

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 2652 of 1990

**IN THE MATTER OF** an application  
by the Tasmanian Salaried Medical  
Practitioners' Society to vary the  
Medical Practitioners (Public  
Sector) Award

re structural efficiency principle  
- special case

COMMISSIONER WATLING

HOBART, 23 December 1992  
Continued from 22/12/92

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER WATLING: No alteration to appearances? Yes. Righto. Let the record show that Ms Cox is here today. Right. Mr House?

MR HOUSE: Thank you, Mr Commissioner. Most of yesterday afternoon was taken up with discussion about allowances in our claim, clause 11. In the light of that discussion, Doctor Senator and I have considered the number of changes to the - some of those clauses, but rather than go through them now, sir, if the commission pleases, I'd propose that we send to you and the other party some replacement pages.

COMMISSIONER WATLING: Yes, that's okay.

MR HOUSE: Thank you.

COMMISSIONER WATLING: It would be a lot easier all round I would think.

MR HOUSE: I did undertake to come back this morning in relation to the loading in lieu of leave for temporary medical practitioners. I had some attempts at recalculation but my records in relation to the costings or value of leave entitlements or the detailed records are in Canberra and not accessible at the moment. Amongst other things my secretary has gone on leave. Such costings cover a range of situations relating to contract negotiations in a number of areas that we've been involved in.

I'd like to again seek the commission's leave to defer that so that I can properly develop an exhibit to justify our claim. I should say that given the views of the commission and the advice of the commission on what I'll call 'non core leave entitlements' it is already apparent that our claim in this area will have to be revised downwards.

COMMISSIONER WATLING: Right. Well that's all right. We'll obviously be having a few more hearing days so you'll have ample opportunity to address that.

MR HOUSE: Yes, sir. There are a number of constructions that may be possible and I'd like to consider them carefully.

COMMISSIONER WATLING: Righto.

MR HOUSE: Sir, when proceedings adjourned last evening we were at clause - or subclause 13(B). That relates to hours of duty and (B) is medical practitioners not on a duty roster. We indicated in the first subclause that the society is proposing that the - subject to agreement between the controlling and the employee there be increased flexibility as to the days that would comprise normal duty during the week. Where, in subclause 2 which says: The usual daily hours of work, and the days of work shall be by mutual agreement

between the controlling authority and the employee concerned and will be reviewed on an annual basis but may be altered at any time by mutual agreement between the controlling authority and the employee concerned but not so as to require any employee to work in excess of 10 ordinary hours - the existing award says 9 - in any one day on a regular basis and not more than 152 hours in any two consecutive fortnightly periods.

We also then propose in 3 in terms of the part-time employee: The minimum period of daily work for a part-time employee shall be two consecutive hours for no more than one period on any day except where the controlling authority and the employee otherwise agree. And that replicates what's in part A of this clause for medical practitioners on a duty roster for the same reasons as I indicated yesterday.

Again, in terms of this group of employees, we propose - subject to the provisions in the parental leave clause - that the minimum hours for a part-time employee should be 40 per fortnight in this category. However, it's provided that -

COMMISSIONER WATLING: Why did you actually select 40?

MR HOUSE: Well we consider that - well initially that 20 was - 20 per week I should say, was the sort of hours - and this is no doubt somewhat subjective - that we believe in - particularly in a hospital situation, is the minimum necessary to provide adequate, or more than adequate hopefully, standards of commitment to patient care.

COMMISSIONER WATLING: So anyone that works less than 20 a week hasn't that commitment?

MR HOUSE: I'm not - well, I'm not saying that the person hasn't a commitment. We consider that it's probably more in terms of the presence of the medical practitioner for sufficient time to maintain the continuity of management of patient conditions.

COMMISSIONER WATLING: Yes. Like, if you want me to rule that it be 40 a fortnight, I've really got to have some concrete evidence to say that that's the absolute minimum requirement. What's the evidence for this?

DR SENATOR: Mr Commissioner, perhaps I can expand on that. I think there are extra dimensions to that of just service provision. I think that going back to the classification standards that all the extra responsibilities regarding teaching, training, research, management, administration as well as a service provision which form part of the duties of -



COMMISSIONER WATLING: But you're not arguing that they have to do all those duties before they get that classification though, are you?

DR SENATOR: No, but I - but -

COMMISSIONER WATLING: No. So, they only have to do one and then they could be eligible for that -

DR SENATOR: Well it says 'one or all', sir.

COMMISSIONER WATLING: Yes. So, say this particular person has to do one or wants to do one. Now, keeping in mind that we're looking at the contract of employment between the employer and the employee - we're not trying to organise the administration of the employer's business. We're looking at a contract between the employer and the employee, so you're virtually saying that the employer isn't allowed to employ a part-timer unless that part-timer works 20 hours a week. Right. Now, I want to know what is the evidence for restricting the employer to only employ someone for 20 hour a week. What's the evidence for this?

DR SENATOR: Well despite what was said about the fact that only one or all of the 1, 2, all of the particular duties laid out in the classification standards may apply to the position, as far as I can recall, all advertised positions for consultants in the past have carried the commitment, not only for service provision, but also for teaching, training, and involvement in research, particularly in recent years. Now, the teaching and training commitment is also - particularly the training component is a requirement of all of the colleges who have very clear guidelines on the methods of approval of positions for resident medical practitioners and registrars.

COMMISSIONER WATLING: But the employer might say, 'Well, look, I want you, you and you to be involved in training, and I don't want you, you and you to be involved in training, and therefore I only want you for 15 hours a week and I sort of offer you full-time employment'. Not everyone has to be involved in training whether the colleges require it or not. The employer can arrange it so certain people are involved in training surely. If the colleges want to call the tune, maybe the colleges should pay.

DR SENATOR: Well I think that's not a matter that may find us at variance, sir, but given the circumstances that do prevail at this time, then the protection of approved training positions is deemed - I hesitate to use that word - is deemed to be an important function particularly in the teaching hospitals and it's not only one in this state, and that continuity of the teaching has to be guaranteed and vouchsafed.



The professional - the understanding of the medical professionals employed in these consultant positions within the public hospital is that irrespective of what may be defined in the position statement, if it's silent on the matter of training, then it is a professional responsibility as part of the professional understanding of the person employed that he or she would participate in such activity. I don't think the situation has arisen where somebody has been employed on the understanding that they would not take part in those activities.

COMMISSIONER WATLING: Right. Well what's the difference between someone working 15 hours a week and doing what training they can in that period, given that they've only got a contract of 15 hours a week, and someone doing 20 hours a week worth of work, or indeed someone doing 19 hours a week as opposed to 20. What's the difference?

DR SENATOR: Well we believe that current arrangements for the staffing of the hospitals, particularly at the consultant grade, allow for employment of individuals to provide services for a lesser number of hours per week. All we're maintaining is those people employed under this award, that there be a lower limit so that management still has flexibility in the staffing arrangements but which will maintain the integrity of all of the services of the hospital and including not only the service provision but also those other functions to which I've alluded.

COMMISSIONER WATLING: If you had the choice, would you provide for greater flexibility for part-time workers or would you put a higher or tighten up the flexibility of the part-time workers and introduce a casual provision?

DR SENATOR: Well, I think the society is very much against the provision of casual employment for just the reasons that we've put forward in terms of continuity of care and of other services.

COMMISSIONER WATLING: Yes, but you're really saying the employer can't do it. It's a restrictive thing you're placing on the employer. Let's face it that's what it is about.

DR SENATOR: Yes.

COMMISSIONER WATLING: Right. Now, - and forget all the other arguments. You're really - when it boils down to the crunch you're really saying, 'Look, we don't want casuals and we don't want part-timers doing less than 20 hours a week', and maybe to keep, in your argument, sufficient level to manage and run the place in a proper and effective manner.

DR SENATOR: Yes.

COMMISSIONER WATLING: But when dealing with the contract of employment, should this commission get into a such a restrictive arrangement so as to not allow the employer to organise his business and he sees fit and under the act's interpretation act 'he' means 'she' and et cetera. Right? I'm not being sexist in that comment, but I - and then the question comes about that if you're really going to tighten it up to say that the employer can't employ certain people, then you have to say, 'Well, where do we go from here, or do we enshrine certain positions and tighten them up and allow greater flexibility through either casual or part-time?' Now I'm going to be faced with this dilemma because I'm going to have to address this question and at the end of the day one might be well advised to look for greater flexibility in the employment of part-timers who regularly work as opposed to the introduction of casuals.

DR SENATOR: Well, firstly, I think it has to be remembered that the initiative for including part-time employment is in fact the society's and it was in fact a very important component in our claim, so I don't believe that it could be argued that we're against part-time employment and trying to make it impossible.

COMMISSIONER WATLING: No.

DR SENATOR: I believe that there are other methods in which services which require less than the 20 hours per week commitment can be fulfilled within current arrangements. All we're suggesting is that under the award that in terms of identity of the service responsibility that there needs to be a minimum set which is reasonable to ensure that the services as we understand them - the whole global set of services - can be maintained in a highly functional fashion.

Now, it's of course the employer's capability to staff even on a relatively casual basis. It's just a question of whether the award should necessarily be the vehicle for doing that. There are other groups from - which are traditionally employed within these equivalent status, if you like, within the hospital where that staff can be drawn from.

COMMISSIONER WATLING: Yes, but if it's in the award and the employee is covered by the provisions of the award, then the employer is required to observe the provisions contained in that award.

DR SENATOR: Yes, certainly, but that does not prevent the employer from exercising their prerogative in staffing the hospital below 20 hours in any particular area.

COMMISSIONER WATLING: Well if it says that they've got to be

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DR SENATOR: But not with an award -

COMMISSIONER WATLING: No.

DR SENATOR: - not with a medical practitioner covered by the award.

COMMISSIONER WATLING: Oh, well that's a different argument. But I'm talking about medical practitioners covered -

DR SENATOR: Well medical practitioners currently can be employed for up to 18 hours per week who are not covered by this award, who will never be covered by this award.

COMMISSIONER WATLING: Who are contractors.

DR SENATOR: No, they're visiting medical officers.

COMMISSIONER WATLING: Oh, well, they're contractors.

DR SENATOR: Well I didn't - I don't understand the subtle difference, sir, I'm afraid.

COMMISSIONER WATLING: Well one's a contract for service and the other is a contract of service. A big difference.

DR SENATOR: Well, I'm not party to those arrangements, sir, so I can't comment further.

COMMISSIONER WATLING: Yes. I'm talking about employees that are provided - that are covered by award provisions.

DR SENATOR: Yes, yes. Well -

COMMISSIONER WATLING: I'm not talking about contractors. Of course they can do things with contractors in every level within the hospital -

DR SENATOR: Yes.

COMMISSIONER WATLING: - and that undoubtedly in most industries there is a push to have contractors do all sorts of things.

DR SENATOR: Yes. Well, in fact, that in fact has been the situation within the medical profession. There has been - and this can't be factual evidence, but the tradition has been that there is an upper limit of the number of hours that may be provided by medical practitioners outside the award arrangement and the society has no difficulty with that. All we're arguing from the other end that in terms of providing what we believe to be a quality service that in terms of service provision in a number of other areas that there is

some advantage in placing a realistic lower limit on the number of hours to be provided. We have gone to a lower figure in terms of the trainees mindful of their requirements and also that of the training bodies.

COMMISSIONER WATLING: Yes.

DR SENATOR: If the commission pleases.

MR HOUSE: Mr Commissioner, I well understand the position of the commission in this matter, but for the reasons that have been elaborated by Dr Senator and experienced in other places, it's inappropriate for the society to be acquiescing to a situation where we believe that, in particular, specialist medical practitioners shouldn't be employed on a casual, quasi casual basis.

In other jurisdictions to the extent it's relevant there are similar restrictions and, indeed, restrictions on the maximum hours that part-time employees can be employed for. There are quotas and there are a number of restrictions. Now we can only submit that we've done away with all the restrictions that we believe are unreasonable and maintained a restriction that we believe is in the interests of our members. So I can't really say more than that.

COMMISSIONER WATLING: I think you're entitled to argue it; don't get me wrong. But I was just wondering what the argument is - what's so magic about 40, why isn't it 35 or why isn't it 60?

MR HOUSE: Well it could be 18.

COMMISSIONER WATLING: Yes. I'm just wanting to find out what the argument is.

MR HOUSE: When we've got a proviso we believe 20 is the right one. Certainly 15 is too few or we say 40 in a fortnight gives a bit more flexibility. As to what the employer might do - and I don't want to give them ideas - they can employ someone as a full-time and give them 4 days a week leave without pay, which happens in the ACT to get around these sorts of inflexibilities.

COMMISSIONER WATLING: I'm not too sure you can do that under our act because the act says if a person is a full-time employee he's ready, willing and available to work. It would be counted as a stand down then and they've still got to pay them.

MR HOUSE: Well it's by agreement obviously.



COMMISSIONER WATLING: Well the act says if they're ready, willing and available to work, someone could say that they're ready, willing and available and the employer would be required to pay them.

MR HOUSE: Well -

COMMISSIONER WATLING: There's no stand down provision in this award.

MR HOUSE: Well you could say to the person: if you want the job you've got to agree to take 4 days a week leave without pay. Simple as that.

COMMISSIONER WATLING: Well then you'd be part-time.

MR HOUSE: Well you're still classified as full-time but, yes, you're part-time.

COMMISSIONER WATLING: You wouldn't be because you wouldn't be working full time. You wouldn't be working a 38-hour week; that's the definition of full time.

MR HOUSE: Well in some areas that I don't practise in, indeed, you'll see - and no doubt you're aware - that casual employment is available for the employer and that is exercised so that demonstrates our concern about this that, you know, we've traversed before. So we believe that from our perspective we've made a significant concession in terms of what exists in other areas. And I can't say much more than that.

Sir, moving to meal breaks, we agonised over whether this previously, as you will recall, is in the hours of work. Whether it should have been put in with meal allowances or whatever - we didn't quite see it as comparable to meal allowances so we made it, for ease of reference, a separate clause which is similar to what already exists other than a) which says: an unpaid meal break of 60 minutes during which the employee is released from all duties which would restrict the employee to his or her place of work or to remain on call shall be taken no later than 5 hours after the commencement of ordinary hours of work or between midday and 2.00 p.m. where an emergency or - and it should be 'a work requirement'. And then we've added: approved by a medical administrator of the health service facility.

And then we continue with what exists: prevents of the taking of such a meal break employees will be paid a meal break at the rate applying at the time. So we've endeavoured to put some - it's not really -

COMMISSIONER WATLING: So at the time means at the time of taking such meal break.

MR HOUSE: Pardon?

COMMISSIONER WATLING: At the time means at the time of such meal break or the rate of pay that's applying in the award at the time.

MR HOUSE: Yes.

DR SENATOR: At the time of taking the meal break, sir.

MR HOUSE: And I think there was some ambiguity about work requirement and to the extent we could put any precision on that. We've said: approved by the medical administrator.

COMMISSIONER WATLING: Does that actually mean that someone is directed by the employer to work or an employer's representative to work?

MR HOUSE: Well it could be that or it could be that a situation arises that requires the meal break to be deferred and there is, if you like, some sort of .... on the determinant of whether that work requirement should continue or not.

COMMISSIONER WATLING: So the work requirement, who would actually require it?

MR HOUSE: It would normally be as the result of a situation for the patient, I would imagine.

COMMISSIONER WATLING: So a patients condition at the time might dictate that they -

MR HOUSE: It's not really an emergency in terms of what normally - Dr Senator would have a closer knowledge than I.

DR SENATOR: I think there would be situations, for example, in late finishing of operating sessions or prolonged clinics and that in combination with other duty requirements may prevent that person from accessing the meal time between midday and 2.00 p.m. during the day and, of course, outside those hours there may be no availability of facilities et cetera.

So we've endeavoured to be as flexible as possible yet be accountable and that's the purpose of adding that phrase: approved by the medical administrator, so that there is some accountability for this. The approval may not necessarily be in advance but on application of the individual may be approved by the circumstances prevailing at that time.

COMMISSIONER WATLING: Would it be approved retrospectively?



DR SENATOR: Maybe approved retrospectively because it can't be anticipated.

MR HOUSE: 14(b), sir, as I understand it, doesn't reflect any change. Similarly, 15 - Extra meals, unless I'm corrected there's no change.

DR SENATOR: No, no, these are new.

MR HOUSE: 16 -

DR SENATOR: No, sorry, 15(b) and (c) are new.

MR HOUSE: Pardon?

DR SENATOR: 15(b) and (c) are new.

MR HOUSE: From our previous claim.

DR SENATOR: No, not from our previous claim.

MR HOUSE: I'm corrected, sir, that 15(b) and (c) are new in terms of a new award but haven't been changed from our earlier page 4 claim. 16 - Rest Period, here we say: an employee required to work outside the prescribed spread of hours shall so far as practicable be allowed a rest period of 8 consecutive hours off duty between the rostered or agreed work period of each day except where a break of lesser duration is agreed between the employer and - we would seek leave to change the words and/or the appropriate to and his/her employee organisation and the controlling authority.

Now the argument for that clause is obviously related to occupational health and safety and patient care. That we believe that is consistent with, I think, some other awards that there should be adequate periods of rest for people that are required to work long hours and -

COMMISSIONER WATLING: If the principle is right why should there be any agreement allowed at all?

MR HOUSE: Well there may be situations of, again, patient care that make it very difficult for that rule not to be broken.

COMMISSIONER WATLING: So we are saying -

MR HOUSE: We would see it very much as an exception.

COMMISSIONER WATLING: So we're really saying that it will only be broken in exceptional circumstances due to - for some reason.

MR HOUSE: Again, to patient care if there's an absolute necessity.

COMMISSIONER WATLING: But it doesn't necessarily say that though, does it?

MR HOUSE: No, but I don't know -

COMMISSIONER WATLING: It means that at any time they could agree to change it.

DR SENATOR: I think the difficulty here is, sir, that the controlling authority may, in fact, be of a mind to allow that this rest period be observed on every occasions. In practice, however, because of the service requirements then it would be a situation where the individual would feel that he must, in fact, attend and not take advantage of that 8 hour rest period.

A situation, for example, where a registrar has been on at night and then has a scheduled operating session or clinic or ward round in the morning that's dictated or established by a consultant, either a visiting medical practitioner or a consultant and really the trainee has little control or discretion over whether he does or does not attend, and quite rightly so in the sense that continuity of care is, again, a very important aspect of the maintenance of quality clinical service.

We are concerned that the existing clause does not really give anybody any idea as to how often this rest period is breached at the present time and the circumstances of those breaches and we believe that from the point of view of occupational health and safety considerations that at least some means of controlling this particular aspect should be in place.

COMMISSIONER WATLING: Right, well just take me through the procedure then of how this would take place because if it was just the employer and the employee then it would be pretty easy to implement. But it says you have to have agreement between the employer, that's the minister administering the State Service Act, the employee organisation or the employee and the employee organisation and the controlling authority. So what's the procedure for getting agreement between those three and how long would that take?

DR SENATOR: Well we believe that we needed a mechanism by which any abuse, possible abuse of this was open to scrutiny. At the present time there's no capacity for that to take place because the individual may feel that even though he has not been able to access this entitlement that complaining about it may, in fact, be counter productive to his own future welfare.



COMMISSIONER WATLING: But they could take it to their union though, couldn't they?

DR SENATOR: Well they could but again that would be a situation that they would individually deign not to exercise, I believe, because of the implication that raising a concern like this might have a deleterious effect on their relationships with other people for whom they more directly account themselves.

COMMISSIONER WATLING: Right. Well I'm just a bit concerned about the mechanism of how we get this agreement then. Say, for example, I really want the break but I've got a patient that's pretty crook and I feel that there is a need to attend to the patient. Now before I can even do that I've got to get agreement with the union and the controlling authority to do it. Now the patient might be that bad that you really need to do something urgently and how do we physically go about getting the union and the controlling to agree? And I take it with the controlling authority -

DR SENATOR: Well in that situation -

COMMISSIONER WATLING: We're not talking about his or her immediate supervisor; we're talking about the controlling authority here and the union.

DR SENATOR: First of all, to reassure you, sir, I believe that there have been no situation where the employee organisation would agree that patient care should be compromised by the exercise of any aspect of our claim. Secondly, we were searching a mechanism -

COMMISSIONER WATLING: Well why wouldn't you just leave it to the employee then?

DR SENATOR: Well the problem is that then we don't know how systematic this is, that the rostering arrangements may, in fact, allow that this potential exists to an extent that's greater than the good that comes from having these people available.

COMMISSIONER WATLING: Right. So would any record be kept of it?

DR SENATOR: It would only in the sense of the time sheet worked by the employee but that wouldn't provide the detail as to the circumstances.

COMMISSIONER WATLING: Yes. I know what you're trying to do and I'm probably don't disagree with the overall philosophy, but I really am concerned about the mechanism.

DR SENATOR: Yes.

COMMISSIONER WATLING: Because I really think that the people are entitled to a rest period and these industrial safety, health and welfare matters, in my view, are extremely important. But I'm just worried about how it takes place because you could be in breach of the award very easily here.

DR SENATOR: Yes, well perhaps then what we need here is agreement between the employee and the controlling authority and notification of the employee organisation. And then, of course, if it's believed that it is a systematic problem then that can be taken up with management or through the available mechanisms elsewhere within the state service and the award.

COMMISSIONER WATLING: Is it then true to say the controlling authority because I think you'd only get agreement then with your immediate supervisor, wouldn't you?

DR SENATOR: Well there in lies the problem too that the - say, the trainee feels as if he may be employed by his immediate supervisor who may be, in fact, as you describe, a contractor or a consultant under this award, but also, of course, his employer could be seen more directly to be the medical administrator responsible for the hospital services.

COMMISSIONER WATLING: Who would actually then okay it? Who would this person have to go and get agreement from before they did this?

DR SENATOR: Well their immediate supervisor would make requirements that they, for example, attended their ward round or their clinic but it would be up to the medical administrator, of course, to certify their time sheet.

COMMISSIONER WATLING: But that's after the event.

DR SENATOR: Yes.

COMMISSIONER WATLING: But this reads that you can't do it unless you get agreement. You've got to have agreement before you can do this. It's not a retrospective thing.

DR SENATOR: Well it normally functions as a retrospective thing.

COMMISSIONER WATLING: Well it shouldn't.

DR SENATOR: Well this is why we tried to address this clause because we found that it really had no point to it in the first place because it was more in the breach than in the observance.

COMMISSIONER WATLING: Yes, well that's another reason why I'm trying to sift this out because we've got to work out are



we just putting things in the award that make - or allow people just to breach it, otherwise it becomes a bit silly.

DR SENATOR: Well this is why - but the society's point of view is that we don't know the scale of the problem. We believe that there should be a default mechanism so that at least it can scrutinise this. In most circumstances we would not impede the continuity of care provided for even if the rest period happen to be breached. But we did not want to see any rostering arrangement which would perhaps not allow that by and large this rest period could be observed.

COMMISSIONER WATLING: So let's try and put that in a nutshell; are you really saying then that where there is an emergency or through the requirement of patient care -

DR SENATOR: Yes.

COMMISSIONER WATLING: - that they can't observe this, then the controlling authority and the employee can agree to do something else.

DR SENATOR: Yes.

COMMISSIONER WATLING: And you really must then clarify that by saying that this can be retrospective agreement.

DR SENATOR: Right.

COMMISSIONER WATLING: Because if it's not that you have to get agreement before it actually happens.

DR SENATOR: Right. Yes.

COMMISSIONER WATLING: Otherwise everyone will be in breach of the award all the time.

DR SENATOR: Yes, well that's basically what we came from.

COMMISSIONER WATLING: And what's - what's the use of it?

DR SENATOR: Yes, that's where we came from but obviously our drafting has not been sufficient to - to guarantee what we wanted to do which was the highest level of occupational, health and safety for the employee as well as the maintenance of quality medical services without bureaucratic -

COMMISSIONER WATLING: The award could quite easily provide, even if you didn't mention the employee organisation, the award could quite easily provide that the employer keep a record of the number of each occasion this happens.

DR SENATOR: Yes, the question is how - again, designing the mechanism by which that - that could in fact be put in place. But, sir, if we could have - take - have leave just see to whether we can redraft to - to clarify those two important principles that we're basically attempting to protect the employee -

COMMISSIONER WATLING: Yes.

DR SENATOR: - but mindful of the need for -

COMMISSIONER WATLING: Yes, some, yes.

DR SENATOR: - for maintaining services.

COMMISSIONER WATLING: Well I think you'd have to at least into it by saying on what occasions can you breach it.

DR SENATOR: Yes.

COMMISSIONER WATLING: And they must be because of emergencies - for emergency reasons or patient care.

DR SENATOR: Yes.

COMMISSIONER WATLING: Or whether there's a requirement to attend to a patient or something.

DR SENATOR: Yes, we still face this - this little difficulty, that the direction may - may in most cases be from the - be from the immediate supervisor whereas that immediate supervisor may not necessarily -

COMMISSIONER WATLING: Is not the employer.

DR SENATOR: - be - be a medical administrator who is aware of these provision and these circumstances.

COMMISSIONER WATLING: Yes. Well that's a problem that the employer's got isn't it - making sure all the supervisors are up to speed in their operation.

