on that, but certainly this award that I've tendered is the current award.

COMMISSIONER WATLING: Yes, well maybe, Mr Watson, you can do that in your right of reply. So -

MR KLEYN: But the point I make apart from the - well the point I make that it's still there but also that it's a totally different - completely different package and certainly the non nursing employees in Tasmania do not have national rates and are not based on any - on any - or certainly not - there is no link between the non nursing rates in Tasmania and the nursing rates. So I submit that it's not an issue should come into consideration.

Now the payment for subsequent call backs - HSUA believes that the payment for subsequent recalls is appropriate and that it's quite often even more disruptive than the initial call back. It's quite often that, you know, if you're called back and you work a number of hours then - and you go home and then you are called back again, if you're called - I would put it

to the commission and put it to the department that nobody would like to be called three or four hours - three or four times - in an evening. It is - so I think also that the way this clause is - or the current provisions provides disincentive to the department to continually call back employees on a regular basis.

Now there was much mention made of the - or perhaps of the issue that the department is in effect, has - may - or may have a management problem with respect to call back. It may be that it is costing them a considerable amount of money more than they would like to spend, although the saving of 150,000 to 200,000 in the budget of 400 million seems fairly paltry to me. But, in the event that they do want to save money - and I'm certainly not opposed to that - I think it's appropriate that they should look at that. My view would be that rather than cutting the condition they should look at how it's administered, enter into further agreements, enter into discussions with ourselves and the SPSF as to how - what - arrangements can be made to - to reduce the amount of call back that is required.

So I see that the payment for subsequent recalls is justified on the basis of the additional disruption and - to employees - and also on the basis of providing a disincentive to the agency to continually recall people.

Now with regard to paragraph 4 - 1.4: the appropriate overtime rate for the purposes of this clause shall be calculated as follows: employees whose salary is less than the maximum salary payable for the base grade classification. Does this mean that the classifications standards that we've taken so long to develop and insert into the award and the movement to skill related career paths and the movement to providing better more varied jobs, doesn't apply to this provision? Does that mean when it comes to paying people for their weekly work we will take into account their classification level, the skills that they have, the training they have, but when it comes to calling them back in the middle of the night, those issues are not relevant because we don't feel that they utilise those skills. This is a question that I find quite amazing - that you could pay a different rate of salary for a skilled employee, like, for example, if we take a plumber, you know, numerous years experience - do they get paid a lower classification when they're called back?

COMMISSIONER WATLING: No, but - we're missing the point here though.

MR KLEYN: Are we?

COMMISSIONER WATLING: Yes, I think the point is that this is a disability for being called back.

MR KLEYN: Mm.

COMMISSIONER WATLING: This is a disability payment that they - that they get for being disrupted and you'd have -

MR KLEYN: Yes.

COMMISSIONER WATLING: - to ask yourself the question whether you're at level 1 or level 10 is the disability any different?

MR KLEYN: But are the skills that they're utilising to do the work -

COMMISSIONER WATLING: Well that's a different argument, but we're talking about an appropriate overtime rate for the purpose of this clause - this is for calculating call back -

MR KLEYN: Mm.

COMMISSIONER WATLING: - I suppose - would be the same - or in fact it's even higher. So if you're talking about the disability, if I'm a level 1 and you're a level 10, is the disability the same for getting out of bed, sort of all hours of the day or night. I don't know whether that's what Mr Watson is trying to point out.

MR KLEYN: That may be the case. I would contend that -

COMMISSIONER WATLING: Yes. Like he might he address that but -

MR KLEYN: - that -

COMMISSIONER WATLING: - so you're saying then that they're getting a lesser rate of remuneration whilst they're on call back.

MR KLEYN: Yes. Yes, in effect, because they're being paid - they're not being paid for the - for the classification that - and - and obviously the classification that they hold is related to the skills that they have and the position that they have in the agency.

COMMISSIONER WATLING: Mm. So your argument is that they're actually reducing their rate of pay whilst doing the work on call back?

MR KLEYN: Yes.

With the clause - paragraph 4 - oh no, sorry, paragraph 5 is the one that I have considerable difficulties with, except that I don't have it here. Is it - just excuse me for a second. The paragraph relating to people will not be paid if

it is part of their normal duties to return to work, that one, sorry. I just don't seem to have it on my copy.

This causes us considerable difficulties and I think it leaves the department with an option to reduce - to remove call back all the time. What does it mean that where an employee as part of their normal duties returns to work for short periods to perform specific duties such as checking of equipment. Does it mean that in the course of checking equipment a tradesperson finds a fault, repairs that fault, are they still working as part of their normal duties or are they on call back?

COMMISSIONER WATLING: Wouldn't that have to be considered at the time when people were being transferred to the new scale, whether the very nature of their work required them to be calling in every so many hours to check equipment and then they'd be classified at the appropriate rate? Or indeed, doesn't it beg the question if you have more than one start in a day that it attracts a penalty?

MR KLEYN: Yes.

COMMISSIONER WATLING: Which might be a slightly different issue to actual call back, and that's probably something that you may have to consider in the rest of your conditions because there's no doubt in my mind that this infers that there are some categories of employees that may be required to have one or two starts in a day. And therefore that should be reflected in their classification standard and/or some arrangement for, you know, two or three starts in a day, which is a different subject to that of call back.

MR KLEYN: Yes.

COMMISSIONER WATLING: Now I think it's really foreshadowing, isn't it, that there may be some categories that are going to fit into that system in which case I find it a little hard because we're not looking at the total package of conditions, which I would have preferred to have done. But, as I say, in keeping with your agreement to hive off certain aspects I can't look down the track at this, but there's certainly an inference that certain categories will have more than one start a day.

MR KLEYN: That may be the case and we're prepared to discuss that at the time, but in that case then I would find it inappropriate that this clause be inserted into the call back provisions because what it, in effect, is saying is that if you are called back as part of your normal duties - and I think normal duties is a fairly loose - could be fairly loosely defined - then you're not entitled to call back.

Now if the agency wants to employ certain people on the basis that they have numerous starts, then that's something that should be subject to further negotiation. But as part of a call back provision I don't think there should be that kind of exclusion, if you like. So our view is that that clause should not be in a call back provision at all.

Now with regard to - just with regard to the on call and **close** call, the actual working of those provisions, we don't have a particular problem with those particular provisions. As Mr Watson has indicated there is very little change or no change at all from the current award and we are prepared to accept that they are okay.

I turn now to the department's argument about the award restructuring must be cost neutral. Now I think I've stated in this commission on previous occasions that the HSUA has and always will reject this proposition. We believe it's inconsistent with the sensible application of award restructuring and workplace reform in that we're going through a significant amount of change, as I indicated at the start of my submission, and it's quite likely that translation and the - well the department estimated yesterday or indicated yesterday that translation will cost \$3 million in a full financial year and that they may engender a saving of around about \$150,000 to \$200,000 if they get their application on call back through.

But there has been no - at this point in time no attempt to quantify how much saving the workplace reform process is going to generate and certainly the department has not included in the other side of the argument the considerable amount of savings that will - that are accruing on the north-west coast from the privatisation of facilities. So the ongoing cost to the department of delivering health services in this state has been reduced and certainly with regard to the efficiencies that will be generated by the workplace reform it seems to me somewhat premature to be looking at reducing conditions and talking about how much money we can save by cutting conditions of employment when there is a considerable amount of savings that may and probably will be generated through the workplace reform process. And it's our view that that should be seen to be - to be delivered and allowed to be bedded down before we look at the issue of cutting conditions.

