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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

[s.170MW](#) Suspension or termination of bargaining period

s.170MX Arbitration by Full Bench

Victorian Hospitals' Industrial Association

(C No. 22345 of 1999)

Service Industry Advisory Group

(C No. 35788 of 1999)

s.170MI Notices of initiation of bargaining period

Health Services Union of Australia

and

Alexandra District Hospital and others

(C Nos. 34750 - 34868 of 1999)

Various employees

Health and welfare services

JUSTICE GIUDICE, PRESIDENT

SENIOR DEPUTY PRESIDENT MACBEAN

COMMISSIONER DEEGAN

MELBOURNE, 23 FEBRUARY 2000

Arbitration under s.170MX following termination of bargaining period initiated by the Health Services Union of Australia in C Nos. 34750 - 34868 of 1999.

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DECISION

INTRODUCTION

[1] This matter involves an arbitration under s.170MX of the *Workplace Relations Act 1996* (the Act) and follows orders terminating bargaining periods involving the Health Services Union of Australia (HSUA) and various Victorian public hospital and community health facilities by Senior Deputy President MacBean on 14 July 1999 [Prints R7187 and R7190] on the grounds that the circumstances in [s.170MW](#) (3) of the Act existed.

[2] The respondents to the proceedings are a range of individual hospitals and health care facilities located throughout metropolitan Melbourne and Victorian regional and country areas and include the following:

- Inner & Eastern Health Care Network
- Southern Health Care Network
- Women's & Children's Health Care Network
- North Western Health Care Network
- Austin Repatriation Medical Centre
- Peninsula Health Care Network
- Royal District Nursing Service
- Australian Red Cross Blood Service
- Barwon Health Care Network
- Ballarat Health Services
- Bendigo Health Care Group
- Wimmera Health Care Group
- Central Wellington Health Service

[3] The employers were represented by the Victorian Hospitals' Industrial Association (VHIA) and the Service Industry Advisory Group (SIAG). SIAG, on behalf of Mercy Public Hospitals Inc. and Bentleigh Bayside Community Health Centre supported and adopted the VHIA's submissions insofar as they are relevant to them.

[4] The terms and conditions of employment regulating the employment of employees sought to be covered by any award made are found in the *Health Services Union of Australia (Victoria - Public Sector) Interim Award 1993* [Print L0832 [H0153]] (the HSUA Interim Award), *Health Services Union of Australia (Royal District Nursing Service) Award 1994* [Print M7664 [H0257]] (the RDNS Award) and the *Social and Community Services (Interim) Award 1995* [Print M5778 [S0825]] (the SACS Award).

[5] There are certified agreements between the HSUA and the employers. These agreements are substantially in identical terms and were operative from 1 July 1997 to 30 June 1999.

[6] The health professionals concerned, who are eligible for membership of the HSUA Victoria No. 3 Branch, are employed in a wide range of occupations including

the following classifications (as contained in the HSUA Interim Award): Medical Imaging Technologist, Radiation Therapy Technologist, Nuclear Medicine Technologist, Physiotherapist, Occupational Therapist, Speech Pathologist, Social Worker, Orthoptist, Podiatrist, Orthotist/Prosthetist, Medical Record Administrator/Health Information Manager, Recreation Therapist, Medical Librarian, Medical Photographer/Illustrator, Cardiac Technologist, Music Therapist, Medical Technician, Medical Technician/Renal Dialysis Technician, Child Psychotherapist, Welfare Worker, Community Development Worker, Technical Officer, Research Technologist, Client Adviser/Rehabilitation Consultant, Biomedical Technologist, Health Aide (Royal District Nursing Service only).

[7] As can be seen the health professionals covered by the claims are employed in a wide range of disciplines. They are usually involved with other health professionals in a multi-disciplinary team providing health services to patients within the Victorian public health sector. With some minor exceptions, the health professionals have received their formal qualifications and training at tertiary institutions with the members of each profession having separate and specialised skills and clinical knowledge in their particular field.

[8] There are approximately 4040 Equivalent Full Time (EFT) health professional positions covered by the HSUA claims of which, it was put, 80% are employed by metropolitan networks, with regional health services and community health centres employing approximately 10%. ¹

INTERVENTION

[9] The Australian Municipal, Administrative, Clerical and Services Union (ASU) was granted leave to intervene in respect of social workers employed in community health facilities pursuant to the SACS Award.

CORRESPONDENCE

[10] On 19 November 1999 the Department of Human Services Victoria, in correspondence addressed to the President, advised that in respect of the health professionals employed in the public sector and subject to these proceedings, the Government had on 21 July 1999 in conciliation proceedings, outlined the increase in wages for which it was prepared to reimburse the respondents by a commensurate increase in funding.

[11] The purpose of this letter was to confirm the terms of the Government's offer to fund the following increases:

" · 3% salary increase from 21 July 1999

· 2% salary increase from 1 July 2000

· 3% salary increase from 1 February 2001

· The nominal expiry date would be 28 February 2002, giving the agreement an eight percent salary increase over a thirty two month term. The operative dates were offered on the basis of agreement being reached on that day.

· In addition, as part of the wages package, the Government offers a sum of \$500 per annum for each health professional employee in the form of a professional development allowance."

INSPECTIONS

[12] A site inspection was carried out at St Vincent's Hospital on 16 November 1999. The Full Bench visited the Medical Imaging Department in which the operation of the following equipment was observed:

- helical CT (computed tomography) which is a computer assisted modality enabling cross-sectional images to be taken of a patient's body;
- ultrasound imaging;
- the use of radioactive material on patients for the production of diagnostic images;
- computed radiography;
- digital subtraction angiography (DSA);
- magnetic resonance imaging.

[13] There was also an inspection at the Peter MacCallum Cancer Institute on 17 November 1999 during which we were shown the following:

- a presentation on the preparation and use of radiation therapy;
- the use of brachytherapy;
- the use of simulators for the production of X-Ray images for the planning of radiotherapy treatments;
- the computerised planning system.
- the mould room; and
- the new linear accelerators.

THE HSUA CLAIMS

[14] The claims now sought by the HSUA are in the form of a draft order which includes existing terms and conditions found in the three awards and enterprise agreements in force, together with various improvements in certain current terms and conditions of employment. These claims are as follows: ²

" · *Wages*

- *Professional structures*
- *On-call allowance*
- *10 hour break between shifts*
- *Five weeks annual leave for health professionals rostered on-call for 10 or more weekends*
- *Security of employment*
- *Classification structure*
- *Extension of current social work classification to community health"*

[15] The HSUA is claiming a 14% increase in wages from 1 July 1999, phased in as follows

- 1 July 1999 - 6.5%
- 1 January 2000 - 4%
- 1 January 2001 - 3.5% ³:

[16] The award claimed is to have an expiry date of 30 June 2001 and is to be read in conjunction with the three awards referred to earlier.

ENTERPRISE BARGAINING FOR RELATED HEALTH PROFESSIONALS

[17] There are substantial numbers of other health professionals employed by the respondents whose terms and conditions are not being dealt with in these proceedings. These include registered nurses and employees in the following classifications:

- Pharmacist;
- Scientist;
- Medical Technologist;
- Audiologist;
- Psychologist;

· Radiation Engineer;

· Dietician.

[18] These employees are eligible for membership of the HSUA Victoria No. 4 Branch and are employed under the HSUA Interim Award and various certified agreements. In addition, the HSUA has coverage of psychiatric nurses who are employed under a number of awards of the Commission and certified agreements.

[19] The Australian Nursing Federation (ANF) has coverage of registered nurses employed under the *Nurses (Victorian Health Services) Award 1992* [Print K6359 [N0175]] (the Nurses VHS Award) and certified agreements.

[20] We have already indicated that the health professionals subject to these proceedings work with other health professionals in integrated teams in delivering the various health services provided by the hospitals and health facilities. It is with this fact in mind that we now set out some of the factual background to what has occurred by way of wage increases in enterprise bargaining between the respondent employers, the HSUA and the ANF.

[21] The wage increases resulting from bargaining between the respondent employers and other health professionals are dealt with in both the HSUA's and VHIA's submissions and relied on in part by the HSUA to justify its wage claim. The relevant commencing point in considering enterprise bargaining outcomes is 1995, when negotiations between the HSUA and the public health sector respondents resulted in the making of certified agreements yielding an 8% wage increase over two years for all non-nursing staff and health professionals members of the HSUA No. 3 and No. 4 branches. In the same year, as a result of negotiations involving the ANF and HSUA, nurses received an 11.5% increase in salaries over two years.

[22] Negotiations for new enterprise agreements in 1997 resulted in nursing classifications receiving an 11% increase over the period from 1 July 1997 to 30 September 2000. Also in 1997 both the No. 3 and No. 4 branches of the HSUA were involved in negotiations for new enterprise agreements. The No. 3 branch accepted a 6% increase over two years, whereas the No. 4 branch accepted an offer of 9% over three years. The two and three year proposals were available to both branches.

[23] The HSUA produced a table summarising wage increases for public health sector employees eligible for membership of the HSUA and ANF since 1995⁴. We have reproduced this table below as amended by the HSUA's submissions in reply⁵:

" TABULATION OF WAGE INCREASES FOR VARIOUS HEALTH EMPLOYEES

	Nurses (ANF HSUA 1 & 2)	Health Professionals (HSUA 3)	Medical Scientists (HSUA 4)	Hospital Administrative & Salaried Staff (HSUA 5)	General Health Workers (HSUA 1)
20 April 95		\$8	\$8	\$8	\$8

1 July 95	5.0	5.0	5.0	5.0	5.0
11 Aug 95	\$8.40				
1 Feb 96	2.0	1.0	1.0	1.0	1.0
1 July 96		2.0	2.0	2.0	2.0
9 May 97		\$10 (approx. 1% - 1.5% depending on classification)	\$10	\$10	\$10
1 Aug 96	3.0				
1 July 97	3.0	3.0	3.0	3.0	3.0
1 July 98	3.0	3.0	3.0	3.0	3.0
1 July 99	3.0 (subtotal 19% + \$8.40)	Total 14% + \$18 Expired 30 June 99	3.0		
28 July 99				3.0	3.0
1 July 2000	<u>2.0</u> Total 21% + \$8.40 Expires 30 Sept 2000		Total 17% + \$18 Expires 30 June 2000	3.0	3.0
1 July 2001				3.0 Total 23% + \$18 Expires 30 June 2002	3.0 Total 23% + \$18 Expires 30 June 2002

"

This history is an important part of the background to these proceedings and we shall return to it later in dealing with the wage claim.

WITNESSES

[24] The HSUA called a total of 17 witnesses who supplied witness statements which were tendered and marked as exhibits. Each witness was cross-examined. In addition, there were supplementary statements from many other health professionals. In those statements the employees expressed agreement, either in whole or in part, with the statement of one or other of the principal witness.

[25] Listed below are the 17 witnesses who gave evidence on behalf of the HSUA, together with their position and place of employment:

<u>Name :</u>	<u>Position :</u>	<u>Place of Employment</u>
Wai-Quen Chan	Legal Officer	Health Services Union of Australia, Victoria No. 3 Branch (Exhibit H7, H8)
David Berlowitz	Physiotherapist	Austin and Repatriation Medical Centre (Exhibit H9)
Andrew Day	Grade 2 Speech Pathologist	North Western Health Care Network at Melbourne Extended Care and Rehabilitation Service (Exhibit H11)
Jenny Dunlop	Deputy Chief Medical Imaging Technologist	Monash Medical Centre, Southern Health Care Network (Exhibit H13)
Linda Mayberry	Medical Imaging Technologist	St Vincent's Hospital (Exhibit H15)

Russell Booth	Chief Nuclear Medicine Technologist	St Vincent's Hospital (Exhibit H17)
Kim Dienhoff	Radiation Therapy Technologist (Radiation Therapist)	Inner and Eastern Health Care Network at the William Buckland Radiotherapy Centre, Alfred Hospital (Exhibit H22)
Kathryn Whitfield	Health Information Manager	Registrar, Victorian Cancer Registry at the Anti Cancer Council Victoria (Exhibit H26)
Jane Bartlett	Physiotherapist	Women's and Children's Health Care Network at the Royal Children's Hospital (Exhibit H27)
Craig Lightfoot	Medical Imaging Technologist Grade 2	Ballarat Health Services (Exhibit H31)
Rowan English	Clinical Manager of Prosthetics and Orthotics	Ballarat Health Services, member of the Allied Health Clinical Management Team (Exhibit H33)

Maree O'Toole	Social Worker	Women's and Children's Health Care Network, Royal Children's Hospital (Exhibit H35)
Hugh Walpole	Social Worker	Southern Health Care Network Community Services with Cranbourne Rehabilitation at Cranbourne Integrated Care Centre (Exhibit H36)
Christine Olaris	Physiotherapist	North Yarra Community Health (NYCH) (Exhibit H38)
Barbara Haynes	Orthoptist, Grade 2	Eye and Ear Hospital (Exhibit H40)
Stephen Tucker	Senior Podiatrist	St Vincents Hospital (Exhibit H44)
Kerrie Stokes	Senior Research Officer	Peter MacCallum Cancer Institute Inner and Eastern Health Care Network (Exhibit H46)

[26] The VHIA provided 15 witness statements which were admitted as exhibits. With the exception of Mr Colin Puls and Mr Leigh Smith, none of the witnesses were required by the HSUA for cross-examination. We list below the VHIA witnesses, their position and place of employment.

Name :

Position :

Place of Employment

Colin Puls	Manager, Employee Relations	North Western Health Care Network (Exhibit S1)
Leigh Smith	Radiation Therapy Technologist	William Buckland Radiotherapy Centre (WBRC), The Alfred (Exhibit S4)
Josephine Smylie	Director, Radiation Therapy Services	Peter MacCallum Cancer Institute (PMCI) (Exhibit S5)
Alec Djoneff	General Manager	Victorian Hospitals Industrial Association (Exhibit S8)
Dr Peter O'Brien	Director of Medical Services	South West Healthcare (Exhibit S9)
Janet Compton	Director of Strategic Development	Royal Melbourne Hospital (Exhibit S10)
Susan Blake	Clinical Director (Allied Health Professional), Directorate of Clinical Support	St Vincent's Hospital (Exhibit S11)

Dr Syd Allen	Medical Director	Southern Health Care Network (Exhibit S12)
Dr Ian Graham	Executive Director - Clinical Services	Ballarat Health Services (Exhibit S13)
David Bowtell	Research Scientist	Peter MacCallum Cancer Institute (Exhibit S14)
Dr Stephen Schlicht	Director of Nuclear Medicine Department	St Vincent's Hospital (Exhibit S15)
Dr Peter Smith	Acting Director of Medical Imaging Department , Melbourne	St Vincent's Hospital (Exhibit S16)
Karen Hogan	Allied Health Co-ordinator and Co-ordinator of the Gatehouse Centre	Royal Children's Hospital (Exhibit S17)
Julie Andrews	Executive Sponsor of the Community Health Program	Southern Health Care Network (Exhibit S7)
Ian Carson	Medical Director of Medical Services	Eye and Ear Hospital (the Hospital) (Exhibit S6)

SECTION 170MX(5)

[27] Section 170MX(5) specifies a number of matters which the Commission is obliged to have regard to in an arbitration of this kind. The provision reads:

"In exercising those arbitration powers, the Full Bench must have regard to the following:

(a) the matters that were at issue during the bargaining period;

(b) the merits of the case;

(c) the interests of the negotiating parties and the public interest;

(d) how productivity might be improved in the business or part of the business concerned;

(e) the extent to which the conduct of the negotiating parties during the bargaining period was reasonable;

(f) any relevant principles formulated by a Full Bench for the purposes of this subsection."

The parties addressed us on some of the matters specified, sometimes as a separate submission and sometimes during the course of submissions on a particular claim. We shall deal with those matters which are relevant at this stage of our decision, but we will also have regard to them when considering the various claims.

"the matters that were at issue during the bargaining period"

[28] The HSUA submitted that while the Commission is required to have regard to the matters that were at issue during the bargaining period (in this case the matters set out in the s.170MI notices) the HSUA has agreed to confine its claim in arbitration to seven matters to be included in a comprehensive award incorporating all current terms and conditions from the HSUA awards and certified agreements.⁶ It was therefore submitted that the Commission should confine the matters for arbitration to these seven claims.⁷ The employers did not submit otherwise. Our arbitration will be confined to the seven matters. We deal later on with the content of the award apart from those matters.

"the merits of the case"

[29] The HSUA relied on a number of decisions of the Commission under s.170MX to submit that the merits should be determined subject to an *"objective assessment"* which the Commission considers *"to be a fair result for the parties ... having regard to the requirements of the Act and the particular circumstances of (this) case"* and determined *"according to equity, good conscience and the substantial merits of the case"*.⁸ These submissions are indicative of the Commission's approach to arbitration generally, an approach which is also applicable where powers are being exercised pursuant to s.170MX. The merits of the case are dealt with in the course of our deliberations on each of the claims.

"the interests of the negotiating parties and the public interest"

[30] It was put by the HSUA that it is in the interests of the parties that it obtain the award claimed as that would be seen as a good outcome. The HSUA also submitted that the employers' unwillingness to agree to the HSUA claim is not based on the merits of the claim but results from Government policy on funding. It is in the public interest that the increased skills and knowledge of health professionals be properly recognised through increased rates of pay and conditions to reflect the change in work value and productivity. It is also in the public interest that health professionals are treated equitably by comparison with other health workers.

[31] So far as the interests of the parties are concerned, there are difficulties in reconciling the employees' interest in securing increased remuneration and enhanced conditions with the employers' interest in maintaining a viable labour cost structure. In balancing the interests of the parties we are also conscious of the potential for our decision to destabilize industrial relations in related employment areas and jeopardize the public interest. Nevertheless all parties have an interest in maintaining viable enterprises with the potential to provide ongoing employment. In our deliberations we have attempted to arrive at wages and conditions which are fair by reference to the nature of the work being undertaken, the recent history of wage fixation for the employees concerned and the level of increases enjoyed by employees in related fields.

" how productivity might be improved in the business or part of the business concerned"

[32] The HSUA submitted that over the past 12 years there has been a quite significant improvement in productivity in the public health sector which has benefited the employers and the community. This improvement could be jeopardised if the HSUA's claims fail and disillusionment increases and work diminishes . The VHIA did not put forward any proposals by which productivity in the establishments might be improved. (As already noted, the employers agreed that the arbitration should be limited to seven claims initiated by the HSUA.) But it did oppose a number of claims on the basis that they would have a negative effect on productivity or would not increase it. Whilst both sides invoked the productivity criterion neither produced any material by which to judge the likely effect on productivity if the various claims were granted. In this context we point out that merely quantifying the cost of a claim does not necessarily indicate that productivity will be affected in any particular way if the claim is granted.

THE WAGE CLAIM

[33] In relation to wages, the HSUA relied on the following matters:

" · Educational Requirements;

· Research;

· Increased Workload and Productivity;

· Increased Skill and Knowledge;

· Increased Complexity;

· Increased Responsibility;

*· Increased Pressure and Stress."*⁹

We were taken to parts of the evidence which, it was submitted, demonstrate that changes of a substantial nature have occurred in the work of the health professionals in each of these areas.

[34] The appropriate point of time from which changes in work should be measured, in the HSUA submission, is 1987. The HSUA submitted that the increases in wages resulting from enterprise bargaining since 1995 have not rewarded health professionals sufficiently for the changes in work requirements that have resulted from the matters identified above. It was put that the increases from enterprise bargaining have not been based on the merits of the HSUA case but rather on the level of the Government's funding of respondent employers in accordance with Government policy at the time.

[35] The HSUA also compared the increases received by the ANF nursing classifications with those received by health professionals. Up until 1 July 1999 health professionals in the HSUA No. 3 Branch have received significantly less in percentage wage increases than nursing classifications. In their submission the HSUA also made the point that for the period from 1 July 1999 to 30 September 2000 the outcome for nurses provides them with a further 5% increase, an increase which it claimed was not offered to the HSUA.

[36] In their submissions the HSUA took issue with evidence given by some VHIA witnesses that an increase in the skills and responsibilities of health professionals is a part of the normal process and is no more than is to be expected of health professionals in keeping up to date with new technology and other developments in their area of expertise. The HSUA submitted that this approach implied that employees should receive no reward or recognition for adapting to such changes. The HSUA also took issue with the evidence from VHIA witnesses who considered the changes to be small and normally expected within the profession. It submitted that the evidence disclosed a "*dramatic explosion in relevant technologies and levels of professional competency over the last 10 to 12 years*"¹⁰.

[37] The HSUA concluded its submission on wages in the following terms¹¹:

"It is submitted that the evidence sustains the HSUA's claim for a 14% increase on current wages and allowances operative from 1 July 1999. This would do no more than bring allied health professionals to the level of salary increases granted to nursing classifications between 1 July 1995 and 1 July 1999. The HSUA submits that the 14% wage increase should be provided as follows:

· 1 July 1999 - 6.5%

· 1 January 2000 - 4%

· 1 January 2001 - 3.5%

The commencing operative date for the award should be 1 July 1999 consistent with the increases given to nursing classifications and consistent with the government's operative date for wage increases to health professionals to commence on 1 July 1999."

[38] The VHIA submitted that health professionals should be granted a wage increase "*commensurate with wage increases granted to other health workers in the Victorian public hospital system and other health professionals in the Australian public hospital system*"¹². The wage increase advocated by the VHIA based on this criterion is 8% over 32 months and provision for a professional development allowance in an award with a nominal expiry date of 28 February 2002.

[39] The VHIA proposed that the increase be phased-in in accordance with the following timetable¹³:

3% from the prospective date of commencement of the s.170MX award

- 2% 12 months from the date of commencement
- 3% 19 months from the date of commencement

In its final submissions the VHIA modified its position on the issue of operative date. Mr  Wood  indicated that the employers would not quibble too much at an operative date of 1 July 1999 if the increase was in the region of the Government's funding offer of 3% plus an amount for professional development, although he went on to express a concern as to whether employers would receive Government funding on a retrospective basis.

[40] The VHIA's justification for this level of increase was based on the following factors:

- Changes such as an increased workload and improved productivity have not affected health professionals in isolation. All health workers in the Victorian public hospital system have been affected to broadly the same extent by these changes.
- The relativities between health professionals and other health workers would be disrupted if the HSUA's claim were granted, and the introduction of new technology has not been so profound as to justify disrupting these relativities.
- Enterprise bargaining has taken place over the last 5 years. It is not fair to re-open these bargains and give the health professionals something that was not bargained for over the last 5 years.
- Health professionals should be granted wage increases commensurate with the funding offer of the Victorian government.

[41] The VHIA submitted further that it would be unfair to reopen the results of enterprise bargaining which has occurred over the last five years. To accede to the HSUA's claim that health professionals had received insufficient reward in bargaining outcomes for their contribution would destroy the integrity of the bargain.

[42] In the submission of the VHIA wage increases and other improvements have already been won on the basis of, among other matters, productivity improvements since 1993. In seeking to rely on past productivity improvements for a further wage increase, the HSUA is in effect "double-dipping". It is in the public interest for the Commission to protect the integrity of the bargains reached. The better approach would be to compare wage increases granted to other health workers having regard to the government wage guidelines at the time.

[43] The VHIA submitted in respect of the intrastate comparisons that each group of workers in the Victorian public health system was offered almost exactly the same amounts by way of increase during the 1995 and 1997 wage rounds. With the exception of the No. 3 Branch, all of the HSUA's Victorian branches accepted the mid 1999 offer of 3% per year.

[44] The VHIA compared the increases received by nurses with the increases received by other health workers. It submitted that from 1 July 1997 until the expiration of the nurses' agreement in September 2000 nurses received only 1% more by way of increase. The 1% difference is calculated on the basis of the nurses receiving 5% over the 15 months from 1 July 1999 to 30 September 2000 (equivalent to 4% for 12 months) whereas the other health workers will have received 3% over a 12 month period from 1 July 1999 to 30 June 2000.

[45] With respect to the HSUA claims relating to increased productivity, responsibility and stress, the VHIA submitted that the evidence was not clear on whether the workload had increased in Victorian public hospitals. However, if there had been an increase in workloads, such an increase would not have been confined to health

professionals but would have affected doctors, nurses and medical scientists equally.

[46] While recognising that there has been an increase in technology over the past 12 years, the VHIA submitted that the resulting changes have not affected all classifications uniformly. There is little evidence of technological change other than in the radiation therapist classification. The changes that have occurred, even if widespread do not, in the VHIA's submission, justify wage increases greater than those granted to other health workers who have been subject to the same technological changes. Health professionals should be granted wage increases commensurate with the funding offer of the Victorian Government. To grant the HSUA claim would result in flow-on effects and would not be in the public interest.

[47] We are satisfied that there has been considerable change over the past decade in the various health areas in which health professionals are engaged. These changes and their effects on the work of health professionals have been more pronounced for some than for others. The rapid rate of technological change, the nature of some of the technology, medical practices, procedures and techniques have all produced changes in the work of health professionals with a resultant increase in educational requirements both at the undergraduate and post graduate levels.

[48] Other factors which have had an impact on the work of health professionals include the reduced length of stay of patients in the public health system. This in turn requires critical clinical decisions by health professionals within a much reduced period of time. This has placed health professionals under increased pressure.

[49] One of the areas that has changed significantly has been the medical radiation profession. For example, the Deputy Chief Medical Imaging Technologist at the Monash Medical Centre in the Southern Health Care Network, Jenny Dunlop, stated that there had been major developments in the clinical work of medical imaging and nuclear medicine technologists over the last 12 years arising from the rapid growth of technological change and a corresponding demand to master new skills and equipment. ¹⁴

[50] This new technology, in Jenny Dunlop's evidence, has -enabled the *"Medical Imaging and Nuclear Technologists to undertake more complex and detailed examinations"* ¹⁵. Some of the new technology in this area includes, helical/spiral computed tomography (CT) which enables cross-sectioned images to be taken of the body. It is an advanced three dimensional CT machine which enables spiral slice images to be produced and reconstructed into a three dimensional image. In addition to having to learn the functions and capabilities of the equipment the technologist is required to achieve a more sophisticated understanding of cross-sectional anatomy. Other areas which have been the subject of significant changes are:

- ultrasound examination
- angiography
- interventional radiography
- magnetic resonance imaging
- computed radiography (general radiography)

[51] While some of the evidence given by the HSUA witnesses was disputed in the evidence given by the witnesses on behalf of the VHIA, we consider the areas of difference to be relatively small. In general, the changes that have occurred in the work of health professionals as a result of changing technology and the other

factors identified earlier are not in dispute between the parties.

[52] We agree, however, with the submission of the VHIA that the changes in the work of the health professionals subject to these proceedings have not occurred in isolation. Other health professionals including registered nurses have been affected by changes of a similar nature. We also agree with the VHIA's submission that the pace and extent of change has not been uniform across the classifications covered by the claim.

[53] We have also taken into account the competing submissions about the significance we should attach to the outcome of bargaining over recent years. The HSUA submits that increases in wages resulting from bargaining are related to government funding levels and are not a measure of changed work requirements. The employers submit that the outcome of bargaining should not be interfered with in any significant way because the integrity of the bargaining process would be undermined by such interference. These submissions are difficult to reconcile. Each point of view is valid to some degree. As will be seen, we have had regard both to the extent and nature of changes in work requirements and to the results of enterprise bargaining in formulating the amount of the award and the operative date.

[54] Taking all of the material into account, and balancing the submissions concerning the increases received or to be received by other employees in the Victorian health sector, we have decided to award an increase in salaries of 6% in two instalments. The first instalment will be of 4% and will operate from 1 July, 1999. The second instalment will be of 2% and will operate from 1 July, 2000. Our award will have a nominal expiry date of 31 August, 2000. We have chosen this date because it is desirable that the parties have the opportunity to address the relationship between the rates for classifications covered by this claim and the rates for other classifications in the Victorian health sector at a relatively early date. In that connection we note the importance which both the HSUA and employers attached to such relativities. The course we have adopted minimises the risk of our pre-empting the positions the parties may wish to pursue in relation to the relativity between the various relevant classification groups.

SECURITY OF EMPLOYMENT

[55] The HSUA made the following claim in relation to security of employment ¹⁶:

"46. NO CONTRACTING OUT

The employer shall not contract out any of the work performed by employees classified under this Award to be performed or provided by any third party.

47. NO REDUNDANCIES

No employees classified under this Award shall be made redundant."

[56] The HSUA submitted that the evidence supported the inclusion of these clauses on the grounds that redundancies caused by budget cuts and the contracting out of work performed by health professionals has "*affected the morale and job security of health professionals*" ¹⁷. The loss of health professional staff has resulted in an increase in the workload of those health professionals remaining. Budget cuts, retrenchments, amalgamations and contracting out had all led to an "insecure workplace" and "low morale".

[57] In response to this claim the VHIA submitted that each hospital is considered an agency of the State of Victoria and thereby protected by the implied limitation

upon the Commission's power. As a consequence, the Commonwealth is prevented from "*interfering with the number and identity of persons that each hospital wishes to employ and the number and identity of persons each hospital wishes to dismiss from its employment on redundancy grounds*" ¹⁸: see *Re Australian Education Union ; Ex parte Victoria* ¹⁹.

[58] Further, it was submitted that the clauses claimed would hinder the ability of hospitals to regulate their employment requirements in accordance with demand or funding. The claim would adversely affect productivity and is against the public interest.

[59] The HSUA's claim amounts to a prohibition on contracting out work currently performed by employees classified under the (relevant) award. It also prohibits redundancies. We accept the VHIA's submission that the clause sought, if granted, could hinder the ability of hospitals to regulate their employment requirements in accordance with demand and funding. It is clear from the evidence that cuts in Government funding and contracting out of work formerly performed by health professionals have occurred and will continue to occur and that the morale of health professionals is adversely affected by changes of that nature. Where such changes are necessary appropriate measures should be adopted by employers to protect employees from unfair treatment. On the case presented, however, we are not persuaded prohibitions on contracting out and redundancies are either practical or appropriate. In the circumstances it is not necessary that we address the argument advanced by the VHIA based on jurisdiction.

PROFESSIONAL STRUCTURES

[60] The claim by the HSUA under this heading is as follows ²⁰:

"19. PROFESSIONAL STRUCTURES

The parties shall establish principles regarding:

- the maintenance of appropriate allied health establishments and staffing profiles in each area and program;*
- the maintenance of adequate senior positions to provide career paths, and appropriate supervision to other staff;*
- the proper implementation of the classification structure;*
- training and professional development strategies, including a dedicated training budget of 2% of total wages and allowances budgets for professional development and training;*
- the maintenance or replacement of capital equipment, including diagnostic and treatment equipment, computers, telephones and fax machines; and*
- adequate and appropriate staffing levels through agreed staffing profiles."*

[61] In support of this claim, the HSUA submitted that it is necessary for the matters identified in the principles to be addressed so that health professionals can "*continue to provide high levels of work performance and proper services to the employers and their patients*" ²¹. The evidence, it was claimed, demonstrates that

there has been a contraction in the number of more senior positions resulting in less senior health professionals having to take on additional responsibilities and a consequent increase in workload.

[62] The VHIA submitted that the evidence did not support the adoption of the union's claim. In the VHIA's submission there is no evidence that the current methods of dealing with "day to day problems" at the various hospitals are unsatisfactory. In addition, it was submitted that the claim will not improve productivity and is not in the public interest.

[63] Whilst the concepts inherent in the HSUA's proposals may have some merit, we think it is impractical to make an award which requires parties to establish principles in relation to the matters specified in the claim. Opinions might differ on valid grounds and agreement might not be possible. We also point out that principles of this general kind are usually matters for the management of the entity concerned. Needless to say there should be proper consultation with professional staff concerning issues directly affecting their working lives.

CLASSIFICATION STRUCTURE

[64] The HSUA claims that the classification structure should be amended in a number of ways ²². The proposal can be summarised as follows ²³:

" The HSUA's claim is threefold:

- To insert Grade 3 classifications for professional disciplines without Grade 3 classifications, in similar or identical terms to the current Grade 3 classifications for other health professionals.*
- To rename Medical Records Administrators as Health Information Managers in line with changes to the title of the undergraduate course and to align the Chief classifications and rates of pay to those currently applicable to the other UG1 professional disciplines.*
- To update and amend the award classifications for Medical Imaging Technology and Nuclear Medicine Technology."*

[65] The HSUA submitted that the changes are necessary to provide proper recognition for the acquisition by various health professionals of particular qualifications, post-graduate experience, skills resulting from changes in technology and specialised knowledge.

[66] It was put by VHIA that the proposed grade 3 classification affects only a small number of health professionals. While not opposing the renaming of Medical Records Administrators, the VHIA submitted there was limited evidence to support an increase in rates.

[67] We agree in principle with the first part of the HSUA's claim, that relating to the inclusion of Grade 3 classifications for professional disciplines currently without access to Grade 3. The evidence indicates that employees in those disciplines are disadvantaged by comparison with the disciplines for which there is a Grade 3. Furthermore there is some evidence that Grade 3 rates are paid to some employees in those disciplines already.

[68] The second part of the HSUA's claim so far as it concerns the renaming of the Medical Records Administrator is not in contest. We grant that claim as well as the HSUA's claim that the renamed classification should be aligned with the UG1 rates in the HSUA Interim Award.

[69] The third part of the claim seeks to revise the Medical Imaging Technology and Nuclear Medicine Technology classifications. The VHIA opposed this on the basis that it was unsupported by evidence but otherwise made no comment. Although the evidence was not as comprehensive as it might have been we are satisfied that the evidence of Ms Dunlop and Mr Booth does justify the changes sought. We grant this aspect of the HSUA's claim also.

ANNUAL LEAVE

[70] The claim for additional annual leave is as follows ²⁴:

"33.8 Weekend Worker

*33.8.1 For the purposes of this Award "Weekend Worker" shall mean any employee who in any one year of employment either works a portion of his or her ordinary hours on a weekend **or is on-call** .*

*33.8.2 A Weekend Worker who either works **or is on-call** on ten or more weekends during the yearly period in respect of which his or her leave accrues shall be allowed one week's leave additional to the leave hereinbefore prescribed.*

*33.8.3 Clauses 33.8.1 and 33.8.2 shall not apply to any weekend on which the employee either works **or is on-call** for 4 hours or less.*

[71] The award presently provides that employees who work on ten or more weekends for not less than 4 hours annually are entitled to an extra week of annual leave. The claim extends the benefit of that provision to staff "on-call" for more than 4 hours on ten or more weekends per year. The HSUA submitted that health professionals who are rostered on-call for 24 to 48 hour periods over a weekend can be compared to employees who work a weekend shift of approximately 4 hours on ten or more week-ends per year and receive an extra week's annual leave.

[72] There is insufficient evidence to justify a change in this provision. Typically a fifth week of leave is afforded by award to employees who are required to work on a certain number of weekends per year, as the HSUA's submission acknowledges. So far as we can ascertain no other group of workers in the health sector receives an additional week of annual leave as a result of the requirement to be on call during a weekend. We can see no justification for departing from the current method of remunerating employees required to be on call. That method compares favourably with the equivalent provision in the Nurses VHS Award . The claim is refused.

ON-CALL ALLOWANCE

[73] The HSUA claims an increase in the on-call allowance, currently 2.5% of the UG1 Grade 1 Year 2 rate, to 10% of the UG1 Grade 1 Year 3 rate. The present on-call allowance is payable for each 24 hour period on-call. This does not, in the HSUA's submission, provide adequate compensation for the extended periods for which health professionals are required to be on-call, nor for the significant burden placed on health professionals outside their normal working hours as a result of their on-call obligations.

[74] We are not persuaded by the HSUA's evidence that the on-call allowance should be increased. Furthermore there has been no attempt to justify the claim by reference to award conditions applying to health professionals elsewhere.

A TEN HOUR BREAK

[75] The award presently provides for an eight hour break between the end of duty and the commencement of the next rostered shift. The claim is for a ten hour break. The HSUA supports the claim by reference to the provision for a ten hour break in a number of awards applying to other health workers in Victoria. It is also submitted that the ten hour break is justified on health and safety grounds.

[76] The VHIA submitted that these claims:

- are inconsistent with the tests under s.170MX(5);
- would not improve productivity;
- are not supported by the evidence;
- involve additional costs of almost \$2 million; and
- are not justified having regard to the conditions that apply to other health professionals.

[77] This provision is already contained in the *Health and Allied Services- Public Sector - Victoria Consolidated Award 1996* (the Health and Allied Services Award) and the Nurses VHS Award. We see no reason why the same provision should not apply to these employees. We grant the claim in principle. The clause should be as near as practicable in form to that contained in the Health and Allied Services Award.

THE SOCIAL WORKERS' CLAIM

[78] The HSUA claims that any award that we make should also apply to social workers employed in community health centres who are currently classified and paid under the SACS Award. Social workers employed under the SACS Award receive between \$150 - \$200 less per week than social workers employed in hospitals under the HSUA Interim Award. It was submitted that social workers employed in community health centres hold the same tertiary qualifications as social workers employed in hospitals. The social workers form part of a multi-disciplinary team, working with other health professionals in community health centres who are paid professional rates under the HSUA Interim Award. It submitted that it would be "*inequitable and anomalous to pay social workers in community health centres less than social workers employed in hospitals*". [25](#)

[79] The HSUA acknowledged that social workers in community health centre employment are not eligible to be members of the HSUA. Nevertheless it relied on [s.170LJ](#) (1) of the Act which, it was submitted, provides the jurisdictional base for the inclusion of social workers in any s.170MX award. The HSUA produced a list of 37 centres who are parties to the proceedings and in which the HSUA submitted it has members.

[80] In response to the HSUA's application the ASU submitted that it should be a party to any award made for social workers employed in community health centres. The ASU made the followings points:

- Social workers employed in community health have their terms and conditions of employment regulated by the SACS Award with the ASU as the sole union

respondent.

- There are numbers of community health centres that have certified agreements with the ASU.
- There is an exclusion in the HSUA rules relating to coverage of social workers and other welfare workers in community health centres.
- The ASU has an application currently before the Commission seeking professional rates of pay for social workers and other classifications in community health.
- The ASU does not oppose any salary increases for social workers arising from these proceedings.
- The ASU seeks the maintenance of (its) existing eligibility to cover social workers.
- The ASU contends there are no relevant findings of dispute for a s.170MX award to be made containing social workers employed under the SACS Award.
- Should the Commission determine to make an award that includes social workers, then the ASU should be a party to such an award.
- The ASU has entered into certified agreements with some 46 community health centres who are parties to these proceedings; these agreements would be nullified by the effect of s.170LY(2).
- The certified agreements to which the ASU is a party contain classifications for non-professional social workers. If a s. 170MX award is made applying to the centres, pursuant to s.170MY(2) the agreements would cease to operate in relation to persons employed in such classifications. The rights of such workers should not be removed as a result of the making of a s.170MX award.
- The ASU should be given rights of representation generally under any new award.

[81] The VHIA submitted that the claim by the HSUA that social workers employed in community health centres under the SACS Award should be included in our award should be rejected. In the VHIA's submission there is no justification for upsetting the existing industrial award coverage whereby the social workers concerned are covered by an award to which the HSUA is not a respondent and for which the HSUA does not have membership coverage.

[82] We intend that the award we make should not go beyond the HSUA's award coverage. Therefore the award will be limited in its application to social workers to those employed pursuant to the HSUA interim award and the RDNS award. There are several reasons for adopting this course. The first is that while we have heard some general evidence concerning the work performed by social workers in community health centres we have heard little evidence concerning the detail of this work. In particular we are not convinced that the work performed by such employees is the same in relevant respects as that performed by social workers covered by the HSUA. Secondly, we have not received an adequate explanation of the cost of the HSUA's proposal to employers. From the disparity in wage rates we assume the costs would be considerable. Removal of that disparity might lead to unfortunate economic effects. Thirdly, and perhaps most importantly, there is an existing pattern of industrial representation in which the HSUA does not represent the interests of social workers in community health centres - that role having been carried out for some years by the ASU. Award coverage reflects that division. We see no reason to disturb those arrangements by granting the HSUA claim in this case. We add that in light of our decision to reject the HSUA's claim the ASU's claim for representivity to the award we intend to make should also be rejected.

THE CONTENT OF THE AWARD

[83] The HSUA pressed for the inclusion of what it referred to as core conditions contained in the certified agreements to be included in our award. Pursuant to s.170LY(2), in the circumstances there specified, an award made pursuant to s.170MX renders a certified agreement inoperative. Whilst the VHIA did not support the HSUA proposal it implicitly conceded the force of the argument based on s.170LY(2). It submitted that it was appropriate to maintain the operation of the core conditions through undertakings by the relevant employers. It did not oppose legal protection of the employees' rights if a way could be found to ensure such protection. Our award will incorporate core conditions so that they are binding on the same basis and to the same extent as currently.

[84] The HSUA also submitted that all of the provisions of the HSUA Interim Award not otherwise dealt with in this arbitration should be included in our award. We can discern no compelling argument put in support of that course. The VHIA argued that the award should be simplified in due course and there is no point in putting provisions in their current form into the s.170MX award. We agree with the VHIA's submission. The award will only contain matters rendered necessary by this arbitration and the core conditions.

THE FORM OF THE AWARD

[85] A Full Bench recently decided that the power conferred on the Commission by s.170MX does not permit an award to be made applying to more than one enterprise. The reasons for that decision are set out in *Australian Nursing Federation and Aaron Private Nursing Home and Others* ²⁶. No party submitted that the decision should not be followed. On the other hand, the employers agreed with the HSUA that the outcome of this arbitration should be the same for all respondents. We therefore intend to adopt the HSUA proposal as to the awards that should be made. There will be one award dealing with all of the conditions we have identified. That award will apply to one respondent only. All other respondents will be bound by their own individual award which will make the first award binding by reference. Some departure from this pattern may be required to accommodate the position where classifications apply at one or a limited number of locations.

[86] The VHIA submitted that research staff at Peter MacCallum Cancer Institute should not be included in any award made on the grounds that the Institute was subject to separate funding arrangements. We reject this submission. We can see no reason, given the amount of the increase we have awarded, why employees of the Institute should not receive the increase and the other conditions which our award will contain. If agreement is reached with the employees that the Institute should be covered by a separate instrument at some time in the future, that matter can be addressed after this award reaches its nominal expiry date.

CONCLUSION

[87] The HSUA is directed to confer with the employers and file draft awards within 28 days of this decision. The orders will be settled by Commissioner Deegan with recourse to the Bench if necessary.

BY THE COMMISSION:

PRESIDENT

Appearances:

R. Hinkley with *D. Langmead* of counsel and *W.Q. Chan* for the Health Services Union of Australia.

S.  of counsel with G. Szlawski for the Victorian Hospitals' Industrial Association.

M. Smith for Service Industry Advisory Group.

M. Harvey for the Department of Human Services.

R. Rankin for the Australian Municipal, Administrative, Clerical and Services Union, intervening.

Hearing Details:

1999

Melbourne:

July 28;

November 15, 16, 17 18;

December 13, 16.

2000

January 18, 27.

Decision Summary

		Conditions of employment - <u>arbitration</u> - ss170MW and 170MX Workplace Relations Act 1996 - <u>full bench</u> - various employees, health and welfare services - termination of bargaining period on grounds that circumstances of s170MW (3) existed - union submitted that increased skills and knowledge of health professionals should be recognised through increased remuneration and enhanced conditions - Commission recognised difficulties in reconciling employees' and employers' interests - employer sought wage increases commensurate with wage increases granted to other health workers - Commission satisfied significant changes had occurred over past decade in various health areas in which health professionals were engaged - significance of bargaining over recent years considered - increase in salaries awarded in two instalments - <u>security of employment</u> - union sought prohibition on contracting out work and redundancies - employer submitted clause would hinder hospitals' ability to regulate employment requirements - Commission not persuaded prohibitions sought practical or appropriate - <u>professional structures</u> - union sought establishment of principles so that health professionals could continue to provide high levels of work performance and proper services - employer claimed no evidence methods of dealing with "day to day problems" unsatisfactory -
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Commission found making award requiring parties to establish required principles impractical - classification structure - union submitted changes necessary to provide proper recognition for acquisition by health professionals of particular qualifications and skills - employer claimed limited evidence supported increase in rates - Commission satisfied evidence justified changes sought - claim granted - annual leave - union sought extension of benefit of extra week leave to staff "on-call" - Commission found no justification for departing from current method of remunerating employees required to be on call - claim refused - on-call allowance - Commission not persuaded on-call allowance should be increased - no attempt to justify claim by reference to award conditions applying to health professionals elsewhere - ten hour break - union submitted increases from eight hour break justified on health grounds - employer argued claims would not improve productivity and would involve additional costs - Commission saw no reason why provision in health and services award should not apply to health professionals - social workers' claim - union claimed award should also apply to social workers employed in community health centres - workers members of another union not eligible to be members of applicant union - employer saw no justification in upsetting existing award coverage - Commission limited application of award to social workers employed within union's award coverage - content of award - s170LY(2) considered - award to incorporate core conditions binding on same basis and extent as under current certified agreements - form of award - whether award made applies to more than one enterprise - power conferred on Commission by s170MX considered - one award applying to one respondent to be made - other respondents to be bound by own individual awards - union and employers directed to confer and file draft orders.

Health Services Union of Australia and Alexandra District Hospital and others

C Nos 34750 - 34868 of 1999

Print S3476

Giudice J

Melbourne

23 February 2000

MacBean SDP

Deegan C

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1 Exhibit H50 at p.15.

2 Exhibit H50 at p.60.

3 Exhibit H 50 at p.56.

4 Exhibit H50 at p.21.

5 Exhibit H55 at p.4.

6 Exhibit H50 at p.26.

7 Ibid, at p.27.

8 See Curragh Queensland Mining Ltd [Print Q4464]; HSUA and Department of Human Services [Print Q2526]; AEU v Minister for Public Administration (Tasmania) [Print Q0785].

9 Exhibit H50 at p29-30.

10 Exhibit H50 at p.56.

11 Ibid.

12 Exhibit S21 at p.3.

13 Ibid at p.4.

14 Exhibit H13 at p.6.

15 Exhibit H13 at p.6.

16 Exhibit H1 at p.53.

17 Exhibit H50 at p.58

18 Exhibit S1 at p.18.

19 (1995) 184 CLR 188 at 222 - 233.

20 Exhibit H1 at p.12.

21 Ibid at p.60.

22 Appendix B of Exhibit H1 at pp. 58-60, 75, 77-80, 87.

23 Exhibit H50 at p.61.

24 Exhibit H1 at clause 33.8.

25 Exhibit H50 at p.77.

26 Print S2652 at paras [19] to [30].

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