DR SENATOR: Yes, well that would in fact not be difficult given - given the fact that - except for the fact that many of the supervisors may not in fact be employees covered by the award.

COMMISSIONER WATLING: No, that's right. But then again if the employer has placed some person in charge of the employer's employees, then they also have a duty and a responsibility to make sure that they understand the rules and regulations under which the employees are entitled to work and entitled to access.



DR SENATOR: Sure - it may need to be clarified through administrative instruction or some similar mechanism.

COMMISSIONER WATLING: Yes.

DR SENATOR: Thank you, sir.

COMMISSIONER WATLING: Right.

MR HOUSE: Yes, well that's a difficult one to resolve. Just to round it off the proviso there is similar to the same as what's in the award as at the moment. Turning to the next clause, 17 - excess time, again we've divided this clause up into a section dealing with medical practitioners on a duty roster and medical practitioners not on a duty roster. There should be an 'S' in (a), medical practitioners on a duty roster.

Clause (a) states, that subject to subclause 12(b) all time worked in excess of the prescribed weekly minimum or outside the prescribed spread of ours shall be paid for as follows: for excess hours within the prescribed spread of hours or hours worked outside the prescribed spread of hours on week days at the rate of time and one quarter.

COMMISSIONER WATLING: So in - in (b) you've got an averaging concept -

MR HOUSE: Yes.

COMMISSIONER WATLING: - of hours - right?

MR HOUSE: Yes.

COMMISSIONER WATLING: So if you happen to work 45 hours one week and the rest of the hours to make up your 76 in the fortnight, you're saying all the hours from 38 will be paid under excess hours - 38 to 45.

MR HOUSE: No, on the average of 72 -

DR SENATOR: Seventy six per fortnight.

MR HOUSE: We're saying that the averaging process applies -

COMMISSIONER WATLING: No, can I just - you might have got me wrong - it says in (a) here: subject to subclause thingumabob - all time worked in excess of the prescribed weekly minimum - that's 38 - right? We're - so if you happen to do 45 in one week and the residue in the next week to make up your 76, the hours between 38 and 45 will attract excess time. Is that your understanding of it?

DR SENATOR: Oh, I see the difficulty here in the sense that - that 17(A)(a) deals with the - does not provide for the - even though it says subject to subclause 12(b) it is still framed in terms of the week rather than the fortnight.

COMMISSIONER WATLING: Week - yes.

DR SENATOR: And we have to perhaps bring those into line. Could - I think we'd need some time just to - to consider -

MR HOUSE: Can we delete weekly?

DR SENATOR: - the implication of that.

MR HOUSE: Can we delete weekly?

DR SENATOR: Well that presupposes that we've made a decision as to - that the average will pertain and - and that a heavy week followed by a light week.

COMMISSIONER WATLING: Yes.

DR SENATOR: How are we going to address the not only the excess hours in one week but the deficiency in hours of the next week?

COMMISSIONER WATLING: In the next week - it does.

DR SENATOR: We need time to consider that, sir.

COMMISSIONER WATLING: I would think so, because it's a fairly big issue, but of course you could have a situation where just everyone gets automatically excess hours if they work past that 38 but mightn't work any more than 76 in the fortnight.

DR SENATOR: Yes. Well I think the other implication is in relation to the hours of work clause with regard to 13(a)(ii) - a proviso - the life sentence there so far as employees present themselves for work in accordance therewith, the hours of work should be those specified on a roster, so it has implications there too, I believe.

COMMISSIONER WATLING: Well we'll leave 17 - defer 17? 17(A).

DR SENATOR: 17(A), I think, sir.

COMMISSIONER WATLING: 17(A)(a).

MR HOUSE: Yes, 17 (A).

COMMISSIONER WATLING: Right.



DR SENATOR: Perhaps we could make the point that those rates there apart from in little roman numeral (i) are the current arrangement and the only change in little roman numeral (i) is the dealing with the excess hours within the prescribed (iii).

COMMISSIONER WATLING: Yes, so it borders on what we were talking about yesterday - 25% for those excess hours.

MR HOUSE: Sir, the - well turning to (b) we say excess hours worked immediately after the conclusion of the rostered period shall be paid when such excess hours are considered justified by service requirements under the circumstances prevailing at the time and these excess hours may be approved retrospectively.

COMMISSIONER WATLING: So what do you mean when you talk about rostered period? Are you talking about the end of the cycle or end of the work pattern for the day or the week - what do you described as rostered -

MR HOUSE: The period that the person is scheduled to work according -

COMMISSIONER WATLING: What - in a day?

MR HOUSE: - to a determined roster.

COMMISSIONER WATLING: Or a week - or is it a monthly roster - in excess of what?

MR HOUSE: The day that - the period that the person is rostered from -

COMMISSIONER WATLING: On each day?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right.

MR HOUSE: And the issue there was a question of the retrospective approval for where - where someone works beyond the scheduled period. It may not be possible as we discussed a few moments ago to get the necessary approval or where a patient requires immediate attention or continued attention. Sir -

COMMISSIONER WATLING: Well where - where does this sort of thing stop though? That could go on indefinitely, couldn't it?

MR HOUSE: Well I would have thought that the -

COMMISSIONER WATLING: So it's really left to the individual employee to work out when they should stop - when they've worked the excess hours.

MR HOUSE: Well I think, you know, a reasonable approach should be taken in that the - where the patient's condition has improved or stabilised or where someone else becomes available to take over. I'd see it as fairly - or not a normal situation.

COMMISSIONER WATLING: No, but I'm really looking about providing safeguards in the award. The way it's written that anybody - you could go on for another eight or 10 hours and just authorise your own overtime by just working through.

MR HOUSE: I would have thought that the medical administrator confronted with the requirement to certify a time sheet that shows that this would some extensive inquiries as to what - what actually happened that required this extra 10 hours of duty.

DR SENATOR: Mr Commissioner, -

COMMISSIONER WATLING: It's a hard one I know, but it's -

DR SENATOR: - it's a very difficult one, I think, but, you know, obviously we all know that the Auditor-General has in fact examined - examined this and has in fact -

COMMISSIONER WATLING: I haven't seen the report but I've been sort of interested - I'll have to get a copy and read it.

DR SENATOR: Yes, it is in the public domain. But this was one area, I think, of very significant concern that was raised last year and the Auditor-General has looked at this. I believe the - his conclusion was that although the documentation may not be - be a hundred per cent in terms of allowing him to - to scrutinise this appropriately, that his overall conclusion was that it didn't seem to be an area of significant abuse and that it seemed to be governed more by the medical exigencies prevailing at the time and have accepted that.

This is a very difficult area because it really does - I guess it comes to the point of personal professional responsibilities, where they begin and end, and I don't think that hard and fast rules will necessarily be helpful because I think that they may solve difficulties in one area but just open up potential problems in other areas.

I would think it's unlikely that individuals employed under this award would automatically allow themselves to significant amounts of excess time on those tasks merely to pad out their



hours. I think that - that there is no evidence to suggest that sort of abuse takes place. I think the Auditor-General agrees with that. And it may be a question of looking at the mechanisms of monitoring work patterns rather than making very prescriptive rules which may prove to be unworkable or to the detriment of patient care.

COMMISSIONER WATLING: I suppose it gets back to the question of, if it can't be justified then should the payment take place.

DR SENATOR: Well payment does not take place until the pay sheet is certified.

COMMISSIONER WATLING: Yes.

DR SENATOR: And the certification process by medical administration is meant to encompass an exploration of anything which - which might appear to be abnormal or irregular.

COMMISSIONER WATLING: Yes, I can understand that's how it might work out in their field, but if an employee to push us, the - any alteration that was made to the sheet would in fact be a breach of the award. Now the award here doesn't say that - doesn't give the approval for anyone to say, well look, that was unnecessary and therefore you won't collect it. The award says that you shall get irrespective - and I have known circumstances whereby people in administration, even though employees put in the time sheet, they alter it. Now they have no authority to do that.

DR SENATOR: Well, we believe - we believe very strongly, as you do, sir, that they have no authority. We would hope that the normal mechanism would be that the medical administrator might refuse to certify the time sheet and before gathering further information from the individual as justification for that particular component. And that would be as far as I'm aware in my health service facility at the present time the way in which this works.

COMMISSIONER WATLING: Right.

DR SENATOR: But there is no question that this matter I believe has indirectly been brought before you in other proceedings. There is no knowledge of my own that - that time sheets have been altered in a - an inappropriate or in fact illegal way over recent times.

COMMISSIONER WATLING: Now there is no requirement for this to be approved because it talks about that it may be approved.

DR SENATOR: Well we're quite prepared to change that to say that it must be approved.

COMMISSIONER WATLING: Yes, right.

MR HOUSE: Well that changes the meaning, because in all - that - it's not always - there wouldn't always be the need through a retrospective approval.

DR SENATOR: Yes, but in terms of retrospective - in terms of approval -

COMMISSIONER WATLING: I think -

DR SENATOR: - it has to be -

COMMISSIONER WATLING: - I think if it was to stay you need more words to actually clarify the situation, because you're really saying, right, there may be times when this is to happen and then you have to ask yourself the question, well what should apply, how is it authorised, if it can't be justified then what is the result. So I think, you know, you've got to get those simple little things into it, I think, to clarify it.

DR SENATOR: Yes, yes.

COMMISSIONER WATLING: But I think you have to say that it - it has to be authorised - if it's not justified, what shall happen, so someone's got to have the authority to say, well I've found that it's not justified and it could have been done, therefore the payment won't be made.

DR SENATOR: Yes.

COMMISSIONER WATLING: But I think if especially if you're going to have retrospective approval you need to tighten it just a bit. But I can understand the circumstances, but I -

DR SENATOR: Well it's also felt that here again might be a situation where managerial - management practice might be incorporated into - into administrative guidelines, but -

COMMISSIONER WATLING: Yes, but they've got to have it in the award before they can actually implement it. They've - and they've got to be able to say, look, this clause in the award states this, that and the other thing, this is the procedure to flow in relation to the implementation of that clause. But if it doesn't say it in the award it means as it stands at the moment it doesn't really mean a lot, it just means you can go ahead and work and put your chit and you've got to be paid for it.



MR HOUSE: Turning to (c). This is an attempt to cover part-time situations for excess time. We say the thresholds and penalty rates for excess hours worked by a part-time employee are the same as those prescribed for a full-time employee and will be applied to hours worked in excess of those applying to full-time employees - and we'd just like to make a minor change - sharing the same duties on the roster.

COMMISSIONER WATLING: In the last line there?

MR HOUSE: Yes.

COMMISSIONER WATLING: Full-time employees sharing -

MR HOUSE: - the same duties on the roster so that - the intent is that the part-timer will not enjoy any advantage in terms of overtime to his or her full-time colleague so that they'd obviously have to work in effect the full-time hours before any penalty would accrue.

COMMISSIONER WATLING: Right. So these amendments that we're making on the way, I take it that you will supply me with some fresh documentation in relation those.

MR HOUSE: Yes, as I indicated this morning, sir, we'll supply you and our colleagues at the other end of the table.

COMMISSIONER WATLING: Right. In relation to the start of (c) -

MR HOUSE: Yes.

COMMISSIONER WATLING: - 'the thresholds'.

MR HOUSE: Yes.

COMMISSIONER WATLING: What do you mean by 'the thresholds'?

MR HOUSE: The periods that - the time that elapses prior to penalty rates or the excess hours being recognised.

COMMISSIONER WATLING: Yes. Do you think you might clarify that as well because that could be -

MR HOUSE: I agonised over the use of that word and so did Doctor Senator.

COMMISSIONER WATLING: I think you just have to simply describe the circumstance even if takes a few more words but it would be an interpreter's nightmare.

MR HOUSE: Well I - yes. Well I take your point but the intent was that they treat the part-timers - if he or she was a full-time in terms of this award. We're not - again, I

think this is a concession we've made in terms of a part-time provision.

COMMISSIONER WATLING: Yes. But I'm just saying what do you mean by 'thresholds'? Simply describe it to me.

MR HOUSE: Yes.

COMMISSIONER WATLING: So and so and so and so and such and such and penalty rates for -

MR HOUSE: Well we've tried to define penalty rate, and then follows - we will attend to that, sir.

COMMISSIONER WATLING: Right.

MR HOUSE: And then follows (d) penalty - that standard provision: penalty payments are not cumulative and where more than one penalty payment is attracted, payment shall be as for the higher penalty only.

Turning to medical practitioners not on a duty roster, we believe that leave in lieu of excess hours worked initiated by the employee up to a maximum of 20 days per year may be taken by the employee and will be calculated at ordinary time rates, with the unused balance of hours calculated at ordinary time rates to be paid at the end of each anniversary year, provided that in the case of a part-time employee leave in lieu of excess hours worked will accrue only for time worked in excess of 7.6 hours per day exclusive of meal breaks.

