

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

T No. 4014 of 1993

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

T. No. 5032 of 1994

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

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

COMMISSIONER WATLING

HOBART, 19 April 1994
continued from 18/2/94

TRANSCRIPT OF PROCEEDINGS

Unedited

COMMISSIONER WATLING: I'll take appearances, please.

MR T. KLEYN: Appearing on behalf of the Health Services Union of Australia, Tasmanian No. 1 Branch, TOM KLEYN.

COMMISSIONER WATLING: Good; thank you.

MR P. AIKEN: Appearing on behalf of the State Public Services Federation Tasmania, PETER AIKEN, with **MR PAUL MAZENGARB.** If the commission pleases.

COMMISSIONER WATLING: Thank you.

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

COMMISSIONER WATLING: Good; thank you.

Well, before we get started this morning there is probably a number of procedural things that we need to do, and we might just go off the record for a moment and examine where we are heading.

OFF THE RECORD

LUNCHEON ADJOURNMENT

COMMISSIONER WATLING: Well we got to the stage where we had just taken appearances this morning and we went off the record to discuss some procedural matters.

It's my understanding that we are proceeding this afternoon with Application T.5032 of 1994, and that is the application by the minister administering the Tasmanian State Service Act to look at recall, on call, close call, and hours of work for day workers, and time in lieu of holidays with pay, shift workers, and the sick leave provision. And it is your application, Mr Watson.

MR WATSON: Thank you, commissioner. First of all I would just like to express our appreciation for the assistance that you gave us this morning, it was most useful.

Now, following the break and following our discussions, we have in fact amended our application, and I understand that that -

COMMISSIONER WATLING: Right, now I have got a copy of the document here, so you'll -

MR WATSON: So the document, I guess it is just a matter of inserting the new recall, on call, close call provision that we put, and deleting the previous one as per the application.

COMMISSIONER WATLING: Right, thank you.

MR WATSON: And, similarly, with the sick leave provision that's been tabled, the same thing.

COMMISSIONER WATLING: Right. No objection to the claim being amended? There being no objections, leave is granted.

MR WATSON: Thanks, commissioner. The new Community and Health Services Public Sector Award was made by the commission on 7 October 1993 and the award was made following an agreement between the Department of Community and Health Services, the Health Services Union of Australia, and the TPSA as they were then, now the SPSFT, in the form of what is known as a memorandum of understanding, which has in fact been tabled before the commission in previous hearings, and also -

COMMISSIONER WATLING: Well, not before me, I would have to say. It's been tabled to a full bench of the commission. In relation to these proceedings where the matter has been referred back to me I would have to say that I haven't sighted it at all in these proceedings.

MR WATSON: No, well I don't think much hangs on that, so, okay.

And also a full bench decision of 23 April '93 where the full bench determined that the award restructuring process should in fact be pursued on an agency-specific basis.

I would just like to table that decision, please.

COMMISSIONER WATLING: Now in terms of exhibits, what number? Yes, I think this is your first one, isn't it, Mr Watson?

MR WATSON: Yes, commissioner.

COMMISSIONER WATLING: Mark this Exhibit W.1.

MR WATSON: If I can just take you, commissioner, to the third paragraph of the decision and quote:

It is apparent that all of the parties wish in some way or another to depart from the integrated approach specified in our decision which required that all issues be considered on the basis of an indivisible package. We consider that a departure from this approach seriously impacts on the package which contemplated award restructuring, rationalisation of conditions of employment,

workplace reform and the identification and implementation of productivity and efficiency measures.

So, in effect, the commission was stating there that the parties were not committed to the State Service-wide approach to the award restructuring as per the November '91 decision, and over the page on page 2, the third paragraph, and I quote again, and the commission says:

In addition, the Commission will ensure that any award or agreement that is proposed to be made or approved has effectively addressed the issues of conditions of employment, efficiency and productivity either on an agency or an enterprise basis, or where appropriate on a service-wide basis.

So it is our view, commissioner, that on the basis of that last statement that I just quoted that what the full bench is saying is that if we wish to pursue the issue of award restructuring based on - still based on - the November '91 decision that we are still talking about an indivisible package. That is, salary rates and conditions of employment as one matter.

And that's certainly how we have approached it.

So, in our view, commissioner, in both of those decisions - that is, the 22 April '93 decision that I just tendered, and also the full bench decision of the 7th of October where the new award was made - the full bench is in no doubt that conditions must be rationalised with salaries to form an indivisible package, and I will come back to this point later.

In the 7th October '93 full bench decision the full bench referred to the matter of the Community and Health Services Public Sector Award and that matter was, in fact, referred to you to determine all outstanding matters for the new award.

Now those matters are salaries and classification standards and conditions of employment.

Your decision of 25th of February of this year approved the professional, technical and clerical streams from the November '91 full bench decision and amended operational stream as agreed between the parties for inclusion in the new award, and you also advised in that decision that the parties will need to direct their attention to the conditions of employment matter with a view to achieving one set of conditions which can be universally applied to all employees under the award.

I would like to table that decision, please.

COMMISSIONER WATLING: Mark this Exhibit W.2.

MR WATSON: Now that decision, commissioner, obviously you are well aware of.

On page 5, under the heading of 'Conditions of Employment' I would just again make reference to the statement that has been made there by yourself about developing one set of conditions of employment which can be universally applied to all employees under the award and, again, obviously that compliments the full bench's observations about rationalising of conditions of employment together with new salary rates.

Negotiations on conditions for the new award commenced prior to the salaries negotiations. However, we were advised after some discussions with yourself that we needed to address the salary and classification standard matters first.

That has, in fact, been done, subject to a couple of minor matters that the parties need to address before the orders for salaries and classification standards are issued.

The parties did meet on a number of occasions during September, October and November of last year where 'without prejudice' proposals for certain conditions were tabled by the employer. However, negotiations were not successful in reaching any sort of agreement.

After the salaries were determined there was one informal meeting between the employer and the SPSFT. I don't know, I can't remember the exact date, but it was on or around the 17th of March of this year. But, again, there was no success in discussions.

There was another meeting between all parties on the 7th of April. However, it was clear that there was still not going to be any agreement and, therefore, the matters would have to be arbitrated, and the parties left that meeting on that basis.

There was agreement between the parties in September of last year that we would address specific conditions identified in the memorandum of understanding first before moving to the other conditions for the new award.

So that, basically, is the history of what's happened thus far, and we are here today to present submissions to have the matters as per our application arbitrated.

At the outset, commissioner, we would say that effectively we are breaking new ground with this new award, on the basis that the award has been approved on an agency of enterprise basis.

It is a new beginning in 1993-94. Something which this agency, the Community and Health Services agency is first to attack, if you like, in the State Service, and I guess in some respects all of us, including yourself, are pioneers in this task; and I suspect that some of the decisions or moves that we make in respect of this particular award may indeed set some precedent for things to come in the future.

There was discussion between the parties about procedure for today, and it was agreed that the employer would in fact lodge the application to vary the award on the basis that the union parties are not, in effect, for want of a better term, intending to change anything in the present award.

The application was lodged yesterday, however both HSUA and SPSFT have been aware of our position in general terms for some 6 months and a lot longer in terms of the time in lieu for holidays with pay for the shift workers' issue.

The four matters that are before you today, commissioner, are:

(1) Recall, on call and close call, which we believe will need to be prescribed by three separate clauses in the new award, but we would believe that they are linked to each other, so we would, in effect, regard that as one issue.

Sick leave, hours of work, day workers, and time in lieu, holidays with pay for shift workers.

Now I would just like to table an attachment to the memorandum of understanding, commissioner, which actually goes into detail about the award clause, or the matters that we identified through the MOU to specifically address.

COMMISSIONER WATLING: Right. Mark this W.3.

And this is an attachment to the document known as the memorandum of understanding?

MR WATSON: Yes, that's right.

COMMISSIONER WATLING: Of which I haven't received during the course of this hearing. Right.

MR WATSON: No. Okay, now this is Attachment 2, and you can see there that we have specifically identified a number of conditions of employment which in some respects have been on the table and been discussed and been around, so to speak, for a number of years in some cases; and during the discussions regarding the memorandum of understanding it was agreed that we would highlight some of these matters and that they would all be addressed in the context of the new award.

The first one that is specifically identified is a review of allowances in respect to the appropriateness of absorption into rates of pay.

That matter we intend to address following this round of hearings.

The review of hours of work clause is as per our application.

Review of call back provisions: similarly our application.

Review of method of payment for public holidays if added to periods of annual leave: that in effect is the time in lieu, holidays with pay and shift workers issue.

Review of payment of wages clause: from our side of the fence, anyway, we are fairly hopeful that that will be by agreement, so there won't be arbitration required there.

Adopt sick leave provisions currently in the Hospital Employees Award for all Department of Community and Health Services employees covered by this agreement. Again, our sick leave application.

And the last one: introduction of pro rata entitlements for temporary employees currently receiving a 20% loading. We believe that that will go through by agreement as well.

Now I might just give you a brief rundown of where we seek to go with our application, and then discuss procedure.

With the recall, close call and on call part of the application we are in fact seeking to reduce the minimum payment for recalls from 4 hours to 3 hours, and also to insert a provision where no further payments for recall would be paid or made until 3 hours have elapsed from the commencement of the first recall.

As far as sick leave is concerned we are looking to standardise sick leave for all employees under the award, and that sick leave clause is based on the sick leave clause which presently appears in the Hospital Employees (Public Hospitals) Award.

As far as the hours of work is concerned, we are - or our position is - that all employees should work 38 hours per week as standard hours, and our application specifically goes to day workers because at the present all shift workers presently work 38, anyway.

The application regarding time in lieu for holidays with pay for shift workers, this matter goes to the issue of what rate of pay days that are accrued in lieu of work on holidays with pay are paid at, and you are well aware of this issue,

commissioner, it has been the subject of a dispute hearing before yourself in 1991; and I am sure that all the parties are most fairly well versed in terms of this particular issue, and in our view there appears to be no possibility of conciliation with this matter and, therefore, it seems destined for arbitration.

Now if I can go to the hours of work application, can I take you to section 35 of the Industrial Relations Act and subsection (1)(a). The Act states that:

(a) Making provision for, or altering the ordinary hours of work prescribed by an award affecting State employees.

Effectively, what our application seeks to do is to alter the ordinary hours of work for employees who are presently employed under both the General Conditions of Service Award and the Hospital Employees (Public Hospitals) Award in some respects as we currently have employees working 38, 37.1/2, 36.3/4 and in some cases 35.

So we would put to you, commissioner, that -

COMMISSIONER WATLING: That's 35, 36 and -

MR WATSON: Three quarters.

COMMISSIONER WATLING: Three quarters.

MR WATSON: 37.1/2 and 38.

COMMISSIONER WATLING: Right.

MR WATSON: So we submit to you, commissioner, that in our view the hours of work for day workers' part of the application would need to be referred to a full bench - or, sorry, referred to the president - for the convening of a full bench at the convenience of the commission under section 35(1)(a) of the Industrial Relations Act.

COMMISSIONER WATLING: Right. So, seeing that is one segment of your application, would it be appropriate then to hear what the other side have to say on that, and then we dispense with this matter?

MR WATSON: Sure.

COMMISSIONER WATLING: Do you want to put any further submissions on that issue?

MR WATSON: No, that's all, commissioner.

COMMISSIONER WATLING: Right.

MR KLEYN: Excuse Me?

COMMISSIONER WATLING: Yes.

MR KLEYN: If the commission pleases, we have - the HSUA - has no objections and supports the view of the department that that particular clause, hours of work, should be referred to the president for a constitution of a full bench.

If the commission pleases.

COMMISSIONER WATLING: Right. Mr Aiken?

MR AIKEN: We concur as well, Mr Commissioner.

COMMISSIONER WATLING: Thank you. Right, well I can indicate to the parties that their request will be granted, and I will refer the matter. So, move to your next point.

MR WATSON: Thanks, commissioner. In relation to our part of the application headed, 'Time in Lieu Holidays With Pay Shift Workers', we don't believe that in accordance with section 35 of the IRA Act that this matter should be dealt with by a full bench.

However, we are aware that the very same issue has been referred to a full bench in relation to the Nursing Homes Award and, therefore, in accordance with section 24(4) of the Industrial Relations Act - and section 24(4) talks about referring a matter to a full bench where the issue at hand may have effect on another award.

It would be our view that this matter directly affects another award, namely the Nursing Homes Award, and we would therefore submit to you, commissioner, that this matter similarly should be referred to the president with a recommendation that it be dealt with by a full bench; and, in fact, it would be our recommendation that it be dealt with by the same full bench as that one that is to be convened to deal with the Nursing Homes Award.

