

**TASMANIAN INDUSTRIAL COMMISSION**

Industrial Relations Act 1984

T No. 2652 of 1990

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

re structural efficiency principle  
- special case

COMMISSIONER WATLING

HOBART, 23 September 1992  
Continued from 22/9/92

**TRANSCRIPT OF PROCEEDINGS**

Unedited

COMMISSIONER WATLING: No alteration to appearances? No? Any preliminary matters? Sitting hours: today we'll adjourn at quarter to one again, we'll resume at 2.15, we'll adjourn at 4.30 again. Mr House?

MR HOUSE: Thank you, Mr Commissioner. During yesterday's hearing I addressed you on the society's application as set out in Exhibit H.4. In this process it became apparent that there are a number of editorial matters that we need to address concerning format and terminology. The specification of hours of work and the use of the term 'officer' are two examples of this.

Perhaps of greater import are your remarks concerning the need to include in the award comprehensive descriptions of work level standards for each grade and/or level in our proposed structure to enable the commission to properly determine relative and absolute salary rates for all categories in the award.

We will set about to develop such material, having regard to the commission's model professional employees award attached to the full bench interim decision of 29 November 1991 concerning award streams in the public sector. There is also some material available to us from other jurisdictions which we see is directly relevant to salaried medical practitioners which could be of assistance in this task.

At this stage I would have to say, sir, though, I am not sure how successful we'll be in those endeavours, given the special or different nature of the work of salaried medical practitioners and how we propose to fit it altogether. But I suppose that remains to be seen.

COMMISSIONER WATLING: Well, Mr House, I have got a document here that I have looked at and prepared for this morning on the matters that we have agreed on, the matters we have disagreed on, and the matters that you need to look at in the adjournment. I wonder whether it might be appropriate for all of us to examine that document so we know exactly where we are in relation to your claim.

MR HOUSE: That would be very helpful.

COMMISSIONER WATLING: Right. Well, we might go off the record to examine it, but we might go on the record when we have finished examining it just to make sure we include in the record that we know exactly where we are on the first day, or after the first day. Right?

We'll go off the record.

OFF THE RECORD

COMMISSIONER WATLING: Let the record show that we have had some discussion in relation to yesterday's proceedings, and we have come up with a list and the list is divided into three sections: matters agreed, disagreed matters requiring argument, and deferred matters for further consideration by the applicant.

And when I read into transcript the agreed matters I am really referring to the submission of the union, and that is that these following matters are agreed, and I acknowledge that we haven't heard from the employer yet. And they are: Title, Scope, Arrangement, Date of Operation to be left to the commission, Supersession and Savings, Parties and Persons Bound - and that's agreed that that's a registration matter and not up for discussion.

In relation to the definitions, still under the agreed matters heading: controlling authority, full-time medical practitioner, hourly rate, medical practitioner, ordinary hours of work - the first sentence only -, part-time medical practitioner excluding the provisos, postgraduate experience, senior qualifications - it's agreed, but with the deletion of the words 'or discipline', and temporary medical practitioner and weekly rate.

Clause 12 - Removal Expenses, and clause 14 - Payment of Wages, in respect to subclause (a) only. Disagreed matters requiring argument: Clause 14(b),(c) and (d). Clause 11. And the question of officers - the use of the word officers verus the use of the word employee or medical practitioner or practitioner. Under the heading of deferred matters for further consideration by the applicant we have:

1. Salary rate structure - including levels and grades within levels; the establishment of relativities one to the other.
2. Classification standards for each level in the structure - including definitions, appointments and promotion criteria, barriers within the levels and between the levels, broad descriptions of work to be undertaken in each of the levels, and progression and/or appointment from one level to another.
3. Residual definitions - and by that I mean after developing such a salary structure there may be a need for certain definitions.
4. Comprehensive hours of work clause for full-time, part-time and temporary employees.
5. Provision in the salaries clause for calculating rates of pay for part-time and temporary employees.
6. The Review Panel. Now, that's where we got to in yesterday's hearing, and now we will proceed with any matters that you wish to deal with today, Mr House.

MR HOUSE: Thank you, Mr Commissioner. I was saying before we went off the record and discussed the agreed and disagreed

matters we've reached a conclusion that we'll have to significantly recast our application, especially clause 7 - Definitions, Clause 8 - Classification Criteria, 9 - Salaries, and 10 - New Appointments and Promotions, and probably 13 - Allowances.

COMMISSIONER WATLING: You won't be actually recasting your application, will you, because the subject matter will be there -

MR HOUSE: We are not seeking to change it, but -

COMMISSIONER WATLING: - but the claim within the application may alter.

MR HOUSE: We are seeking to recast it in terms of some of the comments from the bench.

COMMISSIONER WATLING: Yes, but not the application. The application is to deal with the subject matter of salaries. You're talking about the claim within the subject matter.

MR HOUSE: Yes, well H.4, the document H.4.

COMMISSIONER WATLING: Yes. That's fair enough.

MR HOUSE: However, I don't believe that this exercise of recasting H.4 will have much of an effect on the fundamental differences between the parties and the need for the commission to arbitrate a very wide range of matters under the structural efficiency principle. Nevertheless, we have endeavoured to explain to the commission the nature and rationale for our version of a suitable Medical Practitioners Award.

And, as I have just indicated, coming out of that has been useful and helpful guidance as to where we should go from here. In this regard, we also look forward to learning more from the department this afternoon when it explains to the commission the detail of its view on how the medical award should be restructured. This includes the list -

COMMISSIONER WATLING: So, will you finish your submissions today?

MR HOUSE: I would hope so.

COMMISSIONER WATLING: Well, what about the deferred matters?

MR HOUSE: Well, it depends on -

COMMISSIONER WATLING: You are not going to be able to develop all this between now and this afternoon, are you? Well, you

may be able to, I don't know. It's just that it would be a bit out of my league to do it in a few hours.

MR HOUSE: Well, if that's the view of the commission -

COMMISSIONER WATLING: If you can provide me with a new structure -

MR HOUSE: Well, I can't provide you obviously with an application position, classification standards, this afternoon.

COMMISSIONER WATLING: Well, so that means you won't be finished your submissions then.

MR HOUSE: In those terms, yes.

COMMISSIONER WATLING: Well, why would the employer be responding this afternoon if you haven't finished your submission?

MR HOUSE: Well, my view is that we have indicated in principle and in terms of classification approach in some detail where we see the award going.

COMMISSIONER WATLING: Yes. Hang on. Look, turn off the record.

OFF THE RECORD

MR HOUSE: I might commence by talking about clause 14(b) and (c) and (d), just to try to tidy those up.

COMMISSIONER WATLING: We'll get into the merit of your clause.

MR HOUSE: Yes. Now, our claim in terms of 14(b), 'No deduction from pay instigated by the controlling authority will be made without the written approval of the officer'. The words there were carefully chosen in that if the employer was faced with a garnishee order from a debtor to the employee, then obviously no award provision could override that.

As I tried to explain yesterday when we had some useful discussion about the legal aspects of actually covering overpayments, our intention was that not that the employee would be absolved from the responsibility of making good any overpayment that's agreed is or was an overpayment. The problem we have is there's no protection, well in the award

anyway, to the employer seeking of the debt in a way that could be highly detrimental to the employee.

Now the words aren't perfect. I don't want to breach ethics but there was some discussion between us as to whether we could relook at those words. That hasn't happened but we still believe that there should be some appropriate provision in the award about deduction from pay.

COMMISSIONER WATLING: Right. Has there been a problem in this area before or have deductions been made without authority?

MR HOUSE: I'll have to seek instructions.

DR SENATOR: We believe so but we're not in a position to offer any substantive evidence at this stage. We could examine -

MR HOUSE: Well while it's not relevant in my wider responsibilities I have had, not so much complaints but enquiries from members about their position in relation to this sort of problem. So that in any event a comprehensive award might give guidance to members as to what their obligations and rights are. Perhaps I could seek leave to further consider that clause before I finalise my substantive submissions.

COMMISSIONER WATLING: So do you want to put it on the deferred list then?

MR HOUSE: Yes, please.

COMMISSIONER WATLING: Right. Well we'll put 14(b) on the deferred list. Right.

MR HOUSE: 14(c) -

COMMISSIONER WATLING: So that means we'll have to take it off the disagreed matters list. Right, 14(c)?

MR HOUSE: We would seek leave from the commission to remove that one given advice we've received about that since it was devised.

COMMISSIONER WATLING: Right. Will we take it off your disagreed matters list then?

MR HOUSE: 14(d), again there was some discussion but perhaps not argument. We believe again there should be provision in the award that clearly indicates what the employee's rights are in terms of receiving monies due and the monies - I can't recall but we would say shall be paid - all monies arising out of provisions of this award due to that employee as soon as

possible or in any case not more than 10 working days after the employee's last day of service.

Any payment of monies after such 10 working days will attract a penalty of 10 per cent compound interest per annum calculated on the daily basis. The penalty provision is there more to provide some sort of inducement to observance of this provision, rather than extract any more money out of the financially beleaguered department.

You asked, sir, yesterday about the incidence of this. Well again I haven't overnight been able to, I apologise, provide any substantive evidence. I would have to honestly say that I haven't had much, again in my wider duties, complaint about this particular problem. If the commission pleases, that completes my submission on clause 14.

COMMISSIONER WATLING: Clause 15 is really related to the deferred matters where one is looking at the progression or appointment from one level to another or within the levels.

MR HOUSE: 15 - Salary increments.

COMMISSIONER WATLING: It falls under 2 in the deferred matters.

MR HOUSE: Yes. Commissioner, that brings us to clause 16 - Part-Time Employees. Again this one probably needs some reformatting. However the principle involved in it is that part-time employees would be remunerated and receive other conditions available to full-time employees on a pro rata basis. It's a fairly standard provision, as I understand it, from this jurisdiction and other jurisdictions. I'm not aware of any disagreement from the other side about that concept but will have to wait and see.

On the question - sorry, that's (a) and (c) and (b) is the hours of work, overtime provision which again reflects standards elsewhere, that any overtime or penalty rates wouldn't accrue until the hours of a full-time person - standard hours of a full-time person have been exceeded. We've accepted that philosophy in other jurisdictions.

16(d), we believe, of course there should be job sharing subject to the approval - or operational requirements, of course. It's stated there it's subject to the approval of the controlling authority. We'd hope though that a reasonable approach and an enlightened approach was taken by the employer to enable this to happen where it is efficient and practical. I'm not aware of any difficulty from the other side on that other than where it is placed in our document H.4 may not be appropriate from the other side's point of view. So again it's probably more of a formatting editorial issue between us.

COMMISSIONER WATLING: I've just got a couple of questions in relation to that.

MR HOUSE: Yes, sir.

COMMISSIONER WATLING: It seems to me that that provision gives the employer the authority to implement a system of job sharing, right, if they so desire.

MR HOUSE: Yes.

COMMISSIONER WATLING: Would that be right?

MR HOUSE: Well it could be a system or it could be on an individual basis.

COMMISSIONER WATLING: Right. Well if that's the case you understand then there's - through implementing that clause that you're then saying that the employer can draw all the conditions of employment for a person that job shares. So you are happy with that? And I ask the question because if there's no provision in relation to a job share employee, what sick leave do they get, what annual leave do they get, what are their hours of work? All these types of things.

MR HOUSE: Again I thought that they would come in under the part-time provisions. By their very nature they're part-time employees.

COMMISSIONER WATLING: Well, if it - if it's a new concept, and that's where two part timers or a full timer may be sharing their job with another full timer to create a job sharing position, and then they are thus both converted to part time, or a part timer may share time with a part timer, or a temporary may share time with a temporary - do they become part timers as opposed to temporary? I'm -

MR HOUSE: Well I'd have to seek -

COMMISSIONER WATLING: - because there's no provision there I just don't know what it really means.

MR HOUSE: Well I'd have to seek instructions, but it might be that it's more - causes more problems than it's worth.

COMMISSIONER WATLING: Well it does - it does beg the question: if an employee is entitled to 10 days a year sick leave for example, do they share the 10 days or do they both get 10 days? Now in this provision it seems to me that you're arguing that job sharing can take place under this award -

MR HOUSE: Yes.



COMMISSIONER WATLING: - but the employer is charged with the responsibility of drawing up all the conditions of employment in relation to -

MR HOUSE: Well that certainly wasn't our intention. The only intention was that the management would have the prerogative to determine whether a job could be shared, full stop.

COMMISSIONER WATLING: Yes but then again, they might be award-free then because there's no provision for them. It's only the authority for the employer to implement it. Because it says nothing in this award shall prevent two or more officers sharing a position classified under the award.

MR HOUSE: yes.

COMMISSIONER WATLING: Right? It doesn't say they even have to work under this award. They share a position classified, so you look and see whether there's a classification in the award and then they can share that classification. It could be read to mean if there's no classification in the award you can't share those positions. So you can't share award-free classifications.

MR HOUSE: I'll have to seek further instructions, Mr Commissioner, on that one.

COMMISSIONER WATLING: Well we'll put job sharing on the deferred list. So clause 16(d).

