

AUSTRALIAN MEDICAL ASSOCIATION



WESTERN AUