

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 2652 of 1990

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

re structural efficiency principle
- special case

COMMISSIONER WATLING

HOBART, 22 September 1992
Continued from 15/9/92

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances please.

MR J. HOUSE: If the commission pleases, I appear with **DR GORDON SENATOR** for the Tasmanian Salaried Medical Practitioners Society, JOHN HOUSE.

COMMISSIONER WATLING: Good. Thank you very much.

MS J. COX: If the commission pleases, JANE COX, and appearing with me today is **KATE PAMMENTER** on behalf of the Minister administering the Tasmanian State Service Act.

COMMISSIONER WATLING: Good. Thanks very much. Just a couple of preliminary matters. We have the two applications before us, so the procedure will be that, Mr House you'll lead off with your submissions in relation to your application only. The employer will respond to your application and address their application. You, Mr House, will then have the right of reply to the employer's submission on your application, and you will be able to respond to their submission on their application. And the employer will then have the right, the a final response in relation to their application and the submission presented by Mr House. So have you got the - the format in your mind?

MR HOUSE: Yes.

COMMISSIONER WATLING: So you only work on your application at this stage, and the employer will respond to yours and then address theirs. It will be opening submissions to them. Sitting hours today will go - we'll break at 12.45 till 2.15. We'll commence at 2.15 and then we'll break at 4.30. Right? And I've got other - some other matters that I need to attend, so if you've - I think all the way through these hearings we'll try and set the sitting hours for the - for the day's hearing at the commencement of the hearing, if you like, and then you know where you are as well. If you're happy with that? So, we're off to your submission, Mr House.

MR HOUSE: Thank you, Mr Commissioner. Before I commence my submission I'd like to hand up to the commission, by way of background rather than an exhibit, the recommended medical specialities and qualifications document issued by the National Specialists Qualifications Advisory Committee of Australia. And also a copy of the Australian Industrial Relations Commission's decision in the parental leave case, Print J.3596. The commission may well have both of these documents but it - I thought it may be - it may save you trouble looking for them.

COMMISSIONER WATLING: Yes, that's right. I think the last time I saw the NASQAC one it was in blue covers, so they've changed to green then.

MR HOUSE: Yes.

COMMISSIONER WATLING: Each year.

MR HOUSE: This is 1991.

COMMISSIONER WATLING: Right.

MR HOUSE: My friends at the other end of the bar table, I'm sure, would have that document. And I have given them a copy of the parental leave decision. I would also seek leave from the commission to augment H.5. In my research over the weekend I came across, and I was quite surprised, a consolidated award by the New South Wales Commission for specialists, the Hospital Specialists (State) Award. Unlike this commission, it's only every 10 years or so that you get these consolidations, but it, I think, will be a handy document.

That, sir, would go in the New South Wales section, I believe, after president's - President Fisher's decision of the 28th of March, which is the second document in that .

COMMISSIONER WATLING: Good.

MR HOUSE: Yes, there's two there.

COMMISSIONER WATLING: Well, we seem to consolidate ours more regularly.

MR HOUSE: Yes. It's very difficult, particularly with state matching, to find out what the latest situation is in New South Wales.

COMMISSIONER WATLING: Good on you. Thank you very much. I'll just attach that to exhibit H.5.

MR HOUSE: Thank you.

COMMISSIONER WATLING: Right. That's organised that.

MR HOUSE: Mr Commissioner, in the course of proceedings on Tuesday of last week I indicated that there was a range of issues that the parties had not been able to agree upon in terms of putting before the commission a revised award. And I indicated that the TSMPS was somewhat dismayed that we'd not delivered in accordance with what could reasonably be expected by the commission when it awarded increases in accordance with its wage fixing principles.

I endeavoured by way of exhibit H.3, entitled 'Chronology of Events', to demonstrate to the commission that the lack of progress was not due to inactivity on our part, or indeed in

terms of correspondence and meetings on the part of my friends at the other end of the bar table. Simply put, a range of factors have impacted on our negotiations which have not been conducive to an environment of trust or reasonable compromise, which we believe are the essential ingredients of good industrial relations.

In addition, the department has refused to renegotiate the registered Salaried Medical Practitioners Conditions of Employment Agreement 1988. For its part, the society would have liked to have settled this matter without undue litigation. Like the commission, we have a lot to contend with at the moment. There are many initiatives impacting on medical practice, industrially and otherwise, which I would expect that you are fully aware.

I place it on the record, that members of the society may have accepted reasonable compromise in the light of economic circumstances. However, given the intransigence of those instructing the department's negotiators we now say what has and is happening elsewhere in Australia must have an impact of the State of Tasmania. This means a claim for work-value increases for salaried medical practitioners in this state will have to be vigorously argued before the commission in an economic climate that confronts us all with difficulty.

We have no choice in the face of membership demands. We are generally aware of other similar matters before the commission in regard to public sector employees, where the same problems have arisen or are arising. And I say now, we will not shrink from addressing so-called incapacity to pay arguments we anticipate the government will put before you.

The real question is what standard of services should members of the community reasonably expect in return for federal and state taxes imposed upon them; a question of balance or financial and political priorities. This in turn, we submit, goes to the relative work value of those who actually provide the services. To allege that doctors are rorting the system is simply a mischievous device to avoid the realities of all that is involved in the complexities of the delivery of modern medical care.

Mr Deputy President, I would now like to turn to the substantive matters before you and accordingly back up our position. Dr Senator will shortly address the vital issue of the structure we believe needs to be put in place. We also believe that you should be appraised of this at the outset to put our overall award proposal in context.

I can say that considerable thought and effort has gone into devising our model structure. Indeed, it is a synthesis or product of at least eight versions of models that have been constructed, having regard to both internal and external

relativities. However, the assessment of external relativities has been difficult in terms of relating medical practitioners to other groups, professional or otherwise. And I will now hand over to my good friend, Dr Senator, to inform the commission on how the society has gone about devising an appropriate career structure.

COMMISSIONER WATLING: Right. So, in relation to your application we're dealing with - the first matter we're going to deal with is salaries, is it?

MR HOUSE: No, sir. We're dealing with 9 to 13, which goes to the structure - how - how we see the structure being -

COMMISSIONER WATLING: Right. Well, we'd better relate it to subject matter of the application, because we're going to get horribly confused here. So, which ones are we going to address? Are we going to address - we're not going to address salaries then?

MR HOUSE: Yes.

COMMISSIONER WATLING: We are?

MR HOUSE: Well, it's -

DR SENATOR: It's within that clause, John, but it is the structure -

MR HOUSE: So - yes. It's - it's - the - the matters we will be addressing -

COMMISSIONER WATLING: Will be -

MR HOUSE: - are allowances in part -

COMMISSIONER WATLING: Well, why not in full?

DR SENATOR: We believe they're part of the work value.

MR HOUSE: Well, we see that -

COMMISSIONER WATLING: Yes. Well, maybe -

MR HOUSE: - they're part of -

COMMISSIONER WATLING: - we'll just go off the record.

MR HOUSE: - the actual.

COMMISSIONER WATLING: Just go off.

OFF THE RECORD

COMMISSIONER WATLING: And if I could just clarify it. The first issues we're going to deal with will be, in terms of the application, the salary section, but we won't be looking at the monetary amounts. We'll be looking at the structure and that naturally flows to the next subject matter in the application which is new appointments and promotions within that structure.

DR SENATOR: Thank you, Mr Commissioner.

COMMISSIONER WATLING: Thank you.

DR SENATOR: Mr Commissioner, the society believes that the classification structure incorporated in clause 9 of our claim is the central plank of the society's claim and has considerable impact on many other areas within the claim, and for that reason we felt that this was important to advise the commission early in these proceedings.

It's my task, I believe, to indicate some of the background behind the construction of the career structure is presented to you, and to validate some of the philosophy and the underlying principles that have been incorporated in our structure. This structure, as Mr House has mentioned, has had a long and difficult gestation. It's taken almost 2 years to develop and in the course of that development, many models have been examined and analysed in detail.

It's the society's view that this proposed structure may not be the only option but we hope to provide sufficient justification to the commission that this is the preferred option and I'm reminded of Churchill's comments on democracy being the worst form of government until you compared it to every other form.

In restructuring the classifications with the Medical Practitioners (Public Sector) Award, it is our proposal that the following classifications be introduced: resident medical officer, level 4; senior registrar; senior consultant, medical officer; career medical officer -

COMMISSIONER WATLING: So how - you just might take me through the document - where do I find that? Page 10?

DR SENATOR: Yes, page 10.

COMMISSIONER WATLING: RMO -

DR SENATOR: Yes.

COMMISSIONER WATLING: Right. Now when you say 'RMO, level 4' are you saying '4th year of service' are you?

DR SENATOR: Yes.

COMMISSIONER WATLING: So it's not level 4. So, it's RMO 4th year -

DR SENATOR: Well we are defining it as level 4.

MR HOUSE: If you go to the actual structure -

DR SENATOR: Yes. Should I submit the - ?

MR HOUSE: No, just draw the commissioner's attention to the -

DR SENATOR: Yes. Could I draw your attention, sir, to the consistent use of the term 'level' throughout our structure, and in fact, there are 19 in which the resident medical officers constitute levels 1 to 4.

COMMISSIONER WATLING: Yes. If you're looking at a RMO level 1, 1st year - why do you use 1st year and level 1. Why don't you use one or the other?

DR SENATOR: Because, sir, as -

COMMISSIONER WATLING: Because a level 1, depending on the definition, may mean something different to the - it may not be the 1st year.

DR SENATOR: Well, we believe it does on the basis that the approach that we've adopted has been a monolithic one based on a concept of waiting, utilising relative value, and is contiguous or continuous from - throughout the levels of - through the different classification - subclassifications within our proposed award structure.

COMMISSIONER WATLING: Right. Just let me be the stirrer here. Is it possible to have a RMO level 1, 1st, 2nd and 3rd year experience?

DR SENATOR: No.

COMMISSIONER WATLING: Well I think you've answered my question then, haven't you, because isn't a resident medical officer level 1 which is only a year of service, so isn't it resident medical officer level 2 - right - and resident medical officer level 3? It would mean then resident medical officer level 2, second year. It's really their first year in level 2.

DR SENATOR: Yes, exactly, yes.

COMMISSIONER WATLING: And it could be their first year in level 3 -

DR SENATOR: Yes, exactly, sir.

COMMISSIONER WATLING: - and their first year in level 4 -

DR SENATOR: Yes, sir.

COMMISSIONER WATLING: - not their fourth year in level 4.

DR SENATOR: I can see, but I'm -

COMMISSIONER WATLING: I'm just trying to sort of give another side to the argument which -

DR SENATOR: I'm most grateful for that clarification, sir. It hadn't struck me that that construction could have been placed on the use of the years parallel to the levels.

COMMISSIONER WATLING: Yes. Well you and I and the employer mightn't - the ones sitting in this room - we're making this - it's your claim and if it's successful, this system might be in for the next 10 years and we mightn't be around then. We might be abolished or something.

DR SENATOR: Well all I can wish you, sir, is good health so that we are here.

COMMISSIONER WATLING: And hope we finish the case in the meantime. But anyway, I just raise this. You might want to think about it, but it's - that's why I think in other areas they've been looking at level 1 means someone who enters at this point; level 2 is someone who has completed one year of service.

DR SENATOR: Yes.

COMMISSIONER WATLING: And level 3 might be someone who has completed 3 years of service and done this, that and the other thing. Anyway, I just raise it. So, 4th year of service and thereafter, level 4, is new.

DR SENATOR: Yes. The senior registrar which is on page 11, and in their first year -

MS COX: Senior registrar - it's on page 10.

COMMISSIONER WATLING: Hang on, it's on 10 on mine.

DR SENATOR: Sorry, page 10, sorry.

COMMISSIONER WATLING: Senior registrar -

DR SENATOR: Yes.

COMMISSIONER WATLING: - 1st year, level 8.

DR SENATOR: Yes.

COMMISSIONER WATLING: Right.

DR SENATOR: And in their second year of service in that classification and thereafter, level 9.

COMMISSIONER WATLING: So that's - they - the second one is level 9, is the new one, is it?

DR SENATOR: No, both of those, sir.

COMMISSIONER WATLING: Both. Right.

DR SENATOR: Senior consultant medical officer -

COMMISSIONER WATLING: Right, level 19.

DR SENATOR: Yes.

COMMISSIONER WATLING: Right.

DR SENATOR: Career medical officer on the page before -

COMMISSIONER WATLING: Right.

DR SENATOR: Broken down into -

COMMISSIONER WATLING: Classes and levels.

DR SENATOR: - three classes, each with a number of levels.

COMMISSIONER WATLING: Right. Is that all new?

DR SENATOR: Yes, and replacement for the old medical practitioner classifications.

COMMISSIONER WATLING: Right.

DR SENATOR: Hospital medical officer which is one part the career medical officer scale.

MS COX: Where's that, Gordon?

DR SENATOR: Well that, sir, - this is where we have some difficulty and this is why we've led off this way because the hospital and senior hospital medical officers are defined in the - in clause 7, but for the purposes of their place within the monolithic structure, are included in the career medical officer grades.

COMMISSIONER WATLING: Oh, right, so where do they cut in?

DR SENATOR: They cut in at level 2 -

COMMISSIONER WATLING: Yes.

DR SENATOR: - and extend throughout the range up to level 14.

COMMISSIONER WATLING: Right. So, why did you change the format in this section?

DR SENATOR: To classes and levels?

COMMISSIONER WATLING: Yes. Like, you seem to have picked out, say, senior registrars and career medical officers and you've pick out consultants and deputy directors. Why did you change the format through -

DR SENATOR: Because hospital medical officers, senior hospital medical officers are new categories of service.

COMMISSIONER WATLING: So, look - just taking your structure, wouldn't it be a career medical officer and then move into - as defined - and then move into - what section are we - the senior medical officer and so on? Sometimes you refer to them with - in terms of classifications and other times you've broken them down into levels and grades. There's no consistency.

DR SENATOR: Well, sir, I think in developing a monolithic structure I think as we go on, you may see some of the - some of what we believed was logic associated with this structure.

COMMISSIONER WATLING: Right. Fair enough. So that's where they all fit in at level 2?

DR SENATOR: Yes.

COMMISSIONER WATLING: Right. And do you see fitting - sorry, class II. Who do you see fitting in then at class III?

DR SENATOR: Class III in terms of a senior hospital medical officer would subject to the classifications present in clause 8 under career medical officer.

COMMISSIONER WATLING: And you'd - so, you'd start off - if you were a senior hospital medical officer, you would start off at Class II, 1st year of service.

DR SENATOR: Yes.

COMMISSIONER WATLING: You would automatically progress -

DR SENATOR: Yes.

COMMISSIONER WATLING: - to 3rd year of service -

DR SENATOR: Yes.

COMMISSIONER WATLING: - and you'd stay there.

DR SENATOR: Yes, unless approved - approval by the controlling authority for progression to class III.

COMMISSIONER WATLING: Right. So where do we find -

DR SENATOR: That's a proviso in clause -

COMMISSIONER WATLING: Oh, yes.

DR SENATOR: - clause 8 under the definition of career medical officer.

COMMISSIONER WATLING: Right. So, someone just makes the decision that you can move up?

DR SENATOR: Well, there are fairly strict criteria within the definitions of Class II and Class III that have to be fulfilled.

COMMISSIONER WATLING: So why is it then that the controlling officer - controlling authority has to make that decision? If they fulfil the requirements of the definition, why don't they go automatically?

DR SENATOR: I think that may depend upon the availability of positions at those levels.

COMMISSIONER WATLING: So, is it - if there is a position at that level is it mandatory that someone be appointed?

DR SENATOR: No. It says, 'approval of the controlling authority', sir.

COMMISSIONER WATLING: Appointment - it says 'the initial appointment' or progression. Right, so it is possible to sit on Class II?

DR SENATOR: Yes, and that is why within the proposed structure we have got 3rd year and thereafter can remain at level 10. And in Class I, 6th year and thereafter can remain at level 7.

COMMISSIONER WATLING: So a hospital medical officer - sorry for jumping about here, I just want to get this picture in my mind - would a hospital medical officer be a Class II?

DR SENATOR: That is reserved for Senior Hospital Medical Officer Class II.

COMMISSIONER WATLING: So a hospital medical officer would be Class I.

DR SENATOR: A hospital medical officer would be Class I. Would attract salaries in the levels equivalent to Class I.

COMMISSIONER WATLING: Right. And then you would go to senior hospital medical officer which would start at Class II?

DR SENATOR: The equivalent of the levels incorporated in Class II, unless that senior hospital medical officer fulfilled the extra criteria of Class III under the definition, which was the responsibility for a nominated program or responsibility for managing a department, unit, or service in a hospital or other health care facility or health region.

Mr Commissioner, it is proposed that the term 'consultant medical officer' replace 'specialist', and that the term 'Resident Medical Officer Level 1' replace 'Intern', with consequential changes to the numbering of resident medical officer levels. It is further proposed that the term 'Director of Medical Services' and 'Deputy Director of Medical Services' replace the terms 'Deputy Medical Superintendent' and 'Medical or Psychiatric Superintendent' respectively, and that the generic term 'medical administrator' be introduced.

A common salary scale has been devised to address the principles of structural efficiency for the whole medical profession, and to put in place appropriate relativities, and this is for the entire medical profession within the public sector; and to support the claim by the society for the recognition of the extent and significance of work-value increases applicable to the medical profession in the public sector in Tasmania.

And this will be the subject of later submissions in both written and verbal evidence before the commission. The model that has been devised recognises the need for clearly defined progression and opportunities for advancement related to the acquisition of increased skills, qualifications, and experience; and as I mentioned previously, a monolithic approach has been adopted based on the concept of weighting, utilising relative value of the employees to the state health system, whilst addressing the concepts of multiskilling and broadbanding of employees which will lead to greater flexibility of employment into the system.

The relative value weightings have been derived, developed, and validated with respect to salary scales applying to

medical practitioners in other state and territory jurisdictions in Australia.

COMMISSIONER WATLING: So, where will it actually lead to greater flexibility? You have actually got them locked into their various areas. Where does this flexibility come from?

DR SENATOR: Well, we believe that the creating of equivalence and the opportunity for progression will allow people to move freely from within those streams. Relativities of career medical officers which include district medical officers, departmental medical officers, and hospital and senior hospital medical officers have been addressed in relation to the requirements of the Tasmanian public health system, as we hope to demonstrate; and the development of this model has enabled a significant reduction in the number of separate salary points - currently 38 in the award - to a total of 19.

Mr Commissioner, at this stage I would like to highlight some of the concerns that were addressed in creating this new monolithic classification structure. I will do this under a number of headings, including passing reference, but by no means diminishing the importance of this restructuring being consistent with the structural efficiency principle. But the major areas I believe are incorporated within this model are, firstly, simplicity, then flexibility, clarity and accountability, equity, logic, pragmatism, and modernity.

As I have indicated, Mr Commissioner, the vastly reduced number of steps within the award structure creates the potential for a structure which has far fewer levels than in any other jurisdiction within Australia. And this is particularly noteworthy since our award being a consolidated award covers medical practitioners from the first year graduate right through to the most senior consultants within the public sector in Tasmania.

However, in devising this model and seeking this simplicity we have had to resort to the retention of some type of allowances within the award structure, and this has been found necessary in recognition of the fact that the medical staff within the Tasmanian system are heterogeneous to a significant extent; also that there is a relative lack of depth of cover in any specialist area, so we are dealing with small numbers of individuals doing fairly unique types of work.

But, even accounting for that, you will see from the classification structure that we have managed by and large to eliminate the mixture of grades, classes and levels, and we have only retained the class structure, if you like, in relation to the career medical officer streams. Even so, we have managed to reduce the number of classes from the present five within our current award to three, which are fairly clearly specified with clear criteria.

Mr Commissioner, we believe that this proposed model has the virtue of flexibility; we believe the way we have dealt with the combination of the classification structure and also the allowances - the latter by a percentage approach - based on salary, does not limit the setting of extra managerial or other responsibilities by a level of seniority.

It's flexible in that it also caters for new career pathways within the public hospital system, and here I speak specifically of the career medical officers as hospital medical officers and senior hospital medical officers who provide a new possibility for service delivery, apart from that within the accredited training stream.

In seeking for a simplification and flexibility and acknowledged that the development of a number of different categories of allowances may cause some difficulty. We have also incorporated the concept of accelerated progression in recognition of achieved qualifications. We believe that our model also incorporates adequate barriers and incentives so that there is an equal potential for management and the department to control the employment force within the hospital without deterring the achievement of satisfactory career paths for the employees.

There is encouragement of achievement which would be recognised by the medical council, registration requirements, achievement of postgraduate qualifications appropriate to the work to be performed, involvement of a review panel for progression of consultant to senior consultant levels which incorporates peer review, and the development of career pathways for all medically qualified employees within the public health system including - for the first time - medical administrators.

We believe that the model also has virtue in regard to equity. There have been a number of assumptions made which have been in other jurisdictions, for example, in relation to equivalence between service within the community and service within the public hospital system and we have made - we have been at pains to make these particular streams fully equivalent in terms of the levels achieved and the salaries which they would attract.

In terms of equity, we also believe strongly that the qualifications of medical administrators should be fully comparable with those of their clinical colleagues serving in the same hospitals and health care facilities. In developing the stream of hospital and senior hospital medical officers we have also endeavoured to ensure equivalence between the salary for those categories and trainees performing those similar service tasks. There's also been the -

MR HOUSE: Wouldn't that help to show what you are talking about?

DR SENATOR: Yes. At this stage, Mr Commissioner, it may be of assistance to the commission to tender an exhibit which I believe will help when viewed in conjunction with clause 9 of the award.

COMMISSIONER WATLING: We'll mark this - this will be your first one, I think, Doctor - we'll mark this S.1.

DR SENATOR: If we look, Mr Commissioner, at the left hand front page - and I can see the formatting is a little unusual - and just dealing with these points that are being put - putting forward with regard to equity, you can see in the blue box on the left hand side, the three components of the career medical officer stream. They are separated only to indicate the need for slightly different entry points based on years of postgraduate experience in relation to the particular areas of work which they will be involved with.

Hence, a higher entry level will be required of hospital medical officers in that category of career medical officer than would be required for a district medical officer which in turn would be higher than that for a medical officer employed within the department.

You will note, sir, that in the middle section is the traditional hospital clinician stream from resident medical officer through registrar through senior registrar to consultant, and you will note, sir, that the hospital medical officer stream in the career medical officer range commences at the same level as the traditional hospital registrar and extends up equivalent to the lower reaches of the consultant range.

You will also note, in that stream, that the resident medical officer level introduced causes an overlap between the resident medical officer grade and the registrar grades and that is deliberately part of the desire to allow for resident medical officers who have delayed their final choice of ultimate career path.

On the right, you will see that there are two categories of medical administrator. The one above is the deputy director of medical services, overlapping with the director of medical service range which is parallel to the consultant range reinforcing the point about equivalence of management qualifications with those of their clinical colleagues within the public hospital system.

You will also note that the deputy director of medical service range reaches the same level - almost the same upper level - as the extent of the career medical officer grades. I will be

referring back to that document, sir, but if I can now return to some of the other concepts that we believe are incorporated within our model. The next one relates to logic.

And, as will be demonstrated shortly, we have arranged for equal value steps for the different levels within the various bands and within the particular occupational levels. And this is deliberately designed to iron out the current lumps and bumps which are present throughout our classifications, and particularly our salary structure at the present time.

In terms of rewards for the achievement of higher qualifications which are relevant to the work, these have been carefully considered in relation to the difference in quanta between the levels to avoid any potential for leapfrogging and distortion of the basic structural model.

We believe that the progression of the levels that we propose, and the relative value, and hence the salary scales which will apply, will overcome the past effect of flat increases granted in various wages determinations, and will restore the appropriate relativities and basically remove undesirable compressions. And I should perhaps draw your attention to the fact that what amounts probably to flaring has been considered by other jurisdictions including the commonwealth and particularly in relation to medical practitioners in other jurisdictions.

We believe our model is also pragmatic, because it allows for appropriate controls, where necessary, and overview by the employer, and decision making with regard to the total strategic employment within the public health sector of medical practitioners. It acknowledges differences in complexities of hospitals, and this is particularly related to the administrative grades, and I will return to that issue in some detail shortly.

As I have indicated, it is pragmatic in that the structure acknowledges the importance of skills, qualifications and responsibilities of the work. And acknowledges the roles of other bodies such as the medical council, the accredited training bodies, review panel - which in turn is subject to peer review of excellence. It is also pragmatic in that it has not been ignorant of the arrangements in other jurisdictions, although it is quite different, and attempts to incorporate the best features whilst eliminating those which it believes to be undesirable.

It's pragmatic because we have also allowed for other forms of employment. Our claim includes acknowledgement of the need for some provision for fixed term employment - contract employment arrangements - and we believe that this will provide extra flexibility to the employer whilst enabling the employer to encompass the whole of the medical profession

working in the public sector. But those fixed term contract arrangements are based on this classification and so not distort the intrinsic structure.

We believe that it is pragmatic in that there is nothing within this model that will disturb hierarchical structures, particularly within larger health care facilities, particularly the hospitals, and we do not anticipate any difficulties in that regard imposed by the development of this new career path of hospital and senior hospital medical officers.

I indicated that we believe that the model is not only robust but modern, and I think that it does recognise recent and evolutionary change within the public health sector within this state. We believe that it recognises the development of new sub-specialty areas and qualifications, and these are in relation to a number of areas - accident and emergency, general practice including vocational registration.

We believe some of these recent and evolving changes include new management and administrative roles for clinicians, and this has come about by the devolution of responsibilities with the impending implementation of case mix management and the potential funding of hospitals within this country.

It's modern because it - it - it recognises the absorption of the Repatriation General Hospital into the state system and more of that anon, sir. And it also recognises the recent regionalisation of the public health system in this state which has forged new relationships between different areas of medical practice requiring the establishment of different clinical medical staff structures. The need to address the particular intricass related to cross-regional and state-wide services which in turn may be based on rationalisation under hospital role delineation guidelines currently being examined in each of the regions in this state.

We would indicate that the three regions have handled regionalisation differently and have been quite pragmatic, so that for example the Royal Hobart Hospital is considered an acute program in itself and this is unique within this state and creates the need for management structures which are different to those effective within the other health regions within this state and need to be recognised and I believe have been acknowledged within our structure, and I'll come on to that when I discuss the medical administration in some more length later.

We are also aware of the changes currently under way as a result of the recently negotiated visiting medical officer agreement which was subject to the scrutiny of this - this commission. We acknowledge the decision which broke the nexus between visiting medical officers and staff specialists, but

we are still aware of the potential - potential difficulties that that in itself may impose upon - upon professionals working side by side performing rather similar tasks.

COMMISSIONER WATLING: I wanted to say that in my mind, I see it in a totally separate - I've dealt with them as totally separate and I will continue to do so. The VMO's case was significant for all sorts of reasons and it was totally restructured and they're a unique group that come in and I'm not going to treat them as though they were employees of the employer. Some people might well argue that they're bordering on being contractors. So - but anyway each thing is run on its merit and I'll be examining this on its merit and I won't really be taking much notice of the VMO agreement and the effect that it has in relation to this. These people are employees in a - in my mind in a slightly different sense, although the State Service Act that VMOs are in a similar light but to be honest with you I - only for the act I think they border on being a slightly different type of person in terms of contractual argument versus an employee argument. But anyway, I just want to be open and up front with you on that.

DR SENATOR: Yes.

COMMISSIONER WATLING: I would have said, as I think I did during the course of the hearing, only for the act I think there - they probably would have been contractors.

DR SENATOR: Well, Mr Chairman, I'm grateful for your candour, but I believe I need to go on record and representing -

COMMISSIONER WATLING: Oh, yes I understand.

DR SENATOR: - representing that element of the profession which does not understand some of these subtleties, but also to indicate that although the nexus has been broken and we can appreciate that this is an entirely different employment arrangement, the truth - and I was referring to the - to some of the - the subtleties of regionalisation - the truth of the matter is that there is interchangeability between visiting medical officers and staff specialists in relation to some management positions within the state public health system and that being so, and also the proximity of the work of these two groups then there - without a deep understanding of the issues, there are potential concerns occasionally surfacing.

COMMISSIONER WATLING: And I'm sure that the employers are going to have to take those points on board when coming back, but certainly in relation to the wage rates and levels and things like that, there are many other things encompassed in their arrangements that wouldn't be encompassed in any rates I wouldn't think that you'd be looking at here.

DR SENATOR: Well as I say, I mean that - those issues are - are of concern to individuals who have less insight into the - into the scope of the arrangements. But specifically, I did indicate problems where identical management roles have been assumed, and where differences that are significant in relation to conditions arising.

COMMISSIONER WATLING: That also becomes a significant management problem though; doesn't it?

DR SENATOR: Yes.

COMMISSIONER WATLING: I'm not too sure whether it's my problem or indeed whether it's your problem. It may be a later problem for management - I don't know - depending on what they have to say during the course of their submissions.

DR SENATOR: Sure. Well, Mr Chairman, I would like now to draw further attention to our exhibit which I believe will help with the remainder of the - of this brief introduction to the - to the background to our claim and is a most significant centrepiece which we believe is the classification structure.

But before dealing in detail with - with the second and third elements of this exhibit, I'd just like to indicate the difficulty that we had in setting an index point for the relative values scale that I referred to earlier, and this arose because although the society believe that the proper point of reference for the system should be the individual who has the full scope of skills capable of providing services to the employer plus the capacity for the other tasks involved in a professional life such as teaching, training and research, there was a difficulty with our current classification in that because of the experiential qualification it was virtually impossible for anybody to be appointed currently under a Class I Grade 1 specialist level. However, we still strongly believe that the base grade consultant should be the reference point and we have adopted that within our - within our monolith.

COMMISSIONER WATLING: So, in other words, you're saying that the 100 per cent level is level 10?

DR SENATOR: Yes, yes.

COMMISSIONER WATLING: Right.

DR SENATOR: We have examined a number of other systems and as Mr House has indicated we had some difficulty in examining the relativities with groups other than other medical practitioners because of the lack of equivalence of the range of activities that they undertake, and the fact that - that higher classifications in many other fields of endeavour are

related more to supervisory responsibilities rather than the development and - of excellence and skills.

But in the light of that we still did not exclude our examination of other relevant groups including the proposed professional stream within the public sector within Tasmania. The nursing structures, because they happen to share - to be involved in the same industry, the medical profession in other jurisdictions as I've mentioned and also what has possibly been considered a benchmark, the metal trades industry. What inferences we could draw were however limited. However we -

COMMISSIONER WATLING: Are you saying cutting steel and cutting something else is slightly different?

DR SENATOR: Well, I - perhaps as a lowly physician, sir, I can't really comment on my surgical colleagues perceptions of their - their place in the order of things.

COMMISSIONER WATLING: Well they do work with metal, I agree though, all sorts of metals. Anyway, can I just say, in taking your earlier point, you picked level 10 to be the 100 per cent level, and that's the first year consultant level. Why would you pick the first year consultant level as opposed to level 9 which might be the end of their so-called career path before they actually move onto the first year of the, say, consultants level?

DR SENATOR: Well I think the current processes of medical staff selections, sir, contain the element of - of peer review, of - of qualifications, skills and the work to be performed, and I believe that because this peer recognition is incorporated into the appointment and selection of a base grade consultant, that that has swayed us into establishing level 10 rather than level 9.

Also, sir, it's only when they have in fact achieved level 10 that they are responsible to the entire system, medico legally and to - to their employer for their decision-making and that includes not only their roles in patient care but in those other equally important tasks of teaching, training and conduct and design of appropriate medical research.

COMMISSIONER WATLING: Right, so how do we know that? Do we get that from a definition somewhere do we?

DR SENATOR: What; their range of responsibility?

COMMISSIONER WATLING: Well you tell me that they're responsible within the whole of the system, I'm trying to work out how do we know that? How am I supposed to know that? You've told me, but where do we find it in the contract of employment?

DR SENATOR: Well, I believe that that would be a form - an element of the position statement for consultant grade appointments.

COMMISSIONER WATLING: Yes, but the only thing is that I'm - I'm not actually ruling on position description or - and how do I know what the levels are - what the levels of responsibility would be at each of the levels if you haven't got definitions for each of the classification levels. There's no - one would think you would actually develop a position description from the classification definition and if you went - a bit like what - that which we've done in the public sector - you take a level and you develop a position description within that level, or you take a position, analyse it and then write a position description and then - and match it up with the classification standard, and then say, oh well you slot in here.

But if you don't do that, how am I supposed to know what is the skill and the responsibility of, say, someone with 66 per cent or someone with even 100 per cent. You're telling me that you believe that this is why it should be 100 per cent, but I can't detect that from the contract of employment. You're really saying that someone out there is hopefully going to draw a position description that suits description you've just given me. That may or may not happen.

DR SENATOR: Yes.

COMMISSIONER WATLING: Especially if it's not part of the contract of employment.

DR SENATOR: I take your point, sir, I think it's a very valid one. As you well understand, it has not been traditional for the medical profession to develop these - these position descriptions to the same - to the same degree of sophistication as can perhaps more readily be accommodated within other - other industries.

COMMISSIONER WATLING: Other areas - yes.

DR SENATOR: And I believe that task may not be beyond us. I fear that it may be extremely difficult because of the nature of professional medical life and the fact that it is not necessarily so heavily procedure driven.

COMMISSIONER WATLING: Yes. I must say that I do favour a system that gives levels and percentage relativities, but I also like to know when you're establishing relativities why you're establishing them and what is the criteria for saying, well this one is 95 as opposed to 90 - there must be some difference, and if I can't sort of hone in on that difference you're really saying, well go off and make up your own mind and I'm - I could come back with something entirely different,

but you're giving me no indication or direction of why I should establish this one at 95 per cent and this one at 90.

DR SENATOR: Mr Commissioner, can I take that on advice and perhaps -

COMMISSIONER WATLING: Yes.

DR SENATOR: - we'll have the opportunity of responding -

COMMISSIONER WATLING: Well, you will I think.

DR SENATOR: - to that before the - before my colleagues at the other end of the bench address you -

COMMISSIONER WATLING: Yes, well I -

DR SENATOR: - in their submissions, sir.

COMMISSIONER WATLING: - have to say that I'd be more than interested to hear about this because I would really like to clearly establish the relativities one to another and I think that's our task and responsibility in this exercise, and it would be - if we're going to do it, we might as well do it now, because these relativities might stand for a significant number of years, and therefore it would be very appropriate, I would think, to pick what is the 100 per cent level.

I don't know, you might even get agreement with the employer on what the 100 per cent level is - I don't know, and then you might argue about - about a lot of other things, but you might be able to agree on the datum point and that's worth examining. But at least without putting dollars to it, someone might say, well this in the career structure it might be what you refer to as level 6 as the 100 per cent and then it might mean that 7, 8, 9 and 10 become higher than the 100 per cent.

Like, let's face it, at this stage when you're dealing with percentages it really doesn't mean a great deal till you start putting dollars to them, but it's nice to be able to say, well this is the end of the base career path and anything above this is over 100 per cent, anything below this well naturally is below the 100 per cent. And then you - and really that's what happened in other - and is happening in other industries even up to the engineering levels. You know, there are, what, 120 and 130 - oh 220 and 230 per cent of this base level. But it would be certainly easier for all of us, I think, if you were going to establish relativities to say: right, this is the mean point, this is what they're going to be required to do at this level, this is the area of responsibility, et cetera, and this is why it should be a hundred per cent.

DR SENATOR: Yes, well, Mr Commissioner, I think I drew attention to those important concepts -

COMMISSIONER WATLING: You did.

DR SENATOR: - of full independence and -

COMMISSIONER WATLING: Yes, well that's right.

DR SENATOR: - accountability and -

COMMISSIONER WATLING: But I - but still it doesn't -

DR SENATOR: - for the - their own actions.

COMMISSIONER WATLING: - it's nowhere - nowhere will you find it other than the submissions that you've made from the bar table. So how does the employer then go away and draw up a position description within the terms of the contract of employment? What you're really saying to me is if it's not - if it doesn't appear in the award, you're happy for the employer to go and draw up anything at that level - right - and it may or may not accord with what you're telling me, and I've got to take that on board and I've got to rule on that - I might as well flip a coin - it mightn't happen - it might be totally different to what you've told me. So you see the significance of this - the level and getting the classification standard right at that level.

DR SENATOR: Well, as I indicated, Mr Chairman - Mr Commissioner, we did take the opportunity of examining the - a number of other jurisdictions, other industries and other professional groups before putting forward this proposal that the base grade consultant be considered the - the index point -

COMMISSIONER WATLING: Yes, yes - I could -

DR SENATOR: - for relative value, and - as I've indicated, I think that your instruction or advice to us will be I think very worthwhile taking on board and hopefully we may be able to come to some sort of agreement with the - with the other party with regard to establishing the relativities in - in the index.

COMMISSIONER WATLING: Yes, it could - it could be any one of those levels -

DR SENATOR: Yes.

COMMISSIONER WATLING: - that might be a hundred per cent. It could be level 4.

DR SENATOR: Yes.

COMMISSIONER WATLING: And then it could be level 16, but it would be nice if there was some agreement to say, well this is - this is the 100 percent mark, you might then argue whether it should be 70 or 75 or whether it should be 70 or 63. If you were both honing in on the same level which constituted a hundred per cent, well there's another 50,000 as to the percentages and that that run and up and down the line. It would be nice to pick the central point and you both should have some view on that, surely.

DR SENATOR: Yes. I confess that when we decided philosophically on that index point and examined the other - other models we had to look at, that the relationship between that, what we considered to be the appropriate 100 per cent, if you like, with the bottom and the top of the scales was not hugely out of kilter with what occurs elsewhere.

COMMISSIONER WATLING: No, well that's fair enough. Well I'm sure that will be your argument, but certainly I don't - I'm only making the point in this general discussion that I don't know what a 100 per cent means because I can't see it anywhere, there's no requirement on the employer to accept that's the criteria or classification standard for a hundred per cent and your submission thus far tells me, well that's picked up in a position description, and who's to say that the employer is going to pick your view of the world when it comes to the position description? That's all I'm saying, nothing more, nothing less.

DR SENATOR: Okay. Mr Chairman, I think I have described in some detail the front page of exhibit of S.1 and if we can go to the - the exploded view on the back B.4. page. On the left hand you'll see, sir, the - the construction of a scale of levels 1 to 19 as indicated before. There are in fact only 16 - 16 roughly even steps with a couple of steps that are, if you like, proportions of full level increment to accommodate some of the career medical officer grades, particularly 12 and 14.

The second scale that you see is in fact the relative value that we have been - a scale which we have been referring to and I don't think at this stage I need to make more comment on that. And then the next three columns represent in more detail the three main streams of the career medical officers in the department, the district and the hospital - hospital respectively.

You will note a dotted line which precludes any - any individual from progressing to beyond level 2 without full medical council registration. We believe this is in the interest of the employer to satisfy standards of excellence and a common approach to - to qualifications and appropriate

experience which it could - incorporated within the - the working practices of the medical council.

You will notice, sir, that between levels 7 and 8 is where a Class II Career Medical Officer grades start and that corresponds to the staff of the senior hospital medical officer levels.

And perhaps it's - it does not help the - the appearance of this for the Class III to extend across to the - to the hospital - or the senior hospital medical officer grade except to say that there is a barrier there and that the barrier is erected to ensure that Class III has an extra dimension in the career medical officer grade as it does for the senior hospital medical officer grade, and that extra criteria is the managerial responsibility over a service union - unit department or - or program. There is no reason, sir, why levels 4, 5 6 and 7 in those three streams could not be fully interchangeable.

COMMISSIONER WATLING: So from the department to the district to the hospital?

DR SENATOR: Yes. We believe that there is sufficient evidence from other jurisdictions to indicate that - that work within the community health services is fully equivalent to those responsibilities of career medical officers working as hospital medical officers in - in - in other jurisdictions and should - should be the same as - in Tasmania.

COMMISSIONER WATLING: Right, so someone in the department then could come out and be working the same line as the registrar, for example?

DR SENATOR: Yes. That would depend very much on previous years of clinical experience appropriate to - appropriate - I wouldn't have thought - perhaps department and hospital is more arguable than, say, district and hospital.

COMMISSIONER WATLING: Right.

DR SENATOR: We believe that there should be different entry points in the career medical officer grades. We are strongly of the conviction that at least 3 years of post-graduate experience is required for the - before a career medical officer working as a hospital medical officer be employed.

We believe however that in relation to district medical officer that the - that the customary 2-years post-graduate experience should suffice. And in relation to the departmental medical officer, we believe that - that the completion of the normal first year post-graduate year should be adequate, although of course it's up to the - up to the

employer's prerogative as to what seniority of staff that it wishes to attract.

You will note, sir, in the centre there is a stream for the resident medical of four levels. The fourth level which is - which is in parallel with - with the first of the levels available for the appointment of registrars.

I think the registrar levels are really as they are in the - in the current - the current award, and you will note that they are equivalent with the - with the hospital medical officers and the other - the other career medical officer grades where they exist in terms of the relative value we have described and the hence the level of their appointment.

We're proposing two levels for the senior registrar grade; I felt it was - it was probably unnecessary to indicate that - that there was a qualification step there, because the definition clearly relates to the achievement of - of appropriate post-graduate qualifications for appointment as senior registrar.

And then there is a continuum from the senior registrar grade into the consultant grades which have seven steps plus one level which has been set aside for - for senior consultants. And the elevation from career grade consultant to senior consultant is subject to the deliberations of a review panel based on criteria which are fairly rigid and highly categorised within the definitional clause of the - our award claim.

You will note, sir, that the next column which - which is devoted to directors of medical services is rather similar to the consultant range and harks back to the comments that I made where we believe that there is equivalence between the achievement of acceptable post-graduate qualifications in health - health administration and - and that which is given to their clinical colleagues.

You will however note that there are two extra small increments within the - within that scale at levels 12 and 14 and I'll explain the importance of that when I come onto detail the medical administration career pathways in a few moments.

The last column is devoted to that of Deputy Director of Medical Services where there are three levels - 5, 6 and 7 which are in common with the registrar levels and also the career medical officer levels and relativities. And again I will come back to that in more detail and the reason for that. The admission to post-graduate training, however, allows for access of that particular group of individuals to levels 8 to 13 with a bar between levels 12 and 13 related to the

achievement of the appropriate - an acceptable post-graduate qualification.

COMMISSIONER WATLING: Are you going to take me to the reason why you started at level 5?

DR SENATOR: Yes. Well merely to say that these are people who aren't officially in training. We believe that they're equivalent of career medical officers who may not have a permanent career path decided within that particular occupational family and may wish to move into one of the other streams, either to formal registrar training, to a capacity as a hospital medical officer or, indeed, one of the other career medical officer streams.

COMMISSIONER WATLING: So would it be possible to have, say, a second year registrar appointed as deputy director?

DR SENATOR: Yes. I believe there have been precedents in this state of registrar level appointments to deputies director of medical services.

COMMISSIONER WATLING: Would that be a common practice though?

DR SENATOR: Well I believe at various times - and maybe because in the past the lack of an adequate clear pathway that this may have been necessary. But I don't think I'm in the best position to account for managerial prerogative, sir.

COMMISSIONER WATLING: I'm sure the employers will tell me.

DR SENATOR: Now if I may take you to the other overleaf on the right side which is a deliberate amplification of those two streams of Director of Medical Services and Deputy Director of Medical Services. And just continuing on the theme that we were pursuing in the last few minutes. If I could this time continue with the Deputy Director of Medical Services.

We believe that those levels 5, 6 and 7 should apply where the appointee has not committed himself to this career pathway irrespective of the hospital in which they're serving because of their capacity to perform the task would be appropriate to those levels in relation to the remainder of the monolith in regards to hospital medical officers, other career medical officers and registrars in the clinical services within the hospital.

COMMISSIONER WATLING: Wouldn't they do that if they were on the registrar's career path anyway? Wouldn't they go to 5, 6 and 7 if they were on the career path for a Registrar anyway?

DR SENATOR: Oh, yes, sir. I think we perhaps - I should have perhaps introduced this by suggesting that commitment to training for that career pathway and acceptance of that individual into an agreed training program, allows them to access levels 8 to 12, depending upon the size, complexity and specialisation of the particular hospital. And you'll notice to the left of that scale that there are some indications of the bars, if you like, the entry points and the final level that can be achieved for these people within these acknowledged acceptable training programs.

The first of those perhaps at the left of that cluster applies to Repatriation General Hospital, North-West Regional Hospital and Royal Derwent Hospital. The society is not necessarily saying that each of those institutions or facilities will normally appoint somebody to these positions but this gives us the scope in terms of the relativities for the employer to so do at their - that's their prerogative.

We believe that the post, if it exists and if it is encouraged at Launceston General Hospital, is by nature of the size, complexity, and specialisation of the hospital. It warrants a higher bar with a higher entry point and a higher achievable position. And as we move up the tree, I guess -

COMMISSIONER WATLING: could you just explain these initials. There is a lot - in the third one in there's the Launceston General Hospital -

DR SENATOR: And then Royal Hobart Hospital in the next one. In the first is Repatriation General Hospital, North-West Regional Hospital and Royal Derwent Hospital. In the middle column is Launceston General Hospital and in the right one is - hand side is Royal Hobart Hospital.

COMMISSIONER WATLING: Right. Good. Thank you.

DR SENATOR: Now, these indicate a stratification of the hospital, as I have described, and also we believe it is logical to ascribe that ascending hierarchy so that there can be an additional career path for these deputies directors into director posts; such that there will be opportunity for further progression.

You'll note that at the Royal Hobart Hospital the entry point would be level 10. There would be two points up to level 12, but with the achievement of the acceptable postgraduate qualification there would be the opportunity to advance further to automatically progress to level 13. If I could now just -

COMMISSIONER WATLING: So, how did you determine that, say, that the north west for a deputy finish where it does, and for Launceston where it does, and for the Royal where it does?

DR SENATOR: Well that was part of the model when we lined things up, if you like, against the stream for the directors. We wanted to maintain the logic between the size, complexity and specialisation of those centres, but not allow that people advancing to director's posts would necessarily go backwards, or even stay the same.

COMMISSIONER WATLING: So, for example, at the Royal Hobart Hospital there is no overlap between the top of a deputy and the bottom of a director?

DR SENATOR: You say the top of the deputy or the bottom of the deputy and the top -

COMMISSIONER WATLING: The bottom of the deputy and the top of the director, it's a promotional jump of, what, one level?

DR SENATOR: Yes. It may be two, in fact - or three in fact - because they may initially be appointed at the Royal Hobart Hospital as a director if they had their post graduate qualification at level 16.

COMMISSIONER WATLING: Right. If we adopt a consistent approach, if you move to the deputy in the Launceston General Hospital, the top of the deputy has the same starting level as the director. Why did we sort of do that?

DR SENATOR: Well, only that if you actually look at the director and you look at level 13 in that bar you will notice a little dotted line which is the entry point for the director at the Launceston General Hospital with the relevant postgraduate qualification.

COMMISSIONER WATLING: Yes, but you have got your line drawn here at level 12.

DR SENATOR: Yes, but there are two dots at level 13 within that bar, if -

COMMISSIONER WATLING: So I am supposed to read those two dots as what?

DR SENATOR: Well, if you look below, sir, there is a key entry point for a FACEM or equivalent.

COMMISSIONER WATLING: So those two dots are the key?

DR SENATOR: Yes. And those two dots are also present at level 11 for the two bars on the left, and level 16 for the Royal Hobart Hospital.

COMMISSIONER WATLING: I saw them there, but it is just my photocopy didn't have it that clear.

DR SENATOR: I am sorry, sir, my drafting skills are not what they ought to be.

COMMISSIONER WATLING: Right.

DR SENATOR: Now, part of the difficulties with this model of course have been to try and confine the levels which are usually associated with career medical officer grades to those people within the administrative stream that haven't actually achieved their full postgraduate qualification. That was the need for those two extra points at 12 and 14. For example, the levels 12 and 14 in the director's stream.

COMMISSIONER WATLING: And, who has determined that there is a need for the extra qualifications? How do we determine that under your proposal?

DR SENATOR: Because we define the directors as consultants, given that NASQAC has determined that FACEM has equal status to other accredited college qualifications for specialist medical practice.

COMMISSIONER WATLING: Right. So you are saying that we should get that from the definitions as opposed to any classification standard?

DR SENATOR: Yes, sir, I believe that is picked up in the definitions. Under clause 7(7), under the heading of 'Director Medical Services' I draw your attention to clause (b) -

COMMISSIONER WATLING: What page is that? Page 7 - no. 'Director of Medical Services' page 4.

DR SENATOR: Yes, page 4. And (b) within the consultant classification:

If in the case of a general hospital a medical practitioner is a Fellow of the Royal Australian College of Medical Administration who holds another relevant higher qualification, as specified elsewhere in this clause -

COMMISSIONER WATLING: Right. Now that enables one to be appointed at the start of the director level?

DR SENATOR: Well, at the dotted element of that director level. So, in the case of St John's Park or the Repatriation Hospital level 11 as is the case for the North West Regional Hospital. In terms of Royal Derwent Hospital, Douglas Parker Rehabilitation Centre, or the Launceston General Hospital at level 13. And in the case of the Royal Hobart Hospital at level 16.

COMMISSIONER WATLING: Right. So you could be appointed - under your system here you could be appointed a director at level 10, say, at St John's Park -

DR SENATOR: Yes.

COMMISSIONER WATLING: - but you couldn't go any higher than an 11 until you got the qualifications.

DR SENATOR: No, sir, that doesn't restrict your advancement. You may, in the case of St John's Park progress to level 14, based on years of experience.

COMMISSIONER WATLING: Well, how would that fit with the definition you just told me? It's either one or the other, is it? Yes, so at least 5 years' practical experience in the health administration -

DR SENATOR: Yes.

COMMISSIONER WATLING: So, well, gee whizz, you could read that a couple of different ways, couldn't you? In fact, under the definition the only way they could get to St John's Park - we'll just pick that one for the sake of the discussion - the only way they could get to be a director is if they have had 5 years - that would be fairly simple enough - 5 years' practical experience in health administration within the career medical officer scale.

DR SENATOR: Yes, well 10, 11, 12, and 14 are levels associated with the career medical officer scale, sir.

COMMISSIONER WATLING: Yes, but it says 'in health administration'. So, if you were to take the career of a medical officer, so you look at the career medical officer who can either be in a hospital, or district, or a department.

DR SENATOR: Yes.

COMMISSIONER WATLING: Right. And you have got to have 5 years' experience in that area. Now, take for example if you took the department line and if you took each of those levels as a year, right, you would have 1, 2, 3, 4, 5, so they would be equivalent to level 6. Right? And then you could become a director if you were a level 6. You can go from a level 6 to a level 10 under your definition.

DR SENATOR: That would be possible.

COMMISSIONER WATLING: Right. Now, so you don't have to become a Fellow of the Australian College.

DR SENATOR: No, but we encourage it, obviously.

COMMISSIONER WATLING: Yes, but I am looking - for the sake of the definition - you could just do those 5 years and then go straight on from level 6 to level 10 as director with no other qualification.

DR SENATOR: Yes, but it is not a progression, sir, that would be a -

COMMISSIONER WATLING: That would be an appointment.

DR SENATOR: An appointment.

COMMISSIONER WATLING: Yes. And then, so you go onto level 10 and you're then telling me that you could go straight through to level 14?

DR SENATOR: Yes.

COMMISSIONER WATLING: Without taking any extra qualification?

DR SENATOR: That's right.

COMMISSIONER WATLING: So, you could get automatic progression from level 2 to 14 without any extra qualifications?

DR SENATOR: Only for that particular stream of the directors. It would be very unlikely, I might add, but stranger things have happened. Yes.

COMMISSIONER WATLING: Yes. So I am just trying to pick the bottom end of the scale and the top end of the scale, you see? Now, let's do the same exercise for a deputy; right?

DR SENATOR: Yes.

COMMISSIONER WATLING: You could have a deputy - well, let's go to the definition of a deputy. It says here for medical practitioner is at least 4 years postgraduate experience; right? So, you could have a deputy going from the department - 1, 2, 3, 4 - so that's a level 5, and they could be appointed, say, at the, well, the North West Regional Hospital, to a level 8.

DR SENATOR: Well only if they were accepted into an accredited and acceptable training program, sir. Otherwise they remain within the - all I have got for that dotted bar at level 5, 6, and 7 for deputy directors up the top.

COMMISSIONER WATLING: Right, well how do we know that from the contract of employment?

DR SENATOR: Well, we know it from the, from the - well, not so much from the contract of employment - but in terms of clause 8 - sorry, clause 9 - under 'Deputy Director of Medical Services' it is covered by all the proviso clauses - sorry, the provisos.

COMMISSIONER WATLING: Right, so a deputy can go from 5 to that. Well, why would you - yes, it is probably a matter of drafting - why would you include it in the wage rates section but it is not part of the definition for a deputy director of medical services? You see, I could go straight to the definition and use the definition and progress without - well, there is no cross-reference between the both of them you see? That's probably what confused me. I went to the definitions, looked at the definition and then gave you an example. But, really the definition is not complete.

DR SENATOR: Well, I think the problem arose, sir, because we did have a level of consent with the department on the definitions as they appear in the definitional clause. But no agreement on this particular system of stratification, and hence this was the only place where it could be incorporated to validate or to explain in detail our model.

COMMISSIONER WATLING: You see, in any drafting it would be possible to have, say, a deputy director of medical services, as defined, and then have all the criteria in the definitions. So you only have to go to one spot and not jump all over the award to pick up all the little bits and pieces, because you may not pick them all up.

Like, admittedly I have made no great study of this document that you have tendered - mainly because I haven't had the time - but all I say is that I immediately go to the definition of what you call a deputy director of medical services, use your definition, and then apply it to your chart, and find we have got a bit of a problem. But, of course, you have quite rightly pointed out you have got a bit more tacked on somewhere else in the award. So I can see then that they have to be, to be a deputy director, you have also got to be in this program.

DR SENATOR: Yes. Well, there's encouragement to be in the program, sir, and that is part of the ethos surrounding the career path development within the monolith.

COMMISSIONER WATLING: Yes, well, that's fair enough. Right.

DR SENATOR: Well, I believe, sir, that that completes my task in attempting to clarify the structure which the society has attempted to build over the past 2 years. As I indicated at the outset, I am sure there are as many potential approaches as one would like to imagine, and it is a question really of pursuing an option which has the most virtues; and we believe

on many grounds that this classification structure, albeit a highly simplified one in our estimation compared to many other jurisdictions, satisfies many of those criteria. If the commission pleases.

COMMISSIONER WATLING: If you look at the definition of consultant, it says here you have to have these qualifications, 'or other qualifications deemed appropriate by the Secretary of the Department of Health'. Now deeming can also mean less than. Right?

DR SENATOR: Yes.

COMMISSIONER WATLING: You deem them to have x, y, z. It doesn't mean that they have to have equivalent to. So, are you saying that someone can move into an area where they have less than?

DR SENATOR: Well, it depends what one is using as the gold standard.