I'm sorry again, sir, we've deleted: outside the ordinary hours of work of an equivalent full-time employee, and then instead of putting the definition in parenthesis, we just go straight into saying 7.6 hours per day exclusive of meal breaks. I'll clarify that when we write to you, sir. The - I think we can anticipate some debate over this time off in lieu provision from the employer.

COMMISSIONER WATLING: Right.

MR HOUSE: The situation is that in most other jurisdictions if not all other - well not all - most other jurisdictions, the senior staff specialist or the staff specialist are not paid for excess time as such. In some jurisdictions it is covered by an allowance - sometimes a significant allowance for being available whenever required or having continuous excess duty but we contend that the existing arrangement in Tasmania, that is, as provided for in this clause, is efficient and appropriate.

Just because it's somewhat unique, we don't think it is a reason to do away with it. As indicated, there's no penalty



attaching. There are ordinary time rates - or it's on the basis of ordinary time. It - I can anticipate another argument that the salaries are such that they should encompass this sort of requirement. The trouble is again with the - our debate about allowances, the incidence of excess time doesn't fall evenly across the different specialities, so that this provides we believe rather than, say, a flat allowance of 'X' percent for everyone or a salary that allegedly encompasses this is necessarily the right way to remunerate it.

Now in - for example, this was an issue in the recent work-value case in Queensland where - well, in its wisdom, the full bench of that commission went against what I am saying and said that they didn't think time off in lieu was appropriate. Now, I wasn't a party to those proceedings but I think there was also a difficulty in the way the union's claim was constructed in terms of time off in lieu and that was a factor, but however, the Queensland Commission decided to give a continuous duty allowance or flexibility allowance it was called - a contradiction of terms perhaps - of 5 per cent for people that are regularly working outside the normal spread which is, incidentally, a lesser spread than we have in this award, and for those that worked beyond 14 hours a day, pay them overtime, so we're not proposing to seek anything in that direction, but we strongly submit that it is appropriate, we believe, even given structural efficiency considerations that this provision remain as part of the award in this state otherwise I believe pressures would mount for something that could well be less appropriate.

COMMISSIONER WATLING: In relation to the start of (b) it says, 'Leave in lieu of excess hours worked initiated by the employee', are we talking about the leave initiated by the employee or the excess hours worked initiated by the employee?

MR HOUSE: The excess hours.

DR SENATOR: Perhaps that clause, Mr Commissioner, might be strengthened by saying 'and approved by the employer or the controlling authority'. Perhaps I could make two comments, firstly that the diversity of approach across Australia also reflects the fact that in many other - or in some other jurisdictions there is no hours clause so it's very difficult to compare apples and pears, if you wish.

The second thing is that I believe that any - that the flexibility that's available here for management and the employee is considerable in the sense that in larger departments it means that a service requirements and the smooth running of the facility is enhanced by enabling people to take perhaps an afternoon off here or there depending upon the accrual of these hours and remove the stress on them personally as well as on the system.

In the original circumstances of claim to reduce the specialist's working hours to 38 hours per week, it was the contention of the society that move was to allow in fact extra recreation and not just the accrual of additional overtime payments and hence -

COMMISSIONER WATLING: What was the result?

DR SENATOR: Pardon?

COMMISSIONER WATLING: What was the result?

DR SENATOR: Well it's patchy because of the different shape of the different services I think around the state and particularly in my own hospital where there's different staff establishments in those staff establishments that are large there is a capacity for regular time off at no penalty and no penalty to the service. Where problems arise are in where there may only be one or two specialists providing the services and the difficulties there in maintaining the continuity of care of all of the services involved. We believe that resolution of those problems is more - is related to management practice rather than necessarily an intrinsic fault of the - with the provision.

COMMISSIONER WATLING: On the next pay, it talks about the ordinary time rates to be paid at the end of each anniversary year. Well we don't have an anniversary year. I take it that you mean on the date of the anniversary the employee commenced employment with the employer?

DR SENATOR: Yes.

COMMISSIONER WATLING: So we're looking at on the date - so it would then read: be paid each year on the date of the anniversary the employee commenced employment with the employer.

DR SENATOR: With the employer, is that correct, or the controlling authority?

COMMISSIONER WATLING: Well it's really the employer. The controlling authority -

MISS COX: Is the minister.

COMMISSIONER WATLING: Yes. The controlling authority gets its delegation from the employer which is the Minister administering the State Service Act. It's still the employer. The controlling authority really has a limited role. The controlling authority get it's role from delegation from the employer being the minister. I know it gets pretty complex



but - you know, I don't know whether you have any definitions in here of controlling authority.

DR SENATOR: Yes.

MR HOUSE: Yes, it's an agreed definition, I think.

COMMISSIONER WATLING: Anyway we know what we're talking about. We're not talking about an anniversary year, we're talking about a - righto.

MR HOUSE: Turning now, sir, to 18, call back and we've added 'and return to duties' and (A) again deals with - it's a split up between medical practitioners on a duty roster and (B) medical practitioners not on a duty roster. In terms of (A) we specify: An employee who is recalled to duty outside of that employee's rostered hours of work will be paid for actual time worked including time reasonably spent in travelling to and returning from work by the most direct route at the following rates: (i) If recalled on week days outside the employee's rostered hours of duty or outside the prescribed spread of hours, at the rate of time and one quarter; (ii) if recalled on Saturday or Sunday, at the rate of time and one half.

DR SENATOR: We've got something missing here. We've missed out something here.

MR HOUSE: No, no.

DR SENATOR: Oh, I'm sorry.

MR HOUSE: (iii) if recalled on a public holiday: (a) within the prescribed spread of hours, at the rate of time and one half; (b) outside the prescribed spread of hours, at the rate of double time and one half. Those provisions, as I understand it, are similar to what prevails at the time certainly in terms of the penalties prescribed. We have specified though that specifically that people - where the call back occurs outside the - how can I put it - prescribed spread of hours is not normally subject to a call back provision. Is that right?

DR SENATOR: The call back can occur within the spread of hours.

MR HOUSE: And does the penalty occur?

DR SENATOR: ....

MR HOUSE: Excuse us, sir.

DR SENATOR: It's silent.

MR HOUSE: Well the existing award is not clear and we've endeavoured to clarify that.

COMMISSIONER WATLING: Now when you return to duties do you - are you still eligible to attract your on call rate? Where do we find that prohibition?

DR SENATOR: That isn't specified in our claim and sure to be addressed. My response was what the current arrangement is, but that's covered by administrative circular which - from the Department of Health which clearly precludes the continuation of on call payments during periods of recall.

COMMISSIONER WATLING: Well depending on what the award said, it might well mean that they are entitled to it.

DR SENATOR: Well I think the award again is silent on that, sir.

COMMISSIONER WATLING: But if it gives a rate -

MISS COX: I don't think - it wasn't an administrative instruction. I think it was part of the 4 per cent second-tier offsets ....

DR SENATOR: Right. Sorry.

COMMISSIONER WATLING: But the award wasn't varied to reflect it.

MISS COX: No.

COMMISSIONER WATLING: So if the award says what it says it could well mean that they're entitled to both?

MISS COX: Well possibly, but I mean the 4 per cent offsets were put before the commission at the time and I'm sure that was one of them.

COMMISSIONER WATLING: Yes, but a number of things -

MISS COX: But the award wasn't varied, no.

COMMISSIONER WATLING: - out at the head department they never took the opportunity to vary the award.

MISS COX: Yes, that's correct.

COMMISSIONER WATLING: And, so, you know we only find these things come about when there's some Donnybrook on it, like, payment of wages or something. You know, they are not registered agreements and therefore the award prevails.

MISS COX: Yes.



COMMISSIONER WATLING: These issues need to be considered.

DR SENATOR: Thank you for drawing our attention to that deficiency in our claim, sir, but I think we will reserve our position as to which way we will actually jump on that one.

COMMISSIONER WATLING: Yes. Well I think if it - I think it needs to be addressed in this section.

DR SENATOR: Yes.

COMMISSIONER WATLING: Because you're talking in this section about what payments shall be made when they return to duties. Well you would think that it would include certain payments and exclude other payments. I'd have to say to you that my prima facie position would be that I don't think you could continue to claim on call allowance if you've actually been recalled to work and you're getting the recall to work rate.

DR SENATOR: Yes.

COMMISSIONER WATLING: Otherwise it would be double counting.

DR SENATOR: Well, yes, we're aware of that argument. A counter argument might be that the on call commitment continues possible for not those specific duties at the time and -

COMMISSIONER WATLING: Well you'd actually be at the employer's place of employment then. In fact, I'd be more than interested if you ran an argument on it. I've run down this path before on this particular question because the on call - the theory of on call is that you're supposed to hold yourself in waiting.

DR SENATOR: Yes.

COMMISSIONER WATLING: Now if you're on the employer's premises and being paid for work it gets into the argument whether you're away from the employer's premises holding yourself in waiting.

DR SENATOR: Well, yes, except that our on call is -

COMMISSIONER WATLING: Very flexible.

DR SENATOR: No. Well it may be very flexible by the design of the society, sir, but our on call does contain provision for being available for advice and telephone instructions.

COMMISSIONER WATLING: Yes, but if you're on the employer's premises and the employer requires you to give advice and

you're on the employer's premises being paid for it by a rate that's prescribed, then you'd have to work out how much of it could fall into the category of double counting.

DR SENATOR: Well, again, I don't want to prolong this unnecessarily but I see a situation, for example, where an individual may be responsible for statewide or cross regional responsibilities and, in fact, be called back in one venue and be still effectively capable of fulfilling on call requirements elsewhere.

COMMISSIONER WATLING: Yes, but if they're on the employer's premises and they're actually being paid by the employer to be at work and if it's the same employer - it would be a good debate. We'll leave it until we get to it, I think.

DR SENATOR: Okay, thank you, sir.

MR HOUSE: Turning to (b) -

COMMISSIONER WATLING: It needs to be addressed, I think, in whatever happens in this section here. But if the award is silent it could be argued that each clause stands alone and therefore you could get an on call rate under the on call clause and you could get a return to work under that particular clause.

DR SENATOR: In the light of what you've said, sir, I don't think we'd have any difficulty in clarifying that the rate will only cover the actual call back and return to duties - will be excluded from those.

MR HOUSE: We've got it in the 17(A)(d) where it talks about penalty rates -

COMMISSIONER WATLING: Yes, on another thing. Yes.

MR HOUSE: - not being cumulative.

COMMISSIONER WATLING: Well that's a penalty rate.

MR HOUSE: Yes, but it's a normal industrial practice though.

COMMISSIONER WATLING: Yes, that's right. The other thing we're actually talking about is an allowance, an on call allowance.

MR HOUSE: Yes.

COMMISSIONER WATLING: It's not necessarily a penalty rate.

MR HOUSE: No. (B) - Medical practitioners not on a duty roster, (a) an employee who is recalled to work by a responsible officer approved by the controlling authority.



And then we've added: or returns to duty to fulfil service requirements or professional responsibilities following the completion of the employee's usual hours for that day or 7.6 hours exclusive of a meal break of customary duration whichever is the greater having left his or her place of work may be paid for the actual time worked including time reasonably spent in travelling to and from work by the most direct route at the following rates.

Within the prescribed spread of hours at ordinary rates - perhaps that should say at ordinary time rates, 2) outside the prescribed spread of hours up to 12 midnight Monday to Friday at the rate of time and one half, and 3) from 12 midnight up to the commencement of ordinary hours Monday to Friday at double the normal hourly rate provided that a recall or a return to duty prior to the ordinary commencing time which continues into ordinary hours shall be paid at double the normal hourly rate until the normal commencement time at which time payment shall revert to the normal hourly rate, and 4) on weekends and public holidays at double the normal hourly rate.

Now we see that that provision should be considered in the context of the more flexible arrangements that we provided for people working any 5 days in the week and that those provisions are justified.

DR SENATOR: I think essentially, sir, these prescribed penalty rates are the ones that prevail at this time. The differences here are greater specification of what is covered by this provision and, again, mindful of the need for accountability. We've included specific reference to returns to duty to fulfil service requirements or professional responsibilities. Now -

COMMISSIONER WATLING: Well maybe if we can have a look at that. We start off by saying recalled to work by a - who's this responsible officer approved by the controlling authority? What category of person are we talking about here?

DR SENATOR: Well that may be any member of the employed medical staff who is given this particular responsibility by medical administration.

COMMISSIONER WATLING: So you're talking about being recalled to work by a representative of the controlling authority.

DR SENATOR: Well there we strike some problems, sir, because it may be, in fact, a contract employee.

COMMISSIONER WATLING: Yes, but wouldn't they be the representative of the controlling authority in this circumstance?

DR SENATOR: Well the formality of that I don't think has ever been established.