MR HOUSE: The minimum hours of work. Well we believe that it's unreasonable that people may be called in to work for less than 2 hours without consultation at least, and we say, agreement between the controlling authority, the officer and the society. And, again, this is a fairly standard provision, as I understand, that there is a minimum because of course it's probably impractical for someone to come in to spend more time travelling in and out than actually working.

COMMISSIONER WATLING: So let's follow this through. The minimum period of work is 2 hours -

MR HOUSE: Yes.

COMMISSIONER WATLING: - they - but there can be an agreement to work less than 2 hours?

MR HOUSE: Yes.

COMMISSIONER WATLING: And the agreement is between the controlling authority and the officer?

MR HOUSE: Or the employee.

COMMISSIONER WATLING: Yes. What's this 'and/or the appropriate employee organisation'? Are they -

MR HOUSE: Well the officer - or sorry - the employee is prepared to agree -

COMMISSIONER WATLING: Then you also have to get agreement with the union?

MR HOUSE: No.

COMMISSIONER WATLING: Well what?

MR HOUSE: But if the employee feels it's an imposition then he or she may insist, and the controlling authority has got no option but to accept that the society will intervene.

COMMISSIONER WATLING: Is that what the words say? This talks about who - who is the agreement between? The agreement is between the controlling authority and the employee, full stop. Or is it between the controlling authority and the employee and the appropriate union? Or is it between the controlling authority and the appropriate employee organisation?

MR HOUSE: I get your point, but it could be with either in the way it's styled there, but the reality is that the employee can bring in the appropriate employee organisation.

COMMISSIONER WATLING: Right. Well why would you actually need that there if you had agreement between the controlling authority and the employee?

MR HOUSE: Yes.

COMMISSIONER WATLING: If there was no agreement it wouldn't come about.

MR HOUSE: Well as I'm instructed there is a potential for duress, in the experience of the society.

COMMISSIONER WATLING: Yes, right. Well I think that's probably a valid reason, but where do the - how do the words cater for that? The words don't cater for that problem at all.

MR HOUSE: Well if the officer - if the employee disagrees then there's no agreement.

COMMISSIONER WATLING: Yes, that's right, so it doesn't go ahead?

MR HOUSE: Well if - it doesn't go ahead. If the employee is told well he or she must, if you want to keep your job -

COMMISSIONER WATLING: Then there's a dispute about it?

MR HOUSE: - then all - all - that's - well that - yes, that -

COMMISSIONER WATLING: Right.

MR HOUSE: - that could be a dispute matter.

COMMISSIONER WATLING: Then the union would get involved in: why are you picking on Susie Jane when she hasn't agreed but you've threatened her. So the union then takes it either up with the employer or makes application under section 29 for a dispute settling hearing.

MR HOUSE: Yes.

COMMISSIONER WATLING: I just can't work out where the words 'and/or the appropriate employee organisation' can a), fix duress by the positioning of those words, and b), if you had controlling authority approval with the employee then it goes ahead. If you haven't got approval it doesn't go ahead. It doesn't fix up the duress problem. Those words - the addition of those words, quote, 'and/or the appropriate employee organisation', doesn't fix up the duress question.

MR HOUSE: Well -

COMMISSIONER WATLING: Unless you're saying to me that the controlling authority must get approval with the appropriate employee organisation. And if you are saying that, I would then have to say: well what right does the employee have in this? If you're trying to fix duress, maybe you're trying to say, you know: and if there's any dispute over this matter it shall be referred to the commission, or something. That is -

MR HOUSE: Well, we've got - yes.

COMMISSIONER WATLING: But I - all I'm trying to say is, you're trying to fix the problem. I'm not too sure you're going to fix it with those words, they're not fixing words.

MR HOUSE: Do you want to strike them out?

DR SENATOR: Yes, we can strike it out but the - the possibility of referring any words which would have the effect of putting it into clause 41.

MR HOUSE: Yes.

COMMISSIONER WATLING: It is taken up by grievance procedure anyway.

MR HOUSE: Yes, that's what we're just saying. I think, sir, we just strike the words after 'officer or employee and/or the appropriate employee organisation' be deleted.

COMMISSIONER WATLING: Right. Now with the minimum period of work for any day, does that mean they could have two or three starts in 1 day? So could you bring them in -

MR HOUSE: Split shifts?

COMMISSIONER WATLING: Yes? So you can bring them in for 2 hours - that's per the award - give them 2 hours off and then bring them in for another 2 hours?

MR HOUSE: Yes, that occurred to me when drafting it, that that might be a possibility but I don't know what the society's attitude to that one is.

COMMISSIONER WATLING: Well maybe if you're going to do something about it, you might want to say that there might be - there could be more than one contract in the day or more than one shift in the day, but only by agreement. I don't know.

DR SENATOR: Can we defer that one?

COMMISSIONER WATLING: Yes, it's worth working through.

MR HOUSE: Can we put it on - and again request that one to go on the deferred list please?

COMMISSIONER WATLING: Right. So 16(e). Now we move to 17.

MR HOUSE: Sir, as I understand it this is not an agreed matter.

COMMISSIONER WATLING: Right.

MR HOUSE: Obviously it's intended to, in the society's view, provide proper safeguards in terms of employment of contract employees. The first requirement is probably seen as an intrusion into management prerogative, but the society takes the view that there should be some process where it is aware of where people are being appointed under this provision which I think is a requirement in some other areas of the public service.

There have been instances I think in the profession in this state where this sort of employment arrangement has been reached. I know, I wrote - or I drafted a letter, on Dr Senator's behalf, or maybe even wrote it myself, about one

instance and I was told it was nothing to do with us. So, that's basically the motivation for that clause. We weren't even able to find out anything about it.

COMMISSIONER WATLING: Can I just be the sort of devil's advocate again. Are you saying that this particular provision is to regulate the employment of contractors?

MR HOUSE: Yes, it has that intention.

COMMISSIONER WATLING: Right. Well, that's what I thought, it would have that intention. Now, what authority do I have under our act to regulate the employment of contractors, and does that not conflict with the requirements of the State Service Act? Because the State Service -

MR HOUSE: I must admit I am not - I am still in the learning processes as to the legal and Public Service Act and regulations in this state, and what takes precedence over what and what things are excluded from your jurisdiction.

COMMISSIONER WATLING: Well, certainly the award will override the provisions of the State Service Act, but I think what I am trying to find out is whether they are actually employees or contractors in the true sense, and are we regulating the appointment of contractors.

MR HOUSE: Well, in the Commonwealth they often advertise jobs with the option of a permanent appointment, or they will be appointed as exempt employees, they are called. They are exempt from certain provisions of the Public Service Act.

COMMISSIONER WATLING: Like commissioners' associates.

MR HOUSE: It could well be.

COMMISSIONER WATLING: In the Commonwealth, that is.

MR HOUSE: Yes, that's correct.

COMMISSIONER WATLING: Yes, they are, because they are actually employed on a full time, but they are treated as casuals.

MR HOUSE: You reminded me of that; yes.

COMMISSIONER WATLING: Right, well that's an example.

MR HOUSE: So, really I regard them as employees but they have got no indefinite tenure. They are, as I say, fixed term employees.

COMMISSIONER WATLING: Right, well let's follow this through then. If they are not contractors in the true sense, because if they were contractors in the true sense they -

MR HOUSE: They could come and go as they please, sort of thing.

COMMISSIONER WATLING: Well, there would be no employer-employee relationship for starters, they would be contractors. It gets into the argument of whether it is a contract of service or a contract for service; right? And then if they are employees and being employed for a fixed term aren't they temporaries in accordance with your definition?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. Now, remember earlier I asked a question about - you've got conditions for part timers and you have got conditions for full timers but there were no conditions for temporaries. This is a condition for temporaries, if they are employees. It's regulating the employment of temporaries, as defined.

MR HOUSE: Yes.

COMMISSIONER WATLING: But that's if we are talking about employees as opposed to contractors. You would probably have to examine whether it's a contract for service or a contract of service to really analyse whether or not these people should be covered by an award provision. Because if they are contractors in the true sense they are really self-employed, and there is no employer-employee relationship and, therefore, I'd be excluded in dealing with these matters under our act.

I am not too sure of their actual position, and therefore it would make a huge difference in relation to the argument. But if they were employees with a set term you'd have to say they are very close to your definition of a temporary, and you're including in the award conditions of employment for temporaries.

And, just as you have a provision for part timers on what they can do and what they can't do, and the little extra bits and pieces they get, you might be trying to tell me that there needs to be one for temporaries. I don't know.

MR HOUSE: Yes.

COMMISSIONER WATLING: But if they are contractors in the true sense, I am excluded from dealing with them.

MR HOUSE: Well, my understanding was it wasn't the intention to class them as contractors. Unlike some other groups, I find medical practitioners don't mind being placed on fixed

term contracts as chief executive officers or in the Commonwealth Repatriation Hospitals. Another union had objections to their being put on contracts, performance contracts, whereas the membership I was representing didn't seem to have the same objection.

So, it is just an alternative. They see it as an alternative, rather than going out into private business. They could be employees who choose to take the contract, as happens in the New South Wales public service, where I understand you have got that choice.

COMMISSIONER WATLING: Yes. And then it would depend on the act regulating state employees as to whether or not they were contractors or employees.

MR HOUSE: I am out of my depth there, except they are exempt employees in the Commonwealth. Well, I have to say -

COMMISSIONER WATLING: Well, maybe you have got to look -

MR HOUSE: - that we'll have to look at that.

COMMISSIONER WATLING: I think you are going to have to examine that in great depth because there are some very technical arguments there as to whether they are contractors or whether they are employees.

MR HOUSE: I seek leave to have that one included on the deferred matters, sir.

COMMISSIONER WATLING: 17, deferred.

MR HOUSE: 17(a), well I suppose the whole matter - to save the commission's time, the whole matter should be looked at, the whole section.

COMMISSIONER WATLING: Yes. Well, even when you get to part-time officer, a part-time officer could be appointed on a fixed term anyway. The term might be that you do every Monday and Friday, sort of, 52 weeks of the year. That's fixed.

MR HOUSE: Well, I suppose that was motivated by our insistence on permanent part-time work as distinct from casualisation - casual.

COMMISSIONER WATLING: Right. Well, I will leave you to have a look at that.

MR HOUSE: Hours of Work, 18(a): as I recall, that's (a)(i) is what exists in the current award. So, basically the justification there is the status quo. That provision appears to be working satisfactorily from our point of view. 18(a)(ii) -

COMMISSIONER WATLING: So you feel that it doesn't need any reviewing of the words? Are you happy with -

MR HOUSE: Well, as I said yesterday I think, the spread of hours from 7 am. to 7 pm. is fairly extensive, even in terms of -

COMMISSIONER WATLING: Oh, yes, I am not so much arguing about that. I am saying, even the verbiage contained in - well, example -

MR HOUSE: Well, we have got officers.

COMMISSIONER WATLING: No, what is meant by 'Monday to Friday inclusive shall be deemed to be part of the officer's fortnightly hours'? What does that mean?

MR HOUSE: Well this, I think, arose from where people work less than 38 hours in one week and more in the next week, more than 38 in the next week. That there was some, if you like, averaging out, in terms - it probably came up in the context of a 38-hour week. I wasn't around at that time. It was a structural efficiency, if you like, from the past. Now, that's the justification for it.

COMMISSIONER WATLING: Yes, but it doesn't allow for averaging, though, does it? Keeping in mind that we are looking at award modernisation and restructuring, and forget the span of hours, but just examine what it really entitles people to do. This is the time we have got to examine them, all the awards in depth. Put them into modern day language, get rid of ambiguities, sort things out.

If it is really meant to say that you can average 76 hours over a fortnight, well there is nowhere that says that; right? In your hours clause earlier, ordinary hours, you say, 'ordinary hours are 38 per week'. You don't even say in the definition it can be averaged out over a fortnight or a month. So, it's definitely - it's 'ordinary hours are 38 per week'.

DR SENATOR: Mr Commissioner, I think this, as Mr House has indicated, this arose I think from the second phase matters that were before you in the past, and I think the intent of this not only covers the areas that you have already canvassed but was to cover that situation where weeks on either side of a pay period were unequal in length.

And I wonder whether that might be improved, taking on board your comments about how we might look at the definition of ordinary hours of work, if we included the word 'pay' before fortnight in the third line.



COMMISSIONER WATLING: Well, keep in mind that you are dealing with hours of work here, right, and when you dealt with the question of pay you really have to make provision where the pays can be averaged, because otherwise one week they are getting underpaid and one week they are getting overpaid.

So, if you - and I don't disagree with the thing of averaging - I think that's a wise move, but if you average it out it means the employee's pay packet doesn't go up and down. But you should still give yourself authority to do it, and you need to do it in the payment of wages clause, and you need to do it in averaging hours over a fortnight or a month, and that's how you get the authority to do it.

So, you know, you need to pick it up in both. It's not just good enough to average out the hours because that means you still can't cater for it in averaging the pay. It might average your hours out, but one week you'll get, say, you know, 30 hours pay and the next week you might get the residue.

So, I think you could improve it there to look at the general concept - it is probably where you are better off looking at the chap who worked over a spread of hours of this to this, Monday to Friday, or, an average of 38 hours a week worked during the span of hours of this to this Monday to Friday, and could be worked in the following forms: 72 a fortnight, blah, blah, 140 something a month. You could do it that way.  
MR HOUSE: Yes.