We will be having discussions with the private sector in relation to their application, or their matter, specifically for the Nursing Homes Award with a view to presenting a combined position to that full bench; and accordingly under section 24(4) we would request that that matter be referred to the president for then referring to a full bench.

COMMISSIONER WATLING: Good. Thank you. What does the union representatives have to say about that? Mr Kleyn?

MR KLEYN: If the commission pleases, the HSUA agrees with the department's position, and given that we are the major

respondent to the Nursing Homes Award and will be dealing with that matter in front of a full bench, we see it as logical.

COMMISSIONER WATLING: Right. Mr Aiken?

MR AIKEN: Once again, Mr Commissioner, we concur.

COMMISSIONER WATLING: Right. I can indicate to the parties that I concur with the submission put by Mr Watson. There's nothing in the Act in my view that says that it is mandatory to go to a full bench, but I think it is only reasonable that I adhere to the request, because a similar matter, if not an identical matter, has been referred to a full bench for consideration, and it may expedite dealing with this issue as one matter. Certainly from the unions' side they will only have to run one case now instead of two, and then there is no doubt about it that if I decided a matter in isolation it would have effect somewhere else. So I think we're better off having the issue dealt with by the full bench because it certainly will affect at least two awards, and I would suggest to you may even effect three, being the Private Hospitals Award, as well.

So, for that reason, I will refer the matter.

Right, that brings you to your next issue.

MR WATSON: Thank you, commissioner. I'd now like to move to our submissions in relation to the other two matters that are the subject of our application. That is, recall, on call and close call, and sick leave.

The clause that we have put forward for the Community and Health Services Public Sector Award as per our application and as amended this afternoon is to replace the call back, remote call and close call provisions of the Hospital Employees (Public Hospitals) Award, and also to replace the call back and standby and availability clauses of the General Conditions of Service Award.

COMMISSIONER WATLING: So, what were they again?

MR WATSON: The -

COMMISSIONER WATLING: General Conditions -

MR WATSON: The call back and standby and availability clauses.

Commissioner, the matter of remuneration for call back has been of concern to the employer for some time, as I will go

into in more detail a little later on, and consequently call back was specifically identified in the memorandum of understanding as a condition that should be subject to urgent review.

The history of the call back provision for the Hospital Employees (Public Hospitals) Award as far as our records go back the call back provision has been in the Hospital Employees (Public Hospitals) Award since the Principal Award No. 8 of 1961 where the provision prescribed a minimum payment of 3 hours' pay.

That provision was changed to 4 hours' minimum in the Hospital Employees (Public Hospitals) Principal Award No. 5 on 12 December 1975 and the provision has appeared in the Hospital Employees (Public Hospitals) Award as a 4-hour minimum since that date.

The present provision, that is 4 hours minimum payment and then 3 hours for subsequent recalls no matter when they occur, first appeared in the Hospital Employees (Public Hospitals) Award No. 6 - sorry, Principal Award No. 6 - effective from 1 July 1977, and it would seem from our records that Principal Award No. 6, effective 1.7.'77, was in fact the last time that the call back clause was reviewed.

And, as far as our records go back, commissioner, the clause in the General Conditions of Service Award has been on the basis of the 4 hours' minimum payment, or in its present form, as far as our records go back which is the Mid-70s.

So I would be interested to see if there is any record prior to that, but we have been unable to locate anything. But I don't think that particularly matters.

The present position in the Hospital Employees (Public Hospitals) Award is derived from the metal industry and it is our position that in 1994 this clause is in bad need of review - and bearing in mind that we are looking at a community and health services industry award.

In determining our position on the matter of recall, close call and on call we've had regard for the following:

(1) What is a fair recompense for the disability associated with recall, on call and/or close call, and a balance between what is a fair and reasonable recompense, and also the cost for the employer.

The inequities of the present provision, which I will go to in detail.

The structural efficiency principle.

Other awards of the commission and standards in relation to, particularly recall.

The approach to the new Community and Health Services Public Sector Award as an industry and enterprise award, and that the new award will be a indivisible package, i.e. new salary scales and classification standards, together with a common set of conditions for all employees under the award.

The approach to determining a common set of conditions, particularly when you are moving from more than one award where inevitably there is going to be ups and downs for employees.

Decisions of the commission in relation to award restructuring and the new Community and Health Services Public Sector Award and particularly again the salaries and conditions package.

Full bench decisions in relation to the issue of common conditions and salaries as a package.

The cost of translation to the new award.

The wage fixing principles, and the public interest.

Now if I can just take you to the clause itself, commissioner, as per our amended application.

Firstly, it is our submission - and we believe that a 3-hour minimum payment at overtime rates for recall is a fair and reasonable recompense.

And in respect to that position you will see from our application under the recall clause:

1.1: is where we put there that 'In respect of the first recall a minimum payment of 3 hours at the appropriate overtime rate.

This represents a change in the position from negotiations that we had with HSUA and SPSFT.

We'd previously put on the table on a 'without prejudice' basis of course that the minimum should be 2 hours. However, we have reconsidered that position on the basis that perhaps the 2 hours is not reasonable and we have changed our position and we are now promoting a 3-hour minimum payment.

So that's our position regarding the minimum payment for recall and, in fact, represents a reduction of 1 hour from the present 4 hours' minimum payment which exists in the Hospital Employees (Public Hospitals) Award and the General Conditions of Service Award at present.

The other aspect of our claim, and this is the area where we believe it is critical that a change is made, is the payment for the second and subsequent recalls during a particular recall period.

And I'd like to go to 1.2 of the recall application.

We believe, commissioner, that no further recall payments should be made until the time period from the commencement of the first recall has elapsed. The minimum time period now on the basis our application that minimum time period is 3 hours.

We also believe that each subsequent recall which comes outside of 3 hours from the commencement of the first recall period should be paid at the appropriate overtime rate for actual hours worked.

This aspect of our claim is consistent with the recall provisions in other awards of the commission, which I will go to a little later.

So that is reflected in 1, 2 and 3 of our application.

If I can just continue through the clause, commissioner.

The other issue that we are promoting is the issue of the rate for payment of recall.

It is our position, and as described in 1.4 of the recall clause, that - or if I can just go back one step - the initial position that we were considering in relation to this matter was that the recall situation should be applied in the same manner as overtime. That is, that you have a certain cut-off point for payment of overtime and all employees above that rate, as it would be described in the award, would not be entitled to recall or overtime.

However, that position may cause some operating difficulties for the agency because it's not always possible to get employees who may be classified above base grade or above a certain salary level - sorry, below a certain salary level - to provide all the on call services or recall services.

Now, the president of this commission determined in the Police Award determination that in fact recall would not be applicable to employees above a certain salary level. That is in the same manner as overtime.

So the precedent is there, and I'll table that decision a little later.

We believe, commissioner, that the rate of payment for recall should be the base grade rate, or the career range rate, for

the category of staff recalled, and that should be the maximum rate depending on the, or irrespective of the classification of the employee, and that is what we have in our application in 4(a) and (b).

What we are talking about there is that if an employee is employed on the base grade classification for the category of employee recall that they would be paid overtime, or overtime at their rate exclusive of all allowances, and that if an employee above base grade is recalled then, similarly, they would be paid at the maximum salary payable for the base grade exclusive of all allowances.

So, if you like, our position is something of middle ground between the present situation where there is no limitation and that which has been determined by the president in the Police Award, which we believe may create some operating difficulties for our agency, in any case.

COMMISSIONER WATLING: Was that an arbitrated matter or was it by consent?

MR WATSON: Oh no, that was an arbitrated matter, commissioner. I will go to that issue in some detail in a sec. when I table the decision. Number two of recall - we are saying that for the purposes of the recall clause, time reasonably spent in travelling to and from work shall be regarded as time worked. Number three, commissioner, we did have some discussions about this particular aspect of the clause prior to us going on the record this afternoon. We are aware that this particular clause needs to be reworded, however we just didn't have time to put some new words in there, so if I can just briefly run you through what our view is of how this particular part of the clause would operate and then it may be that following your decision we may need to alter the words for, in fact, the award order.

What we are saying is in effect that a continuous on-call period shall stand alone. Now an on-call period in our view is a period of twenty four hours or less, so if a person or an employee goes on call at 5.00 pm on a Friday night and they are on call, say, for example, until 7.00 am on a Saturday morning, then we would regard that as one period of on-call, one continuous period of on-call, specifically for the purposes of determining the first recall, as per subclause 1 of the clause.

For periods, for example if an employee goes on call at 5.00 pm on a Friday night and they are on call until 7.00 am on a Monday morning, then that period obviously goes further than twenty four hours and it would be our position that each twenty four hour period from 5.00 pm on the Friday night would stand alone as a continuous on-call period for the purposes of determining the first recall, so I apologise that we haven't

actually reflected that in the words and it may be a little bit unclear but we just didn't have time, so we apologise for that.

Commissioner, the next point that we have submitted in our recall clause goes to situations where an employee performs, or is called into work, but that particular work may in fact be continuous with normal duty. Now subclause 4 of the recall clause talks about employees being recalled to work within three hours of commencing normal duty. What we submit is that that situation should be treated as overtime continuous with normal duty. However what we are saying is that, like the call-back, or the recall situation, if the work for which the employee has been recalled to work does not last three hours, or it is not - the duration doesn't go for three hours then obviously they don't have to stay at work for three hours, but we would regard that particular situation as being continuous with normal duty and should be paid at overtime rates.

In relation to .5 of the clause, this particular matter is a standard clause from the general conditions of service award, and it goes to situations where employees, as per the words of the clause, by custom and practice return to work to do duties such as checking of equipment, machinery, caretaking-type duties and the like. Now we don't believe that should be treated as a recall and in effect should be excluded from the provisions of this clause. Now that particular situation is something that we will need to address in terms of some other type of remuneration through our negotiations, but we've put it in because we believe that it definitely should be excluded from the recall provisions.

COMMISSIONER WATLING: Can I just ask - sorry for intervening and I sort of must have jumped over this earlier this morning but what happens with a new employee then? Whereas you're saying where an employee - I can only take it that a current employee - by custom and practice returns to work. Does that mean that all new employees wouldn't be counted?

MR WATSON: Yes, good point, commissioner. Could I seek leave to take out 'custom and practice'?

COMMISSIONER WATLING: Right, whatever you want.

MR WATSON: Sorry, 'by custom and practice'. I hadn't thought of it - or we hadn't thought of it - on the basis of new employees and we definitely don't propose to exclude them.

COMMISSIONER WATLING: So what you're really saying is, is it not, that where an employee's job envisages them returning to work for short periods then it doesn't apply no matter whether it's employees who have done it by custom and practice in the past but for all employees who fit into that category -

MR WATSON: Yes.

COMMISSIONER WATLING: - whose - the very nature of their job is that they return intermittently for short periods to check things?

MR WATSON: Yes, that's right.

COMMISSIONER WATLING: Right.

MR WATSON: In relation to -

COMMISSIONER WATLING: So should we be putting in there then 'where an employee whose job it is to return to work for short periods to perform' or what - what are we really saying there? 'Where an employee returns to work'? Aren't we - isn't the emphasis on it that this is the normal work undertaken by an employee, where an employee's normal work or ordinary work would be to return to work?

MR WATSON: Yes, perhaps we could be saying there that where an employee, as part of their normal duties -

COMMISSIONER WATLING: Right. I should have asked this this morning; in fact I did have a thing around it. I must have jumped it.

MR WATSON: Yes. In relation to on-call, commissioner, there is no real change with what we have proposed to - there is some changing to the wording of the present provision in the Hospital Employees Public Hospitals Award but there is no real change to the meaning of it and effectively we are happy that the present provision in the Hospital Employees Public Hospitals Award can be translated across to the new award in relation to on-call, and as far as close calls are concerned, again, the provision is basically the same as that appearing in the Hospitals Employees Public Hospitals Award.

However it is not necessarily the same as that appearing in the general conditions of service award as there is a clause in there under the standby and availability heading which effectively is worded on the basis that employees who are required to remain at home. Now we say that there are only of the need for two types of on call; that is, not allowed to leave the work place and allowed to leave the work place. In todays times with pagers and mobile phones et cetera we don't believe in effect that there is a need for employees to in fact remain at home. Obviously somebody who is on call must be available to return to work within a reasonable time frame, otherwise there is not real much point in having them on call, but we don't believe there is a need for a separate provision to actually have people remaining at home, so they are either on call at the work place or away from the work place.

COMMISSIONER WATLING: They could be on the golf course.

MR WATSON: I beg your pardon?

COMMISSIONER WATLING: They could be on the golf course.

MR WATSON: Well, if it's on the golf course so long as they can return to work quickly I guess - you know, provided there is no impediment to them returning quickly.

COMMISSIONER WATLING: In fact maybe they wouldn't be on the golf course because I don't think you're allowed to take mobile telephones on golf courses in most clubs.

MR WATSON: No, that's true.

MR MAZENGARB: Could be going down the sixth at Orford.

MR WATSON: Now we believe, commissioner, that there are gross inequities with the present recall or call back provision in the Hospital Employees Public Hospitals Award. If I can just cite you an example: you have employee A who gets called back once for a recall, a continuous recall period, or on-call period, and the job that that employee undertakes takes him or her four hours, that person receives seven hours pay for that recall. You then have employee B who gets called back four separate times in the same four-hour time frame, which does happen in our industry, that employee A was called back for, employee B would receive twenty five hours pay.

Now that is in fact nearly four times as much pay as employee A and they would have in fact done less work, or been at work for less time. Now balanced against that there is the - it could be argued that there is a disability of having to return to work four times, however we don't believe that four times as much pay as the person that has in fact done four hours for a recall is - or demonstrates equity.

COMMISSIONER WATLING: But they would be paid reasonable travelling anyway, wouldn't they?

MR WATSON: Yes, that is right. Now that couldn't happen with our application, commissioner, based on the way it is framed. With regard to the structure of the efficiency principle, I would like to take you to some comments made by the President in his decision regarding the police award, particularly in relation to recall, if I can table that decision.

COMMISSIONER WATLING: W.4.

MR WATSON: I haven't - in this exhibit, commissioner, I haven't copied the whole decision but I have copied the front

page and the two relevant pages from the decision which are pages 98 and 99. Now if I can go to page 98, at the bottom of the page, where the President talks about recall, call back in brackets, he talks about the employees application and what they were seeking. First of all they were seeking to exclude from the provision categories of employees which by virtue of other entitlements were denied overtime, or time off in lieu of overtime, and that is what I alluded to previously. They were seeking to reduce the minimum recall to three hours. They were also seeking to provide that any other recalls within that minimum time period, that is the three or four hours as the case may be, would not attract additional payment, and fourthly over the page on page 99, the employer was seeking to allow the employer to require the employee to undertake work not associated with the original reason for the recall for the remainder of that minimum time. We are not seeking to have the same provision as .4 there.

The president in his decision on this matter which was arbitrated on the basis that the matter as opposed by the Police Association and I quote in the fourth paragraph on page 99:

I am not prepared on the submissions put to reduce the minimum period for recall from four to three hours at this stage. However, I consider it to be appropriate and in keeping with the structure of the efficiency principle to ensure that the employer is given every opportunity to make use of time for which the employee is paid. Accordingly the award will be varied to reflect the other provisions sought by the employer in items 1,3 and 4.

Now items 1 and 3 are in fact - or item 1, in fact, is where the President actually excluded employees based on their once they go over a certain salary rate. We are not seeking to do that but we are seeking to do something which could be described as a similar arrangement but perhaps more favourable and we are also seeking to provide that other recalls from the commencement time of the first recall don't attract any additional payment. Now we do note that the president denied the employers application for reduction from four hours to three hours but it is still our submission that this particular award should prescribe a three hour minimum.

So we concur with those comments of the president, commissioner, and we submit to you that our application similarly is in keeping -

COMMISSIONER WATLING: Well, you concur with them do you?

MR WATSON: Yes.

COMMISSIONER WATLING: In all of them, including the recall from four to three?

MR WATSON: The comments made by - or if I can just finish this bit -

COMMISSIONER WATLING: Right.

MR WATSON: We concur with those comments of the president, commissioner, in relation to the structural efficiency principle for the same reasons. I would now like to go to some other awards of the commission and in particular recall or call back clauses.

COMMISSIONER WATLING: This particular award whatever it is but it has got (2) call back on top of it - mark it W.5. It is award S0.85 whatever that is.

MR WATSON: Yes. Commissioner, these particular award extracts are identified by the numbering down in the bottom left hand corner, so I didn't copy the whole award. The first one in the exhibit is - the first clause in the exhibit, commissioner, is taken from the General Conditions of Service Award which is award number S0.85 and you will see there that the provisions for call back are in fact just about identical to what we are seeking for the new Community and Health Services Award, say four, the minimum payment for recall which is prescribed as four hours, we are seeking three hours, however the award provides that there shall be no further recall payments until that four hours has elapsed from the commencement time of the first recall, and also that payment for all recalls appearing outside the first minimum payment time shall be paid for at rates.

If I can go to the second page of the exhibit, commissioner, this is an extract from the Police Award which is award number S.110. The clause in relation to recall for the Police Award is in fact identical to the General Conditions of Service Award, has the same provision and that follows obviously the president's decision in that decision that I just tabled. If I can go to the next page in the exhibit, which is award S.004 which is the Ambulance Award, you will see down the bottom of the page there under the heading 'call back' that the minimum time frame, or the minimum payment for the first recall in the Ambulance Award is three hours and further recalls do not accrue or payment is prohibited until the time frame from the beginning of the first recall exceeds three hours.

If I can go to the last two pages of the exhibit, commissioner, these two pages come from the Nursing Homes Award which is Number P.170. Again call back in relation to this award there is a minimum payment of four hours for the first recall but again there is no further payment accrued inside that four hours from the first commencement time of the

first recall period. What we have done with those examples, commissioner, is we've selected examples from other twenty four hour industries and awards of the commission which have either recently been arbitrated or recently been reviewed, if you like.

So you can see there, commissioner, that in relation to the present Hospitals Employees Public Hospitals recall clause in relation to the first and subsequent recalls and payment thereof that the present clause in the Hospitals Employees Public Hospitals Award is in fact an aberration and is derived from the mental industry, I said before, and in our view is not in accordance with the thrust of the structural efficiency principle. Now there are different combinations regarding recall in other awards and I have just been through four examples regarding minimum payments and subsequent payments et cetera but you won't find the same provision relevant to this industry in relation to subsequent recalls occurring during the first minimum time frame.

The new Community and Health Services Public Sector Award will represent a package of common conditions and common salary scales for all employees in the community and health service agency with the exception of nurses, medical practitioners, ambulance employees and dentists. Now our position regarding the approach to the common conditions has been to look at a fair balance between what may have been there in the past, what may have caused problems through costs and inconsistencies and also to develop a position which in our view is harsh and - sorry, which is not harsh and unreasonable.

It has certainly not been to either look at the status quo - that is just to simply let - to leave employees on different conditions because they have always been employed under those conditions, but at the same time allow them to have access to new rates of pay as determined for this award, or to look at a rationalisation of conditions which effectively takes us to the highest level of conditions available for all employees under the award, and we believe that to retain the present Hospitals Employees Public Hospitals call back provision is certainly in the category of the highest conditions available.

Now in relation to that last point, I would just like to table another decision, if I can please.

COMMISSIONER WATLING: We'll make this exhibit W.6.

MR WATSON: Commissioner, during 1989, '90 and '91 there was a massive case conducted through the Australian Industrial Relations Commission in relation to the Federal Commission setting national rates for nursing staff employed under Federal awards. The Federal Commission issued a series of decisions in relation to new salary rates and certain

conditions of employment and we were, during that case, undertaking a similar exercise to what we are doing with this award, that is, bringing through the structural efficiency process bringing together nurses who were employed on different rates of pay through different awards and different conditions of employment.

Now if I can take you to page 11 of the decision, you will see there in the middle of the page under the heading 'condition' and I quote:

If there is to be consistency of nurses salaries it will be essential to eliminate many, if not all, of the existing differences in salary related conditions. We refer in particular to hours of duty and conditions involving penalties for overtime and shift work.

Now I can report to you, Commissioner, that one of the items that was arbitrated by the Federal Commission under the category of overtime, the loose category of overtime, was in fact recall for nursing staff and the Federal Commission arbitrated that a minimum payment of three hours should apply to nursing staff for recalls.

COMMISSIONER WATLING: So are you tendering that decision?

MR WATSON: Yes, I haven't got it with me, commissioner, but I can certainly make it available tomorrow morning.

COMMISSIONER WATLING: Right, if you can make it available to all the parties please.

MR WATSON: Yes. If we can then go over the page, if I can take you to page 12 of the decision, in the second paragraph on page 12, on the eleventh line of that paragraph and I quote:

The matter in which rationalisation of conditions is achieved will moreover effect the final salary level to be prescribed in these awards. If for example differences are resolved by levelling up to the highest conditions now available, then there may be little scope for further increases in salaries, so in effect what the full bench was saying there, Commissioner, was that it is no good just looking at the highest conditions available at present or in fact even looking at the status quo. We are looking at one set of conditions to be applied which go together with the salary rates as a package, and that is in effect in our view what we're about with this new award.

Now the full bench of this commission in the December-November - sorry, in the November 1991 decision - made a number of references to conditions of employment and I would like to go into those if I can please, and tender that decision.

COMMISSIONER WATLING: Make this W.7.

MR WATSON: If I can take you to page 5, commissioner, in the middle of the page, the full bench states and I quote:

In the meantime the Commission will continue to hear submissions in relation to those conditions of service matters which remain for the parties to develop standardise conditions in the public sector.

We have come some way since this decision was written and we believe that effectively we are on the same track as what the full bench was talking about there, the difference being that rather than the public sector, we're talking about the community and health services industry, or enterprise. If we can go to page 7 of the decision, at the top of the page and I quote:

We are mindful of the concerns expressed by the unions involved that their specific awards should not be abolished. However the need to properly review the wages structure and conditions of employment in this particular area is long overdue. The Cartland Report (1) in September 1981 clearly identified these problems as being in need of attention and advocated the progressive development of a coordinated and interrelated code to encompass all government employees.

Now again we've now pursued this on an enterprise basis but again the full bench is observing there that these conditions and we would put recall in that category are in need of review and that is what we have done with our application.

Page 16 of the decision, just above the heading of 'translation' again I quote:

Once we have finalised the conditions of employment and agency's specific matters, those previously mentioned awards will be repealed unless we are persuaded to the contrary with effect from 1.7.1992.

Now obviously that time frame has changed now, but again the full bench again make reference to the conditions of employment as being an integral part of the whole exercise. The employment commissioner, on page 17 of the decision, in the middle of the page and I quote:

Notwithstanding that it is our prima facie view that the operative date should be as stated above; however as indicated to the parties during the hearing, we intend to give operative effect to wage and salary rates from the same date as will apply to agencies specific and conditions of employment matters.

So again the full bench is tying the salary rates and classification standards to the conditions matters and they even go further in terms of operative - observations regarding operative date. I will come back to operative date a little later on. Now there were other references in that full bench decision to conditions of employment but I have picked out the ones that I believe are most relevant, so the point that we make with all of those references, commissioner, by the full bench and by the Australian Industrial Relations Commission in that decision that I tabled - and I just might add that that Australian Industrial Relations Commission decision was a five member full bench in the national wage cases for nurses - is that the -

COMMISSIONER WATLING: Does that give it more power than -

MR WATSON: Beg your pardon?

COMMISSIONER WATLING: - does that give it more power?

MR WATSON: I would imagine so. I - certainly that would be our submission that a five member full bench in fact may be a little bit more powerful than perhaps a three member or a two member or a commissioner sitting alone.

COMMISSIONER WATLING: It might be a commissioner sitting alone but I haven't seen the relativity argument in relation to numbers on full benches, but anyway - certainly a full bench does have more persuasive power than a commissioner sitting alone -

MR WATSON: Mm. I guess -

COMMISSIONER WATLING: - but of course it is a bit like our act, isn't it. It says that a full bench can be up to five so if you have three, is it less a full bench?

MR WATSON: Yes, point taken.

COMMISSIONER WATLING: I'd put it to you not.

MR WATSON: Well I guess the collective 'brain power' of a five member full bench may in some respects give it some more credence than a lesser number of members. However, I don't want to dwell on the point.

COMMISSIONER WATLING: No.

MR WATSON: But as far as we are concerned, commissioner, the point that we are making is that the rationalisation of conditions in the exercise that we're undertaking and in other exercises that I've referred to, must mean a change. It must mean a change and a balance between what may have been more favourable conditions in the past, which in fact may have been developed in better economic climates, through different jurisdictions and in effect outside of things like the structural efficiency principle.

Now we don't believe that the other parties, that is, HSUA and the SPSFT have in fact comes to grips with those points and the observations of the full bench in that decision that I just tabled. We have estimated, commissioner, that the cost of translation to the new award - and I just stress that this is, I suppose, a best estimate at this stage that we can possibly do prior to actually translating employees to the new award. The estimated cost of translation for 1993-94 will be \$1.9 million and for 1994-95 a further \$3 million.

