Industrial Relations Commission
New South Wales

Medium Neutral Citation:	**Australian Salaried Medical Officers' Federation (NSW) v Health Secretary in respect of the Western Sydney Local Health District (No 3) [2022] NSWIRComm 1076**
Hearing dates:	18 and 27 May 2021, 13 and 14 September 2021, 27 October 2021, and 22 November 2021 Final note on the interpretation of cl 6(1)(a) Industrial Relations (Public Sector Conditions of Employment) Regulation 2014 filed on 19 January 2022
Date of orders:	16 September 2022
Decision date:	16 September 2022
Jurisdiction:	Industrial Relations Commission
Before:	Chief Commissioner Constant
Decision:	The Dispute Notification is dismissed.
Catchwords:	EMPLOYMENT AND INDUSTRIAL LAW – Industrial dispute – application for continuation of above-award conditions of employment - powers of the Commission on arbitration of industrial disputes – whether the Commission can make a direction under s 136(1)(a) setting terms and conditions of employment – Awards and enterprise agreements – variation - presumption that award provides fair and reasonable conditions of employment – whether presumption rebutted
Legislation Cited:	*Health Administration Act 1982* (NSW), s 21 *Health Services Act 1997* (NSW), ss 115, 116, and 116A *Industrial Relations Act 1996* (NSW), Ch 4, Pt 5, ss 5, 10, 12, 17, 130, 134, 135, 136, 137, 175, 187, and 188 Industrial Relations (Public Sector Conditions of Employment) Regulation 2014 (NSW), cl 6 *Public Service Act 1902* (NSW), s 14
Cases Cited:	*Application by Health Services Union NSW for NSW Ambulance On-Call Related Transitional Benefits Award* [2021] NSWIRComm 1003 *Attorney-General v Gray* [1977] 1 NSWLR 406

Australian Fertilizers Ltd v Australian Workers' Union (NSW Branch) (1983) 4 IR 263
Australian Salaried Medical Officers' Federation (NSW) v Health Secretary in respect of the Western Sydney Local Health District [2021] NSWIRComm 1002
Australian Salaried Medical Officers' Federation (NSW) v Health Secretary in respect of the Western Sydney Local Health District (No 2) [2021] NSWIRComm 1071
Booker Industries Pty Lid v Wilson Parking (Qld) Pty Ltd (1982) 149 CLR 600
City of Sydney Wages/Salary Award 2014 [2014] NSWIRComm 49
Coles Supermarkets Australia Pty Ltd v Bright [2015] NSWCA 17
Health Services Union and Ambulance Service of New South Wales re Changes to Demand Protocol [2008] NSWIRComm 1027
In re Medical Officers -Hospital Specialists (State) Award [1967] AR 45 (NSW)
Jones v Dunkel (1959) 101 CLR 298
Local Government Engineers' Association of New South Wales v MidCoast Council (No 2) [2022] NSWIRComm 1069
New South Wales Nurses' Association v Sydney Local Health District (2013) 232 IR 217
NSW Local Government, Clerical. Administrative, Energy Airlines and Utilities Union v Warringah Council [2015] NSWIRComm 1012
NSW Ministry of Health v Health Services Union New South Wales and anor (No. 2) [2019] NSWIRComm 1081
NSW Nurses' Association v Sydney Local Health District [2012] NSWIRComm 52
Police Association v NSW Police (No 3) [2005] NSWIRComm 243
Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales v Secretary for Industrial Relations [2018] NSWIRComm 1061
Racecourse Co-operative Sugar Association Ltd v Attorney-General (Qld) (1979) 142 CLR 460
Recorded Media Industry Union of New South Wales v Summit Technology Australia Pty Ltd [2006] NSWIRComm 270

	Re Crown Employees (New South Wales Department of Family and Community Services) Residential Centre Support Services Staff Award 2015; Re Crown Employees Ageing, Disability and Homecare - NSW Department of Family and Community Services (Community Living Award) 2015 [2017] NSWIRComm 1058 *Re Medical Officers – Hospital Specialists' (State) Award* [1978] AR (NSW) 321 *Re Operational Ambulance Officers (State) Award* [2001] NSWIRComm 331 *Re Pastoral Industry (State) Award - Application by Australian Business Industrial for a new award and another matter* [2001] NSWIRComm 27 *Re Staff Specialists (State) Award* (2006) 152 IR 405 *State Wage Case 2019* [2019] NSWIRComm 1065 *Yango Pastoral Co Pty Ltd v First Chicago Australia Ltd* (1978) 139 CLR 410
Category:	Principal judgment
Parties:	Australian Salaried Medical Officers' Federation (NSW) (notifier) Health Secretary in respect of the Western Sydney Local Health District (respondent)
Representation:	Counsel: L Saunders (notifier) E Raper SC and D Fuller (respondent) Solicitors: Lander & Rogers (respondent)
File Number(s):	2020/316034

DECISION

1 In these proceedings the Australian Salaried Medical Officers' Federation (NSW) ("ASMOF") represents staff specialists employed by the Health Secretary ("Secretary") within the Western Sydney Local Health District ("WSLHD") to perform work as radiologists at Westmead, Auburn and Blacktown Hospitals ("Radiologists").

2 On 5 November 2020, ASMOF, on behalf of the Radiologists, notified a dispute pursuant to s 130 of the *Industrial Relations Act 1996* (NSW) ("IR Act") ("Dispute Notification") relating to the purported termination with notice by the Secretary of long-standing arrangements which provided terms for the Radiologists which are over and

above the Staff Specialists (State) Award 2019 ("Award")[1] and the Staff Specialists Determination 2015 ("Determination").[2] The purported effective date for termination of the arrangements was 31 January 2021.[3]

3 On 29 January 2021, I made a recommendation to preserve the status quo as at 3 August 2021 "until the exhaustion of the Issue Resolution procedures in cl 3 of the Award", in *Australian Salaried Medical Officers' Federation (NSW) v Health Secretary in respect of the Western Sydney Local Health District* [2021] NSWIRComm 1002 ("*Status Quo Decision*"). The Secretary has complied with the recommendation in the *Status Quo Decision*.

Procedural matters

4 Mr Leo Saunders of counsel appeared on behalf of ASMOF. The Secretary was represented by Ms Elizabeth Raper of Senior Counsel, as her Honour was then, and Mr Dan Fuller of counsel.

5 The hearing of the substantive matters in the Dispute Notification commenced on 18 May 2021 and continued on 27 May 2021. The matter was then listed on 13 and 14 September 2021 to hear the balance of the evidence and oral submissions. On 13 September 2021, I heard matters relating to the disclosure of documents and I issued a decision on these matters on 14 September 2021: *Australian Salaried Medical Officers' Federation (NSW) v Health Secretary in respect of the Western Sydney Local Health District (No 2)* [2021] NSWIRComm 1071. The hearing of oral evidence in the substantive matter was concluded on 27 October 2021 and final oral submissions were made on 22 November 2021. On the final day of the hearing, I posed a question about the interpretation of cl 6(1)(a) of the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014 ("Regulation") if the Secretary was to revoke the Staff Specialists Determination 2015 ("Determination"). The Secretary filed a short note on this question on 9 December 2021 and ASMOF filed a short note on this question on 19 January 2022.

6 In addition to the material set out at [6] of the *Status Quo Decision,* ASMOF tendered: two further statements of Dr George McIvor, the Clinical Director and Head of the Radiology Department at Westmead Hospital, made on 12 April 2021 and 13 May 2021, two statements of Dr Mohamed Nasreddine, who was on leave from his position as Director of Training at Westmead Hospital, made on 12 April 2021 and 13 May 2021, and two statements of Dr Luke Baker, the Director Interventional Radiology, Westmead Hospital made on 12 April 2021 and 13 May 2021; a further statement of Philip Vladica, the Sectional Head of Uro-radiology at Westmead Hospital made on 14 May 2021; a statement of Dr Peter Hudson made 16 May 2021; and a statement of Dr Ross Dwyer, previously a Senior Staff Specialist at Westmead Hospital made 17 May 2021. ASMOF also tendered a bundle of 34 documents admitted as "Exhibit ASMOF 6" and a number of other documents during the hearing.

7 Dr Baker, Dr Nasreddine, and Dr McIvor were cross-examined.

8 ASMOF relied on: ASMOF's Statement of Case filed 4 March 2021 ("ASMOF's Statement of Case"); ASMOF's Proposed Variation filed 12 April 2021; written submissions filed on 15 April 2021 ("ASMOF's April Submissions"); supplementary submissions filed on 5 July 2021 (ASMOF's July Submissions"); a further outline of submissions on 10 November 2021 ("ASMOF's November Submissions"); and a note on the interpretation of the Regulation filed 19 January 2022 ("ASMOF's Note").

9 In addition to the material set out at [7] of the *Status Quo Decision,* the Secretary tendered in respect of the substantive hearing: an affidavit of Ms Annie Owens, the Executive Director of the Workplace Relations branch in the NSW Ministry of Health ("Ministry"), affirmed on 5 May 2021, an affidavit of Mr Brad Astill, the Executive Director, Systems Performance Support at the Ministry affirmed on 5 May 2021, two affidavits of Mr Barry Mitrevski, Director of Finance at WSLHD affirmed on 4 May 2021, and 17 May 2021; Ms Gina Finocchiaro, Director, Workforce & Corporate Operations at the Sydney Local Health District ("SLHD") affirmed on 3 May 2021, Dr Emma McCahon, the Executive Director of Medical Services at WSLHD affirmed on 5 May 2021, a further affidavit of Ms Luci Anna Caswell, the Director of People and Culture at WSLHD, affirmed on 5 May 2021, Mr Peter Hinrichsen, the Operations Manager at Nepean Blue Mountains Local Health District sworn on 4 May 2021, Mr Danny O'Connor, the former Chief Executive of Greater Western Area Health Service, affirmed on 3 May 2021, Mr Trevor Craft, Director – Industrial Relations & Workforce Management at the Ministry, affirmed on 5 May 2021, and Ms Melissa Collins, Director, Industrial Relations and HR policy at the Ministry affirmed on 6 May 2021. The Secretary also tendered a bundle of 14 documents admitted as Exhibit "Health 2" and other documents during the hearing.