COMMISSIONER WATLING: So that gives you authority in the hours clause to average your hours either over a week or over a fortnight or over 3 weeks or over a month. And then if you want that then you have to make sure you relate that back so pay can be averaged, wherein the event that they choose to average their hours in accordance with clause 18, and then the pay may be averaged. They do that in the ambulance area, I think, if I recall from my past experience in that area.

MR HOUSE: Well, sir, yet again can I seek for that one to be added to the list of deferred matters, please?

COMMISSIONER WATLING: Right. That's 18(a)(i).

MR HOUSE: 18(a)(ii): that is a safeguard to provide that people get adequate meal breaks, and that they actually get to take those meal breaks. There are special provisions where the meal break can be deferred, or paid for, I should say, in emergency situations, and we've added 'where an approved work requirement prevents the taking of the break'.

We understand that that latter aspect is not agreed. That's the one about approved work requirements. I'm instructed that

often situations do arise where people are required to work during meal breaks.

COMMISSIONER WATLING: That's because of the pressure of work or the matter they have in hand at the time?

MR HOUSE: Yes. 18(a)(iii): I understand that one is agreed, and that reflects the existing award provision. We didn't see any need to change it. There's the use of the word 'officer' again, of course, which needs to be looked at.

COMMISSIONER WATLING: Well, you are going to address that later, anyway.

MR HOUSE: Yes. Moving on to (b), the heading there is not agreed to the extent that we've included 'hospital', 'medical officer', and 'senior hospital medical officer'. In our view, it is part of the group, they are not part of the resident and registrar group as such, but they are working in the same sort of environment, if I can put it that way.

So we have grouped them in there in terms of hours of work. There have been some difficulties in New South Wales between the trainee group and the career medical officers, which we were seeking to avoid in this award.

COMMISSIONER WATLING: So you are saying that all those categories can be on a roster?

MR HOUSE: Yes. 18(b)(i) reflects the current award provision. The department wants to make a change there which we don't agree to. Well, I am not sure. Anyway, I am not sure, sir, what their position is on that, so perhaps I had better put - I don't know whether it goes on the non-agreed or not.

COMMISSIONER WATLING: Well, if you don't know you are better off arguing it out.

MR HOUSE: Well, it's simple. We contend that 9 hours is long enough, 9 hours' work is long enough within a 12 hour span.

COMMISSIONER WATLING: So you want that 10 changed to 9, do you?

MR HOUSE: No. It's not more than 10 hours inclusive of a meal break. We believe for occupational, health and safety, and all those sorts of reasons that 9 hours is a sufficient period that anyone should be required to work in the span.

COMMISSIONER WATLING: And, what, overtime would apply after 9 hours?

MR HOUSE: Yes.

COMMISSIONER WATLING: Or, if they worked prior to the span of hours commencing and after the span of hours completed? You cover it further down the line, anyway. All right, so you are making the point that the current provision should remain?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. 'Provided always' is that the current provision?

MR HOUSE: Yes, I am instructed that that is new. It's put a capping in terms of the total number of hours that people can be rostered. I am instructed there is no restriction at the moment.

COMMISSIONER WATLING: So, what are you telling me in relation to this, that they work more than 70 hours at the moment and 136 in a fortnight and 268, and you want them brought back to some reasonable level?

MR HOUSE: Where that occurs, yes sir. I wouldn't say it is universal, or I would hope not.

COMMISSIONER WATLING: Right.

MR HOUSE: There's still a degree of flexibility intentionally built in there, but in terms of reflecting conditions in some other state, we thought that we'd address the issue of putting some limit on it.

DR SENATOR: Mr Commissioner, in the current award provision it does provide for penalty payments to be paid to these categories of staff - I should say the resident medical officers and registrars - a penalty rate of time and a half for all hours in excess of 60 hours worked in any one week, but what we have sought to do is to, on the basis of occupational, health and safety, to focus on excess hours of work rather than the fact that they may be rostered for many - much longer hours and be compensated for that with some penalty. So in a sense I guess it was a trade-off, in our mind anyway, but concentrating on the occupational, health and safety aspect rather than remuneration.

COMMISSIONER WATLING: Right.

DR SENATOR: If the commission pleases.

MR HOUSE: 18(b)(ii) reflects the current award provision at subclause 12(d).

COMMISSIONER WATLING: That's the whole of (ii), is it?

MR HOUSE: A proviso has been added.

COMMISSIONER WATLING: That's a new provision, right. And the first paragraph is the existing provision.

MR HOUSE: Yes.

COMMISSIONER WATLING: I just might ask the question again in relation to the roster: the roster shall be mutually agreed between the controlling authority, the employee concerned and/or the appropriate -

MR HOUSE: Yes.

COMMISSIONER WATLING: What does that mean? Is it 'and the appropriate organisation'? Do you have to have the three of them agreeing?

MR HOUSE: Gordon?

DR SENATOR: Yes. I've been before the commission on a dispute arising from this.

MR HOUSE: Well, we can take it the commission -

COMMISSIONER WATLING: The reason why I'm asking some of these questions is that some of these things came up in - via other areas by agreements between the parties, right, and I've never arbitrated them and if I was to arbitrate them I would have probably asked a few questions, but a lot of them have been agreements that have been placed by the parties and the commission hasn't dealt with them.

And I've just acknowledge the agreement, and when agreements come to the commission you have to accept or reject them and you only get to deal with the public interest. But even though it might be there, it's different when it comes to arbitrating a new award. You have a tendency to have a look at what the words say because it's probably the first time you've got to arbitrate it, and if we don't really know what it means, well then maybe we should clarify it.

DR SENATOR: We've got the protection of the dispute mechanism, I guess.

MR HOUSE: Yes.

DR SENATOR: We'll just leave those for ....

MR HOUSE: Well again, sir -

COMMISSIONER WATLING: Even if you look at the roster -

MR HOUSE: Yes.

COMMISSIONER WATLING: - the roster with the controlling authority and the employee concerned, what if one employee says: I don't like the roster. Does that mean the whole roster goes out, or do all people on the roster have to agree, or does the majority have to agree?

MR HOUSE: Well, what's the practice?

DR SENATOR: Well the practice is they all have to agree.

MR HOUSE: I'm instructed the practice is they all have to agree.

COMMISSIONER WATLING: So we're looking at then, 'The roster shall be mutually agreed between the controlling authority and all employees on the roster'.

MR HOUSE: Yes.

COMMISSIONER WATLING: Or, 'All employees to be included in the roster'.

MR HOUSE: Well if those words could be added, please, commissioner, and we'd delete 'and/or the appropriate employee organisation'.

COMMISSIONER WATLING: Right. This might be an appropriate time to break for lunch.

MR HOUSE: Thank you.

COMMISSIONER WATLING: We'll adjourn till 2.15.

#### LUNCHEON ADJOURNMENT

COMMISSIONER WATLING: Mr House?

MR HOUSE: Thank you, commissioner. Before the luncheon adjournment, I was discussing subclause 18(b)(ii) of our supposed - of H.4 and we - as I recall it, we got down to the proviso to that subclause which is designed to provide a check mechanism in terms of where 4 week's notice - 4 week's in advance notice of a roster change hasn't been provided. In that event, one week's notice says:

Provided that an employee's place on such roster shall not be changed, except, subject to the availability of the officer, on one week's notice of such change or payment of the penalty rates more particularly set forth in Clause 18(B)3.

Of the proposed award.

COMMISSIONER WATLING: So you can change it if you pay them.

MR HOUSE: Pardon?

COMMISSIONER WATLING: You can change it if you pay them?

MR HOUSE: Yes.

COMMISSIONER WATLING: What's the provision meant to do; build in some protection or to give extra wages?

MR HOUSE: Primarily to discourage people not being given sufficient advance warning. The next item, subclause (iii). This requires payment for excess hours when not rostered, provided that those excess hours are justified by service requirements and also it does provide for retrospective approval in circumstances where there's not time or it's not possible to get approval prior to the event. I'm not sure whether that's agreed or not, Mr Commissioner.

COMMISSIONER WATLING: What do you actually mean by 'excess hours'? What's the definition of 'excess hours' - in excess of the span of hours -

MR HOUSE: In excess -

COMMISSIONER WATLING: - in excess of 38 hours; in excess of the 70 hours on the roster?

MR HOUSE: In excess of the hours prescribed, either the standard hours or the hours that are set down in the award.

COMMISSIONER WATLING: How are we supposed to know that from that clause? Or is it in excess of the 70 hours in one week in the clause above because it all falls under (b).

MR HOUSE: Well, all I can say is in excess of those prescribed in the relevant section of the award.

DR SENATOR: When they're rostered.

COMMISSIONER WATLING: In excess of the hours prescribed in (i) - (b)(i) clause 18 - (b)(i) of this clause.

MR HOUSE: Yes, but then there's the proviso there.

COMMISSIONER WATLING: So, it could mean, if it's (b)(i) it's in excess of 70 hours in any one week, 136 hours per fortnight -

MR HOUSE: Yes.

COMMISSIONER WATLING: - or 268 in two consecutive fortnight periods.

MR HOUSE: Yes, that's correct.

DR SENATOR: What if the roster is for less -

COMMISSIONER WATLING: So, doesn't that conflict then with 'in excess of 38 hours'?

DR SENATOR: - but if that's - but if the roster is only for 38 hours then it's in excess of ....

MR HOUSE: I'm advised, Mr Commissioner, if the roster is so constructed that it's only 38 in any one week - that's the normal expectation -

COMMISSIONER WATLING: Yes.

MR HOUSE: - then you'd accumulate excess hours. If the roster - it depends on how the roster is constructed and the person would have an expectation of ceasing duty in accordance with a roster and some emergency or some matter comes up, then if the person in charge or the authorised officer asks the medical practitioner to stay on, then they are entitled to be paid for those excess hours, that's my understanding. And if the supervisor is not available, then presumably the medical practitioner can seek to speak to him or her at a later date and explain the circumstances of why work - a person continued to work, and if that explanation is satisfactory, then it can be approved retrospectively.

COMMISSIONER WATLING: Right. Well that raises two points: 1) what do they get paid?

MR HOUSE: They'd be paid the overtime - the normal overtime provisions.

COMMISSIONER WATLING: Where do we find that?

DR SENATOR: Clause 4.

MR HOUSE: In the following clause.

COMMISSIONER WATLING: So I shouldn't read the clauses separately?

MR HOUSE: Well, again, as I understand it, sir, the -

COMMISSIONER WATLING: Clause 3 talks about excess hours, doesn't it?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. Clause 4 is a different clause. It doesn't relate to clause 3. It doesn't talk about 'clause 3 above'. It's a separate clause -

MR HOUSE: Well that's a general -

COMMISSIONER WATLING: - it stands alone.

MR HOUSE: I was going on to say that that - clause 3 relates to, if you like, overtime or excess hours that are anticipated. That's a specific reference to -

COMMISSIONER WATLING: Right. Well, what have you -

MR HOUSE: - unanticipated excess time.

COMMISSIONER WATLING: Well does that conflict -

MR HOUSE: Clause 4

COMMISSIONER WATLING: - with overtime then?

MR HOUSE: Sorry?

COMMISSIONER WATLING: Does that conflict with the overtime. Have you got a provision in here for overtime?

DR SENATOR: Excess hours is overtime.

MR HOUSE: Excess -

COMMISSIONER WATLING: Who said? Excess hours might be - it might be within the 70 hours, but it might be outside the 38 hours.

MR HOUSE: Well -

COMMISSIONER WATLING: Keeping in mind you told me that it was in relation to (b)(i), and (b)(i) in the -

MR HOUSE: Yes.

COMMISSIONER WATLING: - includes a proviso which says:

- the maximum number of hours rostered shall not exceed 70' -

So we must be talking at a rate that applies if you exceed 70.

The reason I ask is that it may conflict with the overtime clause which says you're eligible for overtime - and I haven't read it but it may say you're eligible for overtime if you work prior to or work after the start and finish of the span



of hours or in excess of 38 hours a week or in excess of 'x' number of hours per day.

MR HOUSE: Yes.

COMMISSIONER WATLING: So this could mean you get another excess rate, for what?

MR HOUSE: Well it wasn't intended - the clause 5 -

COMMISSIONER WATLING: Right.

MR HOUSE: - at the bottom of the page prevents that situation from happening.

COMMISSIONER WATLING: But that presupposes that penalty payment is overtime. Penalty payment may be for work on Saturdays or Sundays or public holidays which is penalty rate.

MR HOUSE: Well, my interpretation of that clause is any penalty payment there will be no double counting whether it's overtime or on recall or whatever.

COMMISSIONER WATLING: So is overtime a penalty payment?

MR HOUSE: Yes.

COMMISSIONER WATLING: Or is it overtime?

MR HOUSE: Well, I consider it to be a penalty payment.

COMMISSIONER WATLING: Right. Do you think it's possible to say that work on public holidays and Saturdays and Sundays could be penalty payments and working in excess of the span of hours or the excess number of hours per week, hours per day or overtime payments? If you really mean an all-emcompassing thing you might have to define what you mean by penalty payment.