Now it has been our position, as determined by Cabinet, and I accept that this particular matter will be opposed by colleagues on the right, that the new award will be cost-neutral and in our view the cost neutrality will be achieved through efficiencies from the work place reform process, from the new broad banded salary scales, and from efficiencies derived through a rationalisation in conditions of employment. Basically the money for this new award has got to be found within; we don't have access to extra funding, and therefore we see that they are the options that we have. The other options, of course, are closure of services or less employees, but we don't believe that we necessarily want to go down that track.

With regard to the wage fixing principles, we believe that our application is part of a restructuring program of awards for the community and health services sector and therefore we believe that our application is consistent with those wage fixing principles. With regard to the -

COMMISSIONER WATLING: Is cost neutrality consistent with wage fixing principles or -?

MR WATSON: I will come to cost neutrality in a second, commissioner.

COMMISSIONER WATLING: - because I thought the wage fixing principle did have something in it in relation to, in the short term, there may be additional costs but the long term benefits may override those considerations.

MR WATSON: Yes. Well, it may be, commissioner, that the cost neutrality - it may stretch over two financial years so the long term benefits as you talk about may in fact come and we still will achieve cost neutrality and with regard to the public interest, I will refer back to the comments I made regarding the cost neutrality of the new award.

Also, for an employee in that particular example that I gave you about being recalled on numerous occasions - and I'm not saying that this happens frequently, but it does happen and the potential is there for it to happen by the way the award clause is structured - for an employee to receive two - in effect two thirds of a week's pay for what in effect would be a morning's work or less is - in our view is not in the public interest and in fact it would be against the public interest for the employer not to take steps to address that situation.

As far as the operative date is concerned, as we've flagged to you during the hearing on 18th February 1994, we seek an operative date for this particular part of our application of 1st December 1993 which is the same operative date as has been agreed and ratified by yourself as the operative date for the new salary scales already approved by the commission, and again, commissioner, I refer specifically to that reference on page 17 of the full bench decision where the full bench talked about the same operative date for conditions and salary rates.

We believe, commissioner -

COMMISSIONER WATLING: Can I just say, that the bench did have in mind when making those comments a prospective operative date, so I'd be more than interested in your submission as to how you actually get the money off them now if you've paid them.

MR WATSON: No, well I was - I was going to come to that, commissioner. Effectively our position would be that we would recalculate or if our application is successful it's not an issue, we would recalculate or recall payments in accordance with the new clause effective from the 1st December '93, we would then measure that against any increases that the employees may receive from access to the new salary rates and if it was on the debit side, that is, that the employees in fact 'have been overpaid' then obviously we won't be seeking any overpayments, but those employees would in fact not receive anything as part of the award translation process in terms of retrospective pay and of course if there was a difference then obviously the difference would be made with

the difference with the new salary rates - so that's how we would attack it.

COMMISSIONER WATLING: Mm. But how do I rule that way - that's a very novel approach because I'd have to rule that the employer breached the award for that period of time.

MR WATSON: Sorry, can you just explain that.

COMMISSIONER WATLING: Well if rule that Suzy Jane gets \$300 a week and if your claim was successful that - and you're going to take it out of her back pay, I'm effectively ruling that you have to breach the award for which I've already granted Suzy Jane \$300 back pay to a certain date.

MR WATSON: But - but if - if the effective -

COMMISSIONER WATLING: You'd be giving her less than what she would be entitled to as per the award prescription.

MR WATSON: But if - if - if you did decide that the condition is retrospective as a - as an - or sorry - has an operative date the same as the salary rates, then the two go together don't they?

COMMISSIONER WATLING: Well hang on - the - well, I just want to say to you, the salary rates was agreed under a memorandum of understanding.

MR WATSON: Yes.

COMMISSIONER WATLING: Right?

MR WATSON: Yes.

COMMISSIONER WATLING: And I've endorsed your agreement, so Suzy Jane for the purpose of this discussion, will get \$300 a week and it will be backdated to 1st December.

MR WATSON: Mm.

COMMISSIONER WATLING: This is now an arbitrated matter - right - which you're now arguing that I should rule that she get less than \$300 a week back to the - and you take that money from the money that's owed to her back to 1st December, on a matter that was a consent award.

MR WATSON: But if - if you - if you make your decision then the rest will flow from that though won't it?

COMMISSIONER WATLING: Well that means Suzy Jane won't get -

MR WATSON: I mean our -

COMMISSIONER WATLING: - her \$300 a week because it will be offset.

MR WATSON: Yes, that's right. I mean our position, sommissioner, is that the two matters should be looked at as a package. Now -

COMMISSIONER WATLING: Yes, but one's agreed and the other one now you're wanting arbitration on to set a new standard -

MR WATSON: Yes.

COMMISSIONER WATLING: - which she is already entitled to by award. She's not already entitled to the money that you agreed to under the new arrangement, she's actually received this money per an existing award entitlement.

MR WATSON: Mm.

COMMISSIONER WATLING: Now you want me to rule - to undo an existing award entitlement.

MR WATSON: When you say existing award entitlement, what do you mean?

COMMISSIONER WATLING: I'm talking about the Public Hospitals Award and the general -

MR WATSON: No, no, sorry - you maybe misunderstood what I've said, commissioner, I'm sorry. What we're saying is we won't be seeking - what would happen is that we would only be seeking to offset - if you - if you - if you don't rule it's not an issue, if you were to rule that the condition is effective from 1 December '93 which is the same as the salary rates, then hypothetically if the employee translated to a rate on the new award which was not higher than their present salary then there's nothing to do. We would only be looking to offset if the employee receives an increase with the new salaries on the new award.

COMMISSIONER WATLING: Yes, well I'd certainly have to suggest to you that if I was to go down that line I'd certainly need facts and figures before me to see how employees are going be affected by this because I'm -

MR WATSON: Well - well -

COMMISSIONER WATLING: - I'm not inclined to just do this by some gamble.

MR WATSON: No, well effectively what we would have, commissioner, is a situation where an employee would - I mean we're not for one minute suggesting that they lose money -

COMMISSIONER WATLING: You're really taking it out of their back pay, that's what you're really saying.

MR WATSON: Yes.

COMMISSIONER WATLING: Yes. But you're taking out a back pay something which she's already accrued - and I say she because we're still relating back to this fictitious employee - she's accrued under an existing award.

MR WATSON: Mm, Mm, yes.

COMMISSIONER WATLING: That's - that's the point I make. Now before I did that I think I'd have to say to you I want to - I want a close look at the calculations of how that's done and how current employees who are - who have accrued and obtained in fact an entitlement under their current award, then have it taken back off them through the making of a new award and even how that fits with the supersession and savings and the act that says no person shall be disadvantaged by the making of a new award.

MR WATSON: Mm, Mm, yes. Well we're not saying that they would be disadvantaged.

COMMISSIONER WATLING: Well if they've already got the money -

MR WATSON: They haven't got the money. We're not seeking to taking any money away from them that they've got now.

COMMISSIONER WATLING: No, but you're - you're going to - you're going to actually recalculate it and then take money off them if they get an amount of money that gives an increase in their award reclassification.

MR WATSON: Yes, I mean - yes - that is our submission, commissioner, on the basis that in our view you can't look at one without the other.

COMMISSIONER WATLING: Yes, but - yes, but you -

MR WATSON: - and it is a package.

COMMISSIONER WATLING: - have to understand where I'm coming from too - I'm being very open with you. It's a big step for me to take and especially when they've got it under an existing award that's still in place and you're going to offset under a new award so they're going to be penalised by going to new award and I don't really know the effect of that. You haven't - and you might be going to tender some information to show me the effect that this would have.

MR WATSON: Well I don't - I don't think there's anything else that I could really put to you other than what I've already put in terms of how we would offset it, so I guess - well I guess all we can say to you, commissioner is that's - that's our position and we require a decision on that particular matter regarding operative date based on the package concept and also the - the observation of the full bench regarding the operative date based on the package concept and also the - the observation of the full bench regarding the operative date.

COMMISSIONER WATLING: Yes. Could it not mean that if you translate this employee to a certain level within the new structure that they could - and keeping in mind they're getting a rate for the job - classification standards now in the award - and you take money and you offset it - that from the 1st December they have in fact not received their rate for the job - even in terms of back pay, because it's been taken off them.

MR WATSON: But isn't - doesn't it just go back to the issue of - if you - if we address the operative date of the condition -

COMMISSIONER WATLING: Yes, but you did the deal - you did the deal on the classification standards and the money - 1st December.

MR WATSON: Mm.

COMMISSIONER WATLING: We didn't do the deal.

MR WATSON: No, no, no - I -

COMMISSIONER WATLING: And can I say to you that the full bench decision - as a member of that full bench, I want to say to you that we always had a prospective date in mind so we weren't taking monies off people and offsetting it because the conditions were to be done at the same time. We didn't do the deal on the - on the 1st December - right - the memorandum of understanding did that. Now the thrust of the full bench decision was certainly in advance - in fact we notified people about a year in advance but now you're wanting me to take that principle and use it in reverse which means I have to take something off them.

We never envisaged anything being taken off them; we envisaged the package being sorted out before it started and there'd be a prospective operative date, so everyone knew what the new game plan would be and therefore if I'm now going to say, well you're entitled to \$300 and you're entitled to \$1000 back pay, it could be said if it was offset that I've denied them their classification right and the backdate - and the backdating arrangements for that classification money back to

the 1st December when they've accrued it under an existing award.

MR WATSON: Yes, I - I don't believe that we're actually seeking to take away anything that employees have accrued under the existing award.

COMMISSIONER WATLING: Yes, but you - well you will - the effect of that will be to take it off them if they get back pay after being referred and placed in the new stream.

MR WATSON: Yes.

COMMISSIONER WATLING: So I think you are. The number of employees I don't know - I've heard no submission. The extent of the amount to be taken back - I don't know - I haven't heard any submissions. So these are the unknowns and therefore I'd have to say to you I'm going to be very careful in dealing with question and, you know, I'll give you any opportunity you want to put further facts and figures to me about how people will be affected by this. And I'm - you know, the general question of retrospectivity under the act is well known.

MR WATSON: Well as I said, commissioner -

COMMISSIONER WATLING: In fact, Mr McCabe can tell you all about that because he ran an appeal on this very thing.

MR WATSON: As I said, I'm not sure that there's anything that we could put in terms of facts and figures that - that would either help you or make it clearer but that - that in effect is - is - is our submission, so I guess, you know, we can't do any more than put it to you on that basis.

Now with regard - the last matter that I wish to address is the matter of cost savings - or cost efficiencies - if our application is successful. I do have some - some figures with me today but I would prefer to wait perhaps until tomorrow morning where I could put some more definite submissions to you in relation to the cost savings.

I don't - I don't think it's - it won't take very long and it's not a matter that - as I say, it's not going to take very long, but I prefer to hold that over until tomorrow morning if - if that's okay with you, commissioner.

COMMISSIONER WATLING: Right.

MR WATSON: So in respect of -

COMMISSIONER WATLING: Well in holding it over I'd just say that I'd give the union a right of reply on anything that you might be doing.

MR WATSON: Yes, I - I have absolutely no problem with that at all. On that basis, commissioner, that concludes our submission relating to recall, on call and close call. If the commission pleases.

COMMISSIONER WATLING: Good, thank you. Right, well we'll see what the union side have to say about this.

MR AIKEN: Mr Commissioner, in view of the fact that I intend to call some witnesses, Mr Kleyn has kindly agreed for me to go first in our - in our submissions - to present our submissions.

COMMISSIONER WATLING: Are you going to bring in witnesses now?

MR AIKEN: I'll just do a quick introduction -

COMMISSIONER WATLING: Right.

MR AIKEN: - if I can and then I'll bring them - I'll only be 3 minutes at the most.

COMMISSIONER WATLING: Well can I ask you to give my associate the names of the people that you're going to -

MR AIKEN: Sure.

COMMISSIONER WATLING: - the full names of the people.

MR AIKEN: Right.

COMMISSIONER WATLING: We might go off the record in a minute just prior to you introducing them.

MR AIKEN: Sure, no problems. Right, thanks.

COMMISSIONER WATLING: Right.

MR AIKEN: Mr Commissioner, the - it would probably come as no surprise - the federation rejects the department's application related to what I - what I'm generally going to refer to as call back as in the existing award, but - particularly in relation to on call and recall.

It is our belief on call arrangements should be as prescribed - or as prescribed within the Hospital Employees Public Hospitals Award, that is, the existing conditions within - within the current award.

Members within areas that require an on-call service are not generating calls for monetary self gain in any way. They are providing a service required by the employer. On that basis

the employer must be prepared to pay. If the employer wants to reduce the compensation then how can it be expected the employees must provide the same level of service. Already, Mr Commissioner, several areas have implemented modified shift systems in order to reduce the incidence of on call. Those areas specifically are microbiology, haematology and medical imaging at the Royal Hobart Hospital, radiology, and pathology at Launceston General.