We, from the society's point of view, would accept that there are situations where qualifications might not necessarily have been registered with NASQAC, although its registration procedures are going through, and for that reason might be construed as having less - not be fully equivalent with the established qualifications listed and registered within NASQAC.

This would particularly apply in such areas as the Australian College of Emergency Medicine, for example, and also we presume that there will be developments of other specialist groups. We also, in relation to the same terminology used under medical administrators accept the notion now of modern management. That such qualification as an MBA may have full equivalence in terms of the tasks to be performed, although they would not have the same recognition within NASQAC.

COMMISSIONER WATLING: Well, I just have to say to you that I have some misgivings about people deeming people to have certain qualifications. I will tell you a reason why. And that is, if I am supposed to be conducting a work value and I go out and I have a look and I say, 'Right, your worth 40,000 bucks', and then I hand over the right to the employer to give the same amount of money for someone that I've ruled on that has got less.

Now, it seems to me, (a) it is not fair to the people who have gone to the trouble to get the qualification, because if you are a pink eye with the employer they can deem you to be equivalent thereto, or they can just deem you to be placed on that sort of level, and I would have awarded an amount of money on what I have seen or what I believe the value of the work to be, but I am handing over my authority to someone else

to say: well, look, I can bring someone in, and I like them, and I think, well I don't really like that bloke that's going for the job, so I'll deem them to be something they aren't. Now that might be doing a disservice even to your own people.

DR SENATOR: I believe that that is a very valid point, sir. I would also indicate that the opposite may pertain - that due to attraction, retention difficulties in certain speciality areas that haven't at this stage been dealt with in a gold standard fashion that there may be a need to go beyond the scope of the award to provide for health services to the community.

COMMISSIONER WATLING: Well, I take the view that really I don't have the charter to make awards based on attraction and retention. That's not my job. Now, if the employer wants to attract people then the employer is quite at liberty to pay them whatever they like.

I am setting a standard here for a person that has that qualification. I don't know how the auditor-general would like it but, nevertheless, I can't really make a wage rate based on attraction and retention, I have got to make a wage rate based on the skills, the nature of the work, and the responsibility; because if I was making it on attraction and retention I'd be back here sort of every couple of months based on the economy.

DR SENATOR: Well, Mr Chairman, I am not sure - Mr Commissioner - I am not sure whether that answers a dilemma that I have faced for some time, as to really understand in our context whether our current award is a minimum rates or a paid rates award.

COMMISSIONER WATLING: Well, it could be argued that it is the maximum and the minimum, because it could be argued that the auditor-general would haul the department over the coals for paying more than, and any ruling that we have made you can't pay less than. And that's really because probably the standards of the auditor-general would be that the department has no authority to pay accounts in excess of that which are required by all sorts of things - and in this case being the award.

You can have this great argument about paid rates award and a minimum rates award. In a general context I suppose in the public sector it is a paid rates award, because it's the only amount they can actually pay in law. That's the only authority the department has to pay under. It's like paying an account, isn't it?

So, it is slightly different to the argument in the private sector where a paid rates award versus a minimum rates award. So, it is both the maximum and the minimum in the public

sector. So it could be a paid rates and minimum rates together because they can't pay any more, they can't pay any less.

But I make the point that if we were to determine rates of pay based on attraction and retention we wouldn't be carrying out a work-value exercise, because attraction and retention is poles apart from the skill, the nature of the work, and the responsibility of the individual doing the job.

On the other point that you raise, I think if they want to - if you do envisage that someone at the director level, or whatever, might be sort of a management type whizz kid that has degrees and doctorates and whatever all over the place in all sorts of areas - then I think the definition should cater for that. I think it should be specific. Why would you leave it to the employer to determine if you are running the case? You see, this -

DR SENATOR: I take your point, Mr Commissioner, but -

COMMISSIONER WATLING: - is the problem we have in lots of areas. I've had disputes before in the public sector where there are a number of clauses that say this shall happen except the controlling authority can do something else, and when there's been a dispute over it, it's come back tot he commission and the employer's stood up and said, 'Well, look, I don't why we're here because even though it says that in the award, it says that the controlling authority can do something different. The award says I can do something different; I've done it and I'm only carrying out the charter that the award's given it'. So -

DR SENATOR: Mr Commissioner, we're fully prepared to provide the detail that you request and initially it was in fact the society's position that that would be the path to be followed, but in the interests of perhaps reaching a common position that it would be acceptable, that we have moved away from that, but it may then be the difficult task for the bench to arbitrate on qualifications particularly and in turn decide upon what is to be considered a gold standard.

COMMISSIONER WATLING: Yes. Well all I'm saying, in something like that - and 'that' I'm referring to is the definition of consultant - it should be really talking about this qualification or that qualification or the equivalent thereto. Right? If there's any dispute over it, then it may well be the subject of a special hearing, but when you say that it's deemed by someone else outside of this system, or outside of the arbitral processes, to make the decision, it's even questionable even whether I have the right to say that I can hand over my powers to them. They'll do it, but it at

least if it's - there's some dispute over it, the argument will be about whether it is equivalent thereto.

DR SENATOR: Not his authority.

COMMISSIONER WATLING: That's right. Under this other way, people just come back with the answer, 'Well, look, in law - the award, I'm entitled to do it and therefore why are we here'. No debate.

DR SENATOR: I think the society is deeply in your debt for those words of guidance, sir.

COMMISSIONER WATLING: Yes. Well I think - but then again, I have to say the employer, as a right in terms of hiring and firing people, will say, 'Look, I'm going to appoint this person and I believe them to have the equivalent qualifications to this'. Now, they are entitled to do that.

DR SENATOR: Yes, so -

COMMISSIONER WATLING: This really means if there's any dispute over it, then you can argue it out, but I -

DR SENATOR: Well I think that it may - also of course our process often, particularly in the institution, that there is a staff selection process and the delineation of clinical privileges and a number of other - another system of checks and balances that can operate even at a level below the purely industrial disputation that -

COMMISSIONER WATLING: Right. Well one would hope that it'd never come here because the right choice would be made and then someone would deem them to be equivalent, but it doesn't mean that I'm awarding an amount of money for someone that has either this qualification or that qualification or the equivalent of those, and then in terms of work value, I'm ruling on the right thing, but I could say here, 'Well, gee whizz, I might have to lessen that amount because someone else could deem it a lesser qualification'.

DR SENATOR: Yes.

COMMISSIONER WATLING: It's open to them as per the definition. So, I'd say, 'Well, right, well I - it's not based on this qualification and that qualification, it's based on something less, so maybe the rate should be less'. But anyway - sorry for interrupting your flow, but I'm just trying to get sort of some understandings as we go as well, and - right.

DR SENATOR: I believe that completes my substantive submission on those particular areas of our award claim, sir,

and I think now, from the society's point of view, I'd wish for Mr House to proceed.

COMMISSIONER WATLING: Right. Good. Thank you.

DR SENATOR: If the commission pleases.

MR HOUSE: Mr Commissioner, I'd just like to make a few comments on some of the matters you've raised with Dr Senator. This is not to say that he is correct in that we will give you a fully considered view prior to the employers putting their submissions.

COMMISSIONER WATLING: I've just brought to the surface a couple of issues; right? There's no requirement on you to respond, but in bringing them to the surface - I didn't bring them to the surface for no reason, but you don't -

COMMISSIONER WATLING: I fully appreciate why you have and I wanted to address some of the reasons why we haven't.

COMMISSIONER WATLING: Oh, well, fair enough, you can - you're at liberty to tell me that.

MR HOUSE: In New South Wales there is currently an exercise going on to produce what I'll call - being an ex cCommonwealth public servant - position classification standards for various professional groups including medical practitioners as a separate group.

When we did the work-value case in the Northern Territory, we produced a fairly comprehensive set of role statements before the different groups there who are streamed in a similar way and substreams to what we're proposing in Tasmania. There's a rural medical officer stream. There's a clinician stream and medical administration and public health streams, but I won't bore you with all the details, but role statements were produced there.

In New South Wales, prior to all this, a comprehensive circular was brought out describing the range and functions of resident medical officers which is something also we've been conscious of and I think has been discussed in our award restructuring negotiations here in Tasmania as a possible thing that ought to be picked up.

I suppose, apart from the difficulties we've been experiencing in our negotiations, not sort of assisting - progressing that matter, we ran into a major difference with the department in even putting in a comprehensive description of what - in broad terms - is expected of salaried medical practitioners in the public health system in Tasmania, so I became despondent in terms of going ahead with any program based on the model award for professional people here in Tasmania. So that's - sorry -

a bit of a garbled potted history of how I've looked at the issue that you raised.

As to the 100 per cent or the benchmark, we had regard to the traditional notion of a tradesman and in theory a tradesman is fully trained and fully able to any function within his or her particular trade. It may take, with the lack of experience, it may take someone a couple of days to do something that an experienced person might do in half a day, but in theory the tradesman can do the whole range of functions and is - assume the responsibility for that function.

Now, our assessment was that it was only until you got to consultant or specialist - qualified specialist position, and that is actual occupation of the position as distinct from a senior registrar who has the qualifications but has yet to gain that position, that the person - the medical practitioner assumes the full responsibility and the full - and there is a full expectation of him or her to perform the full range of duties of a medical practitioner. So that was the basis of why we picked that level as the benchmark and indeed, we did the same in the Northern Territory and in that case, not that it necessarily should influence this commission's decision, was accepted by the employer. The -

COMMISSIONER WATLING: They might accept it in this matter as well. You don't know.

MR HOUSE: Pardon?

COMMISSIONER WATLING: They may accept it in this matter as well and that -

MR HOUSE: Well I'm not saying it necessarily should make you - oblige you I should say -

COMMISSIONER WATLING: No.

MR HOUSE: - to accept it, but that's that - that's - so that was -

COMMISSIONER WATLING: Well I have to be honest with you and say one of the reasons I really questioned the 100 per cent at that level because of the words 'deemed'. See, it brings me back to the point I made earlier, and you're really telling me by using those words you can be less than that and I - so -

MR HOUSE: Well this is a very vexed area too.

COMMISSIONER WATLING: Well that's right, and that's why if you're going to convince me that you - it's this level and you're telling me in one breath that it's got to be this and

it's got to be that, and then you have the words in the definition that say 'deemed', I have to take it that it means - it could mean less than that.

MR HOUSE: Yes, I totally agree with the inappropriateness of the word 'deemed'. What this is all about is, in Tasmania the NASQAC is the standard and there is an extreme reluctance to depart from NASQAC as the standard. In other states, whether it's deemed or equivalent or whatever - I'd have to do some research - but the reality is that the medical board of the state or the employer which is - I heard what you say about the employer, but let's just stick to the medical board - in Queensland for example - can, on its own motion, determine - I don't know whether it is deemed, I'd have to look at the word - but at least determine that a certain qualification in a certain field, perhaps limited to a certain field, is the equivalent to a specialist qualification.

COMMISSIONER WATLING: But the only thing is, in this area, that the board is not the employer, and we're talking about the contract of employment between the employee and the employer. The board can decide anything. The employer really could say, 'Well you're not the employer. I've got a contract determined by the commission between the employee and the employer'.

I'm bound to follow that, not what you say. So, that's why I'm trying to - you know, you might be right in Queensland. I say when it comes to a technical legal point, I'd like to know how come a outside board can tell the employer what the contract of employment shall then be. Interesting debate.

MR HOUSE: I don't want to - we've got a couple of minutes. I don't want to prolong this issue, but I would like -

COMMISSIONER WATLING: No. I think I've made the point though -

MR HOUSE: Just by way of information I'd like to tender an exhibit on this matter.

COMMISSIONER WATLING: That means we're up to H.6, I think this is, yes, because I've taken your other documents, Mr House, as being just matters for information.

MR HOUSE: Yes, that's correct, sir.

COMMISSIONER WATLING: Right. So, it's H.6.

MR HOUSE: Here are two advertisements that appeared in the 'Weekend Australian' in January. On the left hand side you have a director of accident and emergency department staff specialist at Tamworth Base Hospital and there it says amongst other things: The essential qualification is relevant staff's

specialist qualifications preferably in accident and emergency and adequate experience and that will provide you with a salary as a specialist in accordance with the Public Hospital (Staff Specialist) Staff Award.

In Tasmania when we look at the Northern Regional Hospital, which is perhaps a similar hospital to that at Tamworth, the director accident and emergency is not accorded - or the position is not accorded specialist status and the salary and conditions for this position will be negotiated. Now this is what we -

COMMISSIONER WATLING: A bit of retraction and retention in there I reckon.

MR HOUSE: Exactly. Now -

COMMISSIONER WATLING: But that doesn't mean that I get involved in that, you see. That's the point I'm making.

MR HOUSE: Well for my part and I'm speaking just for John House, -

COMMISSIONER WATLING: Yes.

MR HOUSE: - I believe that the position needs to be regularised in some way, having regard to what you have said, sir. But, nevertheless, in many states, there is a discretion. That discretion does present Tasmania with no discretion with recruitment, attraction and retention problems. It's presents the society with some difficulty in that for all we know these people are being paid more than a person who is fully qualified, a la, NASQAC as a specialist. Now -

COMMISSIONER WATLING: Well, then let's explore that. The only way for you to really get over that question is if the qualifications standards are still going to be the NASQAC documents, then you can only pull out a position and place it in the award and have it work valued. That's your only avenue. So, you know - and therefore, you've spoken about a director of medical health services and if you've got to have even a NASQAC qualification for that, there might be a number of different directors of medical services, but all I say is one of them may be accident and emergency, and that's the only way - if you're not going to observe the standard and you don't want to observe the standard of NASQAC, the only way this commission can deal with it is to look at a classification and work value the classification.

MR HOUSE: Yes.

COMMISSIONER WATLING: You know, I am not too sure that your -

MR HOUSE: Is that adding something to the list, sir?

COMMISSIONER WATLING: Well, I am not saying anything. All I am saying is, that you are going to have to work out whether it is an extension to your application and, if so, seek leave to amend your application.

All I am pointing out to you is that if you are not going to stick with this, even someone deeming to be equivalent thereto obviously won't fix your problem. And if they haven't got the qualifications, then you have to jump in line with this, then you have to say, right, well you have got to pull them out to one side.

But that may well be, if you examine it in special depth and as a separate classification, it may well up with a result that, well, they are not quite at the same level. I don't know, but that's a gamble you have got to take. That's if you go along that avenue. But I am just trying to show you that you won't overcome this problem as per this exhibit by what you are putting forward. Even if you say 'deemed'.

Now if the employer has a very strong policy that says I am only going to stick with the NASQAC document, when are they going to deem someone anyway? They are not. If they are true to their policy and their view to stick with this, they won't. And they haven't in the past. But you have also got to take the gamble that, you know, I might say: well, look, yes they do all this, they do everything else, but they just haven't got that qualification. And one might say: well, I believe that they should be at this level, or might say, well they should be less than that, because they haven't - it is not recognised.

But I am just trying to show you that that's the only way to do anything about it, if you want to argue it out. But it may well mean alteration to your application, in which case you would have to seek leave to amend it, and you know, and that's - or it could even mean that really the salary matters are really before me, and it may well mean that you don't have to amend your application because the subject matter - salaries - and the subject matter of how you move from one to the other. The whole question of salaries and promotions and qualifications are already before me as part of the application.

In fact, that's the part of the application that we are dealing with now. That's why we are discussing it. But, anyway, I will just throw that into the middle of the well. But this deeming business will not get over any potential problem that you see, because if the employer is true to what the employer believes they will stick with NASQAC.

MR HOUSE: Thank you, sir. Would that be a convenient time?

COMMISSIONER WATLING: Anyway, it might be an appropriate time to adjourn, I think.

LUNCHEON ADJOURNMENT

COMMISSIONER WATLING: Thanks, Mr House.

MR HOUSE: Thank you, Mr Commissioner. This afternoon I propose to go through Exhibit H.4, clause number by clause number, except that I will only be commenting - subject to the commission's wishes - on those matters where we are not agreed or I think we are not agreed.

COMMISSIONER WATLING: And then you will be reporting to me on the matters that you have agreed?

MR HOUSE: If you wish, I will go through every one of them, yes, rather than just the ones that -

COMMISSIONER WATLING: Yes, right. Right, we'll tick them off as we go through. Now, some of these clauses I would think would be related to structural efficiency, if not all of them. I'd need to be able to gauge how does that enhance efficiency and productivity. I will need to know this, because otherwise it would be just a general wage claim. But I have got to look at it from the background that we are processing, or we are finalising the structural efficiency negotiations. So, therefore, I'd really want to know why you are wanting this clause inserted into the award, and where does it enhance productivity and efficiency.

MR HOUSE: Certainly. I will do my best. In terms of the first six items, title, scope, arrangement, date of operation, supersession and savings, and parties and persons bound, I don't believe there is any great difference between the parties on these formal matters. I think we both accept that the date of operation is a matter for the commission to ultimately determine; although given the protracted nature of negotiations, we would submit that no phasing in of any increases is warranted. As you are aware, we do have some difficulties when we come -

COMMISSIONER WATLING: So, are you saying to me, if it boils down to granting the claim by phasing it in, or not granting it, or granting the claim in too, that I am only restricted to one thing? I either grant it in too, or I can phase it in.

MR HOUSE: Well, what I am saying, as I think I tried -

COMMISSIONER WATLING: Or could I use my discretion?

MR HOUSE: - I tried to indicate last week that the society's preference is that you arbitrate the matter in two, or as a package - in terms of our work-value claim for salary increases, anyway. We believe that the salaries should operate from the date of the first pay period on or after the date of your decision, and that there should be no phasing in of those salary increases.

That's our position at this stage, anyway, sir, in that if I don't know what the incapacity to pay line will be, but if they want 10 years in instalments we'd be not very excited about that sort of approach, given that we have tried for 3 years to negotiate a compromise, and that hasn't happened.

COMMISSIONER WATLING: I was only asking the question to try and ascertain whether it was an all or nothing approach.

MR HOUSE: Oh, no. It's a matter for you to determine, sir.

COMMISSIONER WATLING: Oh, yes, well as long as I am reading you, because sometimes we go through these types of hearings and then we end up in appeal, and then someone says: oh, well, you only had the charter to do this or this. I'm just trying to find out what we really mean by that.

MR HOUSE: Well, I don't operate that way, sir.

COMMISSIONER WATLING: Right. Fair enough.

MR HOUSE: The first definition, 'Career Medical Officer', is a problem between us, as Dr Senator I think has already outlined to you. In the interests of efficiency and flexibility, we wish to go further than in some other states and try to have the career medical officer concept cover doctors in both the hospital and non-hospital settings.

In New South Wales where the career medical officer concept was first introduced into Australia, they are largely but not exclusively employed in the hospital setting, and for the information of the commission I would like to tender an exhibit outlining the New South Wales position.

COMMISSIONER WATLING: We'll mark this Exhibit H.7, please.

MR HOUSE: This is largely to put the career medical officer concept in some perspective historically. If I could go to the fourth page of the exhibit, there is a memorandum from the secretary of the New South Wales Department of Health to all regional directors, CEOs, and public of health's area - health

COMMISSIONER WATLING: In just passing through the other pages I notice they have got the criteria for each of the grades.

MR HOUSE: Yes, I was coming to that.

COMMISSIONER WATLING: Right.

MR HOUSE: At 1, 2, 3, 4 dot points down in that circular: 'C.M.O. positions will in general be restricted to hospitals not participating in intern or R.M.O. secondment networks'. The second subdot point: 'Specific service areas, e.g. accident, emergency, in other hospitals'. I know from the local area where I come from at Goulburn Hospital, for example, they utilise career medical officers reasonably extensively. That circular, I should have said, is dated 24 December '87.

Turning now to the principal circular from the New South Wales Department of Health, Circular No. 89/157, issued on the 1st of November 1989, this document indicates - again, if I can quote the fourth paragraph commencing on the first page: 'Generally there has been a positive response to the introduction of the career medical officer classification, as this has enabled the development of a career path in the public hospital system for non-specialist doctors, and increased retention rates for hospital medical officers'.

The next point: 'Improved middle grade medical staffing in peripheral hospitals not included in the secondment networks'. And over on page 2: 'Improved staffing of some departments where there had previously been deficiencies'. Next: 'The service needs of the hospital to be more easily met.

And lastly: 'individuals to undertake more clinical responsibility and require less supervision'. It then points to certain potential or actual problems and - that the department then has developed a set of grading criteria and if I might just go through that criteria; grade 1s - the statement of duties indicates the basic medical duties in a hospital setting.

The next level is the first level of supervisory or out of hours supervisor responsibilities and then the third level is director or head of a unit and duties to include clinical responsibility for patient care and has a supervisory role. And, again, accident emergency is highlighted there. And then as - on page 3, sir, as you referred to, the grade 1 - and here I point out this is in the hospital setting - at least 3 years post-graduate experience; the grade 2, at least 5 years relevant - emphasised - post-graduate experience, and grade 3 at least 7 years relevant post-graduate experience and relevant post-graduate qualifications.

In terms of the criteria that the New South Wales system developed, we don't see that what we're proposing from - for Tasmania is unreasonable or extravagant. Now Dr Senator has already indicated, there are practical reasons for still

recognising some difference in terms of experience requirements and we think the definition needs to be comprehensive and explicit in stating who falls within each substream of this category. The - we don't -

COMMISSIONER WATLING: So would that be done?

MR HOUSE: Pardon?

COMMISSIONER WATLING: Are you anticipating doing that?

MR HOUSE: Developing criteria or -

COMMISSIONER WATLING: Yes.

MR HOUSE: Yes - well yes, sir, in the light of this morning's procedures I - yes, well I put it -

COMMISSIONER WATLING: I'm not -

MR HOUSE: - we'll talk to our friends at the other end of the table about their attitude, but it may well be we'll have to proceed to do it on our own. I don't know whether that answers your question.

COMMISSIONER WATLING: Well, at the end of the day all I say, in the rest of the public sector the parties couldn't agree and they did it on their own.

MR HOUSE: Well -

COMMISSIONER WATLING: The unions had their criteria, the employers had theirs and the commission had to arbitrate; right?

MR HOUSE: Well -

COMMISSIONER WATLING: I think you -

MR HOUSE: - I don't think that's an unreasonable expectation given our experience, but I - I always try to get some sort of agreed document if we can.

COMMISSIONER WATLING: Well, I don't - I wouldn't disagree with you - the most desirable thing is to try and - and get some agreement if you can.

MR HOUSE: Yes.

COMMISSIONER WATLING: Certainly that's what the full bench tried to do in the public sector. When it's been dragging on for nearly one and a half years or something, enough is enough and that's why the bench decided that the unions had to submit their document to the employers by a certain date and

the employers had to submit their document to the unions by a certain date, and then if they - after receiving each other's document if they couldn't agree, then the commission would arbitrate each of the areas.

MR HOUSE: Yes.

COMMISSIONER WATLING: Now I suppose it really depends on how long you want to negotiate this out.

MR HOUSE: Well we -

COMMISSIONER WATLING: The desirable point - don't misunderstand me - the desirable point is to get agreement, because it is a big effort to draw up criteria. Because if you've got someone, say, from the mainland being appointed to a position, it's nice to know that they're going to be appointed within a certain level or a certain grade, because they meet criteria for that grade and there's - there's no-one then being - receiving favoured treatment or being disadvantaged.

MR HOUSE: Yes. Well we already have some material such as what I've just been through from other states that would -

COMMISSIONER WATLING: I'd have to say from my perspective, when I get to the stage of determining the amount of money and the relativities I think I'll need to know that information, because how am I going to put some figure on it -

MR HOUSE: Yes.

COMMISSIONER WATLING: - if I don't know what you can do at level 1 or level 2 or level 3 or level 10 or level 15 - what is the minimum criteria -

MR HOUSE: Yes.

COMMISSIONER WATLING: - to be appointed at that level -

MR HOUSE: Yes.

COMMISSIONER WATLING: - and a minimum criteria might be worth so many hundred dollars a week - or well, I don't know - I'm just taking this leap in the dark that someone referred to on one other occasion.

So, you know, I think when I get down the nitty-gritty, I'm going to be really looking for something like that and maybe you've probably got to consider whether or not - in view of the comments we've been talking about - whether or not you want to draw the definitions and some of the things contained in the wage rate clause, right -

MR HOUSE: Yes.

COMMISSIONER WATLING: - together in one document so it becomes the criteria for each of those levels -

MR HOUSE: Yes.

COMMISSIONER WATLING: - because you've got some in the wage rates and some in the definitions section.

MR HOUSE: Yes.

COMMISSIONER WATLING: Why couldn't you have all these things drawn up in - as a standard, a classification standard.

MR HOUSE: I agree totally. One of the reasons, though, we put it in the wage rate area is because of the barriers and advancement and things like that -

COMMISSIONER WATLING: But I think you can - I think it's possible to write those into any - if you had a - say, for example, you've got 19 levels, you might - well you can write those into a section - not a selection criteria, a classification requirement for each of the levels so you'd know at this level they are suppose to have commenced this course of training -

MR HOUSE: Yes.

COMMISSIONER WATLING: - and are supposed to be doing that.

MR HOUSE: Yes.

COMMISSIONER WATLING: At least - and then you'd be looking up one document - or one section of the document and you wouldn't be cluttering the wage rate section with all these little add ons with 'so forths' and 'as withs' and 'provisos and 'provided that'. You just go to the classification standard and say: That's classification level 1, and turn to the wage rate and find level 1, and you could add all those things to one sort of - well, definition really, and you should probably take some lead from that which has already been established in the public sector by a full bench.

MR HOUSE: Yes.

COMMISSIONER WATLING: Not necessarily the words, but I'm saying the style.

MR HOUSE: Yes. I used to work on position classification standards in the Commonwealth so -

COMMISSIONER WATLING: Yes. Well you may end up with something totally different, but then again until you really highlight your position in a finer detail -

MR HOUSE: Yes.

COMMISSIONER WATLING: - so the employer's of the understanding that - or the employer's understanding is the same as your in relation to that level, until you get to that stage, you probably won't be able to even work on the agreement because there's all the unknown quantities in there. Everyone's sort of baulking because they - oh, I don't know whether to buy this - but you may well get some understanding on a number of levels and you may have a fight about three or four levels and the criteria.

I don't know, but unless you highlight it in that fashion, you've got some problem I think, and - which probably brings me to the point whether or not you should adjourn this part of your submission to have a look at some of those questions that have raised and then come back to it before you finalise your submissions because if you - if, for example, you finalise them today in relation to this aspect, what, am I going to have to open it up and give you another go at it towards the end of your submissions? Do you see what I'm getting at?

MR HOUSE: Yes.

COMMISSIONER WATLING: That means you're having two bites at the cherry and I might be listening to this argument which you might go away and come back to me with a sort of a classification standard for each of those levels and I'm listening to another argument, so which one am I to take then? This argument you are running today - just on this narrow aspect of it - or the one that you come back to me with, then you might have the other side hopping up and saying, 'Whoa you've had your go at this'.

MR HOUSE: Yes.

COMMISSIONER WATLING: You might be locked out.

MR HOUSE: Well I think I agree - well, that -

COMMISSIONER WATLING: If you adjourn discussion on it - and I don't want to tell you how to suck eggs but it might -

MR HOUSE: Yes.

COMMISSIONER WATLING: - and if you adjourn discussion on those aspects -

MR HOUSE: Yes.

COMMISSIONER WATLING: - you're - at a later date in the hearing it is still open for you to come back to me.

MR HOUSE: Yes.

COMMISSIONER WATLING: If you finish your submission on this aspect of it today, you're finished.

MR HOUSE: Yes.

COMMISSIONER WATLING: But then again, if you went away and did the homework on it, and you had this sort of classification sort of criteria that's set out and then the employer had it, you never know, it might halve the argument because you may get a little closer and you may not be arguing on some of the fundamental details. It certainly brought it to a head in the rest of the public sector. That's was the only thing that brought it together.

MR HOUSE: Yes.

COMMISSIONER WATLING: And in the end we ended up with a document - a union document and an employer document and a document that just highlighted the differences, which in the end probably weren't all that great, but if you analyse it - but if you finalise your argument on this today, you may get someone pulling you up - probably including myself - saying, 'Well, hang on, you've run your argument on this point and - but it would be possible -

MR HOUSE: I think that's a good idea.

COMMISSIONER WATLING: So you could -

MR HOUSE: All right. May - we were going to - my colleague, Dr Senator, and I were going to reserve some items going to the definitions for consideration this evening and report back to you before the employers commenced, but this is a much bigger matter now that -

COMMISSIONER WATLING: Well - yes, but I think I - I'm not really wanting to put to you extra work, but I think you might be able to halve your fight -

MR HOUSE: Yes.

COMMISSIONER WATLING: - because if the employer knows that they're going to pay \$28,000 for a level 1 -

MR HOUSE: Yes.

COMMISSIONER WATLING: - it begs the question, what is a level 1 going to do?

MR HOUSE: Yes.

COMMISSIONER WATLING: And I'm going to be asking the same because I'm going to be asking - why should I give \$28,000 to this level -

MR HOUSE: Yes.

COMMISSIONER WATLING: - and you've got to tell me and then I'm going to say, 'Well, where is that enshrined in the contract of employment?' So, -

MR HOUSE: Well -

COMMISSIONER WATLING: - and that really relates to the definition -

MR HOUSE: Yes.

COMMISSIONER WATLING: - the promotion - this question relates to probably all things we were discussing this morning; the definitions, the classification criteria, the - well, given that we're not putting salary rates in -

MR HOUSE: Well there are some definitions that are not related though.

COMMISSIONER WATLING: No, well maybe we can hive those off -

MR HOUSE: Yes.

COMMISSIONER WATLING: - but I'm generally talking about definitions in relation to this structure that you're proposing.

MR HOUSE: Yes.

COMMISSIONER WATLING: So we're looking at definitions in relation to the structure, the classification criteria -

MR HOUSE: Yes.

COMMISSIONER WATLING: - the structure itself and new appointments and promotions.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right? Now, maybe, if you were to adjourn today - keeping in mind we've got some time left - this isn't going to finish tomorrow - you may be able - or you may be better served if you don't sort of fire all your shots at this stage. But given that you've given us the proposal of a structure, you really now have to convert that to a level - level 1 for so and so.

MR HOUSE: Yes.

COMMISSIONER WATLING: And you might even want to look at - picking up the point I made this morning about level and years of service, you might want to talk about level 1, Grade 1, 2, 3, and 4; level 2, Grade 1, and 2, I don't know.

MR HOUSE: Yes.

COMMISSIONER WATLING: But you need to be talking about levels and grades, I think, if you're going to argue a level. It seems to me that you are - in your structure, you're talking - or you are lining these things up to levels all the way through which is clearly identifiable, but if you're going to use a level, then anything within a level must be a grade.

MR HOUSE: Well -

COMMISSIONER WATLING: And then you really have to talk about how you progress from one grade to the next grade within the level.

MR HOUSE: Well, we envisage a structure where you move up through the levels according to experience and there are barriers -

COMMISSIONER WATLING: Yes.

MR HOUSE: - relating to qualifications or other matters.

COMMISSIONER WATLING: Well that's what I noted this morning, so if you get onto level 1, Grade 1 might be if you have - it maybe the 1st year of service, grade 2 might be after you've completed 2 years of service, grade 3 might be 3 years of service, plus this, plus that, plus the other thing and Grade 4, say level 1, Grade 4 might be 4 years experience, including, this, this, this, and this, so that's where you would put them in.

MR HOUSE: Yes.

COMMISSIONER WATLING: And then you'll get to some levels that won't have any grades. It will be just level 3, level 4, level 5; it might be level 6, Grade 1, 2, 3, and 4. So if you can use your definitions and your criteria for appointment and promotion and put it all together under level 1, as defined, it means this, this and this under level 2, I think I'd be clearer. I'm sure the employer would be clearer.

MR HOUSE: Yes.

COMMISSIONER WATLING: And then you could draw any classification standards or any job description, sorry, at the

work place around the definitions for those, you know, criteria for appointment to those levels. So if the job description doesn't fit at level 5, well it may well fit into level 6 or may well fit into level 4, and people need to be then classified at the appropriate level. You're using the criteria established in the award, plus the job description.

So that's a bit of protection both ways there. It's a protection for your members and a bit of protection for the employer, and that's why I think you might be able to get a little closer if that happened. I'm not - I don't know, but it's worth -

MR HOUSE: Well we wanted an award that's clear, comprehensive and unambiguous.

COMMISSIONER WATLING: Yes. Well I think doing -

MR HOUSE: If you can achieve that.

COMMISSIONER WATLING: Well, there will always be problems. I don't have anything perfect, but at least if you get to establish criteria for each of the levels and it's in the contract, then the job descriptions have to be drawn around that unless you're saying you hand the lot over to the employer, and the employer can do what they like - what he likes. It's 'he' at the moment, I think, the minister.

So - but nevertheless, I think that's a bit of a safeguard for you. You'd want to know who is going to be falling in at this level, who is going to fall in at this level, otherwise you just hand it over. That's really some of the problem with the public sector awards at the moment. It - we have these awards that just have a series of grades and classes and levels -

MR HOUSE: Yes.

COMMISSIONER WATLING: - and then we say to the employer, 'There it is, you have it. It's your baby. You've got license to do with it what you like'. That can be changed at a drop of a hat, if someone can rearrange the job descriptions, we can't do anything about it. There's no criteria for each of the levels in the award, and as I've told a few unions in recent time, that if you ever go to work value an award like that not knowing who it applies to and who is eligible for Grade 1 or Grade 7 or Grade 8, the likely success of a work-value case might be zilch simply because there is nothing there at the moment.

You'd have to start afresh and say: Right, what does a level 1 that is required to have all these sorts of things and do that type of work get? And then you can - well, at least you know next time if you go to work value it, in 1992 they got \$20,000 for this type of work. In 1996, at that level, well things

have changed at that level. They now do all these different things and therefore level 1 is significantly changed. You're starting afresh with a work-value case because there's nothing in the award at the moment to tell me who is eligible for what at what level or grade. Just a job description that the employer draws.

MR HOUSE: Thank you. Well in terms of how we proceed, subject to what the commission thinks and colleagues on the other side of the - at the other end of the table, is it possible just to reserve those matters and deal with the other matters this afternoon?

COMMISSIONER WATLING: Yes. Well as far as I'm concerned it is. I'm in your hands, but I think we've discussed enough things to know that I am going to have a number of questions in relation to level 1, Grade 1, Grade 2, Grade 3, who is eligible for it. So you've got the major part here, but you need to tease out a bit more of the other stuff and rather than - I'm more than happy if you want to adjourn this section at this moment and report back to me after you've talked with your colleagues.

MR HOUSE: Thank you.

COMMISSIONER WATLING: I'll be clearer and I'm sure the employer will be clearer. No opposition from the employer anyway on that is there?

MS COX: None at all, Mr Commissioner.

COMMISSIONER WATLING: Right. Right. So we'll then move, for the rest of the day, into the ones that don't need - or that aren't related to this structure -

MR HOUSE: Yes.

COMMISSIONER WATLING: - and that may need some definitions -

MR HOUSE: Yes.

COMMISSIONER WATLING: - that' aren't related to the structure.

MR HOUSE: Yes.

COMMISSIONER WATLING: Well let's go to them.

MR HOUSE: Well I'll jump consultant. We agree on the definition of the controlling -

COMMISSIONER WATLING: But that's going to be related to the structure though, isn't it, so maybe we'll adjourn that.

MR HOUSE: - controlling authority -

COMMISSIONER WATLING: Well - no, I'm saying that that particular definition -

MR HOUSE: Yes.

COMMISSIONER WATLING: - is very much related to this.

DR SENATOR: Consultant.

MR HOUSE: Oh, I've jumped - I said I'd jumped consultant -

COMMISSIONER WATLING: Oh, sorry.

MR HOUSE: I've jumped consultant, controlling authority -

COMMISSIONER WATLING: Yes. The next one is controlling authority, right.

MR HOUSE: There's no disagreement on that.

COMMISSIONER WATLING: Right.

MR HOUSE: I jumped the next to all those down to 'fixed term contract officer'. I'm not sure whether that's structural or not, sir.

COMMISSIONER WATLING: Yes. I'd just leave that one with your other thing at the moment.

MR HOUSE: Yes.

COMMISSIONER WATLING: Full-time officer.

MR HOUSE: That's fairly straightforward.

COMMISSIONER WATLING: Right.

MR HOUSE: We've agreed to that.

COMMISSIONER WATLING: Right. So you've got an agreement on that definition?

MR HOUSE: Yes. I jump, higher qualification. Hourly rate again is straightforward and there's no disagreement on that.

COMMISSIONER WATLING: Right.

MR HOUSE: There's no -

COMMISSIONER WATLING: No disagreement -

MR HOUSE: - or while it might be structure the medical officer is a medical officer.