10 Ms Caswell, Mr Craft, Ms Owens, Dr McCahon, Mr Astill, Mr Hinrichsen, Ms Finocchiaro, Mr O'Connor, and Ms Collins were cross-examined.

11 The Secretary relied on a written outline of submissions filed on 12 May 2021 ("Secretary's May Submissions"); closing submissions filed on 18 November 2021 ("Secretary's November Submissions"); and a note on the interpretation of the Regulation filed 9 December 2021 ("Secretary's Note").

Background

12 Much of the background to the Dispute Notification and relevant terms of the Award[4] and the Determination are set out in the *Status Quo Decision*. For convenience the background which is most material to this decision has been repeated, and, where appropriate, annotated and/or updated below.

13 The Radiologists have been paid and rostered in accordance with written agreements first codified in 1999 ("1999 Agreement").

14 The 1999 Agreement was renegotiated in 2004 ("2004 Agreement"). The 2004 Agreement rolled over the key terms of the 1999 Agreement, with some fine-tuning.

15

The 2004 Agreement was rolled over again in 2009 although the Radiologists at the Blacktown and Mt Druitt hospitals continued on the 2004 Agreement.

16 ASMOF says that in 2015, the Secretary, via WSLHD, entered into a new arrangement with the Radiologists at Westmead hospital ("2015 Agreement"). The Secretary says that WSLHD had no power to enter into the arrangement on her behalf. The 2015 Agreement purportedly "rolled over" the key conditions of the 1999 Agreement, and in addition:

(1) introduced a KPI agreement; and

(2) included what has been described as the "bureau arrangement" which ASMOF says was already in place and which involves a separate successful tender by the Radiologists, through a separate entity, for overflow reporting work on a fee for service basis. [5]

17 The two agreements which ASMOF says currently apply to the Radiologists and which are considered in this decision are:

(1) the 2004 Agreement which purportedly applies to the Radiologists at the Blacktown and Mt Druitt;[6] and

(2) the 2015 Agreement which purportedly applies to Westmead Radiologists [7]

(collectively "the Agreements").

18 By way of a letter from Ms Caswell to the Secretary of ASMOF, Dr Tom Karplus dated 24 July 2020, WSLHD announced that it intended to "cease current over award agreement that is held between the District and Radiologist employed at Westmead and Blacktown Hospital".[8] (errors in original), effective 27 January 2021 or 31 January 2021.[9]

19 It is not in dispute that termination of the long-standing arrangements and the Agreements will result in a change to the remuneration and rostering arrangements for at least some of the Radiologists.

20 Between August 2020 and early November 2020, the parties engaged in correspondence about the termination of the Agreements, including about the continuation of the "status quo".

What is ASMOF asking the Commission to do?

21 ASMOF asks the Commission to enforce by direction, or enshrine by award variation, the terms of the Agreements.

22 ASMOF's primary position is that the Secretary has not, and cannot, identify the source of any entitlement to depart from the Agreements absent consent from the Radiologists. ASMOF's November Submissions set out its reasoning in support of this contention:

> "49. These are not accidental overpayments or quirks of rostering. They are long-standing, negotiated arrangements which have been in place for decades and which the Radiologists have negotiated in good faith with representatives, or persons purporting to represent, their employer. Health cannot simply be *presumed* to be able to unilaterally make this change.

> 50. The 2015 Agreement has a nominal expiry date of 28 February 2018. However, per cl.2, the terms and conditions '*may continue beyond its expiry date by administrative decision of the Employer*'.
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> 51. Had Health ceased to apply the 2015 Agreement on and from 28 February 2018 (or even 30 June 2018), it might be able to contend that it had expired due to the effluxion of time. However, it did not: it made a decision, utterly unexplained, to continue the Agreement for almost another two years (i.e. to the original discontinuance date of 25 January 2021). It has waived any right it had to rely on automatic termination.
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> 52. Further, any such right was constrained: Health had a positive obligation per cl.2 to commence negotiations no later than August 2017 for a *new agreement*: this reflects an understanding by the parties that these longstanding arrangements, while negotiable, could not simply be removed by fiat decree. Renegotiation remains an option and, if negotiations fail, recourse to the Commission, but Health cannot simply unilaterally alter longstanding terms and conditions which it has consensually provided to employees.
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> 53. The position is even clearer in respect of the 2004 Agreement. It provides at 1:
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> > '*The WSAHS Radiologists shall have right of automatic renewal for a further five years. This cycle shall be repeated establishing a five plus five plus five…etc agreement cycle. Subject to a review mechanism being established to consider unforeseen circumstances, any future modifications shall be mutually agreed between the two parties.*'
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> 54. The language could not be clearer: the 2004 Agreement, unless reviewed and changes agreed, continues indefinitely.
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> 55. The legal effect of the Agreements is discussed below. On their terms, though, it is not open to Health to simply refuse to continue to apply them. Certainly, Health has represented to the Radiologists that these arrangements are their conditions of employment, including expressly in advertisements45 and contracts of employment.46
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> 56. The reality is that this is what representatives of the Radiologists' employers have signed up for, and what the Radiologists have been promised. Health has yet to explain how it says it can unilaterally reduce agreed conditions of employment. The Commission ought conclude that it cannot."
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> (emphasis in original)

23 Specifically, ASMOF seeks, in order:

(1) a direction that the Agreements be maintained absent further agreement;

(2) alternatively, a variation to the Award in resolution of the dispute, maintaining the existing conditions (ASMOF's Proposed Variation); and

(3) in the further alternative, a recommendation to the above effect.

The Secretary's case in response

24 The Secretary admits that the Radiologists at the Westmead, Auburn and Blacktown / Mount Druitt Hospitals in the WSLHD have worked pursuant to arrangements provided for in a series of "Networking Agreements" and that at the time that the Dispute Notification was filed the Radiologists were working pursuant to the Agreements.

25 However, the Secretary says that it is impermissible for the Commission to enforce or enshrine in perpetuity, the Agreements which are private contractual arrangements which the Secretary says are illegal. The Secretary relies on the following extract from the judgment of Justice Sheldon in *In re Medical Officers -Hospital Specialists (State) Award* [1967] AR 45 (NSW):

> "This Commission is strictly an industrial tribunal and is not concerned with finding whether a private contract exists or, if it does, what is its meaning. It is certainly not concerned with the enforcement of private contracts. The enforceability of a private contract would be materially altered if it was turned into an award right."[10]

26 The Secretary says that the Commission should not give a direction or recommendation that she must maintain the Agreements, nor should the Commission vary the Award to incorporate the Agreements.

27 The Secretary says that the Commission should not give the direction sought because:

(1) it would not be in relation to an administrative or facilitative matter and would go beyond the proper boundaries of the direction-making power;

(2) the Agreements were not approved by the Secretary, or her predecessor as required by the *Health Services Act 1997* (NSW), or an authorised delegate, which means they are void and payments under them are illegal; and

(3) the 2015 Agreement may be terminated by the Secretary without notice and for any reason in accordance with its terms and notice of termination has been given and should take effect.

28 The Secretary says that the Commission should not make, as an alternative, ASMOF's Proposed Variation because ASMOF has not made out a case by reference to the requirements for award variation under the IR Act and the wage-fixing principles ("WFPs") in *State Wage Case 2019* [2019] NSWIRComm 1065[11] for incorporating into the Award a parallel regime of entitlements, inconsistent with, and substantially more generous than, those in the Award and the Determination, that apply only to a limited class of Award-covered employees.

29 The Secretary says that the Commission should not make a recommendation to extend an arrangement in circumstances where there is no evidence that these arrangements are authorised under the IR Act because the Commission would be seeking to compel a model litigant to pay public monies under arrangements that are illegal.

The Commission's Determination

30 I have considered the parties' cases and determined:

(1) the Commission cannot make a direction in the form or of the type sort by ASMOF;

(2) ASMOF has not rebutted the presumption that the existing Award is fair and reasonable nor made a case that the terms sought in ASMOF's Proposed Variation, if incorporated in the Award, would result in the Award setting fair and reasonable conditions of employment for employees covered by the Award, such that the Commission should vary the Award in the manner sought by ASMOF; and

(3) ASMOF has not satisfied me that I should exercise my discretion to make a recommendation in the form sought in circumstances where I am not satisfied that I should make a variation to the Award which would contain the same terms and conditions. Further, a recommendation, which is unenforceable, would not resolve the dispute to finality.

31

I set out my reasons for these findings below.

The direction sought by ASMOF

32 ASMOF bears the onus of satisfying the Commission that the direction it seeks, that the Agreements be maintained, should be made. In seeking this relief, ASMOF purports to invoke subs 136(1)(a) of the IR Act. That provision empowers the Commission, in arbitration proceedings, to "make a recommendation or give a direction to the parties to the industrial dispute".