In all cases, these have been instigated by the employees. For your benefit, Mr Commissioner, I intend to table two examples of agreements reached. Now the purpose of actually tabling this is so that when we're going through questions - or when I'm running through a series of questions with the witnesses, you'll have the documentation that we'll be continually referring to.

The first - the first letter I'm tabling -

COMMISSIONER WATLING: We'll mark this exhibit A.1.

MR AIKEN: - is simply a letter introducing the concept of a modified shift system within microbiology at the Royal Hobart. The purpose of this letter is to demonstrate to you that it was actually the employees through their relevant service organisation that - that was then association of course - wished for several reasons which were to be of mutual benefit to both laboratory and management to introduce a modified shift system.

Now - sorry, Virginia - but I'm going to have you on your feet a bit here. I've got another.

COMMISSIONER WATLING: So should I be looking at - this says here a draft 'without prejudice' agreement - should I have this in my possession.

MR AIKEN: Look, if - I don't particularly have a problem with it because what's going to follow now is the actual agreement -

COMMISSIONER WATLING: Oh, right.

MR AIKEN: - that was just by -

COMMISSIONER WATLING: So it's now been converted to an agreement?

MR AIKEN: It has, it has.

COMMISSIONER WATLING: Right.

MR AIKEN: What was actually attached to that was a draft agreement; there's been a series of negotiations that have -

COMMISSIONER WATLING: Right. We'll mark this A.2.

MR AIKEN: The next one - before you move on is in relation - sorry about the - the paper wall but it will serve the purpose - this is relation to working conditions within haematology.

Once again -

COMMISSIONER WATLING: A.3.

MR AIKEN: Once again this is the introductory letter to the management indicating what had been recognised for quite some time - there were problems within the laboratory and I draw your attention particularly to situations where employees were working up to 12 days straight - and I'll go into that in some more detail.

Next what I have is two lots of correspondence. This is the final lot. What - what these are -

COMMISSIONER WATLING: Now we'll just identify them first. The -

MR AIKEN: The one headed 'Royal Hobart Hospital' -

COMMISSIONER WATLING: Yes - 11th April - we'll mark that A.4.

MR AIKEN: A.4.

COMMISSIONER WATLING: The one headed 'Royal Hobart Hospital' dated 26th October 1993 - we'll mark A.5.

MR AIKEN: And I did have one more piece which - sorry - should have been in a different order but that's - that's quite - quite okay.

COMMISSIONER WATLING: We'll mark this A.6.

MR AIKEN: A.6 - that's it with the paper work.

COMMISSIONER WATLING: Do you know what the motto was - what the motto is on the - the emblem on A.5?

MR AIKEN: Well not really - I'm not exactly a Latin scholar, I must admit - as you'll find out later. Do you know?

COMMISSIONER WATLING: No, I'm enquiring - just seems intriguing. Sometimes they have a lot of relevance to the matter that's before you.

MR AIKEN: I'm afraid I only did two years of Latin. Mr Commissioner, I intend calling two witnesses from professional

areas within the acute care environment. These two people work in areas where modified shift systems have been implemented. The purpose of asking these witnesses to attend the hearing is to demonstrate to you and to the minister's representative, 1) a general picture of how and why call back systems operate within the acute care environment; 2) that generally employees prefer not to work on call but are required to as part of their employment; 3) employees who are on call are directed to return to the hospital for calls, they do not choose to return; 4) because of the unsavoury hours the toll on personal and working lives, et cetera, the employees have implemented with management support modified shift systems which has reduced costs associated with on call; 5) everything possible is being done by employees and local management to minimise calls; 6) employees, particularly in haematology, microbiology and medical imaging have implemented - that's within the Royal Hobart Hospital - have implemented the modified shift systems well in advance of a time frame they needed to. That is, under the workplace reform process, identified - there was a - yes, under the workplace reform process, identified reforms were not to be implemented until after translation unless otherwise agreed between the parties. That was purely for the cost accounting exercise.

These areas demanded the systems be put in place early, even though some had lost potentially considerable money. However the advantages of increasing their range of hours outweighed the potential monetary loss of on call. The witnesses will verify my contention that despite monetary considerations employees generally prefer not to work on call and department views are 4 hours as a financial incentive - or it is my contention that the department views the 4 hours work as a financial incentive to employees to undertake call. However, the federation views the 4 hours as prescribed within the Hospital Employees Award as a deterrent to minimise calls.

The federation is continually to look at the management of call back systems. It is our view if stricter controls are placed on the users, the users being the people originating the calls and not the service providers, that is, the people responding to the calls, then the costs will reduce and likewise a toll on employees and other - some other considerations will similarly reduce by other considerations possibly effects on sick leave and side issues like that.

Now I'm at the stage where I could call the witnesses. Would you like to go off the record for a moment?

COMMISSIONER WATLING: Yes, we might just find out who there names are.

OFF THE RECORD

NEIL LEONARD BYRON, sworn:

MR AIKEN: Look, for the purposes of the record, could you state your name, occupation and classification?... My full name is Neil Leonard Byron, I'm a medical scientist at the Royal Hobart Hospital, classification III/2.

Right. And just briefly so that we're all informed of your role within - within the hospital, could you just outline your general role?... I'm second in charge of the department. During the week I run the coagulation section and after hours I participate in the on-call roster for transfusion and haematology.

Right. Could you explain what on-call system used to operate prior to the new modified system which was recently implemented within haematology?... The system that's just been changed used to be two people on call, one for transfusion - that person would be called for full blood counts, coagulation tests or transfusions as long as there was a transfusion with it and there was also a second person on call - if there was no transfusion with the request they would be called for just a full blood count or coagulation screen and that operated from 5.30 in the afternoon through till 9.00 the following morning.

Right?... And also all weekend.

Thank you. So there were - were there two rosters actually in place at that stage?... There were two rosters typical on every night and on the weekend.

Now we - we've already established that there actually is a modified shift system in place now - ?... Mm.

- it's recently been introduced. Why was it necessary to actually introduce that and what about major changes or significant changes?... The major reasons were staff dissatisfaction with the number of weekends and amount of time on call - the way that system operated would necessitate virtually working 12 days straight with up to 4 nights on call. If you were busy you'd feel like a worn out dish rag at the end of that time. The other problem with it, is there is a lot of pressure at the moment as there is everywhere in the public service to save funds. Obviously the - the longer we can spread our hours the less call in there is, so we've decided to take out the shift 3.00 till 11.00 at night because we find that the later we stay there the more we were required to stay there, so trying to get 3.00 till 11.00 to get rid of all the early calls which would happen in the early part of the evening, also the weekends now is operating as a shift

system, two people in there till 4.30. Previously there would have been three people in for routine work both - both mornings of the weekend and then a call system after that. What we're doing now is two people in there till 4.30, hopefully to catch any of the work that comes through during the day and then one person on call after that. That will again mean that people will be on on weekends less often than they are now and also with less stress, if all the work can be brought in in the daytime.

So previously the weekend was totally on call the whole time?... Yes.

What - what are your responsibilities or the responsibilities of a scientist once a call is actually made? So when you're on call and you receive a phone call indicating that it's time to return to test a specimen, what - what are your responsibilities?... Our first responsibility is to talk to the medical officer calling us in, to ascertain why they're calling us in. We're required to check that it is a reasonable request. We don't get called in by nursing sisters or by interns, so the first thing we do is check that it is a reasonable request, it's not something that can wait. Then we have to respond within 20 minutes - we'll be due to be at the hospital, which requires all the people on, the medical scientists, and for transfusion and for haematology to live within - that are on call - to live within a certain distance of the hospital so that - that is imposed on them so that they can respond within that time frame. We report into the switch once we get there, that we're actually in the hospital. I believe they let all the other registrars know that you're in there in case there's any other work floating about. We perform whatever tests are required and notify switch when we're going so that they can let us know if we're required by anyone else.

Right. You indicated just before that you check to see whether it's a reasonable request to actually respond to the call. What - given that you indicated that it was actually medical officers that were phoning you, say the clinicians actually initiate the call - what happens if you think that it's an unreasonable recall - oh, yes, recall, yes?... It depends on the medical officer. If we are still convinced it's unreasonable we can suggest that they contact the haematologist on call, the medical director and that we will then come in once they've okayed it. What does regularly happen if you do question the doctor and say that you think that's unreasonable, they will change the request or change their reasoning for having you come in, and it's a case of us arguing then against their clinical judgment which we're not in a position to do.

I'd imagine it would be fairly difficult. It would make life -?... It doesn't engender a lot of friends when you're questioning medical staff, no.

COMMISSIONER WATLING: So are you saying that you don't have the final say?... We have no say at all. The most we can do is suggest that we won't come in unless it's passed through the director of the department. There was for a short period of time - I could be wrong on my year, last year or the year before - certainly within the last couple of years we had all calls go through the medical director but obviously they weren't happy with that system because they're on for a 7 day period or whatever, you know. That was temporary to try and decrease the volume of calls. I'm not sure which year that was, last year or the year before.

MR AIKEN: Those medical officers, they can be consultants and registrars, can they?... Yes.

So - now I'm not overly familiar with the employment of registrars, but presumably they would turn over, over a period of time - do they have a fixed contract of working within the hospital and you might find a new influx of registrars coming in?... We do, we also find new influxes of interns. That can create problems in that we may not be aware of who is actually able to call us in. We'll get a phone call saying it's doctor whoever calling us in and we may find out later that they weren't actually eligible to call us in, in which case they will then give you the name of their registrar that's authorising the call. But in theory it's authorised at registrar level or consultant level.

Right. So you could actually - could you actually find if there were new registrars coming in or an influx of interns that the amount of calls actually increase?... That routinely happens. You can tell when we've got a new lot of registrars in there that the patterns change and then you will have a period of time for a month or 6 weeks where you may either be getting more calls than you usually do or at different times as they settle into the work flow.

Right, fine. Once a call is made and you actually return to work, is the specimen always ready? Do you have any false starts ever or - ?... We do. As a rule for the Haematology and Transfusion Department we advise that people ask whether the specimen has been taken. Obviously it depends if we're called and told there's a motor vehicle accident coming in or an abdominal or something that may require a large volume of blood quickly we won't wait, we'll come straight in. But otherwise we will ask if the specimen has been taken and if not we suggest they call us when it's taken. That saves - we have been in there and hung round for an hour or so waiting for a specimen and then to find out that they can't get it, so you've been called in for no reason at all.

And getting back to the previous question, you have to respond to that call if the Director of Pathology or the on-call pathologist can't be called or contacted - you have to respond to the clinician. That's correct? You have to return.

MR WATSON: Commissioner, excuse me, but we've allowed Mr Aiken a bit of latitude but I think we're leading the witness now. He did - morning prior - just coming in so can we just have straight questions?

MR AIKEN: Sorry, Mr Commissioner, I would have -

COMMISSIONER WATLING: I think you've really got to ask a question of the witness. Don't give him the answer and then get him to confirm it.

MR AIKEN: Sure. Actually maybe that's - I appreciate the latitude I've been given but I thought actually then I wasn't leading, I was just drawing something out of a previous question for purposes of clarification.

COMMISSIONER WATLING: Right. Well I think you're mindful of what we mean.

MR AIKEN: All right, I will be. Thank you for that.

In your opinion, has the new system resulted in any savings at all, monetary or - ?... Well the new system has only been in place for the last week. It should result in savings. Instead of having, as I said, three people coming in each morning on Saturday and Sunday to cope with the routine work and then two people on call after that, we will have only two people coming in, staying there till 4.30. We've changed procedures and automation in the laboratory to enable us to cope with less people for the morning work. We will then only have one person on after 4.30. That must in itself save money over a period of time. During the week the calls we're hoping to save are obviously the ones before 11.00, we're only staffing the lab. till 11.00. We don't have the staff to take that later. We again have no control over any calls that will happen after that time and what will happen to the volume of calls there. We still have the problem of inappropriate calls sometimes but again, as I said, we have no control over that. We come in when we're called, if the doctors insist on that.

Fine, thanks. Just one final question. Now in your opinion what would be the reaction of employees if the call back provision was varied in the way the agency has applied?... We have trouble filling the call roster already some days. If we have someone who goes on holidays it's obviously leaving gaps into our call roster we have to fill. We now sometimes as it goes, especially with sick leave, holiday leave, have trouble filling it, getting people that are interested in having an

extra night on the call roster. I think that will become increasingly difficult.

Right, fine. Well that's all I have, Mr Commissioner, for you.

COMMISSIONER WATLING: Right. Cross-examination?

MR WATSON: Thanks, commissioner. Neil, in relation to recall payments, what do you think is a reasonable recompense for a recall?