COMMISSIONER WATLING: Yes. Right.

MR HOUSE: And so is a medical practitioner.

COMMISSIONER WATLING: Well it's not so much structure, but there's no argument about the medical officer.

MR HOUSE: No, or medical practitioner.

DR SENATOR: Just a moment. We were going to try and roll up the medical officer and medical practitioner.

MS COX: We agreed, I thought, to take medical officer out.

DR SENATOR: Yes, but we have to change medical practitioner
....

COMMISSIONER WATLING: Do you want to leave that for a moment?

MR HOUSE: Excuse us, sir.

COMMISSIONER WATLING: We might just turn off the record for a minute.

OFF THE RECORD

COMMISSIONER WATLING: Right, medical officers where - you'll take out then as a definition. Medical practitioner, what are you going to do with that one?

DR SENATOR: We agreed on that.

MR HOUSE: That's agreed, sir.

COMMISSIONER WATLING: Agreed, right.

MR HOUSE: The next issue is a matter of contention between us as to whether the award should detail what is paid work under the ordinary hours of work definition. Firstly, we believe that ordinary hours of work should still be 5 days, Monday to Friday, with the span of hours 7 am. to 7 pm. which, in terms of national standards, is a fairly wide span in the medical profession and elsewhere.

COMMISSIONER WATLING: So what happens if they work after that; they work on overtime?

MR HOUSE: That is another contentious issue of time off in lieu for specialists. For junior staff and registrars there's overtime. All right, Gordon? Going to the further detail on that page and over the page -

COMMISSIONER WATLING: Well, can I just ask the question: Why would you have ordinary hours of work and quite a lengthy arrangement in a definition provision rather than putting it all under the hours of work clause? It seems to me that hours of work is a fairly large issue in its own right rather than a definition.

MR HOUSE: Yes. Well I was just going onto the origins or the motivation for that lengthy description and I hadn't thought about whether it was in the right place or not I must admit, but it goes to -

COMMISSIONER WATLING: Well it's more than a definition, isn't it?

MR HOUSE: Pardon?

COMMISSIONER WATLING: It's a prescription, isn't it, rather than a definition. It's prescribing the hours of work. It's not defining what -

MR HOUSE: It's describing what medical practitioners do in -

COMMISSIONER WATLING: Yes. Well it's headed up - this is supposed to be a definition of ordinary hours of work.

MR HOUSE: Yes, yes.

COMMISSIONER WATLING: Well ordinary hours of work really - and your document here must be from 7 am. to 7 pm. - they are the ordinary hours.

MR HOUSE: Yes.

COMMISSIONER WATLING: Full stop.

MR HOUSE: Yes.

COMMISSIONER WATLING: The rest of the matters talk about the general prescription for hours of work.

MR HOUSE: Yes, I'm advised that it's really a definition of work. That's what it's supposed to be.

COMMISSIONER WATLING: Yes. Yes, it's really describing what could be done in relation to hours of work for various categories for employees, isn't it?

MR HOUSE: Yes.

COMMISSIONER WATLING: So, I think you're getting down -

MR HOUSE: Well, the -

COMMISSIONER WATLING: - then to - have you got an hours of work clause?

DR SENATOR: Yes.

MR HOUSE: Yes.

COMMISSIONER WATLING: Well -

MR HOUSE: It's just occurred to me, if we're going to develop classification standards, a lot of this would probably be covered in those anyway.

COMMISSIONER WATLING: Some of it could be.

MR HOUSE: In the features of this - of the work of this group.

COMMISSIONER WATLING: Yes. Some of it could well be, and that might be another reason why you develop certain rates for certain people because they are required to do different things at that level.

MR HOUSE: Well could I seek to put that one on the reserve list, please?

COMMISSIONER WATLING: Yes, right. And then you - whatever happens, you've got to read it in conjunction with the hours of work clause anyway, so why wouldn't you put it under the hours of work, so you just go to one place.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right.

MR HOUSE: I should - well, the commission will have noted that compared to the existing award we now propose a standard 38 hours for all medical practitioners covered by the award and that it is seen as the structural efficiency - some significance.

COMMISSIONER WATLING: That's another reason why you have an hours of work clause and not put it in definitions. Well, we'll adjourn that one then and you can come back to me on that. Part-time officer.

MR HOUSE: Yes. The -

COMMISSIONER WATLING: So is that a part-time medical practitioner?

MR HOUSE: Yes.

COMMISSIONER WATLING: Because now we've only got a definition -

MR HOUSE: Yes.

COMMISSIONER WATLING: - for a medical practitioner anyway.

MR HOUSE: Yes. Now, I understand this is another area of difference between us. The society has always supported the concept of permanent part-time work as long as it is in the interests of its members of the profession maintaining a commitment to the public health system and of course in the public interest. As it costs some \$200,000 to fully train a doctor in Australia, we believe that appropriate part-time opportunities should be available to those who require it. There's an increasing demand for part-time work, perhaps highlighted by the predominance of female graduates these days who are more likely to require this form of employment, particularly on re-entry into professional life.

Experience in other states shows part-time employment provides efficiencies for the delivery of health services. However, experience in other states also indicates considerable potential for abuse, especially in the area of casualisation and moonlighting. And I speak particularly about New South Wales.

We strongly submit that the provisions we have proposed are essential if permanent-part-time work is not to become an area of potential abuse and disruption to the smooth operation of the hospital system. I refer there, Mr Commissioner, to the specification that we've put in in terms of the proviso there, that senior medical officers, district medical officers, and departmental medical officers there should be a minimum of 40 hours a fortnight, and in the case of all other groups a minimum of 30 hours a fortnight.

Now, while the delivery of medical services is clearly a service industry, Mr Commissioner, operating around the clock, 7 days a week, we believe it is necessary if standards of ongoing patient care are to be maintained that there needs to be some regulation in terms of minimum requirements and a clear indication of the hours of duty in terms of written advice from the controlling authority. Now, in other areas -

COMMISSIONER WATLING: So, does that mean that if you want to keep up those standards it might be more appropriate to have a shift work arrangement?

MR HOUSE: Well, shift work may be a related issue, but primarily I am talking about part-time employment in all situations.

COMMISSIONER WATLING: You are really talking about hours of work for part-timers, though, aren't you?

MR HOUSE: Well, we are saying there should be part-time employment. We're saying, however, that there should be some minimum hours.

COMMISSIONER WATLING: Is that appropriate - you are not defining minimum hours, though, are you? The definition - keeping in mind we are looking at definitions again - you are really defining part-timers. Why would you put their hours of work in a definition when you are defining part-timers? Why wouldn't there be a provision in the hours of work clause for part-timers, and they have their own provision. The definition is just to tell you who these people are. Just describing them.

MR HOUSE: Yes.

COMMISSIONER WATLING: The other thing is if you are looking at putting something in the hours of work clause for part-timers you might look at what is meant by, 'provided always that these minimum levels' - are minimum levels the same as minimum hours? Because levels could mean the number of people, staffing levels.

MR HOUSE: Yes, well it does mean minimum - it is supposed to mean minimum hours.

COMMISSIONER WATLING: So, a minimum of 40 and a minimum of 30 hours may be varied by a written agreement.

MR HOUSE: It has never been the policy of unions representing salaried doctors to impose quotas on part-time employment. In the Commonwealth we do have provision where the relevant union has to be advised of people being engaged on a part-time basis, and every 6 months or so we get a return, or a document, that sets out the number of part-time people who are employed.

COMMISSIONER WATLING: Well, are you actually at loggerheads on the definition of a part-timer - leaving out the provisos?

MR HOUSE: No.

COMMISSIONER WATLING: You're not.

MR HOUSE: No, we're at loggerheads on the freedom that the controlling authority wants in terms of being able to employ part-time people.

COMMISSIONER WATLING: Right. Well, is there any mileage in sticking with just the definition of part-timers and then including a provision in the hours of work clause relating to part-timers?

MR HOUSE: Yes. That's how it should be. I am afraid what - the back of my head, we have been doing this elsewhere, and I have tendered to have a special clause for part-time employment in the award, and it sort of -

COMMISSIONER WATLING: I think in the use of the award, if you are going to make it user friendly, you'll turn to hours of work and then you will see hours for full-timers and hours for part-timers and hours for temporaries and casuals, or whatever you are going to have; and then you only have to turn to one spot and you can see all the different conditions that apply to different categories in relation to hours of work. Because, quite frankly, I would never look up the definition of a part-timer to work out where the hours for part-timers were. I'd look up hours of work. So, we'll defer the provisos, and you'll look at doing something -

MR HOUSE: Well, I must say, when it goes in the hours of work area, sir, we will still have the same difference, I would expect, and you'll be required -

COMMISSIONER WATLING: To arbitrate. Yes, well, that's fair enough, but at least we are not arguing about the definition of a part-timer. That's all we are defining here; right? We are really arguing about the hours of work, not the definition of part-timers.

MR HOUSE: 'Postgraduate experience' is an agreed matter. 'Registrar' is a matter that I seek to reserve that goes to the structure. Similarly, the definition of 'resident medical officer', 'senior consultant' -

COMMISSIONER WATLING: What about 'review panel'?

MR HOUSE: Review panel, that is as I understand it, sir, agreed. I'm advised, sir, that there is no agreement on senior consultant, and -

COMMISSIONER WATLING: Yes, what about review panel? Are we -

MR HOUSE: Well, review panel - one of the main reasons for the review panel is to determine who -

COMMISSIONER WATLING: Is a senior consultant.

MR HOUSE: Yes.

COMMISSIONER WATLING: So, if you are not agreed on one, they are tied up with the other.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right.

MR HOUSE: 'Senior consultant' we will leave for the moment.

COMMISSIONER WATLING: Right, because that will fit in with your classification criteria.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. Senior qualifications?

MR HOUSE: 'Senior qualification', we are now agreed by removing in the second line the words 'or disciplines'. So it should read 'senior qualification means a qualification appropriate to the specialty concerned obtained by a medical practitioner subsequent to graduation and which is recognised by the National Specialist Qualification Advisory Committee as an acceptable specialist qualification'.

Senior registrar, I will reserve. Temporary officer is now agreed, by (a) as it stands, (b) now reads -

COMMISSIONER WATLING: So are we going to - we'll have to make some policy decision somewhere along the line. Are we going to talk about these people as officers or medical practitioners?

MR HOUSE: Temporary practitioner.

COMMISSIONER WATLING: So, everything we do from here on, can we agree we are talking about medical practitioners or medical specialists?

MR HOUSE: Yes. Temporary practitioner (b) is the same, it is - the proviso should read as follows: 'Provided that such temporary employment be specified in writing by the controlling authority as to the number of hours, days and weeks to be worked.' And the rest of it is deleted.

COMMISSIONER WATLING: I understand what you are saying about a locum, but it says here 'engaged as a locum', what does that really mean in terms of the award? You are describing here a temporary medical practitioner. That's what they are, they are not a locum, are they?

You call them a temporary medical practitioner.

MR HOUSE: We will leave -

COMMISSIONER WATLING: Because otherwise you are going to have to describe what a locum is. It could be another beast; I don't know.

MR HOUSE: Yes. We'll delete 'as a locum'.

COMMISSIONER WATLING: Sorry for interjecting, but I think we are probably better off sorting out some of these things as we go.

MR HOUSE: This is useful, yes. 'Weekly rate' is fairly straightforward and agreed. As indicated before, we'll reserve the whole section 8 - or clause 8 - Classification Criteria.

COMMISSIONER WATLING: Can I just say that when you are looking at this also you are probably going to have to make up your mind if you call a career medical practitioner a sort of level 1, 2 or 3, or are you going to sort of call them - let me see - a hospital medical practitioner which might be a certain level, and a senior hospital medical practitioner might be another level; or are you going to call them career medical practitioner or grades?

You are going to use two different terminologies here. You are really using in your definition a career medical practitioner and then you have divided the career medical practitioner up into a hospital practitioner and a senior hospital practitioner.

Now, whether you might eliminate some confusion by calling them all career medical practitioner but then levels so and so, such and such level so and so; and a career medical practitioner may mean you go off into this stream in the department, this stream in the district, or this stream in the hospital.

MR HOUSE: Yes. Well, in my mind that was the idea, that they were a group described as career medical officers or practitioners, and then have what we used to call in the Commonwealth local designations.

COMMISSIONER WATLING: Yes, but you could - if you called them a career medical officer, right, you could really do away with the departmental person definition and the district definition and the hospital definition and you could include in the criteria, maybe either appointed in a district, a department or a hospital, doing this, this and this. You could use that in the criteria and you'd get away with the three definitions there.

DR SENATOR: Strike problems with the different entry levels.

MR HOUSE: You can specify that in the criteria.

DR SENATOR: Yes. We've have to consider that because I don't know whether the people in hospital want to be called career

COMMISSIONER WATLING: The - can I just say then, if you don't want to call them a career medical practitioner, you need to then forget the word 'career medical practitioner' and either call them 'a departmental medical practitioner', 'a district medical practitioner', or 'a hospital medical practitioner', or 'a senior hospital medical practitioner', but I don't think you can use all these different medical practitioners. You might choose - you've got to go one way or the other.

MR HOUSE: Yes.

COMMISSIONER WATLING: You've got a blend of both here.

MR HOUSE: Yes.

COMMISSIONER WATLING: You've got a blend of career medical practitioner divided into three streams.

MR HOUSE: Yes.

COMMISSIONER WATLING: Or if you're not - or you can just have three different areas, except - it seems to me that it's only in the hospital that you want a senior hospital medical practitioner. You don't want a senior district medical officer. You don't want a senior departmental medical officer. That's the difference I detect from reading your document in the fleeting glance that I have.

MR HOUSE: Yes.

COMMISSIONER WATLING: So, you may have to do away with career medical officer terminology.

MR HOUSE: Yes. Well we'd need to consider that, sir.

COMMISSIONER WATLING: Well, yes - one way I can -

MR HOUSE: You see, the idea was in my mind and I'm instructed otherwise that to some extent they were sort of a group - a stream within themselves rather than the three streams.

COMMISSIONER WATLING: Yes.

MR HOUSE: They're -

COMMISSIONER WATLING: There is another way around it, of course, if you really wanted to stick with career medical practitioner. You call them career medical practitioner, levels, say - well we'll go to your document - where are we? Well, we could use the levels that are, say, that are here. You're really looking at class I and II, so you really could be saying in the definition - well the criteria - classification criteria, you'd be saying in the levels 1 and levels 2, that would only refer to - sorry, level 1 would only refer to departmental medical officer or district medical officer and hospital medical officer, but they'll be changed to practitioner.

Your next class or grade could just refer to, you know, the hospital - shall be senior within the hospital - or something. I'm just thinking off the top of my head, but you can't have both because it will confuse it. Just roughly looking at it, I thought you would have had a career medical officer that could have gone off into that stream down into the hospital, off into this stream into a district, and off into this stream to a department, and they may or may not be different finishing points within the stream, but they could be all medical - career medical officers, but one stream - the hospital stream might have this number of levels, the departmental one might only have this number of levels, and the district one might only have a certain number of levels, but they are all career medical people.

I suppose it's a bit like the nurses going off into clinical and into, sort of, educational and administration. No different, but they probably - some may go up the rung a bit further than others.

MR HOUSE: Yes.

COMMISSIONER WATLING: But you could still call them all career medical practitioners.

MR HOUSE: Yes.

COMMISSIONER WATLING: Anyway that's some thought for your stream, but if you get too many of these definitions, even the employees won't know what they are.

MR HOUSE: Yes.

COMMISSIONER WATLING: At least if they know the career medical practitioner (departmental); career medical practitioner (hospital), or - you know, from a staff point of view, they would be fully understanding of what stream they are in as well.

MR HOUSE: Yes.

COMMISSIONER WATLING: Anyway.

MR HOUSE: Clause 10 - new appointments and promotion. The parties are agreed upon that clause. Clause 11 -

COMMISSIONER WATLING: No, clause 10, you say -

MR HOUSE: Have I jumped some or -

DR SENATOR: No, we left out (b) and (c) becomes (b).

COMMISSIONER WATLING: Wouldn't that thing fall into your classification criteria because you'll be telling us in that definition how you move from one level to the next.

MR HOUSE: Yes. I seek to reserve that matter.

COMMISSIONER WATLING: Yes.

MR HOUSE: Transfer of officers, clause 11, as I understand it, conforms with normal practice in other states and territories. In any event -

COMMISSIONER WATLING: So, we're talking about medical practitioners or who?

MR HOUSE: Resident medical practitioners and registrars.

COMMISSIONER WATLING: May be you need to have a definition or something or are we talking about all employees falling within the scope of the award, but who is - when we say 'transfer of officers' who are we really referring to?

MR HOUSE: Yes.

COMMISSIONER WATLING: Is a departmental - career medical practitioner (departmental) an officer under this award?

MR HOUSE: Yes. Well this goes to the clinical stream.

COMMISSIONER WATLING: Ah - so you can see how you are really going to have to define this then, because we're not talking about then, I take it, the career person that's paid under this award that heads off into the departmental stream.

MR HOUSE: No, we're talking about the trainee category.

COMMISSIONER WATLING: Right. Well may be we should have a look at who you are talking about there, I think.

DR SENATOR: The title of 11 - clause 11 should be transfers of resident medical practitioners or registrars.

MR HOUSE: Yes. I'm advised that it should be transfer of resident medical practitioners or registrars.

COMMISSIONER WATLING: Right. Only those two?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right.

MR HOUSE: Now there's not agreement on that clause as I understand it, notwithstanding the fact that it's currently a provision in Part B of the Registered Conditions of Employment Agreement 1988.

DR SENATOR: Except for the as a - that's the point of contention that that's been added to the -

MR HOUSE: Oh, is that the point?

DR SENATOR: Yes.

MR HOUSE: I apologise again. The point of disagreement is the addition of the qualification of the Australian College for Emergency Medicine, which is the point of contention.

COMMISSIONER WATLING: - contention. It's not the rest of it?

MR HOUSE: The rest of it is okay, is it?

MS COX: We reserve our position. Certain -

MR HOUSE: Well I'm not sure how - what level of agreement, sir, we have on that one.

COMMISSIONER WATLING: Right. Well do you want to tell me why you want it as you do?

MR HOUSE: Well it goes to, again, the - whether NASQAC is the sole standard of determining what is appropriate training for a specialist or consultant qualification or whether FACEM may also - may also be in an appropriate setting or training for FACEM is an appropriate way to go towards getting a specialist qualification in that area. But people who are undergoing that training course should have some rights in relation to the - any transfer program and that transfer program should conform with the requirements of the college's training program. Is that what - ?