33 ASMOF's submissions are somewhat dismissive of the Secretary's contention that the Commission's power to make directions is limited to procedural directions.[12] In ASMOF's July Submissions, it refers to s 136 of the IR Act and says:

> "18. To the extent that it is occasionally suggested that this power concerns procedural directions only, this is unlikely to be correct. There is no such thing as a procedural 'recommendation'. The residue of the powers granted are directed at substantive matters and, with the exception of the reference to interim orders, finality. These are strong contextual indicators that the word 'direction' should be similarly imbued with substance: the word takes its character from its surroundings.
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> 19. Further, it is inconsistent with the way the phrase is used elsewhere in Part 1 of Chapter 3. Per s.134(2), in conciliation the Commission is equally empowered to make recommendations or directions. That subsection continues:
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> > *'Failure to comply with any such recommendation or direction may not be penalized but may be taken into account by the Commission in exercising its functions under this Act'.*
>
> 20. This cannot sensibly be read as referring to matters of procedure rather than substance. Instead, it is much more likely that the word 'direction' is being used in the same general way in both sections, with parties expected to comply in the conciliation stage and required to do so once the matter gets to arbitration."
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> (emphasis in original)

34 ASMOF contends further that the Commission's power to control its own procedures is found in Pt 5 of Ch 4 of the IR Act, "Procedure and powers of Commission" and as such a separate power within s 136 to make procedural orders is not necessary and hampers the practical dispute resolution processes of the Commission.

35 ASMOF's submissions about the Commission's power to make a direction in arbitration proceedings are inconsistent with this Commission's interpretation of its powers that such directions can be made only to facilitate an order that may otherwise lawfully be made pursuant to the IR Act.

36 In the case of an arbitration of a dispute, the power under s 136 of the IR Act is informed by the kinds of dispute orders that may be made under s 137. As Justice Boland explained in *Police Association v NSW Police (No 3)* [2005] NSWIRComm 243 ("*NSW Police (No 3)*") when considering the Commission's power to reinstate an employee:

> "59 As I earlier found, a "decision" includes an order. But is an order reinstating or re-employing an employee, the making of which relies on the vehicle provided by s 136(1)(d), an order under Pt 6 of Ch 2 or an order under s 136(1)(d)? I take the view that an order referred to under s 136(1)(d) would be an order made pursuant to the relevant express power. So that if the Commission, pursuant to s 136(1)(d), was to make an order for the conduct of a secret ballot, the order would be an order under s 172 of the Act. Section 136(1)(d) is merely facilitative; it directs the Commission to the relevant express power in the statute under which the order may be made. Similarly, in

> arbitration proceedings, any order reinstating an employee (other than a dispute order under Pt 2 of Ch 3) would be an order under s 89 of the Act or, in other words, a "decision of the Commission under Part 6 of Chapter 2".
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> 60 This approach to s 136(1)(d) is, I consider, the correct approach. If it not be correct it would, for the reasons I will shortly explain, create a lacuna in the scheme of legislation protecting the rights of police officers, because the Commission would be deprived of any coercive power to order the reinstatement of a police officer in circumstances of constructive dismissal described earlier.
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> 61 Returning to s 405 of the *Industrial Relations Act*, I do not consider there is any doubt that the Commission would have the power to make a recommendation or give a direction to reinstate or re-employ a person pursuant to s 136(1)(a). Section 405 is only concerned with inconsistent awards and orders. Recommendations and directions are not orders or awards and so no inconsistency can arise. Of course, recommendations and directions are not enforceable and their acceptance relies to a large extent on the parties' common sense and goodwill and the perception they have as to whether the Commission, in making the recommendation or direction, has given adequate consideration to the merits of their case. Section 218 of the Police Act reinforces the conclusion that no bar exists to the making of a recommendation or direction under s 136(1)(a)."

37 Consistent with Justice Boland's decision in *NSW Police (No 3)*, Deputy President Sams, when considering the question of the finality or binding effect of directions in *Recorded Media Industry Union of New South Wales v Summit Technology Australia Pty Ltd* [2006] NSWIRComm 270, said:

> "[56] … the fact remains that there is no power, either expressed or implied, to be found in the Act to enforce a direction under s 136(1)(a) - a position distinguishable from enforceability of an award or the possibility of penalty under s 139 for the contravention of a dispute order under s 137."

38 In *Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales v Secretary for Industrial Relations* [2018] NSWIRComm 1061 ("*PSA 2018*"), the Full Bench distinguished between the directions that the Commission can make which have coercive force, being the force coming from the ability to launch contempt proceedings, which are customarily of an administrative and facilitative nature, and a direction that an employer pay money to an employee saying:

> "[86] This Full Bench acknowledges that the Commission may make directions pursuant to s 136(1)(a) of the Act which have coercive force, in the sense that a failure to comply may give rise to proceedings for contempt of the Commission, much in the same way as a failure to comply with a summons to appear and/or produce documents may have that consequence. As already indicated, such directions will, in most cases, be of an administrative or facilitative kind, such as a direction to an individual to attend a compulsory conference, a direction that the parties to a dispute confer or a direction that certain individuals take steps to ensure publication and compliance with dispute orders made by the Commission.
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> [87] Directions of that kind are qualitatively different from a direction that an employer pay money to an employee. Further where such an outcome is not permitted by way of a dispute order (subs 137(3)), or the Commission's powers to order an employer to pay money to an employee as specifically provided for by way of the small claims procedure (ss 379 and 380), it appears to us that the legislature did not intend the directions power in s 136(1)(a) to extend that far."

39 On the basis of the authorities referred to above, and consistent with the more recent authority, *Local Government Engineers' Association of New South Wales v MidCoast Council* (No 2) [2022] NSWIRComm 1069, I agree with the Secretary that making a direction to the effect sought by ASMOF, non-compliance with which could give rise to contempt proceedings, is not facilitative and would circumvent the limitations on the Commission's powers including the limitation in subs 137(3) of the IR Act which states expressly that there is no power to make orders requiring amounts to be paid. Such

circumvention cannot have been the legislative intention. The Full Bench accepted this in *PSA 2018* and found that the power to make directions does not extend to a direction to pay money to an employee, which is the effect of the direction sought.

40 I also agree with the Secretary that the reference to directions in the context of the conciliation powers in s 134 of the IR Act does not assist ASMOF. The language of subs 134(2) says nothing about the permitted subject matter of a direction. The fact that Ch 4, Pt 5 of the IR Act contains powers for the Commission to control its procedures also does not assist, because procedural powers are also found outside Ch 4, Pt 5, including ones that use the word "direction".

41 It is clear from the authorities that ASMOF's contention that the Commission's powers pursuant to subs 136(1)(a) to make a direction are directed at substantive matters and finality, is not correct.

42 There is no power under the IR Act to make orders requiring parties to adhere to independent contracting arrangements or any agreement that sits outside the framework of the IR Act. I am satisfied that the direction sought by ASMOF that the Agreements be maintained absent further agreement is not facilitative of any other power available to the Commission.

43 The Commission cannot make a direction with the effect sought by ASMOF. Accordingly, it is not necessary to consider, at this point, the matters relied on by the Secretary and set out at [27(2)] and [27(3)]. These matters are however relevant to whether the Commission should make ASMOF's Proposed Variation and are considered below.

Should the Commission make an Award variation in the form sought by ASMOF?

44 ASMOF bears the onus of persuading the Commission to vary the Award to incorporate the terms of the Agreements in the form of ASMOF's Proposed Variation.

45 The Secretary says that there are five requirements which must be satisfied by ASMOF before the Commission should vary the Award, and ASMOF cannot satisfy any of these. These requirements are:

(1) ASMOF must displace the presumption that the existing terms of the Award set fair and reasonable conditions of employment for the employees it covers, including the Radiologists covered by the Agreements;

(2) the subject matter of the Award must be the setting of conditions of employment for employees (as defined in s 5 of the IR Act), which are fair and reasonable; [13]

(3) for an award outside its nominal term (as the Award was at the time of the hearing), ASMOF must satisfy the Commission that it is not contrary to the public interest to make the variation.[14] As the 2019 Award was rescinded, and a new award, the Staff Specialists (State) Award 2022, was made on 7 July 2022, the Award is within its nominal term as at the date of this decision.

Accordingly, ASMOF must satisfy the Commission that it is not contrary to the public interest to make the variation and that there is a substantial reason to do so;[15]

(4) ASMOF must satisfy the WFPs; and

(5) ASMOF's Proposed Variation must be consistent with the policies in cll 5 and 6 of the Regulation.

46 Evaluating the requirements asserted by the Secretary and set out at [45(1)], [45(2)], [45(3)] involves a consideration of the terms of the Agreement, the circumstances surrounding the making of the Agreements, and if the terms of the Agreements were incorporated into the Award, their effect.

47 It is well-established that awards of the Commission are presumed to set fair and reasonable terms and conditions of employment: *Re Operational Ambulance Officers (State) Award* [2001] NSWIRComm 331 at [210]. The onus is on ASMOF to rebut that presumption; that is, to make out the case for change to the Award. This necessitates findings that the existing terms are not fair and reasonable; that the changes sought will render them so; and, that the new or varied award will remain fair and reasonable for its term: *Re Pastoral Industry (State) Award - Application by Australian Business Industrial for a new award and another matter* [2001] NSWIRComm 27 at [76] – [77].