MR HOUSE: Well overtime in my view, pure overtime would be paid - would be something paid that doesn't have any penalty. Like, a penalty payment is a penalty payment. It would be just a normal hourly rate if there was no penalty.

COMMISSIONER WATLING: So you're saying the excess hours is not a penalty?

MR HOUSE: Well, it may not be.

COMMISSIONER WATLING: That's why it's not clear in (iii) what it is. It just says it shall be paid but it doesn't say what shall be paid.

MR HOUSE: Yes, well we could refer to - it really depends on the particular award situation applying. You could say in accordance with the relevant section of this award.

COMMISSIONER WATLING: Well if someone gave it to me to interpret I'd go to the clause and I'd look at the clause and I'd probably say: Well all these stand alone, these clauses, especially (iii), it's a stand alone clause within (b), and it says: Excess hours worked. So I'd struggle around for a while to find out what was meant by excess hours. And I'd probably come up with two views that it could mean in excess of 38 or it could mean in excess of 70, with the proviso there. So it's either one or the other. When not rostered - so I take it, right, it's outside the hours on the roster - shall be paid such excess hours. And I say: Well that's fair enough. Now what do I pay them - anything I like or the current hourly rate or a penalty payment or double time and a half, triple time?

And then if I wasn't too sure then I'd probably then look at the overtime clause to see when one was eligible for overtime. See, most of this section is dealing with rosters, isn't it?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. It nearly could be a separate section of the hours. What you should really have if it was to follow nice and easily, is to have a section where we just talk about the hours of work, given that there's no roster, and a section where they're on roster. And you may have different provisions applying for those that are on roster, under the roster section, than you would for those that weren't on a roster.

But it seems to me that this section is jumbled up between those that may or may not be on a roster. And a lot of the provisions relate to roster, even when you move into (iv) it talks about - I can only take it that it means that people on the roster that work in excess of this prescribed weekly minimum outside the spread of hours shall be paid the following. Right? Or does that mean ordinary, say, just day workers?

MR HOUSE: Well, my understanding is that most of the trainee staff are rostered. That's a general understanding rather than specific to each hospital in this state. In New South Wales most of the career medical officers in the hospitals are rostered, however, given that the career medical officers - or whatever you want to call them - may be district or departmental medical officers, then you are probably correct, that it's all jumbled up.

COMMISSIONER WATLING: See, if you look at (a), (a) is the general thing about hours of work, isn't it?

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. Now if you go to (iv), (b)(iv), that could be nearly talking about just day workers; right? And you have to say: well, why doesn't it appear - if it's going to appear anywhere, why wouldn't it appear in (a) because (b) seems to start off talking about people working according to a roster.

MR HOUSE: Well that's because most of those people do.

DR SENATOR: The reason for that is -

MR HOUSE: You've got a general situation -

DR SENATOR: But you see there is no question about them being rostered if they are under (c), it is only - this is to take place for when the roster does not apply to them. They are still rostered people.

MR HOUSE: It does not apply to rostered people?

DR SENATOR: Yes. But how - it can only apply to rostered people because no others are on a roster.

MR HOUSE: Yes. Well (iii), I'm advised, if it's any assistance, sir, is that it only applies to people that are rostered.

COMMISSIONER WATLING: Right. Well, even if it does apply to people that were rostered it still doesn't answer the questions that I posed. Shall be paid what; and in excess of what hours?

MR HOUSE: Outside the spread. Do you want that limitation on it? I'm sorry, sir.

COMMISSIONER WATLING: No worries.

DR SENATOR: No, but it says 'in excess of prescribed weekly ....'.

COMMISSIONER WATLING: Do you want to have a look at redrafting it?

MR HOUSE: I think it might be better. Dr Senator -

COMMISSIONER WATLING: I think you've got to make a definite mark in this award between those that may be placed on, say, just day work and those that are going to be placed on shift work and rosters.

MR HOUSE: Yes. On rosters.

COMMISSIONER WATLING: And you are going to -

MR HOUSE: Well we could link - Dr Senator is suggesting that we might link (iii) and (iv) together.

COMMISSIONER WATLING: So that means if you link them together you've got people on a roster - so even if they're rostered to work on Saturday and Sunday they'd be getting time and a half and public holidays. They'd get time and a half and double time.

MR HOUSE: Yes.

COMMISSIONER WATLING: Right. What if they're not on a roster?

MR HOUSE: I'm advised that (c), section (c) is - people that are not -

COMMISSIONER WATLING: Well then, what force then does (a) have? See, you've got two provisions for people other than those on a roster. You've got those that come under (c) and those that come under (a).

MR HOUSE: Well (a) is generally - that's a general statement.

COMMISSIONER WATLING: If that's general that picks up all those that aren't covered on the roster. Who else are we talking about in (c) then? See, you've either got people on a roster or people not on a roster, as I would see it. What applies to people on a roster and what applies to people not on the roster?

DR SENATOR: Mr Commissioner, if it helps, as I see it, the general (e) clauses cover other areas, the spread and the provision of meal breaks and that's irrespective of whether these people are on a duty roster or not. It applies equally to people on a roster or those people not on a roster. Then, if you like, the break comes to those special provisions relating to individuals who are on a duty roster under (b) and then subsequently those people, other officers - sorry, other practitioners who aren't normally on a duty roster and contain the specific provisions regarding their - that apply only in those circumstances.

In other words, if we can foreshadow in C.2, for example, that's the method of dealing with excess hours worked by individuals who aren't subjected to duty rosters as an alternative mechanism for payment for those on a duty roster which are in (b) (iii) and (iv).

COMMISSIONER WATLING: Do you think it might be more appropriate to have provisions relating to sections in this hours section - provisions relating to those people who are on a roster and those people who are not on roster?

DR SENATOR: Well, Mr Commissioner, that's what I thought we had. One is (b) and the other one is (c).

COMMISSIONER WATLING: Well, I just say from where I sit, it is not obvious that (a) general is meant to be for people on roster.

DR SENATOR: Mr Commissioner, if we address that in terms of (a) and indicate that the 'generally' is in relation to both categories, whether they be on a duty roster or not. Does that clarify the -

COMMISSIONER WATLING: Well, if you did, then you'd have to then say if (c) was meant to pick up the people that were not on a duty roster. Is that the intention?

DR SENATOR: Yes.

COMMISSIONER WATLING: Well, why do we have to repeat then the span of hours?

DR SENATOR: Well, Mr Commissioner, there is a subtle difference in the spread of hours under (c)(i), and the crucial term there is 'generally'; and what we have provided for there with the proviso is that the Monday to Friday can be changed.

COMMISSIONER WATLING: Is that what that means, is it - generally?

DR SENATOR: Well, that really is - the proviso is the explanation of the term 'generally'.

COMMISSIONER WATLING: Right. It says 'always', but the daily hours - talking about daily hours, right - 'and the days of work shall be by mutual agreement'. So that means they could be - that could be Tuesday to Friday or Monday to Wednesday - but you're really saying it can be Monday to Sunday.

DR SENATOR: Yes.

COMMISSIONER WATLING: So, why don't you put Monday to Sunday then in the hours?

DR SENATOR: I think, Mr Commissioner, that what we wanted to stress is that usually these being day workers it would be Monday to Friday, but there may be circumstances where that extra flexibility is warranted for both the - for operative

reasons - but our membership might be content as individuals to make alternative arrangements.

COMMISSIONER WATLING: Yes. Right. Well, you are really talking about the daily hours worked; right? Now, when you talk about daily hours there, are you talking about 1/5th of 38? Is that what you believe the daily hours to be?

DR SENATOR: Yes - 7.6.

COMMISSIONER WATLING: Right. Now, so the usual daily hours, that's 7.6, and the days of work - now the days of work up here are Monday to Friday -

DR SENATOR: Yes.

COMMISSIONER WATLING: Right; 'shall be mutually agreed'.

DR SENATOR: Yes.

COMMISSIONER WATLING: But you are really saying from Monday to Sunday can be mutually agreed. So the days worked up there are, say, Monday to Friday; so down below in the proviso wouldn't you have to say, 'who work in excess of the 7.62 hours a day, or days other than Monday to Friday could be mutually agreed'. Or, are you saying, that if I want to work on, say, a Tuesday to Saturday arrangement, we have to mutually agree to those as well; or are you saying that anywhere where the Saturday and Sunday is mentioned they have to be mutually agreed?

DR SENATOR: Where the Saturday or Sunday is brought into play they have to be mutually agreed.

COMMISSIONER WATLING: Right.

DR SENATOR: The intention of these clauses, Mr Commissioner, is to, as I indicated before, was to provide extra flexibility for a service provision with a limitation of the penalty to be associated with that, and also in recognition that the current award is silent on issues of hours of work on Saturdays and Sundays.

COMMISSIONER WATLING: Yes, you are award free when it comes to that. Yes, I won't disagree. Yes. So do you still think there would be any mileage in looking at having - making it clearer in terms of those that were on a roster and those not on roster and having: a) dealing with all people that were not on roster; and b), dealing with all the provisions for people that were on a roster?

DR SENATOR: Mr Chairman - Mr Commissioner, that would require that all of the specifications for meal breaks would have to be duplicated between those two sections.

COMMISSIONER WATLING: Well it may well mean that. I'd have to say if I was out in the field I wouldn't be able to work it out. I wouldn't be able to work it out. I wouldn't know - and you've explained it to me what you believe it to be, but if I think I was an employee out there in the field I would have difficulty understanding which part belong to day workers and which part belonged to rostered workers.

And if I was a non-rostered worker, I would like to be able to look up my contract and see exactly what I was entitled to, even if it included everything, in relation to hours of work. What hours I would be required to work, what span I've got to do them in, and when the provisions of clause 'x', 'y', 'z' overtime payments might come into play and when the provisions of clause 'a', 'b', 'c', Saturday and Sunday and public holiday work penalties come into play.

But I would never guess that it's supposed to read general for Divisions B, and Divisions C - or subclause (b) and subclause (c), and I'd have to say that if it was meant to be general for both, there would be a conflict in the opening paragraph of (b) - of (a) and the opening paragraph of - or the proviso of (c).

DR SENATOR: Well ....

MR HOUSE: Yes. Sir, we agree that that matter should be included in the deferred matters and -

COMMISSIONER WATLING: And you might end up with a heading (a) might be hours of work - even if it stayed general or even if it was non-rostered employees, and (b)'s heading might be rostered employees. So you've got a set of conditions for each.

MR HOUSE: Could we still have a general preamble?

COMMISSIONER WATLING: Well, put it this way, if you want to make it user friendly and it's all right for people that deal with these things all the time and they have some general understanding, but if I was the employee, I'd just like to go to my contract and see what I was entitled to. I'm not to know that that 'general' means general to rostered people and general to non-rostered people, unless you have some explanatory note that 'general' means that it applies to rostered and non-rostered people.

MR HOUSE: Yes.

COMMISSIONER WATLING: For the sake of probably two extra paragraphs you might like to -

MR HOUSE: Yes.

COMMISSIONER WATLING: The other thing, when you're dealing with meal moneys and things like that, why would they come under a rostered clause and not a general clause dealing with meal moneys, if you were to deal with that - you know. I don't know, you mightn't have anything to do with meal moneys in these two things, but if you were it might be catered for elsewhere.

MR HOUSE: Just as a general observation, in the ACT we had one award that covers all salaried medical practitioners and we're trying to restructure that. They also have what were called 'community medical practitioners' and ironically are now called 'community medical officers' which are salaried GPs, so there's a third sort of group, and having - that's probably to have them all in the one award is good because you have the one document, but you run into these sorts of problems where conditions differ.

The - in New South Wales and Queensland the parties are endeavouring - where they have three or four awards and perhaps even a fifth VMO Agreement which is not - in Queensland - registered but not part of that exercise, so I just make the general observation that having separate awards perhaps helps these sorts of problems but where you have everyone in the one award, you've got to take account of it as you say.

COMMISSIONER WATLING: Yes. Well if it's a generalised award it has to be clear for everyone under it, and everyone has to be able to use it. That was part of the restructuring - award modernisation and to make it user friendly.

MR HOUSE: Well, that's what we'd like to achieve.

COMMISSIONER WATLING: I think so. Under hours - if you just redraft it and cater for the hours for people who are on roster and people who are not on roster.

MR HOUSE: Yes.

COMMISSIONER WATLING: And that means you'd have to make the headings very clear. And even if you didn't mention in (b) all these other people, it would be for anyone that was on roster.

MR HOUSE: Yes.



COMMISSIONER WATLING: You see. And the others would be for those that are not on roster. It doesn't matter who they are. I don't know, it mightn't be what you want.

DR SENATOR: Mr Commissioner, just to clarify what you were saying about the meal breaks. Are you indicating because elsewhere in the award there are references to meal allowances, et cetera, that we shift those provisions over into a, sort of, general meal clause for the award?

COMMISSIONER WATLING: Well depending on what it is but generally under the hours of work it only deals with the subject matter of hours of work. If you want to get into other things like overtime, for example, you go to the overtime clause. You don't put the overtime provisions in the hours of work clause. You usually put them in the overtime clause and you describe when overtime is available to people. It's when they've worked outside the span of hours or in excess of a certain number of days et cetera.