MR AIKEN: If I - I think that might be an inappropriate question, Mr Commissioner, given that the - I don't think the witness has been part -

MR WATSON: Well the witness is a witness at large, commissioner.

COMMISSIONER WATLING: Actually I think that's the risk you run when you bring a witness. However I do say that you did lead the matter off by asking the witness to respond to the claim made by the employer. So I have to suggest that - well I've taken it on board that the witness must have known what the claim was for you to ask the question.

So I'm going to allow the question to go ahead?... Well I think the current award is probably what I would consider the minimum recompense. Not only is there the problem of getting up at all hours of the night dealing with whatever is happening. I think the limitation of living within a certain distance of the hospital. I think all these factors to be costed into that and certainly it's very stressful.

MR WATSON: Yes, sure. And what is that minimum payment under the present award, do you know?... I believe it's about 4 hours' pay.

Right, okay. Now what do you believe is a reasonable recompense for the second call?... I can't say I've considered that. I sure on what that second call is.

Okay. Do you think that - we are talking about a 24-hour industry with the community and health services industry. Do you think that - just to have a bit of a sideways look, do you think that you should, say, get the same recompense as, say, an ambulance officer who is recalled or a policeman?... I have no idea how their awards work. I was under the impression that their awards, they're basically staffed 24 hours a day with people on site.

No, sorry. Just leaving aside their awards, do you think that you should get the same recompense as those categories of employees?... Well I'd have to ask, to answer that, how

regularly are they on call and how often would they be recalled?

Well let's say, for example, someone who comes back to work or is recalled in the same manner as you are?... If they're regularly called back, yes, they should be recompensed at the same level we are.

What's your understanding of the exercise that we're going through now in relation to the new Community and Health Services (Public Sector) Award?... This is all to do with the award restructuring and putting a new award in place, is my understandings.

And do you understand the exercise that we're going through as far as conditions of employment are concerned?... Yes, it's all part of the award restructuring.

So what's your understanding of that?... That the commission in response to the memorandum of understanding that was in place - and I think that's backdated to last December - is setting in place a new award with new conditions of employment.

And those conditions of employment, are they going to be the same for all employees or are there going to be any differences? Do you have an understanding of that?... Well my impression is that they will be the same for all professional awards - streams and I think that's the four streams, is my understanding.

Yes. What's your view or do you have a view on a set of conditions of employment for - and how - I'll rephrase that. No, I won't ask that, it's probably a bit unfair. I think we might leave it at that, commissioner. Thank you.

COMMISSIONER WATLING: Right. Any further examining the witness?

MR AIKEN: I don't think so, thank you, Mr Commissioner.

COMMISSIONER WATLING: Right, good, thank you very much. You can stand down if you like and you can remain in the body of the hearing room or return to work. Thank you.

KAREN MAREE GRIFFITHS, sworn:

COMMISSIONER WATLING: Good, you can take a seat, if you like.

MR AIKEN: Hello, Karen. I'll refer to you as Karen, if you don't mind. Thanks for coming along. I'm just going to run

through a series of questions. Just for the record, can you state your name, occupation and classification?... Karen Griffiths. I'm a Medical Scientist Class I, end of my fifth year.

Can you just explain your role - your general role within the hospital?... I work in the Microbiology Department within Pathology at the Royal. I perform diagnostic microbiology tests, virology, bacteriology. I take part in a modified shift roster and the on-call roster. And I have responsibilities for the intensive care work that's read early in the morning. And there's been an arrangement made whereby I start early to get that out of the way.

Thank you. Can you just briefly explain - you mentioned just then about then modified shift system. What actual system was in place prior to the modified shift system being implemented?... The system we used was a 9.00 to 5.30 working day and at the end of that we'd have one person that was available for call back through the night, and that was on a roster system. And it was usually once, probably once a week you'd do that. Weekends we had three people that came in on Saturday morning and worked - stayed until the work was completed and then one person would be available for call back for the rest of that time. On Sunday there were two people that came in, on Sunday morning, again stayed until the work was completed. And then one of those people would be available for call back. All the people that came in on a weekend were actually there on call, they weren't there as part of a shift roster at all.

So why was the modified shift system actually put in place?... The system we were using, because it wasn't a shift system, it was an on-call system, we had cases where people routinely worked 12 days straight without a break. I've worked 19 days without a break and I've worked 26 days with 1 day break. The amount of stress that that was putting under was leading to a high incidence of sick leave and people just didn't want to work the weekends. It was very hard to find people that would step in if somebody was ill to work the weekends. And because of the amount of sick leave and stress we felt that something needed to be done. So we put in the modified shift system.

Who actually instigated that modified shift system?... It was the staff because of the - as I said, because of the high amount of stress. We felt that something had to be done that it couldn't keep going the way that it was and so with the lab. management - staff and lab. management, together with the SPSFT, came to an arrangement that we felt was suitable for the staff. We put that to the hospital Human Resource Department, several negotiating stages there. We came to agreement there and then that went to central office, and the whole process took 12 months.

Fine. What are your responsibilities once a call is made?... I establish whether the call is needed. I insist of speaking to the person that's authorised the call. Establish the call is needed. If the call is needed then I respond immediately. I have to leave whatever I'm doing and come in immediately, collect specimen - collect specimen from the front desk, perform the tests that are required and report the results.

Do you have to respond to a clinician's call?... We try and talk them out of some of the calls. I've had people call me wanting me to come in to look a result up on a computer because they've taken a test through the day and haven't bothered to put 'please phone result'. So then they wanted me to come in and read it, or they'll call us for results that can clearly wait till the morning. In those cases you try and talk the clinician out of the call. Sometimes they're very insistent though. If I'm sure that the call is not urgent, it could wait till the morning, I ask them to contact the Director of Microbiology and tell them that I'm not authorised to come in for that call. And if they can contact the director then he will say: I'm sorry, they're not coming in for that. If they can't contact the director then I must go in. If I can't talk them out of it and I can't get somebody else to say that it's not authorised, then I must respond.

So the Director of Microbiology takes calls during the night as well?... Yes, if there's a call, you know, in the night that I'm sure is not required, then I will direct them to call Dr And he actually will, you know, screen the calls out to decide what is necessary and what isn't. We try and avoid that if we can but you can spend 15 minutes on a phone trying to convince the doctor that the test he has asked for is not necessary.

You mentioned a process of screening calls. Is that continuing at the moment? I notice in the - or a part of roster - the agreement, there's a review mechanism in place to look at the efficiencies associated with the roster. Are there continually reviews going on? Your roster has been in place for how long now?... It's been in place since November last year and it's a 12 month trial period that we're operating under at the moment, and that's constantly being reviewed. So we have Tuesday morning meetings, weekly meetings where the staff will put any ideas they have to improve that roster. We've just changed some of the weekend work that we do because of that and we now bring clerical staff in of a weekend to - they enter the specimens all through the week; they're obviously faster of a weekend doing that and we find that we can now accept routine specimens of a weekend up till 12 o'clock rather than 10.30 because of that. We also are looking at - the director is looking at getting a modem in which case he'll be able to screen all our calls as well. So it's constantly being reviewed.

Is that designed - the modem issue, is that designed to further try and reduce the incidence of on call?... Yes, because if he wants - he's going to get a modem so that he can access all the patient data and including clinical details, clinical notes, from home. So once that happens all calls will go through the director before we're actually called out. Now instead of calling us they'll call the director. He will screen them, decide on whether it's necessary and then call us.

COMMISSIONER WATLING: So in your opinion, how much of a reduction in call back would that be?... For us at the moment we screen the calls fairly well as it is. But we can't see the clinical picture, we can't be at the bedside so there are things that we would come in for that theatre take and we have no way of knowing whether that's necessary. Most of what we come in for are CSF's but I would think, in microbiology or in the whole of pathology, are you talking about?

Well in your immediate work area?... In micro, yes, just for our department, it would have to cut back probably one or two a week but then we only have probably five calls a week for our whole department.

MR AIKEN: Thanks. In your opinion, what would be the reaction of employees if the call back provision was varied in the way the agency has applied?... There's outrage that the suggestion to vary it has even happened.

COMMISSIONER WATLING: Have you actually seen what the agency wants to do?... What I've seen is that it was back to 2 hours instead of 4 and that it would be retrospective to the 1st December.

Right. If I put it to you that it was not 2 hours and was 3 hours, would you still be so outraged?... Yes, I think if you're expected to respond in the middle of the night, the time that you put on your sheet is the time you're actually in the hospital; it's not the time that you're woken up, that you get up, get dressed, travel in there. I mean, the middle of winter it's not very pleasant. As it is you get home, quite often you lie awake and look at the ceiling because you can't get back to sleep. And the calls - you get paid for the calls you come in for but you don't get paid for the ones that you're woken up asking: what sort of container will we put the specimen in or, you know, what do you think we should do with this person; they're doing this, that and the other? I mean, all the ones you don't respond to you don't get paid for. And I think 4 hours is a minimum.

Fine. Would you prefer not to work on call?... I think everybody would prefer not to work on call. I mean, my family wakes up in the middle of the night when the phone rings. I've got two daughters. The whole household is woken up. You

know, like I say, getting up in the middle of the night it's very stressful; it's not very pleasant. I mean, if there wasn't the need and patients wouldn't suffer by not having the system, then nobody would want to do it.

Just as an aside, do you get paid or recompensed for use of your telephone?... No, that's one other thing that they've managed to take away from us. We're required to have a phone. You know, we've got a pager but if a pager goes off in the middle of the night, what do you do then, get up, get dressed and go to a phone box to make a call. They've put a 008 number in but you would have to do that if you don't have a phone on. So we were getting our rental reimbursed but that's now stopped as well. But we're still required to have the phone on. There's no way a 008 number has changed that.

Fine, thanks, Karen.

MR WATSON: Karen, can you just go back to the reason why the roster was put in for microbiology? I just didn't catch that?... Right, because we weren't working under a shift system we didn't get any rostered days off. So therefore you worked 5 day week and then you worked weekends as well. So every time you worked a weekend you're working 12 days straight and if somebody couldn't work because they were sick or for some other reason and you had to work two weekends, you're then working 19 days straight, and on and on it went. And the amount of stress that that led to and the amount of sickness because of the stress meant that we just had to do something. It was impossible for staff to continue working under those conditions.

Right, so you're saying that the roster was put in place to allow a break - to allow people to have time off. Is that what - so as you can break continuous - ?... It was to alleviate the stress initially and we also found that that smoothed out the work load through the week as well. We didn't have that build up on a Monday because you didn't - of a weekend we didn't perform all tests that we would through the week so on Monday you'd have a big build up of all the work that had been taken over the weekend and not done. And so it provided a better service as well. We extended the hours. I, by agreement, start at 7.00 in the morning and I can get a considerable amount of work done before the phones start by doing that. So there are all those sorts of things brought into it and we felt it was a cost saving as well, it would help.

Okay. You said that you believed that 4 hours is reasonable and that should be the minimum. Is that - did I get that right?... Yes.

Okay. What about for a second recall, what do you think the payment should be there?... Well as it is now, 3 hours at double time.

Okay. And is there any reason for that?... Well because once you've already been woken up, you know, I don't see that the call should drop back. I mean, if you want to increase it, feel free. But if you've already been woken up and then you've got back to bed, you've tried to get back to sleep and you may or may not have and then the phone is off again, you're back in again. I mean, that can - and we have an 8 hour break but that 8 hour break starts at 5.30 at night, it doesn't start at a normal time that somebody would go to bed. So it's quite possible that you will actually get an 8 hour break and get very little sleep and you still have to turn for work in the morning. So, you know, considering the disadvantages to being on call, I think there should be a suitable remuneration.

Okay. What about, for example - let's say, for example, a policeman or an ambulance officer is on the same on-call pattern as you and has the same call backs, do you think you should get the same remuneration?... Without knowing the work situation and things like that, I don't know -

No, but exactly the same pattern as yours hypothetically?... The same pattern, the same stress level, the same everything, I think they should get at least that, yes.

Okay. When you talked about responding to phone calls - like if the phone rings at night then you may respond to a phone call but you might not actually go back to work, is that - well first of all, what's your view on how that should be remunerated?... What, so if you get woken up in the middle of the night. I haven't really thought about that I don't suppose. It would seem to me one of the things that the 4 hours was meant to cover. But then you're never quite sure. You don't know how many times you're going to be woken up. And I think, you know, the fact that the phone rental was paid at least helped a little bit but you've taken that too.