Now it's our view that the department takes a fairly narrow and short term view of efficiency when they talk about increasing efficiency - and I think this is a fairly common perception in the public sector - that when they look at efficiency they look at reducing costs. Now there is very little discussion and argument about improving the quality of service, which I think is consistent with improving efficiency. Improved delivery, improved quality of service to

the community should also be an aim of any restructuring exercise and any workplace reform exercise.

But the government's and the department's view that award restructuring should be cost neutral is totally I think ludicrous in the sense that if it has to be cost neutral from day one we might as well not proceed with the process because there are going to be costs associated with award restructuring and the department should take a longer term view and wait and see what savings will be generated from the entire process.

And if we look at this award alone we're looking at amalgamating something like 17 awards into one. Now that is going to save a considerable amount of money in administration alone. Now the department, as I understand it, hasn't put a saving amount on that as yet but still is prepared to say: Well look, you know, we're going to save \$150,000 if we cut call back. But what if at the end of the day they save \$150,000 on call back, we generate another \$2 million in savings out of workplace reform, is the department going to be prepared to say: Well look, workplace reform delivered much more than we expected; here's the call back, back or here's, you know, a salary increase. I don't think that's likely. I think they're looking at it in a very narrow short term view.

Now just finally, I want to turn to the department's application. The operative date for the conditions be December 1, the same as wages and conditions - wages and classifications clause. It's been mentioned previously that there was an agreement between the parties to this award that the operative date for translating employees to the new award - new wages and classifications structure would be the 1st December 1993.

Now that full bench decision that Mr Watson referred to, I believe it was talking about - it stated that employees would be converted to the new award and - the new classification and salaries and conditions on the 1st December 1992, as I recall. So certainly the commission at the time was looking a year ahead. We're now well beyond the 1st December 1993 so we're looking at a back dating exercise for wages and classifications. I can't certainly for the life of me see how you can back date conditions in the same manner and how you can say, well look, it was legal and above board and according to the award to pay call back at 4 hours for the minimum payment and 3 hours for subsequent payments right throughout this period of time, but now say, well for the period from December 1 1993 until now was a breach of the award. I find that quite astonishing.

I also find - I submit that at times when parliaments around Australia have attempted to introduce retrospectivity when introducing taxation changes, for example, there has been

considerable displeasure from the community. And I would submit that certainly our members will find it very difficult to accept and to continue in a - well to accept a position that the call back provisions will be taken away from them after they worked those call back - under the provisions that currently apply to now go back to those employees and say, well look, that call back - that 4 hours pay that you got for those call backs, it's now wrong; we should have been paying you 3 hours, I find totally unacceptable. And I'm sure most of the members will.

So I just submit to the commission finally that -

COMMISSIONER WATLING: Can I just say that the act does govern the question of retrospectivity.

MR KLEYN: The act, sorry.

COMMISSIONER WATLING: The Industrial Relations Act covers the question of retrospectivity and the act says quite clearly that retrospectivity will only be granted if there is agreement.

MR KLEYN: Right.

COMMISSIONER WATLING: Right. Or it can be demonstrated that there are - I'm paraphrasing now - exceptional circumstances that would warrant the commission doing so.

MR KLEYN: Right. Well certainly, on that issue there's no agreement from the part of the Health Services Union.

I submit finally that the commission should reject the department's application for changes to call back and submit that the current provisions in the Hospital Employees (Public Sector) Award covering call back, close call and remote call should be inserted into the new Community and Health Services (Public Sector) Award. If the commission pleases.

COMMISSIONER WATLING: Good, thank you. Just to quote section 37(5) - retrospectivity. It says:

The Commission may, in an award, give retrospective effect to the whole or any part of the award -

(a) if and to the extent that the parties to the award so agree; or

(b) if, in the opinion of the commission, there are special circumstances that make it fair and right to do so.

Section 35 - 37(5).

MR KLEYN: I would submit that it's hardly fair and right to take away something that you legally and correctly provided somebody, in retrospect. Thank you.

COMMISSIONER WATLING: Good, thank you.

MR AIKEN: Can I just for point of clarification out of something I raised yesterday in relation to an act.

COMMISSIONER WATLING: Right.

MR AIKEN: Just for the purposes of the agency it's when I mentioned the Financial Management and Audit Act. I think it's quoted: And requirement of the employer to seek Solicitor-General - I stated Crown Law advice yesterday. I believe in this situation regulation 611 applies and I'm just putting that for the purposes of the record in case you would wish to view that as part of the submission I tendered yesterday.

COMMISSIONER WATLING: Thank you.

MR AIKEN: Just in relation to the nursing decision. After listening to Mr Kleyn, all I would submit as I did yesterday when you actually raised the question of the differences in the nursing - or supposed differences in nursing conditions to ours. And once again I'll just repeat my view without going into detail on the Nursing Award, is that if those people were operating in the same environment as our members I believe their conditions should be equivalent to ours, that is they should be lifted up and our - the federation's position is once again that the current condition as prescribed within the Hospital Employees (Public Hospitals) Award should be the condition that applies. If the commission pleases.

COMMISSIONER WATLING: Before I let the union side finish their submission and before I call on the employer to respond, Mr Kleyn have you any view as to whether or not the new call back provision should be the same as that applying for nurses, for consistency sake?

MR KLEYN: Mr Commissioner, it's my view that the call back provision should remain as they are in the Hospital Employees (Public Sector) Award. That they should be - the first recall minimum payment of 4 hours and for each subsequent recall a minimum payment of 3 hours at the appropriate overtime rate applicable to the employee's salary.

COMMISSIONER WATLING: Is that not the same as that which is applying in the Nurses Award?

MR KLEYN: That's what applies currently to the Nurses Award, yes.

COMMISSIONER WATLING: Right. Mr Watson?

MR WATSON: Thanks, commissioner. I'd just like to in reply respond to the submissions made by HSUA and the SPSFT. And that these comments are not necessarily in any particular order, but it's in relation to the witness evidence given yesterday. I am a little bit confused because I do believe that Karen Griffiths said that you have to live 15 minutes away from the hospital to be within the bounds of a recall but Mr Byron said 20 minutes. And they were both very definite about that so I'm a bit confused at whether it's 15, 20 or 17-1/2 maybe.

COMMISSIONER WATLING: Yes, well can you say that I'm going to take on board that obviously someone's made a direction, and it's up to 20 minutes. So if that helps you in clarifying your submission.

MR WATSON: I think that there was a fair bit made - or a point made in the SPSFT's submission that there's ineffective management of call back or recall. And whilst we dispute that we make the point that there was no evidence brought before the commission to back that up.

Mr Aiken made reference to a decision of Commissioner Koerbin, I think it was back in 1980. He referred to that decision in where Commissioner Koerbin determined that it wouldn't, in his view, be appropriate to remunerate employees at a level lower than their classification level in relation to recall, which directly relates to what we're seeking through this application. But what he didn't tell you was that Commissioner Koerbin also went on to say in that decision that - or he made some observations that those people who earn a salary in excess of the overtime barrier, in effect, shouldn't be eligible for call back anyway. So if you put the two things together I believe that what we're offering is probably a better package.

Now there was no evidence or no submissions going to a review of the clauses, which is what the MOU says. We believe that we have done a genuine review of the clause. We've modified it, we've come up with certain changes to the present award clause in relation to what's an on call period, what people should get paid when they come back and we've also had regard to other decisions of the commission, other recent arbitrated decisions of the commission in relation to recall.

So we put to you, commissioner, that if we're in the situation where it was simply a matter of the union's arguing the merits of the present clause, then there was hardly anything put forward that would substantiate their case.

Now we believe that effectively one of the statements that Mr Aiken made yesterday was, and I quote: Retain existing

conditions regarding recall and on call. Now again, I made the statement in my submission that we believe that the unions really haven't come to grips with this issue about reviewing conditions as part of this process, and I think that statement probably brings it home. And again, Mr Kleyn said that as far as they're concerned they want the present award conditions: don't attack our conditions.

Now, you know, if that's going to be the case: we'll take the salaries but forget about the conditions. Well as far as we're concerned I just think that we've all - well we haven't missed the point but the unions have.

Now we take the view that, as I said yesterday, even though we haven't got all the conditions in front of you we still are looking at a package in relation to this matter.

COMMISSIONER WATLING: Yes, can you see the problem that I have though?

MR WATSON: Yes, I can.

COMMISSIONER WATLING: Because I must say I do have some difficulty with that line of argument, and I want to be up front with you because I could understand if there were trade offs here and there were sort of pluses here and minuses here. Unfortunately I can't see that at this stage so I really have to say that I'm really looking at this in isolation.

MR WATSON: Well I suppose -

COMMISSIONER WATLING: And I have to be a bit careful of that because I'm not too sure what you would negotiate down the line and I can't see a package at this stage of conditions. And I'd also have to be up front with you and say that I believe that this is a time for a general review to look at all the conditions to see whether they're appropriate, to see whether they're modernised, to see whether they provide efficiency and increases in productivity.

Now that's the area I'm coming from. I must say that it would not have been my preferred position to just hive off one or two issues and look at them in isolation because it forces me to put the blinkers on as well, and you might well note from even the decision that you tendered, which I labelled W.8, that they were looking at the thing in toto and as a package.

MR WATSON: Yes, well that's - yes.

COMMISSIONER WATLING: And they did have all those things before them and they could well balance it off with the package.

MR WATSON: Yes. No look, I understand that. I suppose the only other alternative for you is to reserve your decision until you've heard all conditions arguments.

COMMISSIONER WATLING: Yes.

MR WATSON: But you know, I mean, the only problem with that I guess is that it may create some problems with the implementation of the new rates of pay because obviously we still regard the whole thing as a package and we don't want to be sort of arguing in December next year about conditions.

COMMISSIONER WATLING: Yes. Can I say I regard it as a package as well in terms of you're not just going to get wages but we've got to review the conditions as well. Now don't get me wrong there. But we're in this unfortunate position at the moment where your memorandum of understanding - and you've agreed upon that process to look at certain things first which wouldn't be my preferred position. I would have preferred to look at the wages, which I have, and then - remember I was saying to you that I wanted to look at all the levels because I wanted to balance it out because there may be swings and merry-go-rounds. And you've given here - sort of moved on that and at the end of the day the balance might be right.

So wanted to look at wages separately; I would have preferred conditions separately but you've hived them off and you want to look at some in isolation. It's still part of an overall package but in terms of this particular application they are hived off and they have to be run and won really on merit I suppose.

MR WATSON: Yes, well I -

COMMISSIONER WATLING: And you can't do the balancing act.

MR WATSON: No, I accept that and I guess even when you're looking at a package concept you must also - I mean, first and foremost go to the merits of a particular clause. I mean, you can't just ignore the merit as the first and foremost issue. So we're again I suppose still stand by the comments about the package but also put it strongly that we believe that our application should get up on the merits of our argument as well.

Actually we were heartened to hear Mr Aiken state yesterday that there's no guarantee that everybody gets a salary rise in relation to the award translation, because that has been a bit of a bone of contention. There were statements - just going back to the management of the call back issue, I think that effectively at the end of the day what we're about is responding to the needs of the health and wellbeing of the people in Tasmania so whilst we can put in all sorts of management systems at the end of the day we have to respond to

those needs, and that can not always be controlled simply by effective management. So I just make that point.

COMMISSIONER WATLING: Yes, but then again on the other side of the coin it must be said that the employees don't initiate it.

MR WATSON: No, no, I mean, there was no submission on our part yesterday to that effect.

Again in Mr Kleyn's submissions this morning he referred to attacking conditions. We don't for one minute accept that that's the case. We agreed through the memorandum of understanding that was put to you yesterday that we would review certain things and there were certain conditions identified that would have priority, if you like. And that's what we've addressed.

Mr Kleyn made the statement that this particular clause will have direct effect on people earning \$24,000 to \$25,000. Well if their position gets up you're talking about it affecting people up to \$60,000 per annum through the Professional Employees Award. So there's a bit of a difference there.

Now I just want to clarify the situation in relation to the nurses clause in that nurses decision.

COMMISSIONER WATLING: That is a bit concerning really.

MR WATSON: What happened was the whole case, that is salaries, conditions, the whole thing took a long, long time because there was so much in the case and there were so many players and there were quite a few awards and the commission issued a series of decisions.

What we have at the moment is - Mr Kleyn's quite right in relation to what he said about the present provision. However the matter of the Nurses Award is subject to an order being issued in relation to the Smith-Cross decision. And that effectively is going to have to be arbitrated because the parties are not agreed on the order itself in a number of respects. So we're in fact awaiting the order from Commissioners Smith and Cross to vary our Nurses Award in relation to their decision.

COMMISSIONER WATLING: So have you put your argument?

MR WATSON: Yes.

COMMISSIONER WATLING: And you're just waiting on the decision?

MR WATSON: Yes.

COMMISSIONER WATLING: So when was that put?

MR WATSON: The 19th October last year.

COMMISSIONER WATLING: Right. So what would be the operative date of that? I suppose it's in the lap of the gods.

MR WATSON: Well there's another aspect to it that I must bring your attention to and that is that in the nurses national rates case the full bench determined, along the same lines as - or much the same thing as the president determined in the Police Award, they determined that level 4 and 5 nurses - and we're talking about people at a salary of \$46,000 and above - are not entitled to any penalty addition and that includes recall, on call, overtime, shift penalties, anything. So their rates are all in rates and they actually determined that - the full bench determined that. So in relation to the package, if you like, for nurses again if - and you did ask Mr Kleyn about whether or not the same provision should apply to this award - there are certain other aspects to do with the nurses case that perhaps wouldn't - you know, the swings and roundabouts, I guess.

So we have a situation with the nurses that level 4's and 5's are not entitled to anything and, you know, we did go one step further with our application to provide for base grade rates. So, you know, it's that middle ground. So whilst we need to take account of what happens with the nursing decision, you know, I suppose you have to draw the line somewhere whether you completely match it or determine that things are a package.

COMMISSIONER WATLING: And the cut off point for nurses has already been determined?

MR WATSON: It's been determined by the full bench and I can make that decision available to you if you like.

COMMISSIONER WATLING: Right. Well I'd be interested if you made it available to all the parties.

MR WATSON: Yes, sure, okay. And that is \$46,000 and above.

COMMISSIONER WATLING: \$46,000.

MR WATSON: It also determines that nurses at those levels are employed on a no fixed hours basis as well. So they're not tied to any specific, you know, rigid hours of duty as far as commencing and finishing duty on a particular day.

COMMISSIONER WATLING: So they just get paid so much an hour for every hour they work.

MR WATSON: Well they get paid an annual salary to do their job and if they believe in a particular week that they can do it in 4 days, well that's what they do. If they believe that they need to work 7 days a week in a particular week, then that's what they do. And that's the concept that was approved.

COMMISSIONER WATLING: Right. So they don't get overtime -

MR WATSON: No.

COMMISSIONER WATLING: - and they don't get call back -

MR WATSON: No.

COMMISSIONER WATLING: - and they don't get any of those things.

MR WATSON: No. They get a salary and that is it; there's no addition to it.

Mr Kleyn referred to our application reducing the rates of pay when an employee is recalled. That is true in a certain sense in relation to those people above the base grade but it's not applicable to those people who are on the base grade because our application says that they get paid their appropriate rate.

Now again I just make the point that in fact this is a concession on our part. You know, in relation to employees above a certain salary not getting penalty addition at all. And again we get kicked around the head for even coming up with a concession like this. So, you know, I mean - and we're talking about a reasonable position. We believe that our position is a reasonable position to take.

Again Mr Kleyn said we don't have any problem with on call/close call because it doesn't change anything. Again the same argument. We're not changing anything so we're not going to have a problem with that. And I just think that that reinforces the point that I made before that what we're talking about here is being fair dinkum about this and not just saying: Okay, we got the salary rates but don't touch the conditions.

As far as workplace reform is concerned we don't know what the total savings are going to be yet. We only have approximately half of our groups who have finished their proposals so, you know, we really don't have a good idea of the savings that come out of that process.

Now I just make the point in conclusion, commissioner, that you know if we had have come to this commission with the argument: We don't want the salaries to be touched, leave our

salaries alone, we don't want to pay any more, then I just don't think we would have got very far with that argument at all. So, you know, it's a two way street. If the commission pleases.

COMMISSIONER WATLING: Good, thank you. Right, well that brings us now to the next part of the application which is the sick leave.

MR KLEYN: If the commission pleases, before Mr Watson - if you don't mind, I've been instructed to seek an adjournment of this matter to enable us to consider our position. Now the reason that I do this, Mr Commissioner, is that the department has introduced a new provision into the proposed award clause that was not subject to any negotiations or discussions. And I refer the commissioner to - where is it - paragraph (b):

If the full period of sick leave as prescribed in subclause (a)(iv) of this clause is not taken in any sick leave year such proportion as is not taken shall be cumulative from year to year up to a maximum of 988 hours.

Now it's our understanding that it was the department's intention to extend the sick leave provisions of the Hospital Employees (Public Sector) Award to all employees of the agency and in the negotiations that we have had with regard to this particular clause that has always been our understanding. This particular capping, if you like, of the accumulation of sick leave was only raised when we received this application, in fact. So there's been absolutely no negotiation. We have not been aware of this particular provision in this clause until we received this application and we've not had a position or had an opportunity to develop a position in response to it nor to consult our members. If the commission pleases.

COMMISSIONER WATLING: There's a request for an adjournment, Mr Watson.

MR WATSON: Well I just make the point, commissioner, that - well first of all we would oppose the adjournment. Just before we go to the argument about the adjournment, it's not true that there's been no discussion. And I think you will recall in the off-record discussions yesterday that we did discuss this matter albeit briefly at a meeting that we had on the 7th April up at SPSFT.

Now that was confirmed yesterday so I think it's not right for Mr Kleyn to say that this matter has not been discussed and they are unaware of our position until they got their application on Monday. That's not the case.

COMMISSIONER WATLING: I thought the inference was that you indicated that you may be seeking -

MR WATSON: Yes.

COMMISSIONER WATLING: - not that you were.

MR WATSON: That's right and the reply was - well it was clear that there was never going to be any agreement to any sort of capping arrangement. Now the other thing was that we left the meeting on the 7th April obviously on the understanding that there was going to be no agreement and we were headed for arbitration and the matter was listed for the 19th of this month. So obviously all bets were off and we come to arbitration proceedings. Now we made that point yesterday in the off-record discussions, that you know we're not just going to come here with the base line that we may negotiate to a without prejudice basis. If we can't get agreement then all bets are off and we seek arbitration.

Now the only way that we will accept an adjournment on this particular matter is if the union's prepared to discuss meaningfully some sort of capping on the arrangement and that

COMMISSIONER WATLING: The alternative though might be that you do what the Hydro did, have unlimited sick leave. Aren't you free to look at all areas of sick leave?

MR WATSON: Well, I guess we are but our position is that - is that the sick leave is capped. Now if - if we have some understanding at least today that the parties will discuss the capping issue with a view to either coming back here with some agreed position or agree to have it arbitrated then I don't have a problem with adjourning that particular matter - that particular clause, however, I would oppose adjourning the whole matter of sick leave because we're just never going to get this thing finished.

MR AIKEN: Mr Commissioner, look I would support Mr Kleyn in seeking the adjournment but is fair to say, as we confirmed yesterday off the record, that there were discussions on 7th April and you're quite right in saying that the basis of those discussions was that based on what Mr Watson wants is that we agreed to disagree and you were quite right in saying that we were made aware that the capping issue - the capping arrangement - may become an issue.

Now in fairness to our organisation and the HSUA's as well, I would - I would submit that we see - or seek and adjournment for a period of time. We only - our organisation only became aware of the actual quantum of capping at - when a document was faxed to us at 11.20 on Monday - that was from the department. I've got to thank the department - they actually

did fax it. It was prior to receiving something from the commission itself. The issue is that we only received that at 11.20 on Monday.

Now I certainly would like the opportunity myself to - I'm looking at a number of issues at the moment including the federation policy which is consistent with the example you just raised about the Hydro issue about a no-credit scheme. I would certainly like the opportunity to talk to the department about a no-credit scheme which, in effect, could be, as you'd be aware, could involve some sort of capping. The capping could be a fact that, for example, employees had a requirement for medical certificates for a certain amount absences. You know, the possibilities under that sort of scheme are endless. I would certainly like the opportunity to be able to sit down with the department and discuss that. If they're looking at the capping issue or at least having the opportunity to go away and prepare some stronger submissions, I'm looking at a couple of examples - further examples - at the moment of no-credit schemes that - that we may be able to - to put before the commission, and once again I'd certainly like the opportunity - I mean - well, sorry, if - if the department is serious about looking at what they may consider to be a problem with sick leave, then maybe that's the reason they're looking at the capping. Maybe - and I'm just pre-empting what Mr Watson may be putting forward - if they're saying there's a problem with sick leave then a no-credit scheme may be the ultimate answer to - to any problems they perceive. There may be advantages for both employee and employer. If the commission pleases.

MR WATSON: Commissioner, just before we go on, I think there's a bit of a smoke screen here because the TPSA's position is that we go to triennial system.

MR AIKEN: Sorry, can I - just with respect - I actually haven't put our position. Yesterday, you asked were we opposed to having sick leave within the award. I said, no, the issue was about quantum. The federation's policy is either a no credit scheme or a triennial scheme. In this case we - the basis of negotiations have been about the triennial scheme, however now we're back to the situation where we've agreed to disagree. We're looking at the no-credit scheme which is federation policy. If the commission pleases.

MR WATSON: I can recall yesterday that Mr Aiken in the preliminary comments stood up and said that they were looking at the triennial scheme. I mean that was my - I - this is the first that I've heard of the capping system today.

COMMISSIONER WATLING: I suppose the issue is whether or not there's any mileage in adjourning this issue to enable further discussions to take place and for all systems to be looked and whether or not there's any date to be set on coming back. I

think that's really the issue. Once an application has been made for adjournment and reasons why, we have to work out whether it's feasible that we have it or whether we're just wasting our time. And if we're just - I'd have to say I'm a bit concerned that we should keep these things moving because we'll be down the track before we know it and never get anywhere. Now we've got oodles of other clauses to deal with - for the sake of transcript I'm not too sure how you spell 'oodles' -

MR WATSON: It's like 'noodles' without the 'n'.

COMMISSIONER WATLING: Oh right. Anyway if we're going to have this on every clause we'll be here for years, I would think.

MR KLEYN: Well if the commission - if I can respond to that, Mr Commissioner, I take on board what you say, but I think that the department should be fair and honest in its dealing with us and if they put to us award clauses that they wish to negotiate and then - then they turn around and change them - change them - when they - when we get here, I think that's quite unreasonable.

Now if I could just point out, we received a - a number of award clauses from the department on the 15th October, 1993 and in the sick leave clause they were - that were included in that for negotiation, that particular accumulation clause was - if the - in the full period of sick leave as prescribed in subclause (a) hereof is not taken in any year, such proportion as is not taken shall be cumulative from year to year without limitation.

Now we responded to that - to those - all those award clauses on 6th December, and with regard to sick leave said: HACSU considers that the reduction of notification time from 24 hours to 2 hours is too restrictive. We are concerned that in some circumstances, for an accident or lack of access to a telephone, members will not be able to notify within 2 hours. So we - we had a concern about the notification period, but after that we said we're prepared to accept the other variations to the sick leave clause as proposed, subject to membership approval. So we went into the negotiations quite prepared and we came - we expected to be coming to this commission with the view that we were looking at a sick leave clause very similar to that that was in the Public Hospitals Award.

Now it's true that Mr Watson mentioned on the 7th April - or I think it was the 17th of - 7th of April - that he was considering capping. Now that had never been discussed in any of the negotiations. Now that was simply a matter of, we are - we are thinking of or considering capping. Now if he was considering capping then we should have a bit more of an

opportunity when after getting their clause to have a discussion about that. So I think that if we are going to - to seek - even if we are going to seek arbitration, I think that we should have some understanding of what we're seeking arbitration on rather than the department changing its view at the end. Thank you.

MR WATSON: The only comment, commissioner, just quickly is that - I mean maybe I've got the wrong idea but, you know, when we come to seek arbitration I'm - well - I don't know - do we bring up everything that we may have had a general understanding with in a 'without prejudice' basis and then go from there, or, you know -

COMMISSIONER WATLING: I - well I take the view that if you enter genuine negotiations all the issues should be on the table - right?

MR WATSON: Yes.

COMMISSIONER WATLING: And that the parties should know during the course of negotiations where either side is coming from.

MR WATSON: Yes.

COMMISSIONER WATLING: I don't think you should be adding to the ambit of dispute when you come along here if you can at all help it. I think all the issues need to be on the table during the course of negotiations otherwise it could be said that they're not genuine negotiations. Now if - if capping is the issue one would have thought that there would have been a significant debate about capping.

MR WATSON: Well, yes, just in relation to capping, you know, well probably the question needs to be asked, are the SPSFT and HSUA prepared to discuss the issue of capping. Now there was this distinct impression that they weren't - that obviously it wasn't acceptable and therefore we would need to have arbitration. Now I think there are questions that have got to be asked. If they are prepared to discuss it then, as I've said, we will be prepared to do that. But if they're not I don't think it's of much point just wasting another couple of weeks and then coming back here.

MR AIKEN: With respect, Mr Commissioner, it's very hard to discuss a possibility without knowing a quantum or a possible quantum. You see it's very difficult to find out the day before we're supposed to be arguing -

COMMISSIONER WATLING: So what do you see yourself discussing if I grant the adjournment?

MR AIKEN: Well if you granted the adjournment, firstly I would like to take on board your comment about not leaving this matter too long. Well I certainly wouldn't expect that we would have a long adjournment.

COMMISSIONER WATLING: Like Friday.

MR AIKEN: Possibly next week.

COMMISSIONER WATLING: No.

MR AIKEN: But I don't know - but I've got to defer to -

COMMISSIONER WATLING: Well if I'm looking at adjournment I'm looking at about Friday.

MR WATSON: Friday of this week?

COMMISSIONER WATLING: Yes.

MR WATSON: Right, okay.

COMMISSIONER WATLING: Because I've got other matters that I'm going to have to deal with and I've got a number of outstanding major issues that I've got to deal with in terms of decisions.

MR AIKEN: I felt like I was in church just -

MR WATSON: Yes, well I'd have to make some other arrangements, commissioner, for my schedule for Friday, but I don't think - I think I would be able to get around that. So that would seem okay to me.

COMMISSIONER WATLING: Yes, because I - the only other time that we could then start to bring this back on would be into May.

MR AIKEN: Can we just - can we just go off the record for a second.

COMMISSIONER WATLING: Yes, we might just go off the record.

OFF THE RECORD

COMMISSIONER WATLING: I won't make any ruling at this stage on any long term adjournment but we will adjourn now until 3.30 to enable the parties to reflect on their request for an adjournment and we'll consider whether there be a further adjournment at 3.30.

LUNCHEON ADJOURNMENT

COMMISSIONER WATLING: Right, well is there any need for a further adjournment - does anyone wish to address that issue?

MR WATSON: No, not as far as we're concerned, commissioner. I believe that we have reached a level of understanding with HSUA in regard to the sick leave issue.

COMMISSIONER WATLING: Right.

MR KLEYN: Oh, I can confirm that, Mr Commissioner.

COMMISSIONER WATLING: So you're not wanting a further adjournment? Right. Are there any housekeeping matters we need to deal with before we move on?

MR WATSON: Before we move to the sick leave issue, commissioner, this morning we did touch on the issue of a couple of more decisions that I made reference to and I'd like to table those if I can please?

COMMISSIONER WATLING: Right, very good, thank you. Does that make W.9 does it, Mr Watson?

MR WATSON: Yes, I think so.

COMMISSIONER WATLING: Alright, well we'll mark the document from the Australian Industrial Relations Commission - the top left hand corner it's got December and it's 630/91 -

MR WATSON: Yes.

COMMISSIONER WATLING: - as W.9 -

MR WATSON: Right.

COMMISSIONER WATLING: - and the document with the Australian Industrial Relations Commission on the top and December 1522/90 as W.10.

MR WATSON: Okay. Commissioner, if I can take you to W.10 first of all, to page 5, in the second paragraph there where it starts 'Ms J. Kovaks' -

COMMISSIONER WATLING: Yes.

MR WATSON: - and it talks about there - the decision talks about Ms Kovaks who made a general submission on behalf of all employers except for the Tasmanian Government. Now what happened was all of the employers involved in the case basically agreed to those salary rates that you can see above there - the 45, 48, 52, 56, 63 and 70, however Tasmania did

not agree to those rates, however the end result of the case that we got stuck with them anyway and we - even though we imposed the rates we, through an arbitration process, add the rates, so when it says: Ms Kovaks made a general submission on behalf of all employees except Tasmania - that's what that means.

COMMISSIONER WATLING: Right.

MR WATSON: And you can see it goes on, and the other position that we put was that even though we opposed the rates we still supported the notion of the all-in concept and no fixed hours.

And you can see down on the third line there, and I quote:

It is the employers' position that there should a 'no fixed hours' basis of employment at these levels, with no access to shift penalties, availability, on-call or recall allowances and no payment for overtime.

Now if I can then take you to page 7 of the decision, at the bottom of the page - and I quote:

As with the exercise carried out by Commissioners Cross and Smith, we are also faced with the task of rationalising salaries and conditions in a way which complements the general approach we have adopted to the profession of nursing. In relation to the first question, we are in agreement with Ms Kovac's submission that at these levels of nursing it is not appropriate that on-call or recall allowances, or overtime should be available. We say this because of -

- and we say this because of - and they go into a number of reasons - end quote, sorry - and they go into a number of reasons but the fourth dot point is particularly relevant where they talk about the level salary proposed being a salary which comprehends all of those factors.

And then the next paragraph which is where the commission actually makes their determination, and I quote:

Accordingly we are not prepared to provide for conditions which include allowances such as on-call and recall. Further, we endorse the approach that there should be no fixed hours and that overtime should not be paid.

So that - that was the full bench decision, and then if I can take you to the W.9 exhibit - page 8 of the decision - in the

middle of the page there where - under the heading of 'All-in Rates' and I quote:

Subject only to exceptions specifically noted in this decision, the salaries for DONs and ADONs are to be regarded as 'all-in'. They recognize the executive status of nurses at these levels. Overtime penalty rates and allowances do not apply.

Now the exceptions specifically noted were from memory something to do with country directors of nursing in Western Australia - but nothing to do with the general concept of what they were - or the general concept of the all-in rates vis-a-vis level 4's and 5's generally.

So that second decision, W.9, was in fact the commission's final decision relating to level 4 and 5 nurses where they parcelled up everything as an all-encompassing decision, so I hope that makes it a bit clearer, commissioner.

COMMISSIONER WATLING: Good, fine.

MR WATSON: So it might be appropriate for the other parties to address.

COMMISSIONER WATLING: Right. Do the other parties wish to put any further submissions this point?

MR KLEYN: If the commission pleases, I just want to make the point - I'm not going to dispute what Mr Watson said - I'd just like to make the point that I don't - I still don't believe that the nurse - the issue with the nurses' rates is a particularly relevant one to this case and that it - they were seeking national rates and that they did achieve considerable wage increases as a result of the - throwing in all of the conditions. So - and I think - and I can't - not find it at the moment - I think there is a - as part of that decision from the Australian Industrial Relations Commission there was a view expressed by the full bench that there should be no flowing on as such of any of the decisions -

COMMISSIONER WATLING: No - any of the rates wasn't it?

MR KLEYN: - made - sorry?

COMMISSIONER WATLING: Any of the rates wasn't it?

MR KLEYN: Yes, well, rates and - yes. So I mean given that none of the rates can flow on, I wonder whether - it mightn't be my view - whether the conditions should be used as - as evidence in support of the claim to reduce conditions that are currently in - in the Hospitals Award. If the commission pleases.

MR AIKEN: Once again, Mr Commissioner, I profess not to be an expert nursing issues so I haven't looked at this in any detail - I just - it would appear from earlier comments, I think particularly from Mr Kleyn, that the nurses' issue was part of a package and as you quite rightly pointed out, at the moment the conditions we're discussing aren't part of a package - they've actually been set aside as separate negotiations and therefore shouldn't be linked to the salaries. I'd refer also back to a comment that I made yesterday -

COMMISSIONER WATLING: I think though it is, isn't it? I think - don't want you to misrepresent me on that. I - I've always taken the view that the classification standards and the wage rates - the four streams are linked to an overall package at the end of the day of the wage rates and conditions, however, these specific items that I'm required to look at have been hived off for special treatment and - and that's associated with the Memorandum of Understanding.

MR AIKEN: Sure. I'd never - never want to misrepresent you or the bench in any way, however, in this - what I guess I was saying in this particular case - and once again getting back that I don't understand the full ramifications or goings on in the nurses' issue, but my understanding was that all conditions and salaries were treated together and there were pluses and minuses and so forth - in this case we haven't got pluses and minuses - that's where I was coming from.

What - the issue of senior staff being on call, my contention once again is, that if senior staff are required to be on call then they should be paid at the appropriate penalty rates which we - or at the appropriate call back rates which we believe should be the existing condition and that is also remembering - and I haven't heard any evidence to - to the contrary - I'm not - or to support - I'm not sure if the nurses have the - the same policy applied to them of people actually being restricted to where they live who are on call.

Now that - that's a fairly important issue, and of course it was mentioned up to 20 minutes - 15 or 20 minutes - that sort of internal policy does restrict the number of people who can actually be on a call back system - that pleases increased stress on the rest.

Just in conclusion I'd just ask you one thing to consider the merits of the argument that I presented yesterday.

COMMISSIONER WATLING: Thank you.

MR WATSON: Commissioner, the only comment that I would make is that I think Mr Kleyn is quite right when he said the nursing conditions and salaries were looked at as a package as well and I think the full bench did make some observations

about - for the nursing industry - that that's true - but I think we also need to take a bit of sideways glance to - to employees that are working side by side in our wider health and community services industry, and I don't think that we completely ignore the situation as far as nursing is concerned. So whilst I do think that there is a small amount of merit in what Mr Kleyn said, I don't think it can be completely ignored and in fact I think it is relevant to this case.

If the commission pleases.

COMMISSIONER WATLING: Thank you. Right. Now we move onto the next matter which is that question of sick leave. Mr Watson?

MR WATSON: Commissioner, during the break we have conferred with HSUA and we have in fact agreed on a sick leave clause to go into the new Community Health Services public sector award. Mr Aiken has been given a copy of the clause which basically reflects what is in the present Hospital Employees (Public Hospitals) Award subject to some cosmetic changes and a couple of agreed changes that - or changes that have been agreed between us and the HSUA which I'll take you to in a second. So I'd like to seek leave to in fact withdraw the sick leave component of our previous application and submit what I'm about to table in its place.

COMMISSIONER WATLING: Right. Any objection to the leave to withdraw - to amend - the application in relation to sick leave.

MR KLEYN: No.

COMMISSIONER WATLING: No objection - then leave granted.

MR WATSON: Commissioner, I'll take you through the clause in a second, but in relation to the sick leave clause for the new Community Health Services (Public Sector) Award, we have agreed 'in principle' through the Memorandum of Understanding that the Hospital Employees (Public Hospitals) Award sick leave provisions will translate into the new Community Health Services (Public Sector) Award and on that basis that's the clause that we've agreed to with HSUA and you have in front of you now.

There are - as I've said - there are some slight cosmetic changes and other changes that have been agreed between and HSUA and if I can just take you to the clause itself, you'll see there that in subclause (a) there is no change to the present clause within the Hospital Employees Award. In relation to subclause (a)(i), we have changed gender titles - it said 'he' - we've changed it to employees and we've also changed the words there from 'he/she is entitled to workers'

compensation to 'is being paid for workers' compensation' - sorry - workers' compensation is being paid.

In relation to 2 - subclause 2 - we have changed the previous requirement which was that an employee shall notify within 24 hours of the commencement of normal duty and restricted that down to 2 hours as a - as an agreed matter and also there in the third line it talks about the employer. Now we did have some discussion about this yesterday. We don't - well we haven't really had the time to come up with a form of words but we've agreed that that needs to be addressed. We recognise that it does cause some difficulties on the ground and with the employer being the minister administering the State Service Act, which is obviously not practical to - to advise him every time and on that basis we will be getting together with HSUA and SPSFT to come up with a form of words to replace that. But I think we all know what we need to put in there.

In relation to subclause (a)(iii) - again we've changed 'he' to 'the employee' and we've also changed the wording there to basically reflect what (a) talks about, and that is, personal illness, injury or accident - just to make it consistent as far as the wording is concerned. We've changed (iv) to reflect rather than subclause (b) hereof, we've just said, subclause (b) of this clause - be entitled in any one - whilst it said 'year before' we've changed that to sick leave year and again it goes on to say - or in the old provision it said 'to accrue leave' - we've said to accrue sick leave in excess of 152 hours.