Now you've got to work out whether it may not be more appropriate to have things in relation to meals on everything that happens with meals in a meals clause. A meal money might be available, it might describe, sort of, when one is eligible for it and there might be 10 categories when they're eligible to be paid a meal break. One might be if they work one and a half hours overtime, another might be if they work through - if they're required to work through their period - lunch period and no relief is provided.

You could have 10 reasons where someone becomes eligible for a meal break, a paid meal break. But you might find it is easier, if you're dealing with the question of hours of work, to contain yourself to the hours of work. And then if you got to the meal clause, then you could say: Right, we're now dealing with meal clause. When do they get meals? How much do they get for meals? When are they eligible to get meals?

You could dream up nearly 10 different reasons when, where and why they're eligible for either a meal break or meal money. But you might save yourself a bit of work in not cluttering it up with hours of work because otherwise the heading is incorrect, isn't it? The heading might be dealing with hours of work and meal breaks.

MR HOUSE: Just to complete this section, subclause (iv) reflects the current provisions of penalty rates within the award, the current award. The proviso is the same except at the end after 'holiday', 'or vice versa' has been added.

COMMISSIONER WATLING: But this I take it is for all people on a roster who are rostered for work on those days.

MR HOUSE: Yes. And we'll attend to that. (v) is also taken from the current award provision.

COMMISSIONER WATLING: See, even with that (v) you'd have to straighten that out. If you took your argument about penalty payment means use of penalty in the collective sense, that means if they were on a public holiday and got a penalty payment, then (ii) in (g), if they were required to work through their meal break, wouldn't apply because it's a penalty payment. If you took your argument as the words 'penalty payments' meaning the collective, because it could be strongly argued that it is a penalty for not getting your meal break. That's why I don't believe penalty payments are used in that sense. Penalty payments -

MR HOUSE: I quite understand. If you're on double time on Sunday and they're required to work through a paid meal break - unpaid meal break and you're paid, wouldn't you only get double time?

COMMISSIONER WATLING: Well I don't know. That's what I'm trying to work out from you.

MR HOUSE: Well, I thought that you only get the one penalty and that's the higher - if it's only time and a quarter during the week you wouldn't get three and a quarter.

COMMISSIONER WATLING: No. I'm saying that if you take (v) to its ultimate conclusion and you're saying that I should interpret that as being the collective, right, penalty payment, not penalty payments as we would traditionally know payments, but I should take it as the collective, then in (a)(ii) there is a penalty there; isn't there? The penalty is that their meal break is paid; right?

MR HOUSE: Yes.

COMMISSIONER WATLING: That's a penalty. So they get the double time for working on a public holiday, still be required to work through their meal break, not get the penalty meal money but be paid the double time for working through the lunch time.

MR HOUSE: Well, what is the situation, Gordon?

COMMISSIONER WATLING: And then forego the meal money.

MR HOUSE: It's not really meal money; it's payment -

DR SENATOR: It's for ordinary hours of work.

COMMISSIONER WATLING: Sorry, the payment, the penalty payment.

MR HOUSE: It's the payment for working through your meal break.

COMMISSIONER WATLING: Yes.

MR HOUSE: Well, I wouldn't think you'd be entitled to anything more than whatever rate is applying at the time.

COMMISSIONER WATLING: Well that's the point I'm - I'm just saying that it would exclude any other payment as well.

MR HOUSE: Yes, that's my understanding but I'm not someone on the ground, in that sense.

COMMISSIONER WATLING: Yes.

DR SENATOR: Mr Commissioner, I think that's right. What I think causes the confusion is the terminology in (a)(ii) be paid a meal break at the rate of ordinary time. I think what we mean there is that that time will be counted as time worked.

COMMISSIONER WATLING: That's a big difference, isn't it? So ordinary time doesn't mean double time or the penalty rate that applies in (iv).

DR SENATOR: In (iv) if that time happens to be worked during a time which would attract a penalty, then the penalty will apply.

COMMISSIONER WATLING: Well yes. I see what you're saying but do you think those words now say that after our discussion?

MR HOUSE: Well that's the problem there, Gordon. Those words should be the rates applying at the time.

DR SENATOR: Paid a meal break -

COMMISSIONER WATLING: What I'm saying, it says at ordinary time.

MR HOUSE: Yes.

DR SENATOR: Will be paid for the time worked - worked during the meal break.

COMMISSIONER WATLING: It's really at the rate applying at the time you do it.

MR HOUSE: But you need to fix that.

DR SENATOR: Yes, sure. But 18(a)(ii) is where the remedy is called for rather than -

MR HOUSE: (v).

DR SENATOR: - (v).

COMMISSIONER WATLING: Well yes. So then you really need to make it very clear that penalty payments in this clause - right?

MR HOUSE: Yes.

COMMISSIONER WATLING: We're not talking about penalty payments in the award, are we? Penalty payments contained in this clause? I don't know.

DR SENATOR: Mr Commissioner, we'll have to look at the remainder of the award to determine what other areas may be affected by that provision.

COMMISSIONER WATLING: It might be a number of other things if it's taken as the award collectively, which I've been told that it means a collective.

DR SENATOR: Well, it may even call for another clause regarding penalty payments.

COMMISSIONER WATLING: Yes.

DR SENATOR: Clause 58 I think I've got it listed, isn't it?

COMMISSIONER WATLING: I think you're reading what I'm saying. So clarity and redrafting there. So maybe we'll put 18 to one side, eh?

MR HOUSE: The whole of 18?

COMMISSIONER WATLING: Yes, and we'll split it up into - see, even with things like extra meals and rest periods you've got coming under hours of work. So you're better off having - there's an example where extra meals should be included in some meals clause with the amount, when you're eligible for it, all the circumstances that would enable you to be eligible for it and then extra meals would come in under everything to do with meals.

The rest period. The rest period (e), the thrust of this is to make sure they get a definite break between the finishing of one shift and starting the next shift. So that could well apply to people who are on a roster as opposed to those people who are not on a roster. So you might find that this sort of thing appears in that part of the hours clause dealing with people, it might be one of the roster provisos.

MR HOUSE: Well you could have, say, a surgeon being required to perform an operation that went on for, say, 16 hours or so.

COMMISSIONER WATLING: That wasn't on a roster.

MR HOUSE: Not on a roster. Then we would argue that he or she would be entitled to a break of 8 hours before they're required to report back to work.

COMMISSIONER WATLING: Right. Well if you want to cover both circumstances maybe there's a need for a general clause in the award rather than putting it under one or the other, a general clause that would apply to both. It could just be a separate clause. Instead of it being part of hours of work, it could be a general clause like call back is a general clause. Right. So on my list of deferred matters I'll put all of 18.

MR HOUSE: Yes.

COMMISSIONER WATLING: 18(a) to (e). Right, clause 19 - Call back.

MR HOUSE: Well firstly, Mr Commissioner, we'd seek leave to amend the title -

COMMISSIONER WATLING: Right.

MR HOUSE: - to call back and return to duties.

COMMISSIONER WATLING: Right.

MR HOUSE: Now 19(a), again reproduces the current out of hours penalty rate structure in the existing award. As I understand it, it doesn't seek to vary those rates.

COMMISSIONER WATLING: So - all right - when you talk about ordinary hours of duty, are you referring to 38?

MR HOUSE: Yes. Then it mentions, as defined by a duty roster.

COMMISSIONER WATLING: So it's outside the officer's ordinary hours of duty, or, those defined on the duty roster?

MR HOUSE: Yes.

COMMISSIONER WATLING: Because you'd have people that may not be on roster.

MR HOUSE: Yes.

COMMISSIONER WATLING: But this only talks about those that are on roster.

MR HOUSE: Well again we've - we're talking - it's divided into what I'll call trainee doctors or now including non-trainees in the sense of the career medical practitioners and they - what I might call senior doctors (a) and (b) - that's the same - it's the same sort of split-up as we had in the clause 18.

COMMISSIONER WATLING: Yes, right.

MR HOUSE: Now I'd have to take advice as to whether all hospital medical officers and senior hospital medical officers will be rostered. They will be.

DR SENATOR: As far as we understand.

MR HOUSE: I would have thought so, but maybe - anything's possible, so you - we can't be certain.

DR SENATOR: Well, we can't be. We've included those in that.

MR HOUSE: But the commissioner is making a point that it could be ordinary hours - 9 to 5 and say - or outside of rostered - outside -

COMMISSIONER WATLING: Yes, there's two exercises here. One could be an officer who's just working - it says outside the ordinary hours. Now I asked the question, what are ordinary hours, so you go back to the definition and the definition says ordinary hours shall be 38 per week. So it's those that work in excess of - outside 38 hours per week?

DR SENATOR: This is call back, sir.

COMMISSIONER WATLING: Because you can - what are - what's the definition for ordinary hours?

MR HOUSE: Well again they could be on - well if it comes to a dispute you can only go to the definition - ordinary hours. Here we are. Ordinary hours, we've agreed to the first paragraph, means 38 hours per week, work 5 days, Monday to Friday between the hours of 7 and 7. Right. So we're talking about people who work outside the ordinary hours as defined or working outside the hours - the rostered hours of duty aren't we? We're talking about two groups.

MISS COX: It currently reads in the award, outside the normal spread of hours.

MR HOUSE: Does that help you, Bill?

DR SENATOR: Mr Commissioner, I just wonder whether it helps if we leave out the term 'by a duty roster' and it reads, who

is recalled to work outside the ordinary hours of duty as defined. And if we then look to see what the definition of the ordinary duties are under the hours of work clause and that clarifies it.

COMMISSIONER WATLING: No, you'd have to - if you were looking at ordinary hours of work as defined, you'd have to go to the definition.

MISS COX: That's 38.

COMMISSIONER WATLING: You couldn't turn to the hours clause, you'd have to turn - because it talks about ordinary hours of duty. And if it comes - and then every time you see the words 'ordinary hours of duty' is defined in the definitions. So the ordinary hours of duty definition doesn't have any mention of a roster.

DR SENATOR: Well on reflection, Mr Commissioner, we seem to have two definitions of ordinary hours; one under the definitions and one under the hours of work clause.

COMMISSIONER WATLING: I agree.

DR SENATOR: It strikes me then, Mr Commissioner, that the definition may need to be examined and taken off those matters agreed and shifted to the ever lengthening list of -

COMMISSIONER WATLING: Yes, well, yes that's right, and also you might deal with hours of work under the hours of work clause - you mightn't need to divide it. Because hours of work clause might talk about rostered and those non-rostered, so you mightn't have to use it again as a definition. And keeping in mind that you've to put some of these things in - that you've currently got in your definitions clause, all this stuff down here, in your hours of work clause as well. Because if you look - on page 5, you've got lots of things in there dealing with hours and hours of work; haven't you?

DR SENATOR: Mr Commissioner, so long as that - that approach is - I understand the approach that you're suggesting that we don't necessarily need any definition of ordinary hours of work in the definitions clause.

COMMISSIONER WATLING: Yes. Well if you pick all these things up in the hours of work clause, this will only - but wherever you refer to hours of work at some other clause you might have to say the so and so, such and such, such as the ordinary hours as prescribed in clause 18(a) of this award. You see. You just refer back to that each time.

So if you - if you have about - if you mentioned umpteen dozen times in other clauses, you just refer back to it as - as described in clause so and so. That happens in a number of

awards where they refer back to another clause. Each time they mention hours of work, then say as described in clause so and so, so there's no confusion.

So maybe we'll - we'll have a look at the definition. We won't put that on any list at the moment because it's neither here nor there. You might find that when you come back you'll want to withdraw it from your document because you've covered it all in the hours of work clause.

MR HOUSE: Yes, yes.

COMMISSIONER WATLING: The hours of work clause being divided into those rostered and those not rostered.

MR HOUSE: Yes, I'd noticed in the current award there's no - under the definitions, no definition of ordinary hours.

COMMISSIONER WATLING: Because you'll probably find there's something in the hours of work clause.

MR HOUSE: Yes, yes.

COMMISSIONER WATLING: So we're on call back -

MR HOUSE: Now 19 -

COMMISSIONER WATLING: - and return to duties.

MR HOUSE: - yes, 19(b) - is, as I said, refers to people that are not formally rostered and it is the same as what's in the existing award, as I understand it, except for the inclusion in the third line 'or returns to duty', which I understand is a point of contention between the parties, or maybe a point of contention between the parties, but -

COMMISSIONER WATLING: So do you read that as returning to duty that someone takes it upon themselves to just turn up to work? Is that what that means?

MR HOUSE: No, it's - in terms of a requirement to return for patient care reasons.

COMMISSIONER WATLING: No, but doesn't it say that they're recalled to work -

MR HOUSE: Yes.

COMMISSIONER WATLING: - or they return to work?

MR HOUSE: Yes.



COMMISSIONER WATLING: There's a difference between being recalled - you often think that someone must authorise you to come in or call -

MR HOUSE: yes.

COMMISSIONER WATLING: - you in, and I read, 'or return to duty' means the employee takes it upon themselves to just turn up to work.

MR HOUSE: I'm instructed, sir, that's our position.

COMMISSIONER WATLING: Right, that's how I thought it read.

