

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES
BEFORE THE FULL COMMISSION

CORAM: FISHER, P.
PETERSON J.
McKENNA CC.

25 MARCH 1994.

Matter No. IRC 1460 of 1993

AUSTRALIAN MEDICAL ASSOCIATION, NEW SOUTH WALES BRANCH, and
THE MINISTER FOR HEALTH.
Appeal by the Australian Medical Association, New South Wales
Branch, against a Determination of Mr. Justice Hungerford made
on 25 March 1993 pursuant to the Public Hospitals Act, 1929.

SPEAKING TO MINUTES OF DETERMINATION AND ORDER
STATEMENT

A number of issues have arisen between the Australian Medical Association, N.S.W. Branch ("the AMA") and the Minister for Health in the preparation of a draft determination and order to reflect the judgment of the Full Commission given in the appeal proceedings on 24 December 1993. The parties have filed written submissions on the issues and been heard in support thereof.

The issues are:

1. Whether the short minutes of order should include a notation concerning a document agreed to by the parties in a mediation process during 1993 and called a Contextual Overview.

2. Whether the superannuation supplement or top-up beyond that payable under the Superannuation Guarantee Scheme is intended to be a fixed 2.5 per cent or whether it should reduce over time by the same amount/s as the percentage payable from time to time under the Superannuation Guarantee Scheme increases.
3. Whether the superannuation supplement is payable to Visiting Medical Officers ("VMOs") who were engaged under sessional contracts prior to 1 February 1994 and continue under replacement contracts or only those who stay with the same hospital or area health service.
4. Whether the superannuation supplement is to be paid as part of the hourly rate of remuneration or to a superannuation fund.
5. Whether the background practice costs fixation was intended to be \$25.00 for surgeons and \$15.00 for others or \$25.00 and \$20.00 respectively.

Some of these issues arise as natural matters to complete the giving effect to the judgment of the Full Commission, although the third and fifth matters arise as a consequence of the form of expression adopted by the Full Commission. They raise the possibility that the slip rule will need to be employed for the purpose of resolving any difficulties that may arise.

We now deal with these matters seriatim:

1. The contextual overview document whilst apparently being of significance to the parties, was not critical to the resolution of the appeal proceedings and was not the subject of debate or scrutiny by the Full Commission in the sense that it may be said to carry the approval of the Full Commission. We will not include a notation to it in the order.
2. With respect to the 2.5 per cent superannuation supplementary payment the intention of the Commission is that it operates only to the extent necessary to ensure that the relevant VMOs receive 7.5 per cent superannuation contribution. It necessarily follows that it will reduce consonantly with increases in the payments made under the Superannuation Guarantee Scheme. The relevant draft provision suggested by the Minister will be adopted.
3. The superannuation supplement is intended to be applicable to VMOs who were participating in sessional contracts at the date of the Determination and who continue to work as VMOs under an unbroken series of replacement contracts. A cessation in the VMO relationship will cause the entitlement to receive this payment to cease and not be reinstated. The volume of work performed under sessional contracts is immaterial to this question as is continuance at the same hospital or

area health service. We will therefore adopt the AMA's suggested draft in this respect.

4. The observation of the Full Commission to the effect that its preference that this payment be made to a superannuation fund was only qualified by the opportunity afforded to the parties to follow a different course if they were able to reach agreement thereto. In the absence of agreement it follows that the intention of the Commission must now be put into effect. Payment will need to be made to an appropriate superannuation fund.

5. Background Practice Costs

The decision of the Full Commission in the appeal proceedings expressly adopted \$25.00 per hour for surgeons and \$15.00 per hour for physicians, anaesthetists and general practitioners (see Reasons for Decision of the Full Commission at p.43). The observation made, incorrectly, that these rates equate with those fixed by Macken J. in 1985 (the correct 1985 rates having been earlier set out) was not intended to reflect a particular quantification but rather to support the observation that the fixation in 1993 was being undertaken on a different basis to that in 1985 and that any equality was therefore coincidental. The background practice costs will be \$25.00 and \$15.00 as earlier described.