COMMISSIONER WATLING: Yes, well I'm not too sure what a responsible officer means. Who does it mean? I don't what a

DR SENATOR: Well usually it's another medical practitioner who seeks help but in some cases it might be a member of the nursing staff.

MISS COX: Particularly in the district -

DR SENATOR: Yes, particularly at the district level.

COMMISSIONER WATLING: Yes, but I'm just wanting to put it beyond doubt who can actually do it.

DR SENATOR: Yes. We work from the other way to say that there were two categories. We dislike the use of the term 'self initiated' call back because there was a contradiction in terms. So what we were saying was on one hand you had a call back by an individual or on the other hand that there were professional responsibilities and service requirements which caused a return to duties. I think we'd be grateful for any assistance you could give in the form of words because I believe it is very difficult -

COMMISSIONER WATLING: Yes, well I'm really just going - trying to drag out who can do this, who can actually call someone in and I'm not too sure 'responsible officer approves' - that means everyone has to have approval of the controlling authority so unless they've got some approval -

DR SENATOR: That approval may not necessarily be in a formal documented way. It may be that an individual at that time taking a responsibility for patient care has that delegated approval by virtue of that particular role. There are other local management practices that require, for example, that an intern in casualty, in the accident and emergency centre cannot do this and has to require that somebody of more seniority triggers this mechanism. So that there are varying arrangements and as my colleagues at the other end of the bar table indicated, this may, in fact, in the districts involve non medically qualified allied health professional or nursing staff.

COMMISSIONER WATLING: Yes, well I don't disagree with any of that but all I'm saying is that the award should reflect quite accurately who it is that can do this. It certainly says: approved - this person is approved by the controlling authority so I want to know how they get this approval.



DR SENATOR: Well I just wonder whether we can get over this problem by leaving out the reference to 'by a responsible officer'. In other words, just indicating that an employee is recalled to work and such recall is approved by the controlling authority. Might that solve a the problem, sir?

COMMISSIONER WATLING: I think it could well do but someone has to do it, so you're really saying anyone could do it.

DR SENATOR: Not perhaps anybody but based on management practice.

COMMISSIONER WATLING: But in the sense of the award has statewide implications it could be a registered nurse, it could be some executive officer, it may be a medical practitioner, it may be - but a person, a number of people could do it.

DR SENATOR: So we would seek to insert the words: and such recall is approved by the controlling authority.

MR HOUSE: (b) all payments -

COMMISSIONER WATLING: Let's work our way through here: or returns to duty to fulfil service requirements. So that means there needs to be no authority there, you can return to work as and when you like.

DR SENATOR: Well, again, we attempted to distinguish a situation where there might not be prior request, but I take your point that all of this would be subject to even retrospective approval by the controlling authority that that would be necessary.

COMMISSIONER WATLING: Otherwise the way it reads you can just, well really, initiate your own call back and then take the payment for it. Where's the accountability there?

DR SENATOR: Yes. Well I think that subject to the approval of the controlling authority even in retrospect, for the same reasons that we've indicated before in relation to excess time.

COMMISSIONER WATLING: Right. So we need to redraft that (a) section a bit.

DR SENATOR: I might say, sir, that some of the - to get over the problem of this accountability for return to duties that that is addressed, we believe, to a significant extent in subclause (e) of this clause.

COMMISSIONER WATLING: Right.

MR HOUSE: Well if we can turn to (b), Mr Commissioner.

COMMISSIONER WATLING: Right.

MR HOUSE: All payments under this clause shall be calculated to - and we say - the next half hour with the minimum period - a minimum payment of 2 hours except where the return to duties is self initiated to fulfil service requirements or professional responsibilities in which case payment under this subclause shall be calculated on the basis of actual time spent on return to duties inclusive of travelling - of travel time at the appropriate penalty rate.

There, Mr Commissioner, the existing arrangement is that the payments are calculated to the next quarter hour with a minimum payment of 1 hour. In terms of reviewing this situation we've sought obviously an increase there except in the case of the contradiction in the term 'self initiated call back' where there would be no payment beyond the time actually spent.

COMMISSIONER WATLING: It's inclusive time, of course.

MR HOUSE: Yes. Now again I'm expecting you to ask me to justify that under the wage fixing principles.

COMMISSIONER WATLING: I thought you could do it automatically; I wouldn't even have to ask.

MR HOUSE: Well I'd have to say again, sir, that we believe that it's appropriate in terms of the award modernisation process.

COMMISSIONER WATLING: So what would be the cost of this in relation to, say, if it was done on, say, the past year's arrangement because it's increased cost. Because new conditions relate to increased -

MR HOUSE: Well it would certainly be increased cost but I'm not aware that we would have a costing available or be able to cost it.

DR SENATOR: Mr Commissioner, if I might refer to that. I think that there are only figures in respect of the call back for - well there may be more extensive ones but I only know of some data on the Royal Hobart Hospital. There it is difficult to itemise the amount related to full-time medical practitioners under this award separating off the traditional call back from the so called self initiated call back. It may well be that we find that the component of self initiated call back was such that this, in fact, might, in fact, turn out to be revenue neutral or, in fact, be a saving.

COMMISSIONER WATLING: Well certainly under the principles we're looking at the cost of new conditions and the cost of



new conditions weight heavily on whether they're implemented or not. So you can't put any submission to me in relation to cost?

MR HOUSE: Well not specifically in relation to cost but I think we can only say at the end of the day that I suppose we'll have a list of things that have generated structural efficiencies and hopefully service delivery improvement. Obviously there'll be - well I'd anticipate strenuous argument from the other end of the table about the extent that the commission - sorry, the government can afford these sorts of things.

COMMISSIONER WATLING: So it would cost more than \$1.00 then.

MR HOUSE: That's right.

COMMISSIONER WATLING: You can expect a submission, I take it.

MR HOUSE: Well I'd anticipate that given - looking at other proceedings in this jurisdiction. However, we would hope, as Dr Senator has indicated, that the - the cost wouldn't be great and hopefully it could be perhaps offset if there is a cost with other - other improvements that we're proposing.

DR SENATOR: Perhaps, Mr Commissioner, I could also draw attention to (c) in which -

MR HOUSE: Yes.

DR SENATOR: - is the capacity for cumulation of that - that working time, so it's not a fresh start each time, and we believe that, allied with the payment for only the work time and travelling time for self-initiated callbacks may change that equation quite considerably.

MR HOUSE: And (d) is not new certainly in terms of our - our claim. So that's just a point of clarification. (e)(i) - for the purposes of subclause - subclauses (a) and (b) of this clause, the employee will - and then we've added new words - provide particulars of the service rendered, that is, the date, the time of day, the unit record number of the patient where applicable and either the identity of the employee initiating the callback or alternatively certify that the return to duties was self-initiated to fulfil service requirements or professional responsibilities and held to be justified under the circumstances prevailing at the time.

COMMISSIONER WATLING: Who would hold them to be justified?

MR HOUSE: Well -

COMMISSIONER WATLING: The person so signing? So there'd - there'd make their own assessment that it was justified and then it was - and then it would be up for payment?

DR SENATOR: Well we've indicated, sir, that it should be subject to approval by the employer.

COMMISSIONER WATLING: Yes, so you'd make a few alterations to that, right?

MR HOUSE: And secondly, no callback payment claim may be made by an employee who exercises rights of private practice in respect of the time spent in services rendered to a referred to .... or Department of Veterans' Affairs patient for which a patient - for which a payment for the - the service is claimed by other means, but the employee will record the particulars as provided for in paragraph 1 of this subclause.

And then it goes with words that have been there before: where an employee is recalled to render services to patients for whom a callback or return to duties payment is allowed, and also provide services to patients for whom a callback or return to duties for which payment under this paragraph is not to be made, the employee will only claim payment for the time spent on the recall for the responsibilities not otherwise claimed by other means.

Now these - this - this subclause has - has been carefully drafted by Dr Senator to address some allegations that have been made in the discredited document. But just to try to tighten up in terms of modernising the award, the - or the process under which payments are claimed and also to make it quite clear in the award when claims may be made and when claims should not be made. It's unfortunate that we have to come to this point where what we would think would be normal professional responsibilities have to be spelt out in this way.

COMMISSIONER WATLING: Well I think - look I'd have to say, I don't think it harms anyone to be accountable. I think we've all got to be accountable. I don't think any of us are immune from that, and if this - this can be of a blessing to employees as well as employers. It can save a lot of arguments. I - I don't really see it as being sort of a black day in which you have to put these things into contracts, I just see them as something that's only right and proper. It clearly spells out when you can make a claim and when you can't. And I think that's only right and proper, and then there's no doubt then.

MR HOUSE: Yes.



COMMISSIONER WATLING: And if people want to sort of make accusations then they can be easily checked or they can be examined against the award provision and the contract of employment. So I think it's only right and proper. And let's face it, there has been some murmurs about accountability and I've only sort of read bits and pieces from Hansard and the daily papers in relation to the Auditor-General's report. In fact I notice the award makers even got a shaft.

MR HOUSE: Yes, I was going to go and say that - that it's often convenient to blame the award for something.

COMMISSIONER WATLING: Yes, but - so, you know, I'll do my best to make sure there's accountability as well.

DR SENATOR: I think there was a generic term of stake or remedies that was used by somebody or other, reference to

COMMISSIONER WATLING: Oh yes, I did see some -

MISS COX: In the ....

COMMISSIONER WATLING: I did see some stories in the paper about some of these things and some more interesting responses.

MR HOUSE: Yes. Interesting letters.

COMMISSIONER WATLING: And when is the next saga going to come forth? Who's going to -

MR HOUSE: Well when is the next election?

COMMISSIONER WATLING: Who's going to initiate the next letter - we're all sitting waiting.

DR SENATOR: The society is usually fairly - fairly conservative in such matters.

MR HOUSE: Sir, we turn now to 19, which is rostered on call.

COMMISSIONER WATLING: Right.

MR HOUSE: A - subclause (a) - an employee who is rostered on call and who is directed by the controlling authority to remain within close telephone contact in order to hold that employee in readiness to return to work without delay or within a reasonable time of being recalled, or to attend to telephone inquiries and - and we've added, request for professional advice - shall be paid in accordance with the following rates - and here again we've distinguished between medical practitioners on a duty roster and those that are not - medical practitioners on a duty roster 1.5 hours per night,

Monday to Friday inclusive, or 3 hours per night, Saturday, Sunday or public holiday and 4.5 hours for each 24-hour period of a weekend or public holiday and with the proviso that the above - and we'd seek to delete nightly - that the above rates will be based on the ordinary time hourly rate of a level 2 grade 1 employee except for a senior registrar where the above - delete nightly - the above rate will be based on the ordinary time hourly rate of a level 4 grade 3 employee.

Now, sir, as we've indicated, well firstly we believe going back to the start of that clause that the on-call requirement goes beyond just holding yourself in readiness to return to work if required. But as Dr Senator has indicated there are situations where in a sense you - you return to work over the phone and we discussed this in terms of some other categories on an earlier occasion.

Now getting to the substance of - our claim here is again the - what we say that we don't believe it's appropriate to continue with a flat dollar amount sort of approach to on-call. It's more appropriate in our - our view that the on-call rate be somehow related to the salary at the - that applies in the award from time to time.

We also, having regard to some concerns expressed by the commission about that being a variable rate, we've endeavoured to fix the payment in terms of a particular point within the salary structure. Now the other - the other matter - the other thing we -

COMMISSIONER WATLING: That's not for everyone though, is it? Some people, some people will get another rate.

MR HOUSE: Well there's the senior registrar gets a different rate. Now I was going on to explain why that is, because - but everyone else as I understand gets level 2 grade 1 unless I'm - missed something. The registrar, we say, rate should be in recognition of the fact - or the senior registrar - I correct myself - as I think was discussed yesterday to most intent and purposes performs the - in this function the role of a consultant and is sharing an on-call roster with consultants, so that we believe the rate should be that as what we're proposing for consultants when we go on to the next subclause relating to medical practitioners not on a duty roster. So it would seem to us to be equitable that people doing the same function in effect at the same degree of responsibility be remunerated the same as the -

COMMISSIONER WATLING: Well let's go back to why we have these sort of provisions in awards anyway. And they're really to compensate the employee for the disability experience for being on call.



MR HOUSE: Yes.

COMMISSIONER WATLING: I think I've had this discussion with you before; what is the difference in the disability if you're on 20,000 or if you're on 50,000. Now keep in mind you have to go back to the heart of what the allowance is in the award for. Right? It has nothing to do with your position in the system whatsoever. The allowance is in the award as a compensation to employees for holding themselves in readiness and being required to do things if necessary.

MR HOUSE: Well we - we would submit, sir, that in terms of medical practitioners there is another dimension in that it goes beyond just - and we've had this debate before - it goes beyond just being restricted - just being a restriction allowance. It is an allowance that also recognises that there is a requirement to provide professional advice and ongoing - in effect you're still at work in one sense, that you can't forget about your commitment at work.

COMMISSIONER WATLING: Oh well -

MR HOUSE: Now we've mentioned the fire brigade -

COMMISSIONER WATLING: - let me give you an example then -

MR HOUSE: - and that, well -

COMMISSIONER WATLING: - if - if - if the - well, I think we've used the fire brigade before -

MR HOUSE: Yes, yes.

COMMISSIONER WATLING: - and you still haven't convinced me that someone in on-call in the fire brigade that gets a call for a chemical fire - right -

MR HOUSE: Yes.

COMMISSIONER WATLING: - and they give advice over the phone that that person receives in the industrial sense an amount different from someone that - that doesn't give that advice. The allowance is there for the disability.

MR HOUSE: Well if I was arguing for the fire brigade I would say that the - and I'm not well appraised of this area except in the terms of airport firemen - that the person most likely to be rung about a serious situation will be a higher level fire officer - not always - and that the level of advice expected from that superintendent or whatever he or she is called would be, you know, reflect to some degree anyway the person's training and skill and experience and therefore I would argue if I was here for the firefighters that there should be some differential.

COMMISSIONER WATLING: Well at the end of the day I'm going to go back and examine why is the allowance in the award? What is the allowance there for? What is the philosophy in relation to such an allowance?

MR HOUSE: Well that - in the award as you'd be aware there are differential rates now.

COMMISSIONER WATLING: Yes, but we're reviewing it. Structural efficiency, validity - where did it get there before - by arbitration?

MR HOUSE: Well again and I'm not putting it in the CWJ sense, but -

COMMISSIONER WATLING: Please don't.

MR HOUSE: - these - the differentials in terms of medical awards are not unique to this jurisdiction so there must be some - there -

COMMISSIONER WATLING: Yes, but look -

MR HOUSE: - there must be some reason.

COMMISSIONER WATLING: Yes, well yes, that's right. How many are arbitrated, how many by agreement? Take me through them.

MR HOUSE: Well I -

COMMISSIONER WATLING: There are lots of things contained in awards that -

MR HOUSE: - most of them are by agreement.

COMMISSIONER WATLING: That's right, well we'll be going for an arbitration. Give me an arbitrated decision - evidence - you see?

MR HOUSE: Yes.

COMMISSIONER WATLING: What weight - you know as well as I do that agreements don't carry anywhere near the weight as arbitrated decisions, where they've been fully tested, where the arguments have been fully tested.

MR HOUSE: Oh, yes.

COMMISSIONER WATLING: There - awards contain a number of provisions that are by consent.

MR HOUSE: I'm not saying that it - I'm not putting an argument that what - what I'm putting has the force of



arbitration. I'm putting an argument that there seems to be some recognition in this area of employment - and I'm not sure what happens in the firefighting industry - by the parties, rightly or wrongly, that, you know, there are some different requirements placed on people at a senior level than those at the trainee level. Dr Senator could well -

COMMISSIONER WATLING: Yes, but some of them are there too because some people might feel it more convenient to give a view over the phone than - than be called back in.

MR HOUSE: Well it's - therefore it's cheaper, there's no callback.

COMMISSIONER WATLING: Yes, but that's not the philosophy in relation to callback is it?

MR HOUSE: No.

DR SENATOR: Well maybe partly, sir, if I may -

COMMISSIONER WATLING: Right, well you run the arguments then. Look, I'm - I think I'll - from here on in I'll just butt out of all these conversations that we're having because - and I'm going to stick to just give me the evidence - give me the evidence for doing it, because I - we can waste a hell of a lot of time doing this. I finished yesterday afternoon thinking well why are we doing this.

Maybe if I just sit here and listen to the argument - and I have to say whilst we're on this point, I'm just getting a bit disturbed that you're running one argument and then you're standing up running another argument and we're getting two points of view on - or two arguments on the same subject matter and I'm just getting a bit toey about this.

I'm - not knowing who to direct my attention to; I start off directing it to the chief advocate then the other advocate has a go. All day yesterday. There must have been about 30 or 40 occasions where we had two arguments or two submissions put on every point. Now maybe it would be easier for us all round to butt out - I'll say nothing, you give me the evidence.

MR HOUSE: All right.

COMMISSIONER WATLING: If I can't see the evidence then I have to write my decision accordingly. So, you know, it won't be a case of just going through the award and just telling me what's in the clause. You have tell me what - and as I tried to even say yesterday - give me the evidence. Give me something to write the decision on. Not that you think it's right or proper. What's the evidence for this? Now if you think it's right and proper there must be some evidence for it.

MR HOUSE: Okay. Well we'll -

COMMISSIONER WATLING: Now maybe I'll just shut up from here on in and let you do your bit. It might be quicker all round.

MR HOUSE: Well, sir, the evidence will obviously have to be presented when we come to the time of witnesses because - I apologise for -

COMMISSIONER WATLING: So you're deferring this matter then, are you?

MR HOUSE: Yes.

COMMISSIONER WATLING: Righto. Put 'deferred' -

MR HOUSE: But in general terms from - addressing what you've said as to having two advocates -

COMMISSIONER WATLING: Yes. Well you must -

MR HOUSE: - I'm not a medical practitioner and I - and the reason why we've got two advocates is that Doctor Senator is familiar with what actually happens, but if you find it difficult in terms of him elaborating on the reasons for why we've done things, then that - the process of presenting professional evidence in terms of the medical area, will have to await the appropriate time when we call those witnesses.

COMMISSIONER WATLING: I'd hardly see that arguing for an on-call allowance is professional evidence.

MR HOUSE: Well the question is what sort of function does this involve and if you see it as a disability allowance, end of story. We can't - that's it. I feel that I'm instructed and that it's incumbent upon me to try to say that there is more involved than that, but if that's not the commission's - if that's unpalatable to the commission, -

COMMISSIONER WATLING: Well I'm saying -

MR HOUSE: - well so be it.

COMMISSIONER WATLING: Yes. All right. Well you run your argument. I'll stay silent from here on in and you just put up your proposition, then I'll just examine it.

MR HOUSE: Yes, but I think that's one thing. The other thing is, you know, we don't - we're not unappreciative if where the words of our claim are ambiguous or whatever. I think that's a separate issue, but -



COMMISSIONER WATLING: Yes. But once you get into that then it does create a problem, even this very clause where it starts off by talking about the following rates and you talk about 1.5 hours per night. How can that be a rate? That might be time off. Like, there's all those sorts of - once you start it -

MR HOUSE: Yes.

COMMISSIONER WATLING: - you know, so I think you -

MR HOUSE: Okay.

COMMISSIONER WATLING: - you know, maybe I just butt out.

MR HOUSE: I rest our submission there that we are not - as you well know - in favour of a process where it's \$2.52 and hour or whatever.

COMMISSIONER WATLING: And the reasons?

MR HOUSE: The reason is that that rate has a propensity not to be adjusted from time to time, whereas if it's somehow tied to the salary, we believe that's more efficient in maintaining the award up to date from our perspective. The extent that it's relevant, we've calculated the original on-call rate and we believe it was something like - calculated on the basis of 10 per cent of salary.

Turning to medical practitioners not on a duty roster. Here we've endeavoured to take into account the incidence of being on call and if on a regular on-call roster of one in three - that's one period - one day in three or one period in three - or less frequently, 7.5 per cent of the base salary of a level 4, Grade 3 employee as an availability disturbance allowance, and secondly, if permanently on call or on a one in two roster, 17.5 per cent of the base salary of a level 4, Grade 3 employee as an availability disturbance allowance, and there's two provisos: Provided that this availability disturbance allowance shall be based on an on-call roster approved by the controlling authority, and provided further that the lower rate of availability disturbance allowance, 7.5 per cent of the base salary of a level 4 Grade 3 employee may apply irrespective of the on-call roster where the usual frequency of disturbance whilst on call is low, as agreed by the controlling authority and the employee concerned. Sir, if the commission pleases, I'd like to tender an exhibit going to the method of arriving at those rates.

COMMISSIONER WATLING: Righto. We'll mark this Exhibit H.13.

MR HOUSE: Now, sir, we've endeavoured to work out what the appropriate rate should be given the varying incidents of

people being required to be on an on-call roster and we've made certain assumptions that there are 11 public holidays per year which I think is conservative, and 43 hours ordinary hours of duty including an unpaid meal break of an hour per day, that on average that staff specialists or medical practitioners not on a duty roster would average about 43 hours a week. Now, we've looked - based it on a range of remote call to - or close call. The director's allowance where that might apply is not included. Is that the managerial allowance or -

DR SENATOR: No, the current director's allowance. These are the base salaries of the specialists.

MR HOUSE: Yes. Just - I'm reminded, just on the base salaries of the specialists and allowances are not included and here we see that these payments or payments under the existing arrangements are for permanent on call around 25 and as high as 36 per cent. For those on a one in two roster, around 11 to - or 10.1/2 to 17 per cent - 18 per cent. So - and in one in three roster from 7 to 12 per cent. So that we've struck, if you like, a rate that somehow is a medium rate of 7.1/2 per cent for people on a one in three roster or less.

In terms of a one in two roster at 17.1/2 per cent has been derived - having a look at both the one in two and the permanent on call and we've arrived at a figure of 17.1/2 per cent. So to the extent possible we've endeavoured to calculate or convert the existing dollar amount payments into a percentage - what percentage arrangement on a cost neutral basis.

If I could now to turn to (b). This is again the criteria that was in H.4 with one amendment: The following criteria will necessitate an employee participating in an on-call roster: (i) Employees responsible for clinical care of accident and emergency patients and in-patients in public hospitals; (ii) - and we've added this one - career medical practitioners responsible for the medical care of community patients; (iii) employees with management and administrative responsibilities which require the employee to be medically qualified; (iv) employees responsible for patient diagnostic facilities; and (v) other employees, as directed by the controlling authority.

This we would submit is an appropriate description of people that could be expected to participate in an on-call roster. That's just an elaboration of what this clause or the sort of people this clause covers or the categories in the award. Finally, in this clause, (c) which is I think - well is not changed from earlier proceedings: an employee who is required by the controlling authority to be on call shall be reimbursed



for the costs associated with the rental of a fixed telephone installation at the employee's place of residence together with the cost of telephone calls made as part of that employee's duties. And I'm - Mr Commissioner, is that a convenient time?

COMMISSIONER WATLING: I think so, yes. Righto. We'll adjourn till 2.15. Thank you.

#### LUNCHEON ADJOURNMENT

MR HOUSE: Mr Commissioner, just before the luncheon adjournment we were discussing clause 19(B) - sorry, 19(c) of our claim, and that referred to the reimbursement of rental costs of telephone installation. I'm instructed that in 1988 the Royal - the management at the Royal issued a circular or instruction that provides for this reimbursement. At this stage we're not aware of what the arrangements are in other hospitals, but if it would assist the commission we could provide a copy of that circular when we write to you about other matters.

COMMISSIONER WATLING: In relation to the contents of (c)?

MR HOUSE: Yes. Well I haven't seen the circular, but I'm instructed that it does cover the reimbursement of telephone rental costs for people that are regularly rostered on call.

COMMISSIONER WATLING: Right. But it's your claim though. You're claiming something new?

MR HOUSE: Our claim is new in - I'm not - as I understand it our claim doesn't go beyond what's in the circular, but this obviously - we're seeking to have it made an award condition.

COMMISSIONER WATLING: Right.

MR HOUSE: Sir, turning to clause 20. This and many of the following clauses are unchanged from H.4 other than officer is now - the term 'officer' has been removed in terms of people covered by this - our award and replaced with the term 'employee', so that - and of course the clauses reflect that - those comparable clauses in the General Conditions of Service Award, that being clause 20, 21, 22, 23 - except in 23, if we could turn to subclause 6 where that's an additional clause - subclause which says: Unless otherwise directed by the controlling authority kilometrage on duty in the case of duties specified in clause 18 of this award shall be the distance travelled from the point of receipt of the call back or return to duty or the employee's usual place of residence whichever is the nearer, by the most direct route to the employee's place of employment and return to the employee's

destination or place of residence whichever is the shorter by the most direct route.

So obviously we're seeking reimbursement for private vehicle costs in the case of call back. I think we traversed earlier that while there may be some reimbursement for the costs of taxis or whatever, it's more efficient that the medical practitioner use his or her motor vehicle.

COMMISSIONER WATLING: Right. New allowance?

MR HOUSE: I think in this case, sir, it's an expense related new allowance. I would understand under the principles that if the expenses actually incurred that it is permissible.

COMMISSIONER WATLING: You're going to make sure you address all these things, aren't you? I'd suggest you don't leave any stone unturned, right? And don't take it that I'm going to take things for granted, right? I'll let you run your case as you see fit. If you don't tell me I won't read anything into it.

MR HOUSE: Well the new allowances principle says: new allowances to compensate for the reimbursement of expenses incurred may be awarded where appropriate having regard to such expenses. So, sir, we would submit that prima facie that that claim depended on its merit. It falls within the parameters of the wage fixing principles and we would say that as to the merit it's definitely a work related expense. It may be that one could go by public transport and claim that expense but we say that it's more efficient and appropriate that there be also provision to receive the standard kilometrage allowance where appropriate.

I'm not sure that that's not permissible now but it's not explicit in the award and I'm not sure that it would be claimed in all circumstances. If you're only going a couple of kilometres you probably wouldn't worry about it. Sir, subclause 23(b)8 and specifically 8(b), this is the one to do with expenses travelling outside Australia - Papua, New Guinea and New Zealand we've said -

COMMISSIONER WATLING: Well why have we jumped the rest?

MR HOUSE: I'm sorry, well I said at the start that the provisions that we've inserted in the award are, as I believe, identical to the general provisions that are applying in the General Conditions of Service Award and have been inserted in this award to make the award up to date and comprehensive.

Unless the commission - well I assume that those provisions have been justified before the commission and they do, in fact, apply to our members given that we're party to the



General Conditions of Service Award, and I didn't consider it necessary unless we are seeking a change to have to traverse the rationale and substance of those conditions other than we are seeking the commission's agreement to a change.

I'm unable to anticipate what our colleagues at the other end of the table might argue in this context, but I believe that these things are - these general conditions applying in the state service are not a matter of contention between us. However, sir, I'm reminded that in 23(b)2 we've added in a claim for - in terms of 2(b) - telephone calls to the employee's usual place of work to discharge on call commitments. Again the same provision in relation to an expense related allowance .... the same reasons apply.

Similarly, 2(d) - airport parking fees incurred by the employee, I understand is administratively available. That's the reimbursement. At the moment we're seeking to include that in the award. In terms of subclause 8 of the same section, as I was saying, we have changed 8(b) dealing with travel allowance outside of, what I'll call, Australasia to pick up in the absence of any information that we're able to obtain the rates that apply in the commonwealth. They're specified by what's called schedule 2/C/A of determination No. 15 of 1983, the Commonwealth Public Service Board, as varied from time to time. These rates are based on, as I understand it, commonwealth overseas service and determined administrative - centrally in the Department of Industrial Relations and the schedule is a public document.

However if there is a similar instrument in this state the society would have no difficulty, provided that that instrument is available, in adopting whatever is the standard in this state. However I'm instructed that so far that information hasn't been available so we've had to resort to that vehicle. That's the only reason. We're not saying it's any better than what might be here.

COMMISSIONER WATLING: Are you going to take me to the merit argument of this?

MR HOUSE: Well the merit argument, sir, is it's an authoritative, I believe, an authoritative document, a document based on -

COMMISSIONER WATLING: I'm not doubting but what's the merit of it? Why are you - what's the merit -

MR HOUSE: Those rates have been determined as appropriate -

COMMISSIONER WATLING: What are the rates? Full case, Mr House, full case. You're asking me to award something - a group of words which mean to me absolutely zilch. I don't even know what the figures are.

MR HOUSE: The figures obviously vary from time to time.

COMMISSIONER WATLING: I don't know how and when it was determined. I don't know whether it was consistent with the state act. You might take me to the Industrial Relations Act in relation to making awards to see whether it's consistent with that. And while you're at it you might take me to the section of the Tasmanian Industrial Relations Act that says that the commission has power to require people to observe awards of other jurisdictions.

MR HOUSE: Well, sir, this is not an award of another jurisdiction. As far as I know it's a Public Service Board determination.

COMMISSIONER WATLING: It's the Tasmanian jurisdiction, is it?

MR HOUSE: Well unless there's any .... in the Tasmanian act from having regard to instruments in other areas then, of course, it would apply to Commonwealth employees in Tasmania anyway. So it's not really foreign in that sense. We submit that these rates are authoritative and are derived from a reliable source. Well there are a whole lot of rates obviously, but selecting some: reasonable overseas travel allowances covering meals and incidentals for given salary levels. And there are three tiers. For example, Singapore, if your salary is \$99,005 or more it's \$A208 a day. If your salary is \$59,121 to \$99,005 it's \$156.40 a day and if your salary is less than \$59,121 per annum it's \$142.20.

I again apologise, they are Singapore dollars. In the case of the United Kingdom the respective figures are \$73.40, \$55.20 - pounds, I'm sorry - 73 pounds 40 pence, 55 pounds 20 pence and 50 pounds 20 pence. In the case of the United State, take Washington, \$99,005 per annum, the rate is \$US110; \$59,121 to \$99,005, the rate is \$US82.70; and for less than \$59,121, \$US75.10.

Mr Commissioner, I regret I'm not in a position to make a submission in relation to how such a provision complies or otherwise with the Industrial Relations Act at this point of time. Having a quick look there I wasn't able to identify any provision where the commission is not allowed to have regard to a schedule such as this or put such a reference to the schedule in an award. As I've said, that if there is an appropriate instrument in this state and the commission is able to give that the force of the award, then we would have no difficulty with that.

COMMISSIONER WATLING: Why should I do your homework? And then what about section 20 subsection (4) of the act?



MR HOUSE: Well I say we can't do our homework because we don't know what exists.

COMMISSIONER WATLING: Right, well that's fair enough. That's your submission.

MR HOUSE: Yes.

COMMISSIONER WATLING: Fair enough. I've noted that.

MR HOUSE: Clause 24 is another provision that applies generally in the state sector. And we do no more than seek to adopt that. Now, sir, we come to the first of the provisions that relate to leave in circumstances as to whether - as to the question of whether these matters should be dealt with by a full bench, the decision by the president to that effect or otherwise, unless you advise me otherwise I would seek just to identify the changes rather than argue any particular merit.

COMMISSIONER WATLING: Well I think I can say to you that the act only really requires matters of annual leave to go to the full bench and therefore I'm not going to refer the other matters of leave to a full bench.

MR HOUSE: Thank you. Well in that case I will endeavour to -

COMMISSIONER WATLING: So how are you handle the clause and its inclusion in the award now is your property and your business so you deal with it as you see fit.

MR HOUSE: Well obviously if there's only one area that's still subject to decision then I will endeavour to deal with the matters that can be argued here or now.

COMMISSIONER WATLING: Right.

MR HOUSE: The first one is clause 25 - conference leave, and straightaway we get caught up with difficulties but (a) says: subject to the provisos hereunder on application by a medical practitioner - and we've added 'who is not a temporary employee otherwise subject to clause 11(c) of this award' - the controlling authority shall approve up to 2 weeks leave per year exclusive of travel time by the most direct means on full pay for the purposes of attending conferences however titled concerning medical practice, research, management or education.

There's a number of provisos but before I go to those the question of the temporary employees being entitled or otherwise I think is a matter we have to deal with and it seems that the conference leave would not be a consideration in any event for temporary employees. So we would delete 'who is not a temporary employee' - no we'd leave that in - 'who is

not a temporary employee'. Delete 'otherwise subject to clause 11(c)', I suppose. 11(c) might be there.

The provisos say that such leave for part-time employees will be calculated in accordance with clause 35 of this award. In other words, it would be on a pro rata basis. Provided always that in considering any application for conference leave the controlling authority may have regard to the prevailing work requirements within the health service facility and the relevance to such attendance to work of the health service facility, which we believe is a reasonable - yes, I'll come back, I'll have to argue the merit. I'm just trying to ....

And provided further that the purpose of this clause - for the purpose of this clause a medical practitioner shall mean an employee other than the trainee medical practitioner level 1 or 2. So we're basically excluding resident medical practitioners and registrars. We then say the proviso - after that proviso (b): with the prior approval of the controlling authority an employee may accumulate conference leave as prescribed in subclause (a) of this clause over 2 years provided that any period of such leave not taken during the second year shall not be further aggregated.

And (c): upon the application of an employee proposing to proceed upon conference leave, the controlling authority will approve payment of the employee's return economy class air fare by the most direct route from the venue of the conference together with any registration fees and daily living allowance at the appropriate rate as determined from time to time by the Tasmanian Industrial Commission to apply to officers of the state service for interstate or overseas travel as the case may be or in the absence of such prescription for any country to be visited an allowance as specified by schedule 2/C/A of the Commonwealth Public Service Board determination No. 15 of 1983. And (d): an employee granted conference leave shall within a period of 2 months after resuming duty arrange to present to a relevant peer professional group details of the knowledge gained during such leave.

Now as to the merit of these proposals and going through them again, we believe that the conference leave is an important aspect of the conditions of non trainee medical practitioners which are career medical practitioners. We've included the senior registrar which is a new level because we believe that for all intents and purposes they're specialists in the .... and also for those - and, of course, specialists or consultants and medical administrators should all have access to this professional development provision. Indeed, they do have such access at the moment but it's only 1 weeks leave per year and we're seeking 2 weeks on the basis that 1 week is not adequate, in our view, and we will bring professional evidence to you on that point in due course, sir.



COMMISSIONER WATLING: So you're deferring argument on this clause?

MR HOUSE: I beg your pardon?

COMMISSIONER WATLING: You're deferring argument on this clause.

MR HOUSE: Well given what's happened this morning I'm not in a position to, I think, adequately address the commission on all the implications of and benefits that would arise from an additional week. So I'll have to rely on when we bring forward witnesses.

COMMISSIONER WATLING: So you're deferring this -

MR HOUSE: And whether that finishes this or not I'll just have to abide by what you say.

COMMISSIONER WATLING: Well if you're not going to finish arguing the clause now, you're deferring it then or are you finishing arguing the clause?

MR HOUSE: Well I thought we'd agreed that this case was going to be dealt with in a wholistic fashion.

COMMISSIONER WATLING: Well we're going to deal with it - we're not going to deal with it -

MR HOUSE: At the moment we're looking at award restructuring.

COMMISSIONER WATLING: Now just hang on a moment. I'm trying to find out whether or not you're going to deal with a clause in the award, right, and then move on to the next clause. If you're telling me you're going to half argue a clause and come back at some later stage naturally I'm going to ask: are you wanting to defer it because if you don't indicate to me that you're going to defer arguing the clause out, I must take it that you have finished your argument. Right? Now that's all I can do. Now I want to know whether you want to defer it. If you're not going to finish arguing it, surely you must be deferring argument on it. Otherwise if you're telling me today that you want to finish your argument on it, that's the end of the story.

MR HOUSE: Well -

COMMISSIONER WATLING: I've got to try and keep track of this. I want to let you know that I'm not going to put myself in a position whereby I hear bits and pieces of argument on a number of clauses and then we'll come back to it in due course. I'd rather deal with all the argument relating to a clause at the time. We'll never follow it. Like, I think I

have some aptitude to try and work my way through an award but, my God, if you're going to keep jumping all over the place I will not be able to follow it. And it's not fair to the other side who have to respond to it. That's why I try to keep the documentation going in the early stages to try and keep track of where we are because we were jumping here and moving there and jumping there.

MR HOUSE: Well, sir, there are work value implications in this part of the claim. That's all I can say. Now if -

COMMISSIONER WATLING: Well what parts of the claim relate to work value?

MR HOUSE: The increase from 1 week to 2 weeks, why is that justified?

COMMISSIONER WATLING: I don't know.

MR HOUSE: The point is we want to address that in terms of changes in medical practice.

COMMISSIONER WATLING: But the work value component is going to relate to the change that has taken place since the starting date -

MR HOUSE: Yes.

COMMISSIONER WATLING: - in the skills, the nature of the work and the responsibility. Right? This is a clause relating to leave.

MR HOUSE: Well with respect, sir, we believe that the fact of - attendance at conferences and what comes out of that is relevant to work value.

COMMISSIONER WATLING: So you want to get rid of the conference leave provision and get a money amount in the salary because that's what we're going to be looking at.

MR HOUSE: Does work value only encompass salaries?

COMMISSIONER WATLING: Well it's the work - the skill, the nature of the work and the responsibility of the employees. That's work value.

MR HOUSE: Yes.

COMMISSIONER WATLING: And we'll only be looking at the change in those things. What makes the job significantly different today than when we struck the rate some years ago? And when looking at that you have to look at what has changed in the skill, the nature of the work and the responsibilities that have made it different that would warrant the commission



giving more money. Now clearly I see this as a claim for additional leave.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. If it's work value then you're really telling me that you want increase in the salary rates because you have to go to conference leave or because you have to go to conferences.

MR HOUSE: No, what I'm -

COMMISSIONER WATLING: So you either get an increase in the salary rate or you have conference leave. I can't see how it can be work value but I'm probably a bit thick in this area. You might need to explain it to me.

MR HOUSE: Well we would say that the changes in the skills, responsibilities and duties performed is a justification for our claim for 2 weeks leave for conference purposes. Now if that doesn't accord with the commission's views on the work value aspect then I'll have to reconsider the position.

COMMISSIONER WATLING: I'm not making any ruling on it; I'm just saying to you that this is an application for leave, right?

MR HOUSE: Special purpose.

COMMISSIONER WATLING: Well it's conference leave; it's an application for leave.

MR HOUSE: Not holiday leave; it's a special purpose leave.

COMMISSIONER WATLING: Well it's conference leave, right? And we're not dealing with the rate of pay. It doesn't in any way, shape or form deal with the rate of pay for employees. It's a leave provision. Now the argument must relate, surely, around why you want this leave and why you want 2 weeks. That must be the merit argument. I can't see how it's work value.

MR HOUSE: All right, well, I'll endeavour to do my best now.

COMMISSIONER WATLING: So you don't want to defer it and you don't want to put any more argument on it?

MR HOUSE: Excuse me, sir.

DR SENATOR: It's a question of whether we defer it .... professional ....

MR HOUSE: Well who's going to do it? We're going to have to call a witness for everyone as we go along. It's not work value.

DR SENATOR: ....

MR HOUSE: Sir, I'm instructed that our argument in terms of the merit for the additional weeks leave should be a matter that I seek the commission's indulgence in terms of deferring.

COMMISSIONER WATLING: Right. That's .... That takes us to clause 26 - study leave.

MR HOUSE: Well this clause, sir, says: (a) subject to the terms of this clause the controlling authority may grant to employees who - and it should be 'are' - not otherwise subject to subclause 11(c) of this award - and that probably need revamping, but we would be excluding temporary -

COMMISSIONER WATLING: Do you want to defer that then?

MR HOUSE: Well who are not -

COMMISSIONER WATLING: Well what -

MR HOUSE: - who are not temporary employees. So it should read: subject to the terms of this clause the controlling authority may grant to employees who are not temporary employees study leave without loss of pay: (i) if attending course work as approved by the appropriate supervisor of studies, however titled, during working hours up to a maximum of 8 hours per week; or (ii) if not required to attend course work during work hours, up to 10 days leave per annum in time off for study purposes. And then we have a proviso that such leave for part-time employee will be calculated in accordance with clause 35 of this award. So we encompass part-time or permanent part-time employees.

Study leave shall only be granted in respect of a course: (i) leading to a higher or senior qualification as defined, or - and then we include - a Fellowship of the Australasian College of Emergency Medicine, or a Fellowship of the Royal Australian College of Medicine Administration or a masters degree in health - and it should read - or business administration; or (ii) in respect of a qualification or the acquisition of skills or knowledge which when obtained would be relevant to the needs of the health service facility.

The employee shall submit to the controlling authority a timetable of the proposed course of study and evidence of his or her enrolment in the course. The granting of study leave is subject to the convenience of the health service facility and should not interfere with the maintenance of essential services nor with patient care. Periods of study leave



granted shall not be taken into account for the purposes of calculating overtime payments. The controlling authority may authorise additional time off in excess of the above entitlements. However, this excess time must be made up within the prescribed spread of hours or be without pay.

In terms of (g), the previous version I've provided for greater latitude for the controlling authority to withdraw study assistance. We now say the controlling authority may withdraw study assistance: (i) in the case of unsatisfactory progress by the employee who receives the study assistance for the study course; or (ii) in circumstances that are likely to prevent the completion by that employee of the study course.

Well these - this provision, sir, is - I think mirrors the provision in our registered agreement. I noted the registered agreement has come about in circumstances different to this case, however, I just wanted to point out that here apart from seeking the study leave to apply to permanent part-time people on a prorata basis, we're not seeking any additional benefit. We believe that given the nature of again - or the requirement for medical people to undergo intensive training and maintain their efficiency and knowledge of current medical matters on an ongoing basis, that study leave is justified in the public interest and that given that this is really a first award application, it would comply with the principles that it reflects what is in the agreement and goes no further than that.

I should say also - well it does in the sense that with - consistent with our other submissions included people aspiring to FACEM and FRACMA and a masters degree in administration, however, that's only an extension, I think, to the extent that the controlling authority has different views to ours if those were recognised qualifications, then they would be legitimate areas to seek study leave.

The extent to which the controlling authority may veto the study assistance has been reduced, but we believe that those reasons for withdrawing are as far as should reasonably apply. The - I'm reminded that in any event there are provisions in the State Service for study leave, but they're not in our registered agreement obviously and the reason for the registered agreement, as I understand it, is because the conditions we've - had applied to medical practitioners are specific to that group of people.

We would not see that there would be a flow on problem with this provision if it is put into the award because it is, we would submit, specific to medical practitioners and specific to the sort of training that they're required to undertake and in any event people in other areas of the service have

conditions that are probably more appropriately applied to them.

Finally, sir, I'd say that we see that structural efficiency is all about enhancing people's skills, knowledge, training, and that this proposed clause in our award is consistent with the objectives in that area. Sir, if I could now turn to clause -

COMMISSIONER WATLING: Could I just say to you, you might want to put argument on the question of why the controlling authority should be able to withdraw if it's likely to prevent the completion of the course. It's a novel approach.

DR SENATOR: It's meant to be if they considered that the candidate is likely not to complete the course.

MR HOUSE: Well the words, I'm instructed, sir, are meant to be where the controlling authority considers that the employee is not likely to complete the course. Now, there may be a number of reasons for that, but if the person's obviously not going to go on with it and the controlling authority is aware of it, well, I would think that it's no justification continuing to give the person the study leave.

COMMISSIONER WATLING: Oh, well, I can understand that, but if that's what the claim said but it doesn't say that, you see, so - anyway, I could understand that if it was true, but anyway I'll stick with what your claim says. You're obviously not seeking to amend it, so -

DR SENATOR: .... seek to amend it?

MR HOUSE: Well I'm not unhappy about the words anyway .... Turning to sabbatical leave -

COMMISSIONER WATLING: Now can I take it then that I should take what the words say and not what you believe them to mean?

MR HOUSE: Yes, sir.

COMMISSIONER WATLING: Righto. Thank you very much.

MR HOUSE: Turning to sabbatical leave, this is another matter covered by the registered agreement. Sabbatical leave is: a period of 13 weeks sabbatical leave shall be allowed upon the completion of each 5 years of continuous service within the state health system in not more than three periods of 4 weeks or more in any 12-month period, provided that - and this is new - the proviso - that subject to subclause (g) of Part D of clause 33 of this award - the parental leave clause - a permanent employee who immediately before coming a permanent employee was a temporary employee not receiving an



allowance in lieu of such entitlement shall be credited to that employee at the time of becoming a permanent employee the period of service qualifying this entitlement as if that employee's total continuous service from the date of first reporting for duty as a temporary employee had been serviced as - should be as - a permanent employee.

And (b), which is also new: sabbatical leave shall be granted to employees not being otherwise - and that should be - not being temporary employees in positions classified at level 4 - and delete 'or above' -

COMMISSIONER WATLING: You'll provide me with all changes won't you?

MR HOUSE: Yes, sir. That change is obviously consequent on bringing the senior - the proposed senior - consultant into the level 4 - who hold a higher qualification appropriate to their specialty or discipline or a fellowship of the Australasian College for Emergency Medicine or a masters degree in health - should be - or business administration - and then we'd seek to add: relevant to that employee's appointment.

So we say it's - then there's a proviso: that career medical practitioners at level 2 and 3 who hold - who hold a higher qualification appropriate to his or her specialty may be granted sabbatical leave subject to the approval of the controlling authority.

And (c): the allowance for such sabbatical leave shall be 13 weeks paid leave for full-time employees or such period calculated under clause 35 of this award for part-time employees; (ii) the actual cost by means of public transport of travel expenses up to the value of an around-the-world air fare at excursion rates; and (iii), daily living allowances at the appropriate rate as determined from time to time by the Tasmanian Industrial Commission for interstate or overseas travel, or in the absence of such prescription for any country to be visited, an allowance as specified by schedule 2(c)(a) of the - of Determination No.15 of 1983 of the Commonwealth Public Service Board as varied from time to time. And provided always that for paragraphs (ii) and (iii) of this subclause the controlling authority may approve travel and accommodation expenses actually incurred in excess of those prescribed upon application by the employee concerned provided that the controlling authority is satisfied that no reasonable alternative travel or accommodation arrangement was available.

And (d): in order to qualify for sabbatical leave, an employee shall, (i), present a detailed program to the controlling authority for approval; (ii) submit such program not less than 3 months - I think the existing is 6 months - we believe that's too long - 3 months prior to the requested date

of such leave. However, this period may be varied by mutual agreement between the controlling authority and the employee concerned; and (iii) - is a new one and it's tangled up with the issue we've debated about professional issues panel - have a right of appeal against a decision of the controlling authority not to grant sabbatical leave and an employee may appeal to what we've titled now, professional issues panel, as defined.

The panel shall - and we've deleted arbitrate on - shall consider the merits of the proposed study program only, and not upon the entitlement as to sabbatical leave. And then we've now deleted the outcome of the panel's deliberations in this matter shall be final and mutually binding on both parties. And that last sentence commencing 'the outcome' has been deleted from our claim. And then there's a proviso: provided that an employee whose program for sabbatical leave is rejected by the panel on the basis of merit, we'd seek to add - rejected by the panel on the basis of merit, the employee may submit at any time a revised program to the controlling authority for approval with the date of effect of such leave for the revised program to be not less than 4 weeks from the date of submission of the approved revised program.

(e) - in order to qualify for sabbatical leave, the employee shall have the potential to render to the state health system a minimum equivalent of 2 years full-time service after that employee's return from such leave. If an employee granted sabbatical leave shall within the period of 2 months after resuming duty, (i), furnish to the controlling authority a detailed written report on the activities associated with such leave, and (ii), arrange to present a relevant peer professional group details of the knowledge gained from such leave - and that should be a full stop.

(g) - sabbatical leave shall not be cumulative in excess of 10 years entitlement; and (h), payment shall not be made or accepted in lieu of sabbatical leave except that the leave entitlement as specified in subclause (c) of this clause will be paid pro rata where the officer resigns on the instigation of the controlling authority as part of a redundancy program. And that (h) is new.

Sir, going to our reasons in support of the claim, sabbatical leave is provided almost universally, as I understand it, in the term - in terms of salaried medical practitioners and also in some areas visiting medical practitioners. The 13 weeks per - for each 5 years of service are fairly standard - it certainly doesn't exceed what might be considered standard because in - in some other states there in some circumstances are higher provisions. So while it's not in our award so far, we're not seeking to again, I believe, go beyond what could be



considered standard established, or even by consent, for medical practitioners throughout Australia. I'm not aware -

COMMISSIONER WATLING: But of course this doesn't apply to medical practitioners all the way through, does it?

MR HOUSE: Not all medical practitioners - I should say it doesn't apply to all medical practitioners - I should say medical - specialist medical practitioners.

COMMISSIONER WATLING: Right.

MR HOUSE: Or non-trainee medical practitioners. We thank you for that.

COMMISSIONER WATLING: Why should permanent employees get it?

MR HOUSE: I beg your pardon?

COMMISSIONER WATLING: Why should permanent employees get it? You'll take me to argument on that will you?

MR HOUSE: Permanent?

COMMISSIONER WATLING: Yes.

MR HOUSE: As distinct from temporary or -

COMMISSIONER WATLING: Well I don't know, I'm just looking at your document and you've put in a new section dealing with permanent employees and I wouldn't know who the hell permanent employees are.

MR HOUSE: Well a permanent employee is a person who is not a temporary employee and we've also distinguished a separate category of trainee medical practitioner who falls - is technically a temporary employee.

COMMISSIONER WATLING: So it doesn't - it doesn't apply to full-time employees I take it? There's no such thing in this award as permanent employees is there? What's this new found category of employee?

MR HOUSE: Well can we delete the word permanent?

COMMISSIONER WATLING: Well, you just deal with it as you like. It might be before we get any further into it, it might be an appropriate time to adjourn, I think and - and we'll look at a date for resumption of this matter. Right, are there any - any suggestions? Right, so it looks like we're in February sometime. Right, so at the beginning of February - any suggestions?

MISS COX: I'm not available on the 9th - but apart from that at this stage -

COMMISSIONER WATLING: Not available on the 9th. Right, any other dates that you are not available?

MR HOUSE: Not at this stage, sir.

COMMISSIONER WATLING: Right. Well, we might - we might just go off the record thanks.

OFF THE RECORD

COMMISSIONER WATLING: Now this matter will now adjourn until Wednesday 10th February and Thursday 11th February, 1993. I wish you all a happy Christmas and leave you to it until then.

HEARING ADJOURNED