48 Commissioner Newall in *NSW Local Government, Clerical. Administrative, Energy Airlines and Utilities Union v Warringah Council* [2015] NSWIRComm 1012 ("*Warringah Council*") said that an award sets fair and reasonable conditions where it "represent[s] a proper and proportionate balance between the entitlements afforded to employees and the interests of their employer".[16] This includes considering the nature and circumstances of the employment afforded to the employee by their employer and the broader context in which the employment occurs, including the state of the New South Wales economy: *City of Sydney Wages/Salary Award 2014* [2014] NSWIRComm 49 at [20].

49 Commissioner Sloan considered the Commission's power in subs 17(3) of the IR Act in *NSW Ministry of Health v Health Services Union New South Wales and anor (No. 2)* [2019] NSWIRComm 1081:

> "67 The Commission's power to vary awards is contained in s 17(3) of the Act. During the nominal term of an award, and in the absence the consent of all the parties to the making of the original award, the Commission may only vary the award "if the Commission considers that it is not contrary to the public interest to do so and that there is a substantial reason to do so": s 17(3)(c).
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> 68 In *Rail, Tram and Bus Union of New South Wales & ors v Secretary for Transport* [2017] NSWIRComm 1032 Commissioner Newall made the following observations concerning the Commission's jurisdiction under s 17(3):
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> > "10. It is apparent that the exercise of the power to vary an award is discretionary, but that it is a fettered discretion; where the award is within its nominal term, as in the first three awards with respect to which application is made, the Commission 'may' vary an award if it is not contrary to the public interest to do so, and if there is a substantial reason to do so. In relation to awards outside their nominal term, the discretion is fettered to the extent that the Commission may vary an award if it is not contrary to the public interest to do so.

> …
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> 29. …The two elements contained within subs.17(3)(c) are conjunctive; that is, both issues must be addressed in a way that permits variation. There must be 'a substantial reason' to vary the award and, even if there is such a reason, it must also not be contrary to the public interest to do so."
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> 69 Public interest is not defined in the Act. In *O'Sullivan v Farrer* (1989) 168 CLR 210 at 216 the majority of the High Court held as follows:
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> > "Indeed, the expression 'in the public interest', when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only 'in so far as the subject matter and the scope and purpose of the statutory enactments may enable...given reasons to be [pronounced] definitely extraneous to any objects the legislature could have had in view': *Water Conservation and Irrigation Commission (NSW) v Browning*, per Dixon J. at p 505." (Footnote omitted)
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> 70 This passage from *O'Sullivan* has been cited with approval by the Commission in a number of cases: *Ku Children's Services (Other Than Teachers) (State) Award 1998* [2000] NSWIRComm 94 at [92]; *Elura Mine Enterprise (Consent) Award 2001* [2003] NSWIRComm 218 at [140]; *Kellogg (Aust) Pty Ltd v National Union of Workers, New South Wales* [2003] NSWIRComm 167 at [64]."

50 I will apply the legal principles set out at [47], [48], and [49].

Long standing nature of the Agreements

51 The arrangements under the Agreements have been in place for many years before the *Status Quo Decision*.

52 In support of ASMOF's Proposed Variation, and despite the onus resting with it to establish that the variation should be made, ASMOF asserts that the Secretary has put forward no actual reason why the long-standing bargain evidenced in the Agreements should be abandoned, or why the Secretary should be entitled to change the working conditions of the Radiologists to the Radiologists' detriment without negotiation.

53 The Secretary submits that ASMOF's position set out in [51] reduces to the proposition that the Agreements contain negotiated conditions that are long-standing and thus should be continued through an award variation.

54 The Secretary acknowledges that there are cases in which the Commission has made a new award or varied an award where an employer has sought to depart from a long-established concession or practice of providing an extra-award benefit which are set out at [60] – [79] in *Re Crown Employees (New South Wales Department of Family and Community Services) Residential Centre Support Services Staff Award 2015; Re Crown Employees Ageing, Disability and Homecare - NSW Department of Family and Community Services (Community Living Award) 2015* [2017] NSWIRComm 1058. However, this is not the end of the matter, and ASMOF must establish why the variation should be made consistent with the IR Act.

55 I agree with the Secretary that it does not assist ASMOF to seek to recast the Agreements as arguably having been "incorporated by conduct into each Radiologist's contract of employment".[17]. As the Secretary submits, it has long been recognised, as described by Justice Sheldon in *In re Medical Officers -Hospital Specialists (State) Award* [1967] AR 45 (NSW), that the Commission is "not concerned with the enforcement of private contracts".[18]

56 Further, as Justice Watson stated in *Australian Fertilizers Ltd v Australian Workers' Union (NSW Branch)* (1983) 4 IR 263 at 270:

> "The Commission should be wary also of writing concessions into an award simply because they may be long standing. As Kelleher J. stated in *A I & S Demolishers Case*: 'Concessions allowed by employers are not, however, as a matter of course to be converted into award obligations…' "

57 The long-standing nature of the arrangements and the fact that the Radiologists have arranged their personal lives around the arrangement, or that the removal of the arrangements may impact on them financially, even severely, is however relevant to whether there is a proper and proportionate balance between the entitlements afforded to the Radiologists and the interests of the Secretary.

58 The Secretary submits that, in this instance, the long-standing nature of the over-award arrangements under the Agreements does not justify the making of ASMOF's Proposed Variation because:

(1) the longevity of the Agreements, on its own, does not explain why the conditions in the Award (combined with the Determination) are not fair and reasonable for the Radiologists;

(2) the 2015 Agreement states an intention that the WSLHD would be entitled to terminate the arrangements that the 2015 Agreement sets out, after the expiry of its term, which tells against there being any reasonable expectation that those arrangements would continue indefinitely, and therefore against the proposed variation;[19]

(3) the Radiologists have been on notice for an extended period that the Agreements will come to an end; and

(4) the conditions in the Agreements were unauthorised and are therefore illegal.

59 I agree with the Secretary. The long-standing nature of the Agreements and the reliance by the Radiologists on these in arranging their finances and/or work arrangements are not sufficient reasons on their own to rebut the presumption that the existing Award terms are fair and reasonable nor to justify enshrining in the Award the above-award arrangements contained in the Agreements, particularly where most other radiologists working for the Secretary in NSW are not entitled to these conditions: see *Warringah Council* at [31] – [36] and *Application by Health Services Union NSW for NSW Ambulance On-Call Related Transitional Benefits Award* [2021] NSWIRComm 1003 at [101].

60 Further, as the Secretary notes, the Agreements, being contracts, apply only in relation to the named individuals who have signed them. Newly employed radiologists at the hospitals relevant to the Agreements, who are not parties to the Agreements, are not covered by these long-standing arrangements.

61 The Secretary is also correct that the 2015 Agreement, in providing for termination, tells against the conditions being on-going in perpetuity and that the Radiologists have been on notice of the Secretary's position regarding termination of the arrangements since at

least July 2020.[20]

62 Regardless of whether the Agreements are enforceable as contracts, ASMOF cannot simply rely on the long-standing nature of the Agreements to make its case for variation of the Award without the Commission considering all of the statutory requirements for variation. Consequently, I consider the manner in which the Agreements were "authorised" and whether the Agreements are illegal and unenforceable below at [89] – [112] as a matter relevant to whether I should make ASMOF's Proposed Variation in accordance with the IR Act.

Would ASMOF's Proposed Variation set fair and reasonable conditions of employment?

63 I now turn to consider the seven reasons set out in the Secretary's November Submissions, as to why she says ASMOF's Proposed Variation would not result in setting fair and reasonable conditions of employment for employees covered by the Award.

64 The first reason provided by the Secretary is that the arrangements in the Agreements are unique to a small group of employees (out of thousands of staff specialists in NSW) in one local health district (out of 15), when ASMOF has presented no justification for that unique treatment. Dr McCahon explains in her evidence, the Radiologists are not unique among Staff Specialists in terms of the demands on their time or their capacity for private billing. There is also evidence of a radiology department at Royal Prince Alfred Hospital, a comparable hospital, which has been functional without above-Award arrangements.

65 ASMOF counters that there are various examples of special arrangements for specialists employed by the Secretary.

66 ASMOF tendered various iterations of the "Hunter New England Imaging Flexible Work Practice Arrangement for Staff Specialist Radiologists Agreement"[21] as evidence of examples of radiologists at Hunter New England who have enjoyed a "Flexible Workplace Arrangement" which provides them with two sessions per week in which they are not rostered to work clinical time and, while required to be available by phone, not necessarily on site. This is described as an alternative to working under the Award conditions, and as necessary to provide equity with other local health districts.

67 ASMOF tendered the agreement titled "Enterprise Agreement – Nepean Hospital Emergency Physicians"[22] which was approved by Mr Craft, who had authority to approve non-standard agreements, notwithstanding his concerns about the "integrity" of the Award. ASMOF also tendered evidence about staff specialist emergency physicians who have access to reduced hours and enhanced wage arrangements.[23]

68 The existence of above-award arrangements in other areas of the NSW health system, is a relevant consideration. However, in these circumstances, where there are over 140,000 employees in the health system, the evidence tendered by ASMOF of other over-Award arrangements does not provide sufficient support for enshrining in the Award the specific arrangements in the Agreements which apply only to the

Radiologists and not even to all radiologist at the relevant hospitals. Rather, the evidence of similar-sized radiology departments operating without special arrangements, and the limited examples of above-award arrangements for other radiologists and specialists before the Commission provide support for the position that enshrining the conditions for the Radiologists would not be fair and reasonable.