DR SENATOR: It was previously called self-initiated call back which is a contradiction of terms.

MR HOUSE: I'm also instructed it was previously called self-initiated call back. This is an attempt to perhaps meet some of the concerns that could be in your mind. There has to be a specific reason for the return to work related to professional responsibilities. It's not just something that happens at the whim of the medical practitioner.

COMMISSIONER WATLING: Well this is. The medical practitioner can take -

MR HOUSE: Well, it's not intended to be.

COMMISSIONER WATLING: Yes. The employer mightn't want the person involved, but the medical practitioner -

MR HOUSE: Well that's -

COMMISSIONER WATLING: - could well decide that I'm going to be involved.

MR HOUSE: I think that is often a point of contention -

COMMISSIONER WATLING: Oh, right.

MR HOUSE: - in this area as no doubt you are aware. It's a question of responsibility - who had the - who takes the final responsibility for patient care? Who is the one that's going to be called into account?

COMMISSIONER WATLING: So it's your view that the employer wouldn't be if they told the employee not to come in?

MR HOUSE: Medico legal considerations would put the onus on the doctor I would imagine - well I'm fairly sure it -

DR SENATOR: The issue is whether they're - not whether they're going to return - the issue is not whether they're going to return, that's obligatory, but whether they're going to be somehow compensated for it, that's the thrust of this -

MR HOUSE: We say that the issue is not whether they should return to work or not -

COMMISSIONER WATLING: No, it's what they get paid.

MR HOUSE: - it is whether they - yes - whether they are compensated for it.

COMMISSIONER WATLING: I suppose really it depends at what level they are. It depends whether or not the classification - the new structure, classifications standards and criteria have those sorts of things built in.

MR HOUSE: The difficulty, Mr Commissioner, is that the incident of - incidents for requirement to return may not spread evenly across the membership, it's whether you go to an -

COMMISSIONER WATLING: So, some will benefit and some won't.

MR HOUSE: Depending on their area of speciality, I would imagine it would vary - or I know that it does vary. I don't know how many times anaesthetists are required to return to duty.

COMMISSIONER WATLING: A fair bit, I'd reckon.

DR SENATOR: Mr Commissioner -

COMMISSIONER WATLING: Yes, Doctor?

DR SENATOR: - I think a number of issues involved here which are very difficult, I think, for us to portray in, I guess, industrial terms from the professional point of view. One of the difficulties that we're faced with this whole are is that the authorised officer within the structure of the way patient care is delegated may often be a subordinate and perhaps may not be someone in an advanced state of training, and may not have necessarily an appreciation for the need for return, so that there is a professional instinct, if you like, on occasions and alarm bells go off that they haven't been called about something and they need to - because of their duty of care which is incumbent in the doctor/patient relationship - may feel obliged to fulfil that aspect of their professional behaviour and return to make sure that the patient care is not prejudiced in any way.

There's that aspect of it. Secondly, it's the fact that the call back in the current system is generally initiated by a

subordinate. We want to, as far as possible, remove any - or reduce any potential for abuse which may be related to the concept of implied duress or any form of implication of intimidation to initiate a process just for the sake of the process rather than in the interests of the patient's care.

There are other circumstances, and you mentioned anaesthetists, and there is an obligation, for example, for anaesthetists to see their patients preoperatively to assess them and their suitability for anaesthesia and this make take place, often at odd time. It may be, for example, for Monday morning list, on a Sunday evening, as well as there may be a particular obligation - not as a routine where a patient has been operated, say, on a Friday morning for the patient to be seen, perhaps on the Saturday morning, not as part of a formal extension of the usual professional responsibility in the form of an arranged ward round which we we'll pick up in that flexibility in the hours of work for the specialist, but because of the specialist or consultant in this case has particular concerns about the outcomes.

So there are all those different nuances and as I said at the beginning it's extremely difficult to cater for all of those in the constraints that we all feel imposed upon us relating to award restructuring.

MR HOUSE: The real question though is, should it be built in to the salary?

DR SENATOR: The other point was at what level of seniority. It's deliberately been pitched at those of consultant level to which that clause (b) applies and I think it's safe to assume that no matter how we go about the development of the classification structures, the incumbent within the consultant classification will be the responsibility - the overall responsibility for the care of the patient.

COMMISSIONER WATLING: Right. So if it was at the consultant level and you were designing structures and things like that and people were compensated at an appropriate level, would it not encompass that type of arrangement where you could go back?

DR SENATOR: We're, of course, trying to -

COMMISSIONER WATLING: It might be one of your arguments for a certain rate of pay.

DR SENATOR: Sure. I mean, we'll try as far as possible to - as we have undertaken, to proceed along that way. We can't see what the final outcome is likely to be.

COMMISSIONER WATLING: No, I understand.

DR SENATOR: But we take that on board. We think however there may be a distinction from just what I mentioned before, the extension of normal professional responsibility which would be doing a routine ward round on Saturday morning if you were operated on on Friday afternoon, for example, as opposed to then feeling alerted and not necessarily waiting for a telephone to ring to tell you that you had to see a patient on Sunday morning who you had operated on on Friday morning.

COMMISSIONER WATLING: Yes, that's right.

DR SENATOR: So, there is a clear distinction in our minds between those two situations.

COMMISSIONER WATLING: Right. Right.

MR HOUSE: Turning to 19(c), again an area that you may have to arbitrate. This is similar to the current award provision other than - instead of 'the existing next quarter hour' - at the start of the second line, we're proposing 'the next half hour', and a minimum payment of 2 hours instead of the existing 1 hour. In most states and territories, the minimum payment is at least 2 hours, so that's one thing additional we're seeking in the penalty rate area.

COMMISSIONER WATLING: That - now is this part of restructuring?

MR HOUSE: It's part of work value.

COMMISSIONER WATLING: Work value - part of the special case?

MR HOUSE: Yes, it will be addressed in the special case context.

COMMISSIONER WATLING: Because it's another claim isn't it? It's got to either fall under the special case or the finalisation of structural efficiency - or is it -

MR HOUSE: Well as I understand the wage fixing principles require the - any changes in allowances which - this is not really an allowance, but comes near it - has got to be justified in terms of net significant changes in work value and it couldn't be justified under the award restructuring, but if I'm wrong, I'm pleased to be corrected.

COMMISSIONER WATLING: Yes. Well this whole exercise falls into basically two categories, the special case component in relation to wages which is - which really means the special case - a work-value case will have to be carried out. The other bit is in relation to finalising the restructuring of this award -

MR HOUSE: Yes.

COMMISSIONER WATLING: - for which money has already been given.

MR HOUSE: Yes.

COMMISSIONER WATLING: Now this particular claim is a claim to extend conditions of employment.

MR HOUSE: Yes.

COMMISSIONER WATLING: Yes. Now that comes under another principle, doesn't it?

MR HOUSE: Well in - this is -

COMMISSIONER WATLING: You can hardly say -

MR HOUSE: - this comes under the allowance - the call back as a group -

COMMISSIONER WATLING: Well it's not an allowance is it?

MR HOUSE: - as a concept is normally remunerated in terms of an allowance. I think you were suggesting we might consider it in the light of restructured salaries which would be a work-value matter as well as -

COMMISSIONER WATLING: Yes, but it's not so much an allowance. It's an additional condition of employment. It's an extension of an existing condition of employment, isn't it?

MR HOUSE: Well I -

COMMISSIONER WATLING: Well allowance, because if it was a new allowance I'd have to say, under the principles, it says no new allowances, and then allowances - existing allowances can be increased where they are for reimbursement of costs for meal money, travelling - they're reimbursement type allowances.

MR HOUSE: What about changes in the conditions under which the work is performed in accordance with the work-value principle?

COMMISSIONER WATLING: The work value - well it's then - then you have to look at: a) whether the general work-value principle is open to you, right, or whether your wages claim has been designated as a special case and hence you go to the work-value principle.

MR HOUSE: Yes.

COMMISSIONER WATLING: Now, certainly, for the wages component of it, you'd be required to work under the work-value principle -

MR HOUSE: Yes.

COMMISSIONER WATLING: - changes in the nature of the work, the skills and the responsibilities. However, new allowances may be created, right, where they are one-off, sort of, special arrangements that can't be catered for in a wage rate. For example, you might have one person doing this particular job and if you were to give this wage increase a \$20 a week increase because only one person out of 300 does it, it may be more appropriate to give a \$20 allowance in the case of that person as opposed to lifting everyone up by \$20.

Now that's when new allowances can be created, where it may not be appropriate to make a new classification or impose a new wage rate when a limited number of people may be eligible for it because what you've done is you've pulled everyone up by the boot straps, given them the money when they don't actually do the work, so in that case it may be more appropriate to establish an allowance.

MR HOUSE: We're now -

COMMISSIONER WATLING: But this is a condition of employment, isn't it, call back? And then you have a look at what the principles say about conditions of employment and the conditions of employment principles talks about where it doesn't add to the cost. So then you have to say: Right, would this add to the cost, and if so, how much? Is it negligible? Will it be significant?'

MR HOUSE: Well on the basis of the conditions of employment principle, obviously the claim is not allowable.

COMMISSIONER WATLING: Well, it would be if it is part of structural efficiency, but is it structurally efficient to do this?

MR HOUSE: I don't think our friends at the other end of the bar table would think so, so -

COMMISSIONER WATLING: So, it doesn't fall within the structural efficiency package?

MR HOUSE: No, it's not part -

COMMISSIONER WATLING: Actually you're really increasing a condition.

MR HOUSE: - I can say categorically it's not part of the structural efficiency.

COMMISSIONER WATLING: Yes, I agree with that.

MR HOUSE: Incorrectly, it was - as far as I'm concerned, I'll speak for myself - justified in my mind under the work-value principle.

COMMISSIONER WATLING: It may well fall into the structural efficiency principle if there are trade-offs in other areas and people might see it as being structurally efficient then to allow all this to happen. Let's face it, I've seen other areas where they have increased conditions like this -

MR HOUSE: Yes.

COMMISSIONER WATLING: - but on the other hand, they've done something else which - it's loosened the system up a bit and therefore employers and unions have come back and said, 'Well, look, it's all part of our package - structural efficiency package, even though there is an increase in it. Nevertheless, there was a decrease in this and we are now able to do that, and we can do this, so as a package it's structurally more efficient'.

MR HOUSE: Yes. Well in the environment in Tasmania, that's a very difficult thing to achieve and it's made extremely more difficult if you've got a claim in for salary increases.

DR SENATOR: Mr Commissioner, -

COMMISSIONER WATLING: Yes.

DR SENATOR: - I just wonder whether there's some way of reserving that particular subclause based still on the structural efficiency principle if read in conjunction with subclause (d) which does offer efficiencies.

COMMISSIONER WATLING: Well, I suppose you could run that line. I'd have to make up my mind probably at the end of the day after looking at the total package whether it was really part of a structural efficiency arrangement or just another cost.

MR HOUSE: You'd have to have the costings, Gordon.

DR SENATOR: Yes. Because (d) is, in effect, an offset for (c) -

COMMISSIONER WATLING: Yes, I agree. Well on the face of it -

DR SENATOR: - and in some instances, maybe a savings and obviously we'd need to see what the costings are.

COMMISSIONER WATLING: Yes. Well that's right. I'm certainly - if that - if you are able to work on that, it may well mean that one balances off the other, but if you take it in isolation, it could look like a significant increase in a condition of employment and not necessarily be involved in the structural efficiency arrangement.

MR HOUSE: Well (d) -

COMMISSIONER WATLING: But maybe that's something that you've got to - for your evidence - you have got to, sort of, drag a bit of stuff out of there.

MR HOUSE: - (d) goes hand in hand with (c), as Dr Senator's rightly pointed out, and has - it's the sort of - again, the sort of offset or attachment in other states to having sometimes up to payment for 4 hours, particularly where it is 4 hours, you'd have that sort of offset.

DR SENATOR: Mr Commissioner, I think the combined impact of (c) and (d) is to ensure that where the work is there that people actually remain there and complete it even if it isn't the same task, rather than disappear, to return at considerable extra cost to everybody within the system including the patient's welfare.

COMMISSIONER WATLING: Do you want to get some more information on it and come back to me on that; is that what you are suggesting?

DR SENATOR: Mr Commissioner, I'm not sure where we'll get that extra information from.

COMMISSIONER WATLING: Yes. Right. Right. Well I'm sure the employers will respond to that. That's about the only area we'll get it from.

MR HOUSE: Subclause (e) is a new sentence - a new addition.

COMMISSIONER WATLING: What's the new bit?

MR HOUSE:

For the purposes of this clause each night or day stand alone.

A point of, just, clarification. As I understand it there's no objection from the employer to that clarification.

(f) is - (f)(i) and (f)(ii) are the society's efforts to include provisions in the award to make it quite clear as to the duties and responsibilities that are assumed or carried by medical practitioners which are legitimately part of their paid work responsibilities. It again, addresses - it



attempts to address allegations about the award being deficient in some way in terms of flexibility or what people are doing. As I understand it, though, the department is not particularly attracted to those clauses and at least we've tried.

DR SENATOR: It also enhances accountability for auditing purposes and removes any suggestion of double dipping.

MR HOUSE: Yes, I'm reminded by Dr Senator it also enhances accountability for auditing purposes where there maybe allegations of double dipping. That was another objective in endeavouring to spell things out in the way that we have.

COMMISSIONER WATLING: So (f) is a new clause as well.

MR HOUSE: Yes, sir, (f)(i) and (ii). I'm not sure whether the style is consistent there I notice, whether it should be (f) - do you use -

COMMISSIONER WATLING: Well whatever happens we'll have to put it into the style of the commission anyway.

MR HOUSE: Yes.

COMMISSIONER WATLING: The set style we use.

MR HOUSE: Do you have a practice note on those sorts of things?

COMMISSIONER WATLING: Yes. It's - we stick to a certain style that even goes through the FATEX system now so you can pick up all the awards throughout the country, but there are drafting manuals available and - but we do have a style of our own commission, especially the numbering.

MR HOUSE: Is that in any gazette, sir, or is it - ?

COMMISSIONER WATLING: No, but if you really required it I think we could run something off to tell you what it was.

MR HOUSE: Thank you.

COMMISSIONER WATLING: I noted also, back earlier, our clause 8 is always wage rates. The first eight clauses of awards of this commission are all the same, so you can pick up any award and go to them and examine them, so you will always know that clause 8 - so even whatever happens out of this, you'll end up with clause 8 being the wage rates.

MR HOUSE: That's handy to know.

COMMISSIONER WATLING: Yes. The first eight clauses are always the same.

MR HOUSE: Thank you. Proposed clause 20 - rostered on call - the subclause (a) conforms with our stated view that this work-related allowance should be linked with salary and our belief that the amount - the flat amount - in the current award was originally devised by looking at 10 per cent of a normal hourly rate or - or 10 per cent of the basic rate.

Again, this is one that - to the extent that it adds to cost, would need to be assessed against the allowances provisions in the work-value clause. But - well I am reminded that the approach that is proposed here could well lead to savings through being more administratively or less cumbersome administratively to administer. But we're very strong, sir, in -

COMMISSIONER WATLING: So it might be easier to administer, but it might cost twice as much?

MR HOUSE: Well I was just going to go on and say, we really don't have a costing of it. It is a genuine attempt by Dr Senator to try to devise something that reflects our basic view, that instead of a flat two or three dollars an hour sort of approach, so on payment of on call in this state we would prefer a percentage approach which is genuine - generally the approach in other states.

COMMISSIONER WATLING: Had you considered whether or not it would be more appropriately dealt with in the classification structure and pay rate?

MR HOUSE: Well here again, the incidence of on call doesn't fall evenly -

COMMISSIONER WATLING: So not -

MR HOUSE: - as I'm instructed.

COMMISSIONER WATLING: - not everyone's on call at some stage?

MR HOUSE: Well, it's more how often you're on call.

COMMISSIONER WATLING: But if you're rostered - there must be a roster for on call isn't there?

MR HOUSE: Well in the ACT, again, the people in the psychiatric area, I understand, are not rostered on call very much at all.

COMMISSIONER WATLING: Yes, but what about here though? Not too many -

MR HOUSE: Well I don't know. I'm instructed that - without knowing the detail, I'll ask Dr Senator to answer that.

DR SENATOR: Well, 20(a)(i) refers to categories including new categories of employees, so we can't really answer, I mean, in relation to what is going to be the practice that applies to career medical practitioners when that - if that category of staff comes into being in this state. However, I can say in relation to resident medical officers, registrars, and - registrars - and we don't have any senior registrars in our classification, that almost universally they are rostered on call.

However, it's - there is a great diversity of rostering on call practice depending upon the size of the pool which in turn depends upon the areas to which they're designated their tasks. In other words, if you are on - if you are working in the field of, say, general medicine, you may be sharing a roster with up to four or five other individuals in one hospital.

In another hospital it may only be one of two, whereas if you are in a specialty area such as orthopaedics, ophthalmology, you may be the sole registrar in the state, in which case you will be rostered permanently on call, out of hours. So we have this difficulty in contemplating the concept of rolling up because of the diversity, the heterogeneity of the tasks and the numbers involved and it would be extremely difficult to find a formula that would satisfy some of those particular quirks. Again there would be significant differences between the mental health - well, Royal Derwent Hospital, for example and it's requirements and, say, the North-West Regional Hospital. There are -

MR HOUSE: What about specialists - that's where -

DR SENATOR: Right.

MR HOUSE: - the difference.

DR SENATOR: Well, we're only confronting our comments at the moment to the trainees aren't we?

COMMISSIONER WATLING: Right, so - so that's in relation to (i) you're talking about?

DR SENATOR: Yes, yes.

COMMISSIONER WATLING: In relation to (ii), what's the problem there?

DR SENATOR: Mr Commissioner, (ii) involves a saga but I'll try and keep it - keep this simple. That what we've endeavoured to do here is - is to try and role things up into

the simplest - in the simplest fashion, realising as with the trainee grades and the other junior grades that we propose that there is a great deal of diversity within the state for the particular operations of various health care facilities.

What we've attempted to do here is to strike two levels to reflect those services in which consultants combine, not only with other - other consultants under this award, but also with their visiting medical officer colleagues to provide comprehensive services, and to recognise that there may be larger departments which share the on call responsibilities fairly widely, whilst in other services. Again, we may be talking about single practitioners or perhaps two practitioners sharing the entire on call burden.

Now one of the difficulties - I mentioned a saga, and it relates to the - the fact that the on call responsibility is for the service to patients. How closely that should be linked to the frequency of call back I think is a separate issue and a management issue, but I believe that we may face some debate from the other end of the bench. What I would say, however, is that when we delve back into the history of the on call arrangements for specialists that subsequent to the decision of the public service arbitrator in the - in early, I think it was in 1981, a determination was made by the department to pay an extra duty allowance in lieu of the on call provisions of this award, struck at a much lower rate of \$1.31 an hour which was never upgraded - was never brought back to this commission for adoption within the ambit of this on call provision of the current award.

So what we're trying to do is to separate off the management difficulties from the provision of an on-call roster service appropriate to - to the services within this state, and to also simplify it on the basis of the two levels proposed. The levels proposed have been calculated on the basis of the quantum that the current on call rates as struck within the award and not the extra duty allowance established by the department. What relation the - that quantum of hours at the current rates, how they would relate to the normal salary of different levels of consultants as currently defined under the award.

COMMISSIONER WATLING: What do you mean by 'one to three' there?

DR SENATOR: That's one night in three.

COMMISSIONER WATLING: One in three - right. Okay. Now I suppose when you're looking at something on - like an on-call roster you're really being paid an allowance for the disability of having to hang around; right? Now -

DR SENATOR: And - and the availability and the disturbance factors.

COMMISSIONER WATLING: That's right. Well, would - would the disturbance factor or the having to hang around and be available be any greater to a person at the top of the salary level and the bottom of the salary level? Wouldn't the inconvenience be the same?

DR SENATOR: Well I'd have to ask the question a different way, as to why we actually paid differently for their ordinary hours - for their ordinary work.

COMMISSIONER WATLING: Oh yes, but one - one is because they're classified differently - at a level they have different skills et cetera, et cetera, this one is for people sitting at home or in close proximity to a telephone to be able to be called back if necessary. Both, whether they're at the top of the scale or the bottom of the scale, right, have the same inconvenience of not being able to go out and have their game of golf, or go down to the pub or go out to dinner with their friends on Saturday night. The inconvenience strikes the top of the scale and the bottom of the scale equally.

So it has nothing to do with the actual salary level that you're on, it has to do with the inconvenience of hanging around or being in close proximity. So you could - say for example, if you and I - if I was at the bottom of the scale and you were at the top of the scale, and I had to do it, I'd probably feel the same annoyances as you. It doesn't matter what scale or level I'm in - I'm on - I've still got to be around and I still can't go and have my game of golf or go down to the pub or have a good night, a good dinner with my friends and open a nice bottle of red.

DR SENATOR: Well I feel sympathy.

MR HOUSE: Mr Commissioner, I'd like to just clarify one aspect - that this is not - we don't believe anyway that the on call situation as required of medical practitioners is the same as say a restriction allowance that applies.

COMMISSIONER WATLING: But it's on call.

MR HOUSE: Yes, you're required to be on call, and there is the restriction aspect. However, we've also - I don't know whether it addresses the question you've raised, but I think it's important to put it on the record that - what our position is, that being on call actually requires to provide medical advice and make medical decisions over the telephone. If there's some problem at the hospital and you're called up, then in a sense you're back at work.

COMMISSIONER WATLING: Yes, but the inconvenience of - of that and also if I - even if I'm a junior and I'm on call and someone rings me up, even at my level as a junior, I've got to make some medical assessment don't I?

MR HOUSE: Yes.

COMMISSIONER WATLING: No matter whether I'm junior or senior.

MR HOUSE: I was just addressing myself, sir, to this idea that you can't - the only sort of impact that it has on you is, 1), you mightn't be able to go to the pub or you mightn't be able to play golf or something, which is the case with a normal restriction for any employee. But in addition to this - and of course a fire brigade officer or whoever may be required to go back to the base or attend a fire, however, I just wanted to distinguish doctors by the fact they actually in a sense -

COMMISSIONER WATLING: They make an assessment -

MR HOUSE: - they have to actually do something -

COMMISSIONER WATLING: - as to whether or not.

MR HOUSE: - while they're on call which may not require them to report back to work.

COMMISSIONER WATLING: Yes, they make an assessment after someone phones them up.

MR HOUSE: And give instructions or whatever.

COMMISSIONER WATLING: Yes. Well use your example of the fire brigade officer then. Now it's not unusual for them to call in either and (a) give advice, and (b) enquire as to what sort of fire it's going to be and whether it's a chemical fire or whatever and then they may make some assessment as well as to whether or not they should go back or give the order to call back everyone. Now that often goes with -

MR HOUSE: Well if that's - I just wanted to make the point -

COMMISSIONER WATLING: Yes.

MR HOUSE: - that it's not just for hanging around.

COMMISSIONER WATLING: No, but a significant component of it is no doubt holding yourself in readiness. It must be. That's why you're on call.

DR SENATOR: Well, Mr Commissioner, I think there is a number of issues here and I think the society would accept that it is more difficult when we're discussing the element of the quality of disturbance as it relates to people and in the interests of removing that particular component and having regard to just some of the calculations that we've done, we could see perhaps some justice of relating those two percentages to that of a specific level within the award.

And we think that the one having regard to the work that we'll be doing on the classification standards and the fact that we believe that consultants, as part of that classification standard, will bear responsibility for patients, to link those two quanta to the base grade consultant level. However the other principle that we would like to have adopted is the percentage approach, and I think that is a separate issue.

COMMISSIONER WATLING: Yes, I agree. Which probably begs the question, what happens when, say, this tribunal on a number of occasions would say that expense related allowances should be increased and all other allowances not increased when they hand down a wage increase? This would mean that that sort of allowance would automatically be increased without being reviewed at any time when all other allowances seem to be reviewed and they're split into work related allowances and cost related allowances.

Now on a number of occasions the commission has increased with, say, a state wage case, cost related allowances where it reimburses the employees for costs - those type of allowances - but it has stated that work related allowances have not been increased. Now, you get a situation if you were to write something in the award in this fashion - and that's obviously why you'd be doing it - to make sure every time the wages were increased that the allowances got an automatic increase even though there may not have been any justification for increasing the allowance other than it's linked to salary.

MR HOUSE: It's a question of whether you see it as a disability allowance or a work related allowance and I'm seeing it in terms of the latter.

COMMISSIONER WATLING: Well disability allowance and work related allowance would be the same. They're not a cost related allowance. A cost related allowance would be an allowance for reimbursement for meals -

MR HOUSE: The disability may not change though whereas obviously the cost of the work does.

COMMISSIONER WATLING: Yes, but the cost to whom? The disability may not change to the person on call, right? That's why things, like out in the building construction site, it's not all - or on every occasion you find that the mud

allowance and the working in wet and windy conditions doesn't change because they've been given an amount for wet and windy conditions and it's not based on your actual rate of pay. It's a disability that you're experiencing and having to experience.

MR HOUSE: Or peace on the job.

COMMISSIONER WATLING: Well certainly in having to say, looking after the building construction industry, 9 times out of 10 it is that. And lots of things are agreed outside this commission that have never gone into awards. But I just make the point that disability allowances and work related allowances are virtually the same when you compare them to cost related allowances.

MR HOUSE: It should move with salary and therefore should be related to salary.

COMMISSIONER WATLING: So you don't recognise any disability then associated with hanging around waiting for something to happen.

MR HOUSE: We think primarily it should be - I would submit anyway that primarily it's a work related allowance and the fire brigade officer as well if he or she is required to give advice to other firepersons on how to deal with an emergency situation on the phone. I see a difference between just - I think that is the higher function rather than just a fact that you can't go to the pub. Looking at the situation -

COMMISSIONER WATLING: I don't want you to think I was flippant about that. I was just trying to make the point that it is for waiting around and you are - if you carry out to the fullest this clause you should be really around home holding yourself in readiness.

MR HOUSE: Yes. Well to be less flippant -

COMMISSIONER WATLING: And I know that there are people who do get the odd call and have been out on the golf course playing with me on Saturday. But I just make the point that it is -

MR HOUSE: In the previous case those instructing me, the VMOs, were concerned about the impact it had on their family life so I shouldn't have been flippant.

COMMISSIONER WATLING: No, well it does have an impact, I don't deny that. But the only point I was making in discussion was it would have an impact on me as a junior, as you as a senior.



MR HOUSE: Yes, I agree. In the question of percentage versus flat approach, I have a document here I'm not sure how up to date it is so I can't vouch - and it's not my document - for its accuracy but looking at the on call situation firstly, for medical officers, the category where we would propose to include in the career medical practitioner group, it is only in South Australia, New South Wales and Tasmania where there appears to be a flat amount paid either by the hour or by the night or on call period.

I don't know how current they are but Victoria is 2.5 per cent of weekly salary per recall, 3.5 per cent on public holidays. Western Australia 18.75 per cent of the minimum weekly salary of a Senior Specialist Level 2, so they've picked - probably having a view to what you're saying of the equal incidence of burden - they've picked a particular point in the structure. And Queensland 90 per cent of the hourly rate; Saturday, Sunday and public holidays - that must be at night - during the day 45 per cent and other nights 45 per cent.

If we turn to - I'll go to resident and registrars. South Australia, New South Wales and Queensland have flat amounts. I'm not sure - I can't be sure - I haven't researched this, I apologise - just how these flat amounts are arrived at so I'm only talking about so much per night or per period or a percentage.

Where it specifically says a percentage, Victoria again the 2.5 per cent of weekly salary or 3.5 per cent on public holidays. The Northern Territory is 21 per cent of the ordinary rate. They have a first roster and second roster system too that provides a payment there. I should mention in relation to Northern Territory they are on a trial basis, which you'll see in the exhibit H.5, looking at rolling up the on call on a trial basis at Royal Darwin for administrative reasons. With specialists, South Australia, as part of award restructuring in getting the decision in H.5, has now a 5 per cent allowance.

DR SENATOR: Plus an excessive disturbance allowance.

MR HOUSE: Yes, plus an additional - what is it? How much is it?

DR SENATOR: Five per cent.

MR HOUSE: How much?

DR SENATOR: Five per cent.

MR HOUSE: Additional 5 per cent, I'm reminded, for those that suffer extreme disturbance.

COMMISSIONER WATLING: Now all these are arbitrated, of course.

MR HOUSE: That was a consent matter, sir.

COMMISSIONER WATLING: Consent as part of restructuring. Trade offs. Take me to one that's been arbitrated and we'll - and give me a look at that.

MR HOUSE: I'd have to ask to come back to you on that, sir, and I will do that. Mr Commissioner, I'd like to take you to H.5.

COMMISSIONER WATLING: Right.

MR HOUSE: To the section on the ACT, and specifically at the end of that section, the decision by Mr Commissioner Sheather.

COMMISSIONER WATLING: That's in the attachments you handed up the other day?

MR HOUSE: Yes. Sorry - no, no, that was New South Wales.

COMMISSIONER WATLING: H.5 - .... me to the ACT?

MR HOUSE: Yes.

COMMISSIONER WATLING: Where's the - where's the thing from Commissioner Sheather?

MR HOUSE: Sorry, there's - in H.5, I've endeavoured -

COMMISSIONER WATLING: Oh, I'm sorry.

MR HOUSE: It's through a process of interleaving to separate the various jurisdictions -

COMMISSIONER WATLING: Yes. Right.

MR HOUSE: - and if you go to ACT at the back of the ACT section there's a copy of a decision by Mr Commissioner Sheather -

COMMISSIONER WATLING: Well he approved an agreement didn't he?

MR HOUSE: Yes, it was a bit - bit more than an agreement, it was a - a guided consent agreement -

COMMISSIONER WATLING: Well he said in - let's look at the opening of it - he said - decided in transcript to approve the parties agreement on the new structures and salary levels for community health officers.

MR HOUSE: Yes. Well I don't think I'm speaking out of court, but it was not quite as bad as Tasmania, but we put in work-value material and it took the department there 6 months to decide its attitude on that material and then another 3 months to decide why they said to give us reasons why they said no, and this matter was, if you like, conciliated by Commissioner Sheather.

But that's really not the point I was wanting to make and I - you'll see over the page in clause (ii), deleting a table which had community medical practitioners - I'm sorry I haven't got the deleted table - where there were two levels, Class I and II - sorry, I apologise - there was only the one class of community medical practitioner. There, as I've mentioned before, salaried GPs in the ACT in the health centres around the ACT, now they had just the one rate - the one class and the one rate.

Built into that rate was a 15 per cent loading for being on call and being available for recall. You'll see there an asterisk - rate only payable where the officer is required to participate in a roster which provides general practitioner services out of hours.

Now the award restructuring process on - whilst that we combined the previous child health medical officers group with the community medical practitioner group and came up with a three-level community medical officer structure - I won't go - there was a number of justifications but I don't think it's germane to this argument - so - and at the Class III level there's only the one position, and that is an in-charge position which also much - at least 50 per cent of the work is clinical work so it's not really, sort of, just an administrative job.

Now, the point I'm coming to is that it was decided in the interest of structural efficiency that distinguished between - or have a level - or distinguish that the - at the higher levels where after hours service is provided between those that did provide after hours service and those that didn't. Theoretically everyone was supposed to be doing it. There were some that weren't for various reasons. There were some where - well there were some health centres where because of, as Dr Senator said, pooling reasons, the incidence of at least recall was not very - very great, and other centres where staffing reasons caused, you know, there's a high incidence of being rostered on call and being recalled.

So it - we went the other way - that's the point I'm making and it was seen to be, by management, and I think by ourselves, to have advantages. Now with budgetary restrictions, the sting in the tail is that they want to reduce the number of people who are on the - who are being

rostered and therefore these people are facing a 15 per cent reduction in their salary.

COMMISSIONER WATLING: Well I suppose it's only because they're not working on the roster.

MR HOUSE: Well the management is saying, we're going to rationalise the rostering system; instead of having a roster for each health centre, we will have a - you probably know that Canberra is sort of divided north and south - we'll have one for the north and one for the south and we'll need less people and this will spread the load and save us money.

COMMISSIONER WATLING: But aren't they entitled to do that?

MR HOUSE: Yes, I -

COMMISSIONER WATLING: It's only restructuring isn't it, and efficiency?

MR HOUSE: All I was trying to say, sir, I'm not - I'm just saying that the idea of rolling up - this is - we went the other way. Before the - everyone had 15 per cent built into their salary for this - to do - to perform this task. The reality was that the burden wasn't falling evenly, but everyone was being paid for it.

COMMISSIONER WATLING: Yes, but wouldn't they only be paid for it if they were on that roster arrangement?

MR HOUSE: Yes, but they've - there was not - when you just had the classification, community medical practitioner, those doctors in the health centres received a rate of pay that had incorporated into it the 15 per cent.

COMMISSIONER WATLING: Yes, in the case of the top one, they - Class IIIB they got \$67,000.

MR HOUSE: Well that one didn't exist -

COMMISSIONER WATLING: Right?

MR HOUSE: Yes.

COMMISSIONER WATLING: As opposed to not being on the roster and they got 60,000.

MR HOUSE: Yes, but before - firstly, sir, there was no Class III, and secondly there were - everyone was just classified community medical practitioner, not IIA or IIB, it was just that, and you received a salary that incorporated into it this rolled up concept. But the point I'm trying to make is that, if in - as well as the point you made about there may only be

a few people affected, it could be argued that if there isn't any distinction then there's no incentive. If -

COMMISSIONER WATLING: No incentive to be on call?

MR HOUSE: That's right. Well there's no - if - if - that's right.

COMMISSIONER WATLING: But if it was included in their rate they could be directed to be on call?

MR HOUSE: Well they could be directed, yes.

COMMISSIONER WATLING: If there's a provision in the award that says the employer is able to direct employees to carry out duties that's within their skill and competence which they're being paid for.

MR HOUSE: I suppose I'm not mounting an argument that we shouldn't go down that track. All I'm trying to point out, that there are instances in the - particularly with the medical profession, where rolling up rates may not - may not - be the best way to approach a problem. But - or may not - I shouldn't say a problem - it may not be structurally efficient or it may not be as structurally efficient as it first appears.

COMMISSIONER WATLING: Right.

MR HOUSE: Mr Commissioner, unless - well just on the last point, (c), of clause 20, - we're still on 20 aren't we?

DR SENATOR: 20(b).

MR HOUSE: (b) - I thought - well, commissioner, it's half past four, I don't know whether you want me to complete this - this section or not, but I saw - I jumped ahead, I saw just one little one left, and -

COMMISSIONER WATLING: Well, we've got (b) and (c) to go, so -

MR HOUSE: Yes, sir.

COMMISSIONER WATLING: - so I think we might finish this point - these - we might finish (b) and (c) before we -

MR HOUSE: Fine, thank you. Well (b), as I understand it, is one that will probably require arbitration, sir, and this is a genuine attempt again by the society to try to provide appropriate criteria to identify situations where people should - by exclusion should not participate in an on-call roster. It's an attempt to define also the level of responsibility for patient care in terms of being on call.

The .... here again is to try to provide an award that addresses some of the difficulties that were alleged against my client as to a rather less sloppy approach to the question of being on call.

COMMISSIONER WATLING: So when you get down to (v) doesn't your argument get blown apart?

MR HOUSE: Pardon?

COMMISSIONER WATLING: Does not your argument get blown apart when you -

MR HOUSE: Well it's get blown apart except to the extent that we see that management - it's like the point you were making to me just a minute ago that management here does really have, once you get down to that level, control over it. Unless Dr Senator wants to correct me, you're sort of looking at a last resort situation, aren't you?

COMMISSIONER WATLING: In fact, it really means (i) to (iv) are superfluous.

DR SENATOR: Mr Commissioner, I'd say that there are opposing forces here. There are the forces working one direction from the medical staff's point of view to ensure that comprehensive on call services are available and that ad hoc arrangements which aren't in the interests necessarily of proper and appropriate patient care, can be avoided. On the other hand there's the difficulties of budgetary considerations and cost constraint.

It's a question of really trying to balance these two forces. I guess, if I was to be truthful, the reason for (v) was to try and achieve some sort of concession to (i) to (iv) from our friends at the other end of the bench. As far as I'm concerned the definitions incumbent in (i) to (iv) are comprehensive, however, there may be unusual situations where the controlling authority does require other people to provide this on call service.

COMMISSIONER WATLING: So you're virtually saying (i) to (iv) is mandatory, that the award provides that these people be placed on an on-call roster and any other person the employer so requires.

DR SENATOR: These would be guidelines as much for management as to what their policy should be towards the construction and maintenance of appropriate on call rosters for services under their control.

MR HOUSE: Gordon, is it automatic or is it that these people would be required to, rather than -

DR SENATOR: We believe that consistent with the requirements under the State Service, that this should be part of the employment contract, that these individuals be required to participate.

MR HOUSE: The point I'm trying to make is, does that give them an automatic entitlement or does it - it's just like a person will be required to perform reasonable overtime. What are you driving at there in the -

COMMISSIONER WATLING: You're saying that it's mandatory that these people be on. That's what you're saying.

DR SENATOR: Yes. In the interests of patient services.

COMMISSIONER WATLING: And any other ones the employer chooses so the award chooses the first four and the employer gets to choose any others.

MISS COX: There aren't many of them for us to choose.

DR SENATOR: And there may be fewer after this exercise.

COMMISSIONER WATLING: Right.

MR HOUSE: Turning now to (c), sir, that one also, I understand, is not agreed. I'm instructed that departmental policy, perhaps in an administrative instruction already enables that reimbursement of telephone costs to be provided and there we're only seeking to bring it out into the open in terms of an award provision.

COMMISSIONER WATLING: I've had experience in running a case on this matter. I've been on your side of the table and I've got a similar provision in the award as this and then one of my first tasks when I was appointed to the commission was to have people appear before me to undo it. And I asked the question: why, because the poor advocate that's got that in the award went to a lot of trouble to get that into the award. And the response was: well with due respect to you in this life and in your former life and behind the bar table that they didn't feel that they should have to pay for every telephone installation given that the employee could change houses two or three times a year or two or three times in their working life and why should the employer have to keep paying for someone to change their place of residence.

MR HOUSE: I'm not sure, sir, whether the rental changes when -

COMMISSIONER WATLING: Telephone installation.

MR HOUSE: I see. The rental of a fixed telephone installation -

MISS COX: Every time you move though there's a new installation cost.

COMMISSIONER WATLING: Every time you move you get caught for that.

DR SENATOR: Mr Commissioner, if it would help, we would seek leave to modify that to reflect just the first installation.

COMMISSIONER WATLING: So we'll put (c) on the reserved list, eh? Come back to me on that. So that's 20(c). Right, well that being the case - yes, Mr House?

MR HOUSE: That's a convenient time.

COMMISSIONER WATLING: Right, well we have got tomorrow then, same time, 10.30 start? Right, we'll adjourn until tomorrow morning. Thank you.

HEARING ADJOURNED