The next proviso about accrual in the first year of service remains unchanged. As far as (b) is concerned, again some - just some cosmetic changes: after subclause (a)(iv) we've said 'of this clause' rather than 'hereof'. And we've also put in there 'sick leave year' in the second line instead of just 'year' by itself.

Over the page in relation to (c), we've simply inserted: 'if an employee is absent on sick leave on a day' so that basically that's the same. As far as (d) is concerned (i) and (ii), that basically is the second-tier agreement which was agreed for both hospitals and the public service proper through the second-tier wage negotiations and we've basically reflected that agreement, however we have changed 'week' to 38-hours because our - our pay people on the ground and our pay offices in the HR departments were experiencing a lot of difficulty with the 1 week based on the - all the different hours that people work, specifically when you're talking about restructured hours and flexible working hours, so they specifically requested that we make it definite and make it 38 hours so that's what we've done in there and that's an agreed matter with HSUA. And (e) is basically the same terminology as appears in the award in terms of what a year is for the

purpose of this clause, however we've just made it a sick leave year rather than just leave it at a year.

So that's - that's basically the clause itself. We've deleted references to the Workers Occupational Disease Relief Fund Act which is now repealed, so that's a redundant provision and we've also taken out there the reference to sick leave whilst on paid recreation leave. We intend to put in a clause in the recreation leave clause which talks about when you're sick what happens.

COMMISSIONER WATLING: What happens.

MR WATSON: I believe that's probably more appropriate.

So I think, commissioner, that that basically takes us through the clause. So we put it to you on that basis. Now before - before I go any further, in relation to the quantum within the clause, this, as far as we're concerned, is linked to our hours of work application, so if we're not successful with our hours of work application - that is, 38 for everybody - then we would reserve the right to come back to this application and revisit the quantum, because the 152 hours per year is based on a 38-hour week and if someone is working, say, 36, 36.3/4, then that hourly - or that hourly figure will be reduced a little bit, so if I can just sort of put that rider on to it, I don't think it's a big issue, but - and I don't think that's opposed by Mr Kleyn.

COMMISSIONER WATLING: Well it would be inconsistent then wouldn't it.

MR WATSON: Yes, that's right. The exercise that we're undertaking here in inserting a common sick leave clause for the new award was in effect 152 hours per year or 20 days per year for full-time employees is exactly the same exercise that we went through when we rationalised conditions for nursing staff through the structural efficiency process.

Under - under the old nursing system we had the employees under Part 2 and Part 7 of the regulations and therefore we had nurses employed under the old Nurses Public Services and Nurses Mental Health Award on sick leave through the triennial system and the public hospitals component of the nursing awards was the 20 days per year. So when we rationalised conditions we went to 20 days per year for everybody and now all nurses are under that common sick leave provision, so it's the same exercise we're going here. So in relation to translation the exercise that was agreed with nursing staff was that we would translate people progressively across to the new system and without going to a lot of detail the - effectively what happens is that when an employee's next anniversary date under the triennial system comes up they would then slide across to the - the new 152 hours per year

for full time employees clause - provisions, sorry - and they would retain all existing sick leave credits as at the date of transfer. So no, we're not seeking to take any credits away from anybody and that's been done for all nursing staff who were previously under the triennial system which is quite significant - all Royal Derwent, all St John's Park, all - or some of community health, some of the mental health and community health nurses, nurses in Willow Court, nurses in Family and Child Health Services and there's been no - no problem to our knowledge with that at all.

It may be that we need to have some further discussions regarding translation depending on your decision or any other points that either parties wish to raise, so I don't think we should necessarily be tied to a specific translation, however I think we would prefer to go the same way as we did for nurses, but - but we are prepared to have further discussions with the union parties on that if we need to.

The annual recall system, commissioner, is simple. It's easier to administer than the triennial system which does become a little bit complicated and if you've ever tried to explain it to somebody who is not really - you know, who may not be au fait with awards and things, it is very difficult to explain it to - just in lay terms to somebody who just wants a straight answer.

We have all of our nursing staff, as I said, on this provision. We have a good bulk of our employees who are presently under the Hospital Employees Award on this provision so it only - it seems logical that - that we move to the provision for all staff under the new award.

Now if we can get to a stage where we have all employees in the agency on standard hours, standard sick leave and other standard core conditions, then we would regard that as being structurally efficient in terms of conditions of employment and also in accordance with the thrust of the structural efficiency principle.

Our application, commissioner, is, in our view, consistent with the wage fixing principles as part of the award restructuring program and the rationalisation of conditions. Our application, in our view, is definitely not against the public interest. What we've done and what we will continue to do with the rationalisation of conditions is to look at the full bench's decision, to look at conditions with the salaries as an indivisible package and so that if we cannot come up with a rationalised set of conditions for the award where there may be ups and downs for employees that we really haven't done the job properly or achieved the objectives of the structural efficiency principle in the context of industry or enterprise award. If the commission pleases.

COMMISSIONER WATLING: Thank you. Just one question - is it anticipated that - that all employees whether being part time or temporary and full time get 152 fully accumulative.

MR WATSON: No, commissioner, I - we - we had some discussion that's us and the HSUA prior to coming back here and we agreed that the part time provision would stay in the Hospital Employees (Public Hospitals) Award at this time and -

COMMISSIONER WATLING: Is that in your - in your document?

MR WATSON: - because we - I beg your pardon?

COMMISSIONER WATLING: Is that in your document?

MR WATSON: No, it's not. We - we intend to have a part time provision, an all-encompassing part-time provision in the new award which will effectively have all conditions for part-time employees where - where they need to be specified separately.

COMMISSIONER WATLING: So are you going to sort of segregate them into their own -

MR WATSON: Yes.

COMMISSIONER WATLING: - conditions of employment?

MR WATSON: Well no, not their own conditions of employment but there will be certain differences for part-time employees, for example, with sick leave, they'll obviously have to receive pro rata entitlements.

Now we haven't specifically mentioned them here because if this is ratified for the new award, the part-time provision that is still in the other award which we would imagine will continue to operate, so I - I'm sorry if that wasn't clear, but that's in effect what we're - what we intend to do.

COMMISSIONER WATLING: So you're really - you're really saying that the question of sick leave for part timers will be dealt with at the same time as you deal with the general conditions for part timers?

MR WATSON: Yes, that's right but I don't think that it's really going to be of significance in relation to - like we're not going to be looking for a separate part time - part-time employee. It would simply run off, as far as we're concerned, this full time clause.

COMMISSIONER WATLING: So you'll be amending this again - this clause?

MR WATSON: No, no, what - what we'll be seeking to do - well, just say for example we'll have a clause which is part-time employees -

COMMISSIONER WATLING: Yes.

MR WATSON: - subheading - sick leave, provisions -

COMMISSIONER WATLING: Oh, right.

MR WATSON: - of the sick leave clause shall apply in all respects except for quantum on a pro rata basis or something like that.

COMMISSIONER WATLING: I get the drift - I get the drift. Right. Now before you go any further do you want to address me on the question of any operative date and when orders might be drawn if you're successful? Because, see - I'm just trying to think ahead here. Just say, for example, your application was successful you may well wish to start moving on that, especially if you've got a number of people whose triennium comes up now.

MR WATSON: Yes.