69 The second reason provided by the Secretary as to why varying the Award to include the terms of the Agreements would not set fair and reasonable conditions of employment, is that the Secretary says that the conditions provided for by the Agreements are fundamentally inconsistent with, and substantially more than, the conditions in the Award and the Determination, including by providing for:

(1) reduced hours of work, generally seven half-day "sessions" per week (equating to 3.5 days),[24] compared with not less than 40 hours or 10 sessions per week over five days per week (or, by agreement, four days) under the Award;[25]

(2) penalties for weekend work,[26] when:

(a) the Award is a salaried award;

(b) the Commission has recognised that the salaries payable under the Award and the Determination include a portion reflecting the requirement to perform reasonable on-call and recall (the "special allowance") and to work overtime: *Re Staff Specialists (State) Award* (2006) 152 IR 405, at 419-20 [40]; *Re Medical Officers – Hospital Specialists' (State) Award* [1978] AR (NSW) 321, at 328-29;

(c) therefore ASMOF's assertion that weekend work is available only by agreement[27] is not correct nor is it correct that staff specialists who elect Level 5 under the Determination "can only, strictly speaking, be required to work for 30 hours or 7.5 sessions per week."[28] Rather, Normal Duties are to be worked Monday to Friday, but there remains an obligation to perform reasonable on-call and recall duties "outside of Normal Duties"; and

(d) the Determination provides a specific mechanism for compensating for abnormal hours (with specific conditions that must be met); and

(3) guaranteed Level 5 income without meeting the requirements in the Determination, and a higher base salary than the Determination provides for Level 5 (80% of the Level 4 salary rather than 75%);

(4) an entitlement to exercise rights of private practice ("ROPP") without paying monthly infrastructure or facility fees in accordance with the Determination unlike those staff specialists referred to in ASMOF's submission that "part of the funds generated by [the Radiologists] is paid as an infrastructure charge to the relevant Public Health Organisation first, before any drawings are made";[29]

(5)

guaranteed Travel, Education and Study Leave ("TESL") funding entitlements, regardless of whether the Radiologists generate sufficient ROPP income to fund those entitlements, as is required under the Determination; and

(6) from 2015, the bureau arrangement in which Radiologists undertake public radiology work at private rates.

70 The Secretary relied on the evidence of Mr Mitrevski about the financial benefit to the Radiologists of the Agreements compared with their entitlements under the Award and Determination including, that in the financial years 2018-2019, and 2019-2020 and the period July 2020 to March 2021, (i.e. less than three years), not taking into account their earnings from outside practice in which they participate during their 1.5 days per week of paid absence from the WSLHD, the Radiologists collectively received approximately $20.6 million in payments to which they were not entitled under the Award or the Determination. This amount includes:

(1) $10.5 million in payments from the bureau arrangements;[30]

(2) an amount of $7,528,297 representing the difference between the payment of Radiologists as full-time and if they were paid on a fractional basis of 0.7 commensurate with the hours they worked;[31] and

(3) the additional amounts paid to the Radiologists due to the guaranteed ROPP payments under the 2015 Agreement compared with the amount of ROPP that would have been available to the Radiologists without the guarantee.[32]

71 Mr Mitrevski who was not cross-examined about his evidence. Mr Mitrevski's evidence was put to Drs Baker, Nasreddine and McIvor in cross-examination. Dr Nasreddine asserted that "Mr Mitrevski himself has stated to a colleague that we would have reached level 5 [under the Determination]"[33] but otherwise the three Radiologists largely accepted Mr Mitrevski's calculations or their evidence was to the effect that they had not checked Mr Mitrevski's calculations. In any event, the doctors' evidence did not raise any significant concerns about the accuracy of Mr Mitrevski's calculations set out in [70].

72 I do not accept that the Agreements are "other relevant industrial instruments" for the purposes of cl 5(g) of the Award as submitted by ASMOF. I agree with the Secretary that the suggestion that cl 5(g) of the Award should be read as giving force to any private arrangement purporting to set employment conditions for staff specialists would undermine the authority and integrity of the award system.

73 I agree with the Secretary that that the conditions provided for by the Agreements are inconsistent with, and substantially in excess of, the conditions in the Award and the Determination. Such a finding does not support making ASMOF's Proposed Variation on the basis that these conditions set fair and reasonable conditions of employment for the employees covered by the Award.

74

The third reason provided by the Secretary as to why varying the Award to include the terms of the Agreements would not set fair and reasonable conditions of employment, is that when the operation of the Award is properly understood, the notion as asserted by ASMOF [34] that the Secretary has "enjoyed" benefits from the Agreements is misconceived.

75 ASMOF asserts that the Secretary enjoyed the following benefits:

(1) although formally rostered to work less than 40 hours per week, the Radiologists routinely perform work in excess of 40 hours per week outside their on-call and recall obligations, mostly on-site;

(2) each Radiologist routinely works an on-call roster, and additionally performs work on weekends; and

(3) the nature of the work available to the Radiologists, due to changes in hospital structures, has meant that significantly less private practice work is available to them, such that they would not be able make level 5 under the Determination. This is the same issue Ms Owens says motivated the determination for emergency specialists.

76 In response to the asserted benefits set out at [74], the Secretary submits:

(1) the Award is a salaried award: it does not cap the number of hours to be worked to perform Normal Duties (only providing that they are to be worked between 7 am and 6 pm Monday to Friday except for shift workers or where they are averaged over more than one week), and requires "reasonable" on-call and recall work outside of Normal Duties; and

(2) Mr Mitrevski's evidence shows that all Radiologists have generated private practice income, in some cases more than enough to cover what would be their entitlements under the Determination, in only 3.5 days of attendance at work per week. This is contrary to the Radiologists' assertions [35] about the difficulties of obtaining private practice work, and very different from the situation of emergency specialists, who cannot generate private practice income because of Medicare billing restrictions. The Secretary also points out that it is unclear as to what is said to be a benefit to her from a reduced capacity for the Radiologists to generate private work.

77 I accept the Secretary's submissions set out at [76]. The Secretary has successfully rebutted ASMOF's assertion that the Agreements benefit the Secretary in the manner asserted by ASMOF.

78 The fourth reason provided by the Secretary as to why varying the Award to include the terms of the Agreements would not set fair and reasonable conditions of employment, is the operational challenges and corresponding risks for patient care identified by Dr McCahon as a consequence of the Radiologists being absent from work for 1.5 days every week. These operational challenges include Radiologists being:

(1) absent from multidisciplinary team meetings;

(2) unavailable to discuss clinical issues in the intensive care unit;

(3) limited in their capacity to supervise trainees and radiology registrars; and

(4) limited in their capacity to develop models of care and business practices.

79 I accept the Secretary's submission that it is not to the point that some Radiologists may work additional hours within their 3.5 days at the hospital or from home, because the operational challenges relate to the physical coverage at the hospital across the breadth of the five-day working week, not the raw number of hours worked by the Radiologists. Relevantly, Dr Baker, Dr Nasreddine and Dr McIvor recognised the importance of radiologists being physically present at their hospital to perform their work.

80 The fifth reason provided by the Secretary as to why varying the Award to include the terms of the Agreements would not set fair and reasonable conditions of employment, is Dr McCahon's evidence that the Agreements are contributing to recruitment issues in the WSLHD,[36] because of the perceived inequity associated with colleagues receiving much more generous entitlements under the Agreements.

81 I have considered the Secretary's evidence and weighed it against the evidence of ASMOF, including that contained in the statement of Dr Vladica made 12 January 2021, and the statements of Dr McIvor made 12 January 2021[37] and 12 April 2021[38] and ASMOF's submission that to withdraw the terms under the Agreements would result in resignations at the at Westmead, Auburn and Blacktown Hospitals.

82 I accept that by withdrawing the beneficial terms of the Agreements, there is likely to be a consequential loss of services provided by the Radiologists who may seek more beneficial arrangements elsewhere or in private practice.

83 However, the Commission's role in award variation proceedings is not to entrench terms such as those contained in the Agreements for limited groups of employees in awards without considering all of the employees covered by the relevant award. With that in mind, the negative effect on recruitment of radiologists not covered by the Agreements, which when balanced against the potential loss of the Radiologists' services, is a reason not to entrench the terms of the Agreements in the Award for the Radiologists, rather than in support of so doing.

84 The sixth reason provided by the Secretary as to why varying the Award to include the terms of the Agreements would not set fair and reasonable conditions of employment, is, that in addition to its lucrativeness, as Ms McCahon stated in her evidence[39] the bureau arrangement gives rise to a conflict between the Radiologists' duties to the hospital and to act in patients' best interests, and their own financial interest associated with participating in "outsourced" reporting for which they can charge their employer private rates.

85 I have considered ASMOF's responses to the concerns raised by the Secretary about the bureau arrangement which are:

(1)

it only applies at Westmead;

(2) the Secretary's evidence supporting its proposition that the arrangements are improper is based on a surface understanding of what the arrangements actually involve, which it says Mr Craft conceded;

(3) the bureau arrangement is the result of competitive tender, has been audited by WSLHD, and is subject to KPIs and related probity measures which the Secretary considered appropriate;

(4) the arrangements were the idea of persons working in the Ministry, "such that the present outrage seems a little confected".[40]

86 The bureau arrangement is a lucrative arrangement for the Radiologists. I accept that there was a quotation or tender process in 2010, which was intended to cap the cost, and another process in 2011, after this the tender process is unclear. I do not accept that the fact that the arrangement is only at Westmead Hospital provides support for maintaining it or incorporating it in the Award. I agree with the Secretary that the bureau arrangement gives rise to a conflict between the Radiologists' duties to their employer, the Secretary, and to act in patients' best interests, and their own financial interest. This is so, whether or not the arrangement was the idea of the Secretary or the WSLHD, and is a reason supporting the position that varying the Award to include the terms of the Agreements would not set fair and reasonable conditions of employment.