In relation to your recalls - this may be difficult to answer, but is there any pattern to the period that you actually spend at work when you're recalled? Like, is it an average of 1 hour, 2 hours, 5 hours? Is there any -?... For microbiology, which is different again than other departments, we would be in the hospital for on average an hour and a half to 2 hours, on average. It depends whether when you look at the specimen whether it suggests an infection then you have to do follow-up tests. If you do you're there longer. If it doesn't suggest that you don't have to do those follow-up tests. But on average it would be an hour and a half to 2 hours.

Okay. So what do you think about the notion of the employer paying for hours worked?... I don't think that takes into account the other - you know, the side elements of it, I suppose, you know, where you are woken up and you've got to get up, you've got to get yourself alert, you've got to drive in and then you've got to get home and try and get back to sleep. I don't think it takes those sorts of things into account. And it also doesn't as much compensate for those calls that you don't come in for.

Do you - in your personal situation, you're a medical scientist, your position will translate to the professional stream. Is that your understanding?... Yes.

Do you know roughly what level? I mean, I've got no idea, I'm just - ?... I would think probably P2.

So level 2?... Mm.

And do you know what sort of increase that involves?... Not really. It does involve an increase - it's a few thousand

Okay. Your understanding of the exercise that we are going through now in relation to the conditions of your employment - do you have any views on what we should be doing with existing conditions of employment? Like, should - well, if you will just answer that one first?... With the conditions of employment as they stand now -

Like - should it just be a case of getting the Hospital Employees Public Hospitals conditions, taking them across and saying, 'Okay, let's have those with the new salary rates', or should we do a review or how - ?... I think if you were having new awards then you can look at things and see if it is the appropriate system. I mean, you know - it doesn't necessarily mean that you just throw something in because it has always been there, but I think if you're looking at it in total in monetary terms for saving money then you're coming at it from the wrong angle. You've got to look at it from an employee's point of view as well because as a good employer that should be a consideration; it should not just be how much money you can save.

Okay, thanks commissioner.

COMMISSIONER WATLING: Could you take me through the system - and you may have experienced it - if you finished at, say, five o'clock one night and then you got a call back, say about eleven, and then you got another call out at say two or three, when would you start work again the next morning?... At eleven, at two or three, you haven't had an eight-hour break until after that time so it would be eight hours after your last call, if that was the case.

So you still adhere to the eight-hour on the call back?...
Yes. Well we - yes, I would and people within micro would.

So in that case, you'd be trying to sleep at a different part of the day?... That's right. The biggest problem comes when you would get a call at - I'd better calculate this - six and a half at two in the morning because then you've had your eight hour break and it doesn't matter if you get another four after that, that's bad luck, you turn up for work because your eight hour break starts at five thirty, so you know - or if you were called out continuously once you'd finished work until one in the morning, but again that's not as big a problem because at least that's a more normal, a more natural time to sleep, but if you - you know you don't go home and go to bed at five thirty. You go home and you get tea and you organise children, you do all the things that you have to do. If you've got reading from work you do that and most people go to bed at about ten or eleven, I would think, and then you try and get some sleep, so if you get a call at two o'clock in the morning, you've had three hours sleep if you got to sleep straightaway and you have to front for work in the morning at your normal time.

The award currently contains a provision for a minimum payment of four hours for the first call out. What do you think is comprehended in the payment of that money? What do you think you're getting the minimum call out of four hours for? What this supposed to reward you for?... The inconvenience of - I suppose one of the main things is having to live within such a short distance of the hospital and -

Yes, you might just elaborate on that. Have you received some instruction along those lines?... I haven't personally been - you know - I haven't signed anything to say that that is what happens but it is an understanding that to work there you must live - you must be able to respond within fifteen minutes and Richard Hughes who is the Human Resource manager during the time we were talking about our modified shift said quite clearly that that was the case and that you must respond within fifteen minutes.

Right. So what if you couldn't respond within fifteen minutes?... What, if you lived somewhere where you couldn't?

Mm?... Then you shouldn't be on the roster.

So you wouldn't be invited to be on the roster?... No.

Is that a way to get out of being placed on the roster?... No, not really. It is part of your -

Buy a house further out?... Well, it's probably very tempting for some people but as part of your conditions of employment

you're required to be on the on-call roster and to meet those - to meet that requirement you must live that distance. We have somebody who actually until very recently was on the on-call roster and lived - bought a house at Triabunna and had to travel in and board in town, so I mean she was quite happy to travel each day - this was in a different department - but quite happy to travel each day to work but to call had to live within fifteen minutes so therefore had to board in those nights.

Right. Now you've - I interrupted you because you told me that one of the compensatory factors is that you've got to be within fifteen minutes of your employment?... Mm.

Anything else?... The inconvenience of having to be by the phone. We do have a pager but you still need to be by the phone so that can talk to the doctor, find out the clinical details. It is quite restrictive on your social life. It's - you know - you couldn't really go to the pictures and in the middle have the pager go off; that's just not appropriate. Your family life is disrupted - you can be in the middle of cooking tea and you're called out; your family is woken up in the middle of the night because the phone rings. It's cold and miserable in winter. Most people don't - wouldn't relish the idea of being up several times through the night when there's a frost and the wind is pretty strong, and there is a large amount of stress involved in responding to what you know is an urgent result, is an urgent test. You know that somebody at the end of that - you know - where the test has - where the specimen has come from - is in a critical condition and that your result is going to have a bearing on what is done with those and for people in transfusion that is a bearing on whether that person lives or dies, so there is a huge amount of stress that is placed on you, while you are performing that result and while - you know - and a time restriction, and you have to be - you have to be accurate, so you have to be very alert no matter what time of the night it is and you have to be very accurate and you have to be very fast and so there is a large amount of pressure and a large amount of stress because of that so all those things, I think.

Right. Now if you were called back and you were in the midst of the four hour for which you were being paid, after one and a half hours or two hours, someone said to you, 'Look I want you to do another job whilst you're here', do you feel that you should be paid for another call back?... Well, we're not at the moment.

Right?... We're - if you are in the hospital you do the work and you stay until there is nothing else to do.

Right. So if you're called back whilst you're on call back, in fact if you've returned to work and you are called back again, and someone says they want you to stay on, do you think

you should receive another four hours pay?... Not unless it's at the end of the four hours that you're paid for. If its within that four hours, no. If that happened too often, I might change my mind.

Right. Any further questions from the parties seeing that I've thrown a few in? Any re-examination?

MR WATSON: Yes, just on that basis, Commissioner, just one question. Karen, if - bearing in mind all that you've just said - if the hospital said, well, look we don't require you to be on the on call roster anymore, what would you say to that?... Hurrah.

MR AIKEN: I have just got one final question. Bearing in mind what you were saying about the disruption to personal lives and so forth, where do you park when you actually respond to a call? Where do you park your car?... Usually in the turning circle if there is a space there.

Do you? Yes?... Yes, we have a temporary parking permit. I have got a car park over at the Theatre Royal which I managed to get because I was starting so early and there were no buses but there's usually -

Do you sometimes have to park there or generally you?... Um yes, generally I try and get in the turning circle because it's the middle of the night; I don't want to be walking across the roads but there have been occasions, yes, but the -

There have been - and you don't have a security - or do you have a security guard to -?... Oh no. Oh no!

So there could - could there be occasions where you can't park in the turning circle and it's two o'clock in the morning or any time during?... Possibly, but I'd probably tend to go up on the lawn, I'd think, rather than - I mean, it's too dangerous.

I think that's more force of personality in that case, isn't it Karen?... Yes, probably yes. It's dangerous to be any distance away in the middle of the night, so -

Right, fine, thanks.

COMMISSIONER WATLING: I have no further questions, thank you very much. You are free to stay or do whatever you wish. Mr Aiken.

MR AIKEN: Thank you, Mr Commissioner. I find it amazing and rather ironic, given the current cooperative arrangements both the unions and - well, unions and management are currently involved in through the memorandum of understanding that the department is embarking on what I clearly would contend to be

a money grabbing, or money saving, exercise in this case over this particular condition. An adjunct to the memorandum of understanding which has been mentioned previously today -

COMMISSIONER WATLING: Well, what part do you reckon is the money grabbing exercise?

MR AIKEN: Sorry, just to -

COMMISSIONER WATLING: If you look at the claim itself?

MR AIKEN: Well, firstly in relation to the issue clearly of retrospectivity, Mr Commissioner, and the reduction from - the reduction in the entitlement as it is specified within the hospital employees award. My contention would be that that is -

COMMISSIONER WATLING: Are we really talking about the reduction from four hours to three hours?

MR AIKEN: Yes, and subsequent payments. Basically a reflection of a condition as it applies in the Hospital Employees Public Hospitals award and the issue of retrospectivity. That quite clearly is a money grabbing exercise; it can't be anything else. An adjunct to the memorandum of understanding is a work place change and translation agreement. This agreement - and unfortunately I haven't got it with me but I can provide that at some stage if you so wish - this agreement specifies employees will be involved in a reform process identifying efficiencies and inefficiencies and proposing change. Basically it is an outline of the workplace reform process.

In return the employees will be translated to the new award, that is a new streams in the witnesses case, the professional steam. That translation by no means guarantees salary increases to anybody and the agency has been advocating this view to employees consistently. In fact the department has been insistent on employees identifying reforms and not considering the dollars of their individual classifications, so that in effect when looking at drafting position descriptions, disregard of dollars, look at the functions and the standards to get an accurate assessment of where you translate. Try and totally disregard that.

Now we have the irony that I mentioned previously, the minister's advocate is seeking to alter a condition of employment on what I will contend, once again, to be no other grounds than financial. There have of course been the comparisons. Employees are required to adhere to a comprehensive reform process, yet the agency is not willing to reform its own processes or systems and reporting lines. For some time employees, but more particularly members of a federation, have been attempting to have management address

problems with the on call systems. The problems with the on call systems are not the amount of money paid to employees. One must remember, in our opinion, as demonstrated by the witnesses, the money is paid for the inconvenience of disruptive nights, disruptive personal lives, cold nights, tiredness, stress associated with providing urgent test results under enormous pressure, particularly as Ms Griffiths pointed out in one of her examples.

Further, I would contend, as I did previously, this is a deterrent to the employer to ensure minimisation of calls. It must be remembered call back is designed to meet emergency situations. In the acute care environment, that can be almost an every day occurrence. Many employees involved with on call will admit there is fault within a design of a system but certainly not for compensation. In fact many believe a payment for on call should in fact be more than the current four hours as prescribed within the award.

If the money is so attractive, why is there sometimes difficulty in filling on call rosters? Once again, particularly Mr Byron indicated that that can be a problem. A lesser remuneration as proposed by the department may in fact see more people unwilling to be on call, as evidenced by the witnesses. We could get the situation, if we look at the other situation associated with that as well, where there are in-house restrictions of people having to respond within a certain period of time. That is a further restriction and inconvenience on their person life.

I have numerous areas including haematology, microbiology and medical imaging - I haven't brought anything actually, Mr Commissioner, as you've realised in relation to the medical imaging of the Royal Hobart. I could of course at any stage bring witnesses from that area to talk about their systems while they brought it in place, but you can have my assurances that it is similar to the reasons for the other two labs.

One of those areas, together with radiology and pathology at Launceston General, moved to modified shift systems at instigation of federation members. Surely, I contend, these questions indicate the department has only used one management tool, one management measurement tool, at its convenience to look at call back, that is a financial indicator. Unfortunately this management tool used in isolation to others, doesn't present a real picture of where problems lie. Clearly by looking at the financial payout the department is - sorry, skip that.

We've heard, Mr Commissioner, that the department has only looked at the cost implications of call back. That has been my contention. It has not looked at the root cause of the problems. From the evidence presented by my credentialled and reliable witnesses, one can conclude the department has not

talked to the parties involved in call back, otherwise it would have been willing to discuss the management of the systems. Instead we have seen workers, through sheer frustration, take matters into their own hands and demand the implementations of systems which have extended the hours of operation in some cases to 11.00 pm and midnight.

This has, in effect, reduced the on call, call back payments. Surely from what you have heard you must concur that the majority of people involved are not motivated by monetary gain, however are motivated by commitment as professionals intend on delivering an expert service but balanced with a need for a personal life. If I could just refer back to some of the examples, some of the exhibits that I actually tended, if we could go to A.3 which is in relation to haematology, that is in August - and unfortunately I cannot tell you the date - I photocopied it quite badly - but that is where we have indicated to the hospital management formally that employees within that area are frustrated, in some cases working twelve days straight, and that the situation is starting to take a toll on personal lives and working lives.

I can assure you, Mr Commissioner, there was a degree of frustration within that laboratory that people had to actually work twelve days straight, that the on call system actually contributed to that. Now if we turn to A.4, which is a letter from Mr Lindsay Pyne the chief executive officer at the Royal Hobart Hospital, he is also assistant regional director and the manager of the acute care program - he has indicated that - and it was some time after my letter - but he has indicated in the second paragraph he is looking into the matter with some urgency and that, in the last line, the last part of the last line of that second paragraph, we could discuss what appears to be a general concern amongst pathology staff in relation to the after hours work load.