COMMISSIONER WATLING: It won't, in fact, be operative because there'll be no order. However there could be an operative date with orders to follow.

MR WATSON: Mm.

COMMISSIONER WATLING: Or a foreshadowing of the operative date when the orders are drawn.

MR WATSON: Could we just go off the record for a second please?

COMMISSIONER WATLING: Yes.

OFF THE RECORD

COMMISSIONER WATLING: Right, no further submissions to be made. Mr Kleyn?

MR KLEYN: If the commission pleases, the Health Services Union has no difficulties with the clause as presented. As Mr Watson has indicated we have reached agreement on this particular clause which I'm very pleased about. I just would like to make a couple of comments in respect of subclause (a)(ii): Except in exceptional circumstances. I'd just like to make the comment that in the negotiations we had over the months leading up to today we did - this was a particular

issue that was of concern to us, that if we were going to reduce the notification period that there be some capacity for employees in exceptional circumstances to be able to notify the employer at a later date.

And I would envisage that those kinds of circumstances would be things like where people have an accident on the way to work or whether they don't have easy access to a telephone or situations such as that. But apart from that I have no difficulties with this clause and it would be - I submit that this clause as it is be inserted into the new award.

COMMISSIONER WATLING: It's really the existing award provision modernised.

MR KLEYN: Yes, it is and it does delete a lot of the redundant provisions and it does make the language a little bit more modern and more gender neutral. If the commission pleases.

COMMISSIONER WATLING: Good, thank you. Mr Aiken?

MR AIKEN: Thank you, Mr Commissioner. The conditions of employment committee of the State Public Services Federation has considered the issue of sick leave fairly extensively. That committee - I'm not sure if you're aware - comprises a wide range of members from various agencies within the state sector.

They've, as a result of that, developed a federation policy which is to support either a triennial sick leave system which operates in the majority of state service agencies or with a preference to look at a no credit sick leave system. On that basis I would be looking at some stage in the future of reserving the right to maybe come back to this commission to look at the possibilities of a differing sick leave system. But in the first instance we would be looking at discussing that matter with the agency.

However on the basis of the policy of the federation I can't support the application by the agency. However I was going to look at a number of general or provide a number of general comments about the clause. However they've now been addressed with the redrafted condition and like Mr Kleyn, I did have a problem with (a)(ii) which has now been rectified. And the other major concern of part-time employees will be addressed at some stage in the future. So I don't have any general comments to offer about the actual arrangement itself

I would however look to you regarding the possibilities of an anti-detriment provision of some description. We do have the translation provisions as Mr Watson pointed out and that there is the opportunity for us to work that through further. However I would be looking for some form of anti-detriment

provision within the award which basically would protect employees in situations where they could lose out and there could be some examples of people who could lose out in cutting across to the new system - or translating to the new sick leave system. I would expect that would be minimal and we would only be looking at possibly a handful of people, maybe a few more. But I would request that.

COMMISSIONER WATLING: I just ask, if it was done at the - the review when their triennium came around, would in fact that they be losing anything then?

MR AIKEN: There could be -

COMMISSIONER WATLING: I just can't work out in my own mind whether they would be actually losing something.

MR AIKEN: There could be a possibility where - now look, we could get into some difficulties here because I could give examples of where people would be disadvantaged and we could come up with a lot more who would be advantaged. The translation provisions seem okay. But I'm particularly thinking about people who may be on maternity leave, who could be in their fifth year of service. They can use 61 sick leave on full pay. Now once they - and they have 66 in their fifth. Once they get into their sixth year then they get a fresh 66 days. However if they - there is a possibility and I don't know if you're fully aware of a triennial system, the fifth and sixth -

COMMISSIONER WATLING: Well I have some understanding of it but I have to say that it's not the clearest system in the world.

MR AIKEN: No. The reason I - I thought, we're going to have a transcript obviously coming out of this and someone's going to pick it up at some stage and not know what, particularly the three of us, are talking about, I would imagine.

I'm just looking for the rare exceptions, to protect the rare exceptions. I think even Mr Watson might agree that there could be the odd situation where somebody might be disadvantaged and I'm just looking for the opportunity of the protection of the commission, in the first instance talk to the agency and if we have a problem come back to the commission and say: Look, these are the facts under the old triennial system. I hope we don't have to do that because I don't want to go through and explain it.

Even though you might understand it I think we'll lose some people.

The other situation - through the process of negotiations one concern of mine was the absence under the existing award of

sick leave without pay. Now that's quite a big issue as far as I'm concerned. Under the triennial system you do have access to sick leave without pay. Now whilst people under the Hospital Employees Award can take leave without pay where the full credit expires, they haven't got sick leave without pay. The difference between the two is sick leave without pay under the 4 per cent offset, the second tier, doesn't have an effect on other increments: your recreation leave, your salary increments - I can't think - oh, long service leave now. So that in some respects community and health employees can be disadvantaged.

I'd be requesting that should you be looking to supporting the application of a department that you give consideration to also including a component of leave without pay at some quantum that you would determine or preferably an open-ended sick leave without pay provision.

I would also request that should the department's application be successful, despite my extensive arguments against it, that you would look at considering my earlier submission in the recall, on call and whatever it was, certainly the call back clause, that you would consider my arguments in relation to retrospectivity, which was a general argument about conditions. If the commission pleases.

COMMISSIONER WATLING: Right. Any further matters to be raised? Mr Watson?

MR WATSON: Just a couple of very brief things, commissioner. As Mr Aiken said, I think we're all in effect maybe reserving our right to come back to the commission at some later stage if we come up with some brainwave in relation to a new sick leave system. So I think that's basically taken as read.

In relation to Mr Aiken's submission about basically having a safety net for everybody, we would oppose that on the basis that we've either got a new system or we've got the old system or we've got two systems. I don't think we can have a bob each way on it. So I think what we will be doing is saying from a certain date, that is the anniversary date on the triennial system, you're across on the new system now and that is it. But I think if we start fiddling around with savings provisions and, you know: you would have got this so we'll give you a bit more to make it up. I think whilst it might be advantageous for Mr Aiken's members, I just think that what we're on about here is a new provision and it should be applied to all employees on the basis of the award provision.

We're not seeking to take away sick leave that employees will have accrued under the previous system but from a given date that will be it and they get the new system, if our application is approved. If the commission pleases.

COMMISSIONER WATLING: Good, thank you. Right, well that ends all the - sorry?

MR WATSON: I'm sorry, I just As far as Mr Aiken's submission regarding sick leave without pay is concerned we believe that there is some merit in perhaps having further discussions on that. And we wouldn't oppose that aspect in relation to sick leave.

COMMISSIONER WATLING: Right. Right, well that brings to conclusion all the matters that are before us in relation to these applications. I'll reserve my decision on the two matters for arbitration. I will give you an indication now that the two matters that you request go to full bench for hearing, will go to the full bench. Whatever decision I hand down on the two matters for arbitration I will give you a clear indication of which way I feel the clause should go. I will give you an operative date but I won't give you any orders at this stage. The orders will follow in due course and some day in the future will release the order.

Now we might go off the record now to see what our future program is.

OFF THE RECORD

COMMISSIONER WATLING: This matter is now adjourned and we'll reconvene - well these matters, I should say, subject to the application 5032 have been concluded and I'll hand down the decision.

We will have a drafting conference on May the 18th, starting at 9.30 to look at all the other agreed matters that will form part of the application, which I understand is going to be amended and which I understand the commission will be informed the subject matters of the amended application.

So right, thank you for your attendance. I'll hand down a decision in due course.

HEARING ADJOURNED