87 The seventh reason provided by the Secretary as to why varying the Award to include the terms of the Agreements would not set fair and reasonable conditions of employment, is that the Agreements have not been authorised as required by the *Health Services Act*, would not be enforceable independently of the Award, are uncertain in their operation, and in the case of the 2015 Agreement could be terminated by the WSLHD at its discretion.

88 The Secretary argues that to continue the Agreements by way of direction or recommendation or vary the Award to incorporate the terms of the Agreements would involve maintaining arrangements that were unauthorised and unlawful as required under the *Health Services Act* and that are fundamentally inconsistent with the conditions that should apply to the Radiologists under the Award and Determination.

89 Sections 115, 116, and 116A of the *Health Services Act* are in the following terms:

> **115 The NSW Health Service**
>
> (1) The NSW Health Service consists of those persons who are employed under this Part by the Government of New South Wales in the service of the Crown.
>
> (1A) Those persons are not employed in the Public Service of New South Wales.
>
> (2) This Part does not affect any other means (statutory or otherwise) by which persons may be employed in the service of the Crown.
>
> **Note—**
>
> Other ways in which persons are employed in the service of the Crown include employment in the Public Service, the Teaching Service or the Transport Service.
>
> **116 Employment of staff generally**

(1) The Government of New South Wales may employ staff under this Part—

(a) to enable local health districts and statutory health corporations, and the public hospitals that they control, to exercise their functions, and

(b) to enable declared affiliated health organisations to exercise their functions in relation to their recognised establishments and recognised services, and

(c) to enable the Health Secretary to exercise his or her functions under Chapter 5A in relation to ambulance services, and

(d) to enable the Health Secretary to exercise his or her functions under Part 1A of Chapter 10 in relation to the provision of services to public health organisations and the public hospitals that they control, and

(e) to enable the Health Administration Corporation to exercise its functions under this or any other Act, and

(f) to enable the Cancer Institute (NSW) to exercise its functions under this or any other Act.

(2) The employment of staff in the NSW Health Service, including the exercise of employer functions in relation to that staff, is subject to the requirements of this or any other Act relating to that staff.

(3) The Health Secretary may, subject to this and any other Act or law, exercise on behalf of the Government of New South Wales the employer functions of the Government in relation to the staff employed in the NSW Health Service (except as otherwise provided by subsections (3A)–(3D)).

Note—

The Health Secretary's functions under this or any other Act may, under section 21 of the Health Administration Act 1982, be delegated to any person.

(3A) A local health district board may, subject to this and any other Act or law, exercise on behalf of the Government of New South Wales the employer functions of the Government in relation to the chief executive of the local health district.

(3B) The chief executive of a local health district may, subject to this and any other Act or law, exercise on behalf of the Government of New South Wales the employer functions of the Government in relation to the other NSW Health Service senior executives employed to enable the local health district to exercise its functions.

(3C) The board of a specialty network governed health corporation may, subject to this and any other Act or law, exercise on behalf of the Government of New South Wales the employer functions of the Government in relation to the chief executive of the health corporation.

(3D) The chief executive of a specialty network governed health corporation may, subject to this and any other Act or law, exercise on behalf of the Government of New South Wales the employer functions of the Government in relation to the other NSW Health Service senior executives employed to enable the health corporation to exercise its functions.

(4) The Health Secretary may create divisions (however described) of staff in the NSW Health Service.

(5) This section does not limit the purposes for which, or the manner in which, staff may be employed in the NSW Health Service.

116A Salary, conditions etc of staff employed in the NSW Health Service (other than senior executives)

(1) The Health Secretary may fix the salary, wages and conditions of employment of staff employed under this Part in so far as they are not fixed by or under any other law.

(2) The Health Secretary may give directions to a public health organisation requiring the payment by the organisation, on behalf of the Government of New South Wales, of the salary, wages and other employment-related costs (such as superannuation, workers compensation, public liability insurance and vicarious tortious liability) of those members of the NSW Health Service who are employed under this Part to enable the public health organisation to exercise its functions.

(3) The Health Secretary may enter into an agreement with any association or organisation representing a group or class of members of the NSW Health Service with respect to the conditions of employment (including salaries, wages or remuneration) of

> that group or class. Any such agreement may (subject to Part 2) extend to conditions in respect of the employment of persons convicted of, or charged with, serious sex or violence offences.
>
> (4) An agreement under subsection (3) binds all members of staff in the group or class affected by the agreement, and no such member, whether a member of the association or organisation with which the agreement was entered into or not, has any right of appeal against the terms of the agreement.
>
> (5) This section does not apply to the conditions of employment of NSW Health Service senior executives under Part 3 of this Chapter. This subsection does not prevent particular conditions of employment under this section from being adopted by reference in the contract of employment of the executives.

90 The Secretary submits that as a consequence of the legislative scheme, at all relevant times, conditions of employment were to be as determined by the Secretary or, before 17 March 2006, the Health Administration Corporation (HAC).[41] The Secretary has, and the HAC had, the power to delegate that function by written instrument pursuant to s 21(1) of the *Health Administration Act 1982* (NSW).

91 The Secretary relies on Ms Collins's evidence[42] to support her assertion that those delegations have always been limited to individuals within the Ministry, not at the area health service or local health district level.

92 Ms Collins sets out the following in her affidavit affirmed on 6 May 2021:

> **"Delegations**
>
> 47. At all relevant times, pursuant to section 21(1) of the *Health Administration Act 1982* (NSW), the HAC, Director-General or Secretary (as the case may be) has had the power to delegate their functions under the *Health Services Act*, by instrument in writing, to any person.
>
> 48. The current delegations of authority are set out in the Ministry's "Combined Delegations Manual". At all relevant times, a version of the Combined Delegations Manual has been in effect. I am not aware, including from searches I have performed of the Ministry's historical records, of any written instruments recording delegations of powers under the *Health Services Act* at any relevant time that have not been contained in the Combined Delegations Manual as in force at the relevant time.
>
> 49.I have reviewed all versions of the Combined Delegations Manual in effect since 18 December 1998. None of those contained a delegation to anyone in an Area Health Service or Local Health District to set conditions of employment for employees in the NSW Health Service, including non-standard or over-award conditions, or to negotiate or settle the terms of industrial instruments. The only delegates of those powers were senior employees of NSW Health (that is, at the Ministry or Department level).
>
> 50. Copies of the relevant delegations from the Combined Delegations Manual, including all historical versions back to 18 December 1998, are at Tab 7 of MC1. ..."

93 The Secretary says that this authorisation system is essential to the operation of government to ensure that public monies may only be expended with Parliamentary authority. The Secretary relies on the Court of Appeal decision, *Attorney General v Gray* (1977) 1 NSWLR 406 in which the Court considered the decision of a Director in the Department of Education, who was not authorised under the *Public Service Act 1902* (NSW), to pay a teacher more than he was entitled. The Public Service Board had the authority under s 14(1) of that Act. In this judgment, Huntley JA acknowledged at 409, the principle:

> "... that no money can be taken out of the consolidated Fund into which the revenues of the State have been paid, excepting under a distinct authorisation from Parliament itself. The days are long gone by in which the Crown. or its servants, apart from Parliament, could give such an authorisation or ratify an improper payment. Any

> payment out of the consolidated fund made without Parliament my authority is simply illegal and ultra vires, and may be recovered by the Government if it can, as here, be traced.
>
> The correctness of this statement was not challenged. Therefore, no officer can certify, so as to affect the State, otherwise than in accordance with actual Parliamentary authority."[43]

94 The Secretary submits that these statutory provisions leave no room for any other source of authority to set conditions of employment for NSW Health Service employees which I have taken to exclude the Commission's powers under the IR Act.

95 The Secretary submits therefore that, if the Agreements were not authorised by her, the HAC or an authorised delegate, they are void and unenforceable: see *Yango Pastoral Co Pty Ltd v First Chicago Australia Ltd* (1978) 139 CLR 410 at 413 (Gibbs CJ), and at 423 (Mason J, Aickin J agreeing). Accordingly, any payments purportedly made under the Agreements are illegal as being made out of public funds without Parliamentary authority: see *Attorney-General v Gray* [1977] 1 NSWLR 406 at 409 (Hutley JA) and at 412 (Glass JA, Samuels JA agreeing); *NSW Nurses' Association v Sydney Local Health District [2012]* NSWIRComm 52 at [102] (Boland JP) (upheld on appeal: *New South Wales Nurses' Association v Sydney Local Health District* (2013) 232 IR 217). The Secretary says that the Commission should not countenance the continuation of such an arrangement.

96 ASMOF contends that the submission that the Radiologists must establish that the Agreements were authorised is baseless in circumstances where:

(1) the Agreements were negotiated in good faith between the Radiologists and representatives of their employer;

(2) "the Ministry" was completely aware of the arrangements as early as 2009, and allowed them to continue without interference or authorisation; and

(3) any defect is really the fault of the District Executive, not the Radiologists – and these failures remain unexplained.