Now there is a general acceptance in that letter. I would content that management recognise that there was a problem within that laboratory. However, that was at a local level and once again it was instigated by the employees taking the matter in their hands. Further, I would also indicate in A.6 that Mr Martin Jarman who is of course known to this Commission, has indicated in paragraph two, and I quote:

I would like to take this opportunity to thank staff - this is in relation to the microbiology roster

I will start the quote again:

I would like to take this opportunity to thank staff for their cooperation and time involved during this exercise and compliment them on their willingness to investigate opportunities for

achieving cost savings, improving working environments and overall efficiency.

The department - oh, end of quote, sorry - the department has not met the requirements of effective management. It has found the deterrent of four hours to be a cost impediment. However instead of looking at the real issues, it has decided to reduce the financial figure by simply reducing the payment. It will still demand the same of employees; it will just pay less. The employees have acted in good faith, demonstrating they don't really want to be involved in call back. Once again my witnesses have demonstrated that, that why should they have a financial imperative imposed on them - that's the employees - simply because the department appears to shirk its responsibilities of effective management.

We have heard how laboratory management and employees have worked and continue to work to address work issues, particularly those related to call back, but they can't totally address the problem with the originators of the calls, but why should the service providers - that is, the people on call - be punished. An important component of a modified shift system is the review mechanisms. This has given the opportunity for the laboratory management and employees to continually look at other cost saving measures. Further, as demonstrated in microbiology, the lab. management are looking at added ways of reducing the incidence of unnecessary calls, remembering of course it is not the service providers who generate the calls. This in turn will reduce the actual cost - just to refresh your memory, that was in relation to the director having the modum and screening every single call.

Accordingly, Mr Commissioner, I request that you dismiss the department's application and retain the condition as prescribed in the hospital employees award. I would go on, though, of course. The next point of concern in relation to this issue is the clause, and I quote:

The appropriate overtime rate shall be calculated with reference to the career range salary of a category of staff recalled.

This matter has already been determined, I am led to believe, Mr Commissioner, although - this matter has already been determined. Although I am no Latin scholar I believe this is referred to as *res judicata*, and he asked me earlier about a - the logo on the hospital. I believe *res judicata* means a previously determined matter.

Now this was determined by what I would consider to be a competent jurisdiction and matter number P.143 of 1980 refers - it was an application by the then director general to replace hospital employees, public hospitals principal award No. 6. On the 27th May 1981 the then Commissioner of the

Public Service Board, Mr L.A. Koerbin, dismissed a similar request by the department on the grounds that it is discriminatory. That occurred in 1981, as I mentioned. The department did not appeal with the decision; it has not tried to vary the conditions since and I would contend that any rights to appeal have since expired.

If it pleases you, sir, I will read the relevant section into transcript and I quote:

The controlling authority also wish to retain senior staff for call back and pay them at rates applicable to subordinate staff. For example, if a department head were to be recalled for a routine test, he would be paid at a rate applicable to a subordinate officer and not at his classified or authorised award rate, assuming of course he was eligible for overtime in any case. I consider the proposal somewhat discriminatory and not worthy of serious consideration, having regard for the agreement reached between the Director General and medical practitioners about inter alia overtime rates.

That's the end of the quote. Effectively what this would mean if it was agreed to is that only base grade professionals would operate on call. Redundancies have impacted significantly on the Department of Community and Health Service. Laboratory areas have also had to incur redundancies. This would mean that people would be operating under extreme pressure. Only base grade people would be on the on call system. Surely the department could not consider having people above base grade or above the career range actually on call, responding to calls, and not being paid.

COMMISSIONER WATLING: That's their proposal though.

MR AIKEN: Yes. It strikes me as being ludicrous, sir, working all hours of the night.

MR WATSON: Commissioner, sorry to interrupt, but I don't think that is in fact our proposal.

MR AIKEN: The Commissioner thinks it is.

MR WATSON: We're not saying that they don't get paid.

COMMISSIONER WATLING: Yes - they get paid, but they'll get their calculation for the purpose of the call back is different?

MR AIKEN: That's correct.

MR WATSON: Yes, so that's not what Mr Aiken is saying.

MR AIKEN: Yes, sorry - no, you're right. Sir, should the agency succeed in their application then we'll be faced with the absurd situation where people are paid less out of hours than in normal hours. There wouldn't be any compensation for the conditions that Ms Griffiths and Mr Byron have described previously. A person would be discriminated against purely because that person is of a higher classification. The agency wants to retain people of higher classification on call but are not prepared to pay them at their substantive rates. We would of course have some difficulty -

COMMISSIONER WATLING: Is that a submission to introduce what the police have introduced that over a certain level no one gets call back, no one gets a call back arrangement or call back pay?

MR AIKEN: I'm not submitting that but that was my understanding of the comparison that the department's advocate made in relation to the police award.

COMMISSIONER WATLING: Yes, but in the police award at a certain level they don't get any call back.

MR AIKEN: That's right.

COMMISSIONER WATLING: In the proposal put forward by the employer here that everyone, whether they are at a higher level or not, gets some call back arrangement. Now in the arbitrated decision in relation to the police, certain people at certain level don't get any call back; if you reach a certain level within your employ.

MR AIKEN: Well, let me clarify my position, Mr Commissioner, and that is that we want to retain the existing condition in all aspects of call back, on call, recall, that is, the existing condition as in the hospital employees award. Now, Mr Commissioner, I was going to discuss my concern regarding the department has not taken account of the standby and availability provisions of a general conditions of service award. Now I understand in relation to earlier discussions, that doesn't form part of a subject matter. However I would be reserving the right at some stage, some future stage, to actually come back to you, to this venue, this forum, and discuss the matter of stand by as a separate subject matter.

COMMISSIONER WATLING: It has always intrigued me, this argument of award hopping and I would have to say that it has never really been tested and it does beg the question, if there is an arrangement in an award that has been specially designed for hospitals, a) does the employer have the right to award hop, and b) if there is a similar clause relating to a similar subject matter, which one prevails? So I think if you were going to go along that line, I would also request that

you address all these issues because you may well be opening up something that may be wider than you anticipate.

MR AIKEN: I'm sure I'll get another night or two sleep - well, sleepless nights - out of this. I didn't sleep last night.

COMMISSIONER WATLING: Can I just make the point, it's not quite as easy as all of that, but I understand the argument but in my ten years on the bench I'd have to say that there's been some pretty torrid arguments over the years as to whether or not the employer has the right to award hop, and those of you that were around in the Tasmanian Museum and Art Gallery case may well recall some of the torrid submissions from the bar table and some of the torrid responses from the bench.

MR AIKEN: I certainly don't expect to change everything overnight. The final point of contention, from my point of view, Mr Commissioner, is the issue of retrospectivity. Although salaries and classifications are retrospective, there are no guarantees whatsoever that employees will receive a salary increase or classification upgrading. As mentioned previously, some work unit groups have already implemented shift systems; they have put those in place well ahead of the time that they've actually had to. The implementation of these systems has, and may in some cases, result in significant savings to the agency. However, in some cases, individuals have lost the potential for extra money. That has been weighed up, though, with the advantages to their personal lives and working lives in terms of reducing stresses and changing the environment.

The issue - so those people have actually - oh, as a result of this system members would lose significant amounts of money. However it has been determined by the membership that those systems should be put in place prior to translation, and it was put in place as a sign of good faith. The salary rates - sorry?

COMMISSIONER WATLING: The - or the department's argument really was along the lines of only those who got increases arising out of award restructuring would have a re-work of the recall arrangement, if I could put it that way, deducted, and not those people that didn't receive an increase.

MR AIKEN: I would certainly question the legality of being able to actually deduct money because my contention is that that retrospective payment is back payment, the retrospective payment, in terms of salary classifications, is back payment of salaries.

There are certain legal requirements that an agency or an employer must actually adhere to before being able to actually retrospectively deduct money, or deduct money from an

employees salary. I believe that is governed by the Financial Management and Audit Act and requires Crown law approval to be able to do those sorts of - before the employer as being the minister can actually do or undertake any processes in relation to deducting monies. Likewise there has to be the express permission of each individual effected by it to have that money deducted and that person can come to some form of agreement with the agency in relation to those.

I'd like to pick up on a point that you raised earlier, Mr Commissioner, and that is the fact that the salary rates were actually inserted in the new award by consent. There was agreement between the parties. There is no agreement between the parties related to the retrospectivity of award conditions, and on that basis I see that as being a totally different issue to the issue of retrospectivity of salaries. I would be requesting that should you find to change any of the provisions of the conditions in a manner not consistent with how I'm arguing, then I would expect that would be from the date of decision or a date after the date of decision to enable areas pay officers to come to grips with those new conditions.

In the minister's - or the minister's advocates - submission there was talk about efficiencies and conditions of employment, changes to conditions of employment plus the efficiencies identified by the work unit groups would actually, in these case, lead to the savings that needed to be achieved through - or to achieve cost neutrality. Now cost neutrality, as you would be aware, is a big issue. The - certainly organisation and I'm sure Mr Kleyn will say something similar - do not agree with the agencies contention, or the minister's contention, that cost neutrality has to be achieved in award restructuring and one of the main reasons there is a dispute between the two - the two of us or three of us - is the fact that how can you define the accounting period, what is the accounting period? Government in many cases thinks from financial year to financial year. We think over a period of time, over a period of years, that in fact the employer, through some of the efficiencies that will be demonstrated by the work units, will actually start to reap benefits. In fact, it will be something better than cost neutrality.

It is very difficult to actually even try and estimate the cost of translation to the new award. Number one, not all the work unit groups have actually finalised their proposals in relation to the new awards, or sorry, to efficiencies, and translations, indicative translations haven't been finalised. We are going through a process at the moment where that will occur over the next five, six, seven weeks. The minister's advocate also mentioned that there could be the possibility of closure of services in reducing the numbers of employees.

Whilst that is obviously of concern to an organisation such as ourselves, that has been occurring when there hasn't been any wages blow-outs. That has been occurring for the last three or four redundancy programs. The agency alone would have lost, in my estimate, somewhere between two and a half or three thousand employees or more. On that basis, I will end my submission, Mr Commissioner, and I would request once again that you reject the department's application, not agree to the retrospective granting of conditions, and reflect the condition currently contained within the Hospital Employees Public Hospitals Award within the Community and Health Public Sector Award.

COMMISSIONER WATLING: Good. Can I just - before you take your seat - ask you the question - a question in relation to nurses. Now it has been brought to my attention that nurses enjoy the same provision in terms of the minimum payment of three hours as the employer is submitting here. Have you any submission to place on why I should do something different for non-nursing staff as to nursing staff?

MR AIKEN: Well, I'm not overly familiar with the issue of nursing or nurses conditions; however, I would suggest that if those employees are responding in a similar manner to our members within the respective areas within the acute care environment that their conditions should be lifted up to the condition of a hospital employees award. I know that is out of your jurisdiction but I would expect that that would no doubt be acting as a deterrent to minimise calls and look at staffing levels.

COMMISSIONER WATLING: Yes. In terms of hospital environment, what would be the proportion of nurses to non-nursing staff?

MR AIKEN: I've no idea.

MR WATSON : About half and half.

MR AIKEN: Half and half, is it? Half and half. If the commission pleases.

COMMISSIONER WATLING: Good, thank you. Mr Kleyn, do you wish to get started now, or -

MR KLEYN : If the commission pleases, I'd prefer that we adjourn now given that it's ten minutes prior to the time we were going to adjourn.

COMMISSIONER WATLING: Right, and then that would allow Mr Watson to respond in the morning.

MR WATSON: How long do you reckon you're going to take.

MR KLEYN : Oh, I don't know, more than ten minutes I would think.

MR WATSON: Yes, because I'm - I mean, as far as I am concerned, commissioner, I'm quite prepared to stay to listen to Mr Kleyn's submission now.

COMMISSIONER WATLING: Yes, how long do you think you might go?

MR KLEYN : Well, I'd be more than ten minutes, Mr Commissioner, but I am also conscious of the fact that I have to be here again at nine o'clock tomorrow morning, and I request that I still need to make some contact with the department about that other matter.

COMMISSIONER WATLING: Right. Well, I think we might adjourn now and allow you to do what you have to do. We are reconvening at nine in the morning with another matter and we will follow on - I don't know how long that other matter will take; it is a report back. It would have been nice to get an early start. We might just go off the record for a moment.

OFF THE RECORD

NO FURTHER PROCEEDINGS RECORDED

HEARING ADJOURNED