DR SENATOR: Particularly since people who have achieved FACEM can in fact achieve consultant specialist level in other jurisdictions.

MR HOUSE: Well that's another complicating factor - and I'm again advised is - that in other jurisdictions, as I demonstrated before the luncheon adjournment, may achieve specialist status in other states, notwithstanding whatever happens in Tasmania.

COMMISSIONER WATLING: So you're saying that if these people are transferred to attend something - or participate in something run by the Australian College for Emergency Medicine that it's possible to transfer them in that area?

MR HOUSE: The point is that the controlling authority may transfer people around in such a way as to interfere with their accredited training program. We believe that that shouldn't happen, that the controlling authority says that FACEM is not an approved qualification - senior qualification or even a higher qualification - I think - according to NASQAC, therefore that training program is irrelevant to the question of whether people - how people are allocated in this state.

However, it may be in a 4-year training program that only two of those years are done in Tasmania and two might be done in New South Wales and at the end of that program in New South Wales, subject to a satisfactory completion of all requirements, the registrar would be entitled to apply for a specialist position and - as demonstrated by 'H' - well the advertisement for the Tamworth Base Hospital.

COMMISSIONER WATLING: H.6 you mean?

MR HOUSE: Yes. So it goes beyond this state whatever the decision is in relation to FACEM here.

COMMISSIONER WATLING: What does it mean, 'a proposal initiated by a head of agency'? And -

DR SENATOR: Change the 'a' to 'the'. This was taken out of the state service.

COMMISSIONER WATLING: Right - and - yes. And in relation to this award is the head of agency the employer?

DR SENATOR: Yes.

COMMISSIONER WATLING: How do we know? Have we got a definition for head of agency?

MISS COX: No, it would be the controlling authority I guess.

COMMISSIONER WATLING: Controlling authority - that's right. Yes, I know, there's been some changes in relation to who has the authority and the power. It's the controlling authority

not head of agency. Head of agency is not the employer. In fact the Minister administering the State Service Act is the employer. So we're really talking about there 'initiated by the controlling authority'.

MR HOUSE: The next one is 12 - Removal Expenses, is standard state service provision and is agreed.

COMMISSIONER WATLING: Can I just say in moving on, it might be - it might pay us to have a definition of 'controlling authority' if we haven't already got it in there.

MR HOUSE: Yes we have. It is agreed.

COMMISSIONER WATLING: Right. Where do we find that?

MISS COX: Page 3 at the bottom, the last of the definitions.

COMMISSIONER WATLING: Oh, yes, that's - sorry - that's the one we - yes. Right, sorry, Mr House, removal expenses?

MR HOUSE: That, sir, is a standard state service provision, as I understand it, and is agreed.

COMMISSIONER WATLING: Right, so, we're really talking about your employees - or - we're talking about -

MR HOUSE: We've got officers there again.

COMMISSIONER WATLING: Yes, well - but who does it really mean? Even when you refer to officers.

MR HOUSE: Well it means all medical practitioners covered by the award.

COMMISSIONER WATLING: Right.

DR SENATOR: What about the use of the term officers here - do we have to be stuck with that?

MR HOUSE: Well we've got another -

MS COX: The second line.

MR HOUSE: - on the third line, sir, we've got determined for officers employed in the state service.

MISS COX: That will have to stay because that means officers generally; public servants - different.

COMMISSIONER WATLING: Yes, so -

MR HOUSE: Yes, we're not talking about -

COMMISSIONER WATLING: We're really talking about officers under the State Services Act aren't we?

MR HOUSE: Yes.

COMMISSIONER WATLING: Not officers in the state service.

MISS COX: Employed under the Tasmanian State Service Act.

COMMISSIONER WATLING: Yes, that's a different type of officer.

MR HOUSE: Yes.

COMMISSIONER WATLING: So maybe there's a need to really look at officers under the Tasmanian State Services Act. You need - probably need to elaborate on that a little bit.

MR HOUSE: Sir, clause 13 - Allowances - is not agreed, and as indicated earlier it's probably best determined in the light of our work-value case. However, we reiterate as a matter of principle we strongly believe that a percentage of salary approach should apply to (a), (b) and (c). However (d) and (e) are subject to broader considerations going to the public sector generally - that's higher duties allowance and more responsible duties allowance - I understand they're matters that were under review if they're not still under review generally -

COMMISSIONER WATLING: Yes -

MR HOUSE: - for the service.

COMMISSIONER WATLING: - I'd have to say in this area, prima facie I believe if the structure is right and the criteria for appointment to a position within that structure is right, then there - these types of allowances would disappear. Why - wouldn't they be - they be paid at an appropriate level or appointed to a position if the structure was right?

MR HOUSE: Well, when I was in the public service, if someone went on leave and the position had to be filled and there was no opportunity to transfer someone in at the same level then what was called higher duties or partial higher duties, in our terms, was - could be authorised.

COMMISSIONER WATLING: Yes, I agree, but we're looking at award restructuring. Look, in the last several months I've looked at hundreds of industries overseas, right, and I have to say that if the remuneration is appropriate then part of the deal in getting an appropriate rate of pay is that on occasions you might nip into these areas and act in these areas, you see, and you may - you may do that.

A lot of people jump at it on the basis that when the job becomes vacant they've already completed some service in that office and it's a good thing to put in their curriculum vitae, but part of their remuneration does envisage them doing this work from time to time.

MR HOUSE: That - that's a feature of the private sector as I understand it. Like my superior has been away for - or has left about 4 months and I'm not getting any more money for doing two jobs.

COMMISSIONER WATLING: Yes, well, in fact I could take you to areas within the state service where they're doing higher duties now and not getting paid for it. And I can take you to probably hundreds of those places right at this very moment in the state service. But all I say is, we shouldn't be hell bent on sticking with the old sort of systems when we're supposed to be developing some new thinking, new philosophy, and it may well be part of your work-value argument to get a certain rate of pay that people are required to do these duties from time to time.

MR HOUSE: Yes.

COMMISSIONER WATLING: So why would I - why would you pay them again - you know?

DR SENATOR: Can I - could I comment on the MRDAs?

COMMISSIONER WATLING: You're not going to have a double-dip at this - I'm not going to go for double-dipping. I'm going to be very careful about that.

DR SENATOR: We take on board your point about the higher duties allowance. There is a number - a number of peculiarities -

COMMISSIONER WATLING: Right.

DR SENATOR: - which may in fact warrant consideration of the continuation of the MRDAs. These are one-off situations, particularly with state-wide roles or - and I can instance, for example, director of postgraduate training for the state, which are so unique but they're currently - those positions are currently being filled by career - by a career grade consultant or specialist who - in which there needs to be some scope for reward for taking on an entirely novel area which, because of the fact that it is unique is very difficult to build into the underlying structure.

The same may apply where the department or the controlling authority for any reason wants a specific task in the way of a short term consultancy to be fulfilled by somebody who is in the normal career path and for which no provisions exists within the classification for so rewarding them. The only alternative -

COMMISSIONER WATLING: So to just follow that through, if it was a short term consultancy to do something, wouldn't it be a separate contract?

DR SENATOR: Well traditionally it hasn't been. I mean that's the other way -

COMMISSIONER WATLING: Hasn't?

DR SENATOR: Hasn't been.

COMMISSIONER WATLING: Right.

DR SENATOR: I can - there are two good examples I can think of recently in my own case being commissioned by the department to - to develop some concepts about reaccreditation of the medical school. There were other tasks - I know of one other individual given the task of hospital role delineation guidelines for the state. These are not part of the normal working - working requirements and they would not be built into the - into the structure as such.

COMMISSIONER WATLING: No.

DR SENATOR: They would not be part of the normal range of duties expected.

COMMISSIONER WATLING: Yes. Well I take that point on board, but I still say if you're looking at criteria - classification criteria, a position may envisage this type of work being done, it may warrant, sort of, another level in the rung, I don't know, but the other alternative could be that if it's not included in the classification definition or criteria then it may well be arguable that you negotiate something at the time as a separate contract because it may be rare, it may be something that doesn't happen and if it doesn't appear in your classification, sort of, definition or criteria it may well be an argument for you to argue a special contract.

DR SENATOR: Mr Chairman, I - again we take that point. The other - the other reason for leaving it where it was, was because of the lack of agreement with regard to some of the allowances -

COMMISSIONER WATLING: Yes, right.

DR SENATOR: - which might have picked - particularly the managerial allowances which may have been another vehicle for addressing those particular one-off situations.

COMMISSIONER WATLING: But I would think that when you were getting up here into the - even under your own proposal, when you're getting up into the directors, deputy directors, and you've even got a career path here going up, even to the top level with directors, that there must be scope in here to write in people that are called on to do specialist tasks for short periods. Because if you look at your scale, these people, and given a person at this level, that may not and - well under this stream, won't be - director, surely somewhere in there they can be called upon to do some specialist work. And if they are then they have to fit in to one of the levels.

DR SENATOR: Yes. The whole point of this, Mr Chairman, was - Mr - sorry, Mr Commissioner - the - that these individuals may have in fact - may in fact be directors and there is no other - no other vehicle.

COMMISSIONER WATLING: Right, well if that is the case in relation to directors, depending on the verbiage contained in the classification criteria, will depend on whether or not they're required to do those things as part of being a director. It may be arguable that as part of being a director that's one of the tasks. It may well be. And that's in - sort of incumbent in the job that you may be called upon to this type of work. And in fact you'd have to ask yourself in some areas why wouldn't it be.

I think if I was a director of an area I could be asked by the - the controlling authority to do something special. It would be just the same as a member of this commission being called upon to do an enquiry into the retail trading hours which has happened, or an enquiry into something else. It's certainly not part of our role under the act, but nevertheless we've been called upon to do something special - a one off for a period of time.

Now I would expect that in my position that someone might ask that someone be made available. I think you get to a certain level within your employment and that's one of the things you've got to expect. I think a director would be the first one you'd think about calling upon to do a special report into something, because that's why they're a director.

I think if I was employing someone I'd like to know that I could call on my director to do a one-off special enquiry and present a report to me as long as the rate of pay was appropriate.

DR SENATOR: Yes, Mr Commissioner, I think the concern here is that as I indicated this morning, because of our - our

relative lack of depth that these individuals are often required to provide their usual range of services - this is an add-on - it's not a question of being able to divert to another task.

COMMISSIONER WATLING: Yes, but there's only a certain number of hours in the day isn't there?

DR SENATOR: Well, not in the view of the employing authorities for medical practitioners.

COMMISSIONER WATLING: Well - well maybe if we just leave it at this stage.

DR SENATOR: Yes, sure.

COMMISSIONER WATLING: You've heard what I've had to say in the to-ing and fro-ing. My preferred position would be to settle it somewhere in there. If it becomes totally impossible that it can't be, sort of, placed in there then I think we'd have to go into some in-depth argument as to why, because anyone in any of these streams, especially this particular stream here, could be called upon to do it. And in fact you could have someone down here being called upon to do it.

I - and whether it's envisaged in the rate of pay or it's that unique that it - it would have to be pretty unique that it couldn't be envisaged in there that I've highlighted separately. You do have a problem, I suppose, if you want to get someone lower down to do a special task or a special job when it might be envisaged in this stream at this level, and that's when I think you may be able to run a legitimate argument saying someone that is not a director or not above a certain category who's required to do this that and the other thing may get that.

I'm just - these are all throw away lines - I'm not wedded to any of them, but I'm just trying to do it to stimulate thought and discussion amongst yourselves.

DR SENATOR: Yes.

COMMISSIONER WATLING: But certainly at the top level of a director, I - I've just got this view that you should be able to be called upon to do some specialist jobs and that's why you're in such a high level. And - which may beat the argument as to why would this stream go up equal to the director. You see, it might be a flaw here. So, you know, like it does seem funny to me if you've got this person going to the top level here and you've - at exactly the same level as the director and then the director being called on to do a special task or a special job and this person's not and they get the same rate of pay.

I think when you look at the classification criteria you will strike some problems around here, especially these two points here, because when you start defining these two for the director, and you start defining these two, that's where I think, you know, you'll find that the differentiation will be at the - even at the director level, it will be all these little add-on things that will be required to be done that will give the extra dollars.

MR HOUSE: From a personal point of view, Mr Commissioner, I've got no difficulty with the aspect of the people taking on special tasks and I think in the Commonwealth Public Service that's - even extra tasks is fairly normal without necessarily attracting additional remuneration. The difficulty I see, given custom and practice and what's entrenched, is where someone goes on leave - sick leave - for 12 months or something in a higher position and another person has been asked to take on, say, significantly increased responsibilities in policy advising and so on as to how in the public sector culture that will be - I'm not disagreeing with what you're saying -

COMMISSIONER WATLING: Yes, but isn't that a classification review then?

MR HOUSE: - it's a matter of getting people to accept that sort of idea.

COMMISSIONER WATLING: Doesn't that boil back down then to a classification review rather than the higher duty? You're talking about someone away for 12 months.

MR HOUSE: If the secretary of the department goes away on, say, a special project looking into some aspect of government policy and the person - say, it might be an assistant secretary or first assistant secretary, not necessarily a deputy secretary, asked to perform the role of the head of the department, then I'm not sure even at that level whether people can, sort of, accept that that adds to their CV and that ought to be enough.

COMMISSIONER WATLING: Yes.

MR HOUSE: I don't know. I'm not - it's just something - it's very interesting and I'm just trying to relate it to my experience, that's all.

COMMISSIONER WATLING: Yes, well all I say is if you haven't got the criteria - classification standards, criteria for each of the levels then people won't be appointed at the appropriate level.

MR HOUSE: Yes.

COMMISSIONER WATLING: And therefore if there's going to be any fight then people argue in relation to their classification. They've been incorrectly classified at this level because they are required to do 'X', 'Y', 'Z' and falls within the boundaries of the next level.

MR HOUSE: Yes.

COMMISSIONER WATLING: If that's in the award then at least there's some argument.

MR HOUSE: Doesn't it go to the question of substantive positions? That's the problem in that you don't own the position, you're just temporarily put in the position.

COMMISSIONER WATLING: Yes, it does get into that, I agree. But then again it depends on how you define each of the levels. I'd have to say I'd be pretty surprised if you came back and didn't say somewhere in this director level for starters that they may be required to do special projects as part of their job.

MR HOUSE: I don't have much difficulty with that idea.

COMMISSIONER WATLING: Yes.

MR HOUSE: And perhaps even the other idea. I'm just saying that if someone temporarily is asked to take on, not a new project - much greater responsibility. The president of this commission or the Australian commission and all that would entail, say -

COMMISSIONER WATLING: We might be able to get rid of a few of the 40 industries that I've got. I might be able to take less.

MR HOUSE: Well in the Australian commission it's a case of all sorts of political pressures on the President, I think, that I wouldn't want.

COMMISSIONER WATLING: But I take your point. But then again in any award restructuring you have to say that if the restructuring and the scales and the rates of pay take into consideration that you may be required to do this, you may be getting that money all the year round when you may only perform the duty for 3 or 4 weeks of the year.

MR HOUSE: Yes.

COMMISSIONER WATLING: Now in lots of areas that I've examined they've said: Look, just give me the rate and if I have to go up there for 4 weeks or 6 weeks I'd rather have the rate all year round, thank you very much.

MR HOUSE: Yes.

COMMISSIONER WATLING: And do away with the allowances. And that's what I've witnessed overseas as well. Most of them are saying: I'd rather have it, sort of, encompassed in my classification. And at least I know then I may be able to be called upon to do that work at that level. But I might only have to do it for 6 or 8 weeks. So what I'm getting 52 weeks. See, people aren't that silly they can't work out which side their bread is buttered.

MR HOUSE: Yes.

COMMISSIONER WATLING: But if you're saying that you've got to take a reduction for it or something like that or you're going to get exactly the same, I think if people want to do away with things like penalty rates and all these sorts of things they've got to get a reasonable all-up appropriate rate and say that's the all-up rate, something that's just fair and reasonable. But I don't think you're just going to eliminate it overnight and expect to reduce people's wage rates by just saying, well, it won't apply. That's not reality, I don't think.

MR HOUSE: No.

COMMISSIONER WATLING: But there's a lot of administrative gains there by the employer only having to work on one rate and then saying: Well rightio, I know in negotiating that rate that I'm able to move you into this area to relieve and you into that areas to relieve, because that's the deal. But anyway it's another thing really tied up with - depending on what you do there will depend on the validity of this allowance.

MR HOUSE: Yes.

COMMISSIONER WATLING: But, you know, it will certainly -

MR HOUSE: There's a lot of interrelated matters here.

COMMISSIONER WATLING: Yes. Well you'll certainly find that when you start dabbling around in this area especially when you compare it with the director - I can see this now, that's one of the things that hit me this morning - you can have a career person going right to the top. Say you had a number of them and you've got them on exactly the same as the top rate for the top director, they could go there except probably a different level of qualification in certain aspects. Something has got to differentiate them

Anyway maybe if you look at that - we come back to that after you deal with this because you may well find he'll fall one way or the other. That's all I say.

MR HOUSE: Moving on to -

COMMISSIONER WATLING: We seem to be deferring more than we're actually arguing out.

MISS COX: It'll still come back.

MR HOUSE: Moving on to 14 - Payment of Salaries.

COMMISSIONER WATLING: So we're talking about the managerial allowance and the qualification allowance, right?

MR HOUSE: Sorry?

COMMISSIONER WATLING: Se we're deferring (a) and (b)

MR HOUSE: Yes.

MISS COX: What about (c)?

COMMISSIONER WATLING: And (c) and (d) and (e).

MR HOUSE: Yes, (e). All of them.

COMMISSIONER WATLING: Temporary officer allowance, higher duties allowance, more responsible duties allowance. Right, 14 - Payment of salaries.

MR HOUSE: There is agreement on subclause 14(a). Last week we had some discussions about 14(b). I think the difference there, sir, is that we agree that the controlling authority has the right to recover over payments or whatever legal entitlements they might seek to recover medical practitioners' pay. The difficulty is to the amount of recovery, I suppose, in any one pay period that we don't believe the controlling authority - say, there's \$2,000 owing.

Take that out in one hit there should be some arrangement to stagger the repayments within the capacity to pay of the person, which is the situation - that may be the situation in Tasmania, it is the situation in the Commonwealth. There's a requirement to repay the debt but the amount - the manner and the amount of instalments is normally something that can be worked out or the employee would have some say over that.

COMMISSIONER WATLING: So doesn't (b) say that they can't do it without the written approval of the officer anyway?

MR HOUSE: Well that's not agreed. Those words are not agreed, as I understand it.

COMMISSIONER WATLING: So the controlling authority wants -

MR HOUSE: Miss Cox has probably got her version. I haven't, I'm sorry, at the moment but the principle is the controlling authority believes it has the right to recover an overpayment, say, from the person's salary with or without - without it necessarily having the written authority of the officer or the practitioner, sorry. We've got officer again.

COMMISSIONER WATLING: Some people might argue in law that if the award says you're to be paid \$50 a week and the employer takes money out and gives you less than \$50 a week, then you've been underpaid.

MR HOUSE: But if it's the result - the underpayment is to recover a previous overpayment.

COMMISSIONER WATLING: Some people argue in law that the employer would then be required to sue you to recover it.

MR HOUSE: Notwithstanding some public service regulations that say that -

COMMISSIONER WATLING: Well all I say there's an argument in law that might give you two different sides to this which neither side is prepared to test, I'd suggest.

MR HOUSE: Well, I'm speaking from -

COMMISSIONER WATLING: It's a case of we won't hurt each other, will we?

MR HOUSE: Speaking for myself, and I've advised members that are in the situation, that I believe they have an obligation - I'm not a lawyer - an obligation to repay a legitimate overpayment and -

COMMISSIONER WATLING: I think the employer could take the necessary steps to recover it. Don't get me wrong. But it may not be through automatic reduction from one's pay.

MR HOUSE: But if the employer says they want it back all at once and the person has got a family and housing repayments, et cetera, commitments, then I believe it's unreasonable for the employer to ask for it all back in one hit. It's as simple as that.

COMMISSIONER WATLING: Well, yes. All I say, there may well be a murky argument on that point and it's pretty hard to say one way or the other. But it does get into whether or not the person has been underpaid and all I say is I'm not here - I'm not even qualified to rule on it, on a legal matter such as that. But I know it is a bit of a murky area and you might

get two different lawyers giving you two different opinions on whether or not it can be automatically taken out of one pay or whether they have to take the necessary steps to recover it.

MR HOUSE: Yes.

COMMISSIONER WATLING: It might be through the issue of a writ of some description.

MR HOUSE: Well we'd be happy to reach a compromise on that one and a week ago, I think, we agreed that we'd look at it again so it may not need to be arbitrated.

COMMISSIONER WATLING: I think this sort of thing is a matter of just commonsense really because there's no doubt that if it's an overpayment it can be recovered. It's a case of whether you do it the hard way or the easy way.

MR HOUSE: That's right.

COMMISSIONER WATLING: But, sometimes doing it by that simple approach of taking it out of one's pay, I can see that it may well cause problems. But, then again -

MR HOUSE: Particularly as it might come out of your pay before you even - without you being advised - and then you have some cheques bouncing.

COMMISSIONER WATLING: The other thing, too, is there is nothing in the regulations - within the Industrial Relations Act - that says the employer has to keep records in relation to the deductions they've made from the pays for overpayment of wages. So, that's why it probably doesn't appear in any pay slip, although the wise employer would do that, I would think.

But, anyway, it is an argument I think could be one way or the other. Sometimes they are subject to written agreements or some understandings of how things are going to proceed, and I think in the long run that's the best way to protect your position, and you'd have to question whether sometimes it might be maybe better to leave (b) out and just let it happen, and have your written understandings on that; because generally the employer in law wouldn't be able to deduct things from an employee's wages unless they had authority, anyway, because they would be underpaid, and then they would be in breach of the award.

MR HOUSE: Yes.

COMMISSIONER WATLING: So, I don't know. I am just being the stirrer here.

MR HOUSE: Well, they might get a garnishee order.

COMMISSIONER WATLING: Yes, well, yes. Well, if you got a garnishee order that would override that anyway, wouldn't it, because that would be handed out by a court. So, any court orders -

MR HOUSE: Well, I am not really sure what motivated that particular clause, Mr Commissioner.

COMMISSIONER WATLING: Well, there has been some over payments and things like that. In fact, I have to tell you I have experienced it first hand.

MR HOUSE: Lucky person.

COMMISSIONER WATLING: So - but - and I got the little note to say they wanted to know how I was going to pay it back, in monthly instalments or all in one hit, and I said, 'Well, maybe you should ask me whether I am even going to pay it back, first of all, not ask me how I am going to pay it. I might decline to pay it.'

But, anyway, it was easy enough for me to say, 'Right, so much a week. Take it out'. In the long run it may have been cheaper than getting the summons and briefing someone to defend it. You have to be a bit practical in these circumstances. Discretion is the better part of valour. But, anyway -

MR HOUSE: Mr Commissioner, we seek the commission's leave to delete clause 14(c), and consequently renumber (d), (c) and (e) as (d), or restyle -

COMMISSIONER WATLING: It would have been contrary to any draft bills floating around, too, wouldn't it?

MR HOUSE: It may be, yes.

COMMISSIONER WATLING: Mind you, I wouldn't have -

MR HOUSE: There's something to do with 2 and a half per cent, too.

COMMISSIONER WATLING: Yes. It must be remembered that prescriptions to an employee organisation is not an industrial matter, and even if it came to the crunch the right under the act as it is at the moment I am not able to deal with that because it is not an industrial matter. It is nothing to do with the employer-employee relationship, it is the employee organisation's relationship with the employee.

MR HOUSE: Yes.

COMMISSIONER WATLING: And that's why you find that things like deductions for Medical Benefits or insurance or house repayments and that are not contained in an award because it is not an industrial matter. We can only deal with industrial matters.

MR HOUSE: Right. So, it is better left out, anyway. Well, the new 14(c) I think might be agreed if we delete from the second line 'appointed at level 8 or above', so it would read: 'On written application to the controlling authority an officer may elect that the employer disburse the officer's salary before income tax deductions according to the requirements of the officer and make appropriate adjustments to the officer's pay'. Again, I would expect from what you say, that's not a matter really for the commission.

COMMISSIONER WATLING: Well, is that allowable now? Isn't that talking about salary sacrifice and all sorts of things?

MR HOUSE: Those arrangements have been just introduced into the AMA, and I understand from 1 July 1994 any taxation advantages will be removed.

COMMISSIONER WATLING: Well, I have got a letter on my desk about salary sacrifice at this moment from the commissioner of taxes.

DR SENATOR: Mr Chairman - Mr Commissioner - I think that this arose from an enquiry of the employer some time ago, 18 months, and the response from the controlling authority was that there was nothing that would prevent this from occurring. It is true to say that recent announcements by the federal government have changed the rules relating not so much to salary sacrifices as salary packaging, I think is probably the generic term.

But the benefits flowing to employees within the public sector particularly of institutions who have different status with regard to fringe benefit tax may still have some benefit associated with them even beyond April 1994 when these arrangements are to be changed.

I think discussions with our colleagues at the other end of the bench indicated that they would just confirm that these arrangements had been sanctioned by the controlling authority at an earlier time, and they had, as I understood, reserved their position until they had ascertained just that point.

COMMISSIONER WATLING: What about the recent announcements that have been going around the Tasmanian State Service in terms of letters from the commissioner for taxes on certain packages being arranged in the public sector, of which I have received a letter?

DR SENATOR: Yes, Mr Chairman, we are aware of those, and in terms of the -

COMMISSIONER WATLING: Yes. Does this fall within that category as well?

DR SENATOR: Well, this clause, Mr Commissioner, is really for the individual to sort out his own personal affairs, and then with the employer's agreement allow for a more flexible approach. But it may well come down to a case of caveat emptor.

COMMISSIONER WATLING: Isn't that tax evasion?

DR SENATOR: No.

COMMISSIONER WATLING: If you are disbursing your income before tax is taken out, surely it must be.

DR SENATOR: No, not under the fringe benefit provisions.

COMMISSIONER WATLING: Interesting debate.

MS PAMMENTER: Excuse me, Mr Commissioner, we've had a few discussions with the tax office on the issue of salary sacrifice and it is our understanding that any employee who is covered by an award cannot get any benefit from salary sacrifice because their actual salary is prescribed in the award. If you are a level, whatever, medical officer you receive this amount of money, and whether or not you choose to receive that in any sort of non-cash benefits that's still your prescribed salary, so that's still your taxable income.

So as far as the department is aware, the advice that we received from the tax office is people covered by awards won't be able to get any benefit from salary sacrifice.

COMMISSIONER WATLING: That's my understanding as well.

MS PAMMENTER: Yes.

MR HOUSE: Even if it is an over-award arrangement?

COMMISSIONER WATLING: It is still income.

MS COX: It is still income.

MS PAMMENTER: Yes.

COMMISSIONER WATLING: It is still taxable. Yes, in fact, I think they are looking very closely at some of these things now that are happening in the state service.

MR HOUSE: Yes, I read about that.

COMMISSIONER WATLING: Certainly the last letter I got requested the state government to act 100 per cent in accordance with the taxation laws.

MR HOUSE: Well, they are even looking at superannuation, I read, as a device - being used as a device to avoid tax.

COMMISSIONER WATLING: That's right, that's another, yes. So they are clamping down on it. Anyway, were you saying to me that that's out or in? Because, I tell you what, if you are saying it is in I am going to have to have some very specific argument on that, and it will have to be pretty good.

MR HOUSE: Well, what are my instructions, Gordon?

DR SENATOR: Well, subject to - Mr Commissioner, subject to receiving something in writing from the department as they undertook since they had initially indicated these arrangements were appropriate and allowable I'd be prepared, if we can confirm what has been said, to remove it.

COMMISSIONER WATLING: Well, I think you will find this is new advice around over in the last 4 weeks, 3 or 4 weeks. It is very new. Anyway, we will reserve that point.

MR HOUSE: On the last one, the last subclause there, now (d), or it might be (c), the difficulty as I understand it is the controlling authority believes that 3 days is far too short a period to enable the arrangement of payment of monies due. The society, as I understand it, would probably accept 10 days as being a reasonable period. So, that's a matter we will await the submission of the employer. But we believe there should be some clause to require certainty in terms of people being paid out in a reasonable period.

COMMISSIONER WATLING: Doesn't it say, 'in any case, not more than 3 working days' after the officer's last day of service?

MR HOUSE: That's what it says at the moment. That's our version.

DR SENATOR: I would like to amend that to 10 days.

MR HOUSE: Yes, I'm reminded that again we would like to amend that to 'not more than 10 working days'.

COMMISSIONER WATLING: So, the employer - after you finish your employment - the employer has 10 working days to pay you out instead of 3?

MR HOUSE: We'd seek the commission's leave to amend it to that effect.

COMMISSIONER WATLING: Right. Now, when you talk about 'monies' what do you include in monies? Are we talking about super?

MR HOUSE: All monies normally entitled - all normal entitlements under the award - including any redundancy payments that may be - well, aren't in the award - but -

COMMISSIONER WATLING: Because I just think -

MR HOUSE: The superannuation would be governed by the Superannuation Act, and again in the Commonwealth that's something outside the jurisdiction of the commission.

COMMISSIONER WATLING: What about the 3 per cent money, they have access to that to roll it over.

MR HOUSE: Well, that is preserved, as I understand it by the superannuation -

COMMISSIONER WATLING: Yes.

MR HOUSE: - taxation -

COMMISSIONER WATLING: That is right, the law.

MR HOUSE: - laws. What you are saying, Mr Commissioner, we are not specific enough there.

COMMISSIONER WATLING: Well, I am just thinking, if someone wanted their money out of the RBF, right -

MR HOUSE: Yes.

COMMISSIONER WATLING: - it is the same employer, right, are we saying that this employer has to get their super money out in 10 days, out of RBF?

MR HOUSE: Well, can we put in the words 'all money legally due'?

COMMISSIONER WATLING: Well, that might be legally due. Are we saying that super, that RBF money payout might be legally due.

MR HOUSE: Yes. Well, I -

COMMISSIONER WATLING: Are we really talking about - are we all - I can understand -

MR HOUSE: No, we are talking about the normal -

COMMISSIONER WATLING: - things -

MR HOUSE: - entitlements, award entitlements really and any redundancy payments.

COMMISSIONER WATLING: So we are talking about all monies due arising out of prescriptions contained in this award.

MR HOUSE: Yes. Yes, although this - there may be separate redundancy arrangements that the government may have determined.

COMMISSIONER WATLING: Well, you have not got redundancy in the award.

MR HOUSE: No.

COMMISSIONER WATLING: So -

MR HOUSE: But here again it might be done by FIAT, particularly in Tasmania.

COMMISSIONER WATLING: Yes.

MR HOUSE: The government will pay.

COMMISSIONER WATLING: Yes. But surely we can only talk about things in relation to this award and -

MR HOUSE: Yes.

COMMISSIONER WATLING: - if the redundancy payment is not a matter for this award, if super is not a matter for this award -

MR HOUSE: Yes.

COMMISSIONER WATLING: - how can we govern that? It would be different if you were going to put redundancy package or something into the award.

MR HOUSE: Well, again we would seek leave to amend the clause along the lines of those been most helpfully suggested by the commission.

COMMISSIONER WATLING: So we are talking about all monies arising out of provisions contained within the award.

MR HOUSE: Yes.

COMMISSIONER WATLING: Or this award? All monies due to that officer arising out of the provisions of this award shall be paid as soon as possible and in any case not more than 10 working days after the officer's last day of service.

MR HOUSE: Medical practitioner.

COMMISSIONER WATLING: Yes.

MR HOUSE: Yes. Thank you. The next clause, salary increments, I believe is -

MS COX: Mr Commissioner, just to make it clear we - even though it has been reworded 14 new (d), we still do not agree with it. Just so that -

COMMISSIONER WATLING: Right. You prefer to do it on the day they leave?

MR HOUSE: Yes.

MS COX: Well, it has never been a problem in the past. It is a new award provision and we really have not heard argument from them as to why they want that inserted as a new provision.

COMMISSIONER WATLING: Right. Well, undoubtedly we will get that argument.

MR HOUSE: Well, I would have thought it was self evident, but anyway.

COMMISSIONER WATLING: Has there been a problem in the past with getting monies when people leave?

MR HOUSE: I am instructed so, but.

DR SENATOR: Mr Commissioner, not necessarily in relation to termination, but there certainly has been problems with arrears by the department going back as far as 10 years.

COMMISSIONER WATLING: Right.

MS COX: When someone has resigned?

DR SENATOR: No. Apparently - well, it is a different matter, but -

MS COX: Well.

DR SENATOR: - Mr Commissioner, in all these cases we believe that any problems tend to be at the expense of the - or any potential problems tend to be at the expense of medical practitioners.

COMMISSIONER WATLING: Right. But in the past when people have resigned have they had difficulty getting the monies owing to them under the award?

DR SENATOR: We have no substantive evidence on that point, Mr Commissioner.

MR HOUSE: Well, I can only say then in that sense that it does happen in the Commonwealth that you do not get paid your correct entitlement. But that is not Tasmania. And the salary increments, I believe we are agreed on that clause.

DR SENATOR: You just have to change that to 10(b) because of

MR HOUSE: This would be - there should be in the second line an amendment -

COMMISSIONER WATLING: Is this tied up with the - the classification arrangement? Because, will not the classification tell you at what level you are and how you get increments?

DR SENATOR: This only goes to the timing of those increments not to the qualification for the increments.

COMMISSIONER WATLING: Well, if you have an appropriate arrangement in the award that says for level 1 this is the classification standard, then you do not go to level 2 until you are appointed to level 2 and fulfil the classification standard. And you have got level 1 grade 1, grade 2, grade 3, grade 4, would not you be writing that in the classification standard? Because salary increments will not be available to you under your program because you have only got one - I think it is one level - no, you have got one area, career medical officer, that has three classes. Right? The others are all single levels and spot salaries for those levels.

MR HOUSE: Yes.

DR SENATOR: annual progression.

COMMISSIONER WATLING: Now, even under your own document you are saying that class 1 for career medical officer will be x, y, z, but the classification standard criteria will tell you - it should tell you - how you get to class 2 and class 3.

MR HOUSE: I seek leave to reserve that item or that clause 15.

COMMISSIONER WATLING: Right. Can you understand what I am saying?

MR HOUSE: Yes.

COMMISSIONER WATLING: Because you will define your class 1, which you might then call it grade 1, level 1 grade 1 shall be x, y, z, and grade 2 will be a person who has completed one

year at this level and this course of study and that course of study. So, it answers itself.

MR HOUSE: There is a question, I suppose, to the extent that the system where people get annual increments based on satisfactory performance -

COMMISSIONER WATLING: Well, this will not happen under this arrangement. In other words what you are saying - what you are saying is then, that these are all annual progressions. It will depend on the work, though, will not it, that they do? The work and the years experience? And in the potential -

MR HOUSE: Well, where you have got grades within a class it may - you may still have annual progression according to satisfactory performance, I would have thought, but

COMMISSIONER WATLING: Well, let me -

MR HOUSE: - a registrar would move through the increments -

COMMISSIONER WATLING: No. Let us be the devil's advocate. Even on your own proposal, take for example the director of medical services, you do not allow annual increments for St John's Park Hospital past this level.

MR HOUSE: Yes.

COMMISSIONER WATLING: So how can you have annual increments?

DR SENATOR: Well, Mr Chairman, obviously -

COMMISSIONER WATLING: Otherwise St John's Park would go right to the top here.

DR SENATOR: Yes, well obviously, Mr Chairman, this has to be seen that there are some - some limitations to the extent to which somebody may progress through this entire structure.

COMMISSIONER WATLING: That is right and that is where it would be picked up under the - it should be picked up under the classification definition -

MR HOUSE: Yes.

COMMISSIONER WATLING: - because you will be restricting certain people and will be allowing others to progress through the range, under your proposal.

MR HOUSE: Yes.

COMMISSIONER WATLING: So when you got to this one, for example, you would be saying: however, in the case of St John's Park shall not progress above that level.

MR HOUSE: Commissioner, I am mindful of the time -

COMMISSIONER WATLING: Oh, right.

MR HOUSE: - I am not - whether this is a convenient time to break.

COMMISSIONER WATLING: Well, it is. I think we have - so, I think we have agreed that that is tied up with this particular thing here.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. Right. So, we will start at number 16 tomorrow and then I will try and refresh my memory overnight as to the ones that we have put on - the things that we have put on the reserve list to come back to so we are all pretty clear on it.

MR HOUSE: I will try to do the same.

COMMISSIONER WATLING: Yes. So we know where we are heading. Right, thank you very much, we will see you, what, 10.30 tomorrow morning - 10.30 tomorrow.

HEARING ADJOURNED