97 ASMOF submits that the Secretary is the party asserting that the Agreements were not authorised. Given the matters set out at [96] above, and the inadequacy of the enquiries the Secretary has made about the approval of the Agreements and the evidence she has chosen to put before the Commission in contrast to the information she had available to her, the Commission would not be satisfied that the lack of authorisation is established.

98 The Secretary says in response to this that because certain witnesses did not refer to certain documents (which they were not cross-examined about), or that certain individuals did not give evidence (when ASMOF, which the Secretary says bears the onus of proof, did not lead evidence from them), cannot elevate what would otherwise be speculation or conjecture into an evidential foundation for ASMOF's case: *Coles Supermarkets Australia Pty Ltd v Bright* [2015] NSWCA 17 at [17] (Basten JA, Hoeben and Ward JJA agreeing); *Jones v Dunkel* (1959) 101 CLR 298 at 305 (Dixon CJ), and at 319 (Windeyer J).

99 ASMOF submits that the Secretary's submissions about authority miss the relevant point. ASMOF says there may be an issue if the Radiologists were seeking to enforce their entitlements in a Court. However, ASMOF says this is not what the Radiologists have asked, rather they have asked the Commission to resolve an industrial dispute arising from an attempt to change their established pay and conditions. No fetter is placed on its power to do so by the issues raised by the Secretary; they are an irrelevancy.

100 It is correct that ASMOF has asked the Commission to resolve an industrial dispute, and it is not ASMOF's obligation to prove that the Agreements were properly authorised, as would be required if ASMOF or the Radiologists were seeking to enforce the Agreements as contracts in a Court.

101 However, the onus of establishing that the Commission should make the direction or recommendation sought, or make ASMOF's Proposed Variation, rests with ASMOF. As I do not consider that the Commission has the power to make a direction in the form sought by ASMOF, it is not necessary to consider the question of authority in that regard.

102 In respect of ASMOF's Proposed Variation, whether the presumption that the existing Award is fair and reasonable is displaced and in determining whether the terms of the Agreements would set terms that are fair and reasonable, the Commission can take into account the matter of authority. If ASMOF cannot satisfy the Commission that the Agreements were properly authorised then this may be relevant to the Commission's exercise of discretion, but it is not, on its own, definitive.

103 Much of the evidence before the Commission supports the Secretary's position that the Agreements were not authorised. The evidence shows:

(1) business records searches have been performed by the Secretary's employees at the Ministry and WSLHD, which have not identified any record of the Agreements being approved[44]. These searches were substantially more extensive than those conducted prior to the hearing leading to the *Status Quo Decision*;

(2) Mr O'Connor,[45] a former Chief Executive Officer of the WSLHD, Mr Hinrichsen,[46] a former Network Director and Mr Astill,[47] former General Manager of Medical Imaging in the WSLHD, gave evidence that they did not seek and were not aware of anyone seeking approval from the Ministry for the 2004 Agreement, the renewal of the 2004 Agreement in 2009/10, or the 2015 Agreement;

(3) senior staff in the Ministry's Workplace Relations Branch, Ms Owens and Mr Craft, who were there at the time of one or both of the Agreements, were not aware of the Agreements or of there being any compliance with the Ministry's processes for considering and giving approval to non-standard arrangements in relation to the Agreements[48]; and

(4) the Ministry's position, which it conveyed to the WSLHD when the 2004 Agreement was brought to its attention in 2009 was that the 2004 Agreement had not been approved and that the WSLHD should seek advice about terminating it.[49]

104 Ms Owens also gave evidence that attempts were made to contact Professor Steven Boyages, who signed the 2004 Agreement, without success.[50]

105 It was put to Ms Collins[51] and Mr O'Connor[52] in cross-examination that the Agreements were not sent to the Ministry for approval by the Secretary or her delegate. There is no contrary evidence on behalf of ASMOF.

106 The fact that the Agreements may have been authorised at the WSLHD level, does not mean they were authorised as required by the *Health Services Act*.

107 In general, statutory powers must be exercised personally by the person on whom they are conferred: see *Racecourse Co-operative Sugar Association Ltd v Attorney-General (Qld)* (1979) 142 CLR 460 at 481. At all relevant times, the power to determine conditions of employment for staff specialists has been conferred on the Secretary or the HAC. Local health districts and their predecessor area health services are distinct entities from the Secretary and the HAC. They are bodies corporate separately constituted under the *Health Services Act*[53], with separate governance, management and functions.[54] The *Health Services Act* states expressly that local health districts do not represent the Crown.[55]

108 In those circumstances, the Secretary's submission that the conduct or knowledge of local health districts (or their executives) cannot be attributed to the Secretary or the HAC has significant force. For the same reasons, and in these circumstances, it is not correct to conflate, or as the Secretary submits, elide, "WSLHD" with "Health" or "the Secretary".

109 The Secretary denies that the evidence shows the staff of the Ministry were actively aware of the Agreements at any relevant time. The Secretary says that the 2004 Agreement was only brought to the attention of the Ministry, five years after its inception in 2009, in the context of attempts by the Radiologists to "renew" the agreement, which ultimately resulted in proceedings in this Commission.

110 At that time, the Ministry confirmed that no record could be found of the 2004 Agreement being approved.[56] The WSLHD decided that the 2004 Agreement would be "renewed", in the sense that the arrangements set out in it would continue to be applied, until 2014.[57] The Ministry was kept up to date about aspects of this "renewal" issue in 2009, but it cannot be inferred from the absence of evidence, that the Ministry approved the "renewal". In any event, it was made clear to the Commission in the final report-back before the proceedings were discontinued that the WSLHD's position was that "the [2004] Agreement, and therefore the current arrangements, come to an end at the expiry of that term", that is, 2014.[58] There is no evidence that the Ministry was made aware of the subsequent negotiations around the 2015 Agreement, or approved it, contrary to the position conveyed to the Commission in 2010.

111 I accept the Secretary's submission that, even if it were found that there were imperfections in the searches conducted on behalf of the Secretary, I cannot find that she authorised the Agreements.

112 For the reasons submitted by the Secretary and referred to above, I am not satisfied that the Agreements were authorised in accordance with the *Health Services Act*, and therefore valid and enforceable.

113 It is, however, relevant that the Radiologists were paid in accordance with the Agreements with the knowledge of employees of the Secretary in WSLHD and the Ministry. While this apparent concurrence with the Agreements does not establish authorisation by the Secretary or her delegate under the *Health Services Act*, it lends support to an argument that at least some of the Secretary's employees at the Ministry and WSLHD consider that the terms of the Agreements are fair and reasonable. I accept however that the Secretary has made efforts to terminate and vary or bring to an end the terms of the Agreements over the years which diminishes such support.

114 I have considered each of the seven reasons submitted by the Secretary as reasons supporting the contention that to make the ASMOF's Proposed Variation would not result in fair and reasonable conditions of employment for the employees covered by the Award and I have considered ASMOF's case in support of ASMOF's Proposed Variation. I agree that ASMOF has not displaced the presumption that the Award sets fair and reasonable terms and conditions such that the Award should be varied to include the ASMOF's Proposed Variation. I am unconvinced that the Agreements set terms which represent a proper and proportionate balance between the interests of the Secretary and the entitlements afforded to the Radiologists particularly given the generous nature of the conditions which is considered at [69] to [73] above.

115 The Secretary points to other matters which she says cast doubt on the enforceability of the Agreements from a contractual perspective. For example:

(1) the 2004 Agreement states that it shall comply with "the relevant NSW Health guidelines", including the Award, which it does not.

(2) the renewal "cycle" purportedly established under cl 1 of the 2004 Agreement has the quality of an agreement to agree, which would be unenforceable: see *Booker Industries Pty Lid v Wilson Parking (Qld) Pty Ltd* (1982) 149 CLR 600 at 604;

(3) the 2015 Agreement purports at cl 1 to be "an Agreement as defined in the [IR Act]", which it is not, and at cl 2 to commence upon "ratification by the [Commission]", which has never occurred;

(4) there are clauses in the Agreements, particularly the 2015 Agreement, that are so obscure in their meaning that they would be uncertain and invalid at law. The Secretary points to cl 9 which defines the bureau arrangement which she says is almost impossible to decipher.

116

As I have stated above, it is not for the Commission to enforce the Agreements as contracts. Such enforcement would require ASMOF to establish the relevant authority and to interpret the terms set out in [115] in the appropriate place. The matter of enforceability in these proceedings informs the Commission's discretion in evaluating whether the terms of the Agreements, would, if incorporated in the Award, set fair and reasonable terms representing a proper and proportionate balance between the entitlements of the employees and the Secretary.

117 I agree with the Secretary's submissions that in exercising the Commission's power to make an award variation I should take significant care before enshrining private contractual arrangements, whether or not they are enforceable, as a matter of contract law and I have decided not to make ASMOF's Proposed Variation. Consequently, while the clauses referred to by the Secretary and set out in [115] do not assist ASMOF it is not necessary to give these matters any substantial weight.

Patient care

118 While it is not strictly necessary, given my finding that ASMOF has not displaced the presumption that the Award sets fair and reasonable conditions of employment such that I should make ASMOF's Proposed Variation, I have considered ASMOF's evidence about patient care. This issue goes to the question of the public interest.

119 Many of the concerns raised by ASMOF are dispelled by Dr McCahon's evidence, much of which was unchallenged.

120 Patient care is a matter of managerial prerogative for the Secretary and the WSLHD to manage in which it would not be appropriate for the Commission to intervene: see *Health Services Union and Ambulance Service of New South Wales re Changes to Demand Protocol* [2008] NSWIRComm 1027 at [181] - [189].

121 I also agree with the Secretary that some concerns about patient can be explained by the Radiologists' absence from work for 1.5 days per week. This accords with the evidence of Dr Baker, Dr Nasreddine and Dr McIvor about the importance of being physically present, and with common sense: staff specialists being present at a hospital for fewer days means less supervision and training available to junior doctors, and less capacity in general for the Radiologists to do their work.

Application of the Wage Fixing Principles

122 As I have decided not to make ASMOF's Proposed Variation nor direct the terms of the Agreement continue it is not necessary that I consider whether or not the WFP apply to this case. However, I observe that the Secretary is correct in that this matter involving the arbitration of a dispute notified under s 130 of the IR Act makes no difference to the application of the WFP. The WFP are expressed to apply to all "[m]ovements in wages and conditions".[59]

123

It is also not necessary that I consider ASMOF's second contention in relation to the non-application of the WFP, that ASMOF is not seeking to increase or improve wages or conditions but maintain existing conditions.

The Regulation

124 As I have decided not to make ASMOF's Proposed Variation nor direct the terms of the Agreement continue, it is not necessary that I consider the effect of cll 5, 6 or 6A[60] of the Regulation.

Recommendation

125 In circumstances where, following a thorough consideration of the evidence, I have decided:

(1) I do not have the power to make the direction sought by ASMOF requiring the Secretary to continue the terms of the Agreements; and

(2) ASMOF has not displaced the presumption that the Award sets fair and reasonable conditions of employment nor made a case that the terms sought in ASMOF's Proposed Variation, if incorporated in the Award, would result in the Award setting fair and reasonable conditions of employment for employees covered by the Award, such that I should make ASMOF's Proposed Variation,

it would not be appropriate to make a recommendation that the Secretary continue the terms of the Agreements. Further, a recommendation, which is unenforceable, would not resolve the dispute to finality I decline to make such a recommendation.

Issue Resolution in the Award

126 I observe for the sake of clarity that the Issue Procedures in cl 3 of the Award in respect of the matters contained in the Dispute Notification are exhausted by this decision.

Order

127 The Dispute Notification is dismissed.

Nichola Constant

Chief Commissioner

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Endnotes

1. As at the date of this decision, the Radiologists are covered by the Staff Specialists (State) Award 2022 ("2022 Award"). This change in award is not material to the Dispute Notification or this decision other than as considered in respect of the matters the Commission must consider when varying an award pursuant to subs 17(3) of the IR Act, which is dealt with in the decision. Other than rates of pay and pay-related allowances, there is no material difference in the terms of the Award relevant to this decision between the 2019 Award and the 2022 Award. For convenience therefore, I have used the term "Award" to describe both the 2019 Award and the 2022 Award.

2. Where the Award is silent, the conditions set out in the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 apply. This is not material to the Dispute or this decision.

3. The letter from Ms Luci Caswell to Dr Tom Karplus dated 24 July 2020 (Tab 14 of ASMOF 6) which notified WSLHD's "intention to cease [the] over award agreement ("Agreement") between the Radiologist[s] employed at Westmead and Blacktown Hospital" provided "notice of the cessation of Agreement and all associated employment arrangements effective 6 months from Monday 27 July 2020". On 30 December 2020, Ms Caswell wrote to Mr Morgan by email and informed him, amongst other things, "a return to Award arrangements will occur on 1 February 2021 (being the next full week commencing after 25 January 2021)".

4. There is no material difference in the terms relevant to this decision between the 2019 Award and the 2022 Award.

5. Exhibit "ASMOF 6", Tab 8 p94.

6. "The WSAHS Networking Agreement" dated 24 May 2004, Tab 2 of ASMOF 6.

7. Tab 8 of ASMOF 6.

8. Exhibit "ASMOF 6", p139.

9. See [5] above.

10. at 46.

11. The current Wage Fixing Principles are now set out in Annexure "A" to State Wage Case 2021 [2022] NSWIRComm 1014. For the purposes of this decision, there is no material difference between the 2019 WFPs and the 2021 WFPs.

12. Mr Saunders accepted in the hearing on the status quo that Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales v Secretary for Industrial Relations [2018] NSWIRComm 1061 ("PSA 2018") limits the Commission's power to issue directions, but, at that time, submitted that it was seeking a direction as to ongoing conduct of an employer during an issue resolution process in an industrial context which is facilitative. See tcpt 20 January 2021, p 52, line 42 to p 53, line 5.

13. Section 10 of the IR Act.

14. Subs 17(3)(d) of the IR Act.

15. Subs 17(3)(c) of the IR Act. However, if the Award were outside its nominal term and the terms of subs 17(3)(d) had applied, as set out below, I am unconvinced that the public interest would be satisfied by ASMOF's Proposed Variation, consequently, the fact that the Award is within its nominal term has no material impact on the outcome of this decision.

16. At [25].

17. ASMOF's April Submissions at par 36.

18. at 45-46.

19. Cf Re City of Sydney Award 2014 (2014) 247 IR 386, 396 at [70].

20. The letter from Ms Luci Caswell to Dr Tom Karplus dated 24 July 2020 (Tab 14 of ASMOF 6) which notified WSLHD's "intention to cease [the] over award agreement ("Agreement") between the Radiologist[s] employed at Westmead and Blacktown Hospital" provided "notice of the cessation of Agreement and all associated employment arrangements effective 6 months from Monday 27 July 2020". However, on 30 December 2020, Ms Caswell wrote to Mr Morgan by email and informed him, amongst other things, "a return to Award arrangements will occur on 1 February 2021 (being the next full week commencing after 25 January 2021)".

21. Exhibits ASMOF 36 and ASMOF 37 and later referred to as the Hunter New England Imaging Onsite overflow Reporting Agreement for Radiologists: ASMOF 38.

22. Exhibit ASMOF 34.

23. Exhibit ASMOF 20.

24. 2004 Agreement cl II. C. I; 2015 Agreement cl 4.1.1.

25. Award, cl 4, Part A (a) and (b).

26. 2004 Agreement, cl III.B.2 - 4; 2015 Agreement, cl 8.1.3.

27. ASMOF's November Submissions at par 8.

28. ASMOF's November Submissions at par 17.

29. ASMOF's November Submissions at par 19.

30. Affidavit of Barry Mitrevski affirmed 4 May 2021 at par 36 and annexure BM-9.

31. Affidavit of Barry Mitrevski affirmed 4 May 2021 at par 31 and Affidavit of Barry Mitrevski affirmed 17 May 2021 at annexures BM-7A and BM-8A.

32. Affidavit of Barry Mitrevski affirmed 4 May 2021 at pars 13 - 22 and Affidavit of Barry Mitrevski affirmed 17 May 2021 at annexures BM-3A and BM-4A.

33. Tcpt 18 May 2021, p 46, lines 21 – 22.

34. ASMOF's November Submissions at par 67.

35. ASMOF's November Submissions at par 67(c).

36. Affidavit of Emma McCahon at par 40 and GM-8 to the statement of George McIvor made on 12 January 2021.

37. At par 19 and GM-8.

38. At pars 14 to 31.

39. Affidavit of Emma McCahon at par 42.

40. ASMOF's November Submissions at par 70.

41. From 17 March 2006, Health Services Act, ss 116(3), 116A. Before 17 March 2006, Health Services Act, ss 115(2), (3)(a).

42. Affidavit of Melissa Collins affirmed on 6 May 2021 at pars 47 – 50.

43. at 409.

44. Affidavit of Melissa Collins affirmed on 6 May 2021 at pars 54 - 72, Exh MC 1 at Tab 9 - Tab 11; affidavit of Luci Caswell affirmed 5 May 2021, at pars 5 - 12; and affidavit of Luci Caswell affirmed 10 September 2021, at pars 5 - 13.

45. Affidavit of Danny O'Connor affirmed 3 May 2021 at pars 12 – 24.

46. Affidavit of Peter Hinrichsen sworn 4 May 2021 at pars 14 – 16.

47. Affidavit of Brad Astill affirmed 5 May 2021 at pars 201 - 221.

48. Affidavit of Annie Owens at pars 9 - 27; affidavit of Trevor Craft dated 5 May 2021 at pars 9 - 20.

49. Affidavit of Trevor Craft affirmed 5 May 2021 annexure TC- 1; and Affidavit of Peter Hinrichsen, annexure PH-1.

50. Affidavit of Annie Owens affirmed 5 May 2021 at pars 28 – 29.

51. Transcript, 27 May 2021, p 85: lines 5 – 16.

52. Transcript, 27 May 2021, p 107: 16 - 19.

53. Section 17.

54. Health Services Act, Ch 3, Pts 2 and 3.

55. Health Services Act, s 22(1)(e).

56. Affidavit of Trevor Craft affirmed 5 May 2021 annexure TC- 1 and Affidavit of Peter Hinrichsen, annexure PH-1.

57. Affidavit of Peter Hinrichsen at pars 15 – 19.

58. Affidavit of Melissa Collins affirmed on 6 May 2021, Exh MC 1 at Tab 19.

59. See sub-cl 1.3 of the Wage Fixing Principles set out at Annexure A to State Wage Case 2019 [2019] NSWIRComm 1065.

60. Clause 6A was inserted in the Regulation by the Industrial Relations (Public Sector Conditions of Employment) Amendment Regulation 2022 on 22 June 2022 to take effect on 24 June 2022.

Amendments

20 September 2022 - Amendment to cover sheet to include the solicitors for the respondent.

Decision last updated: 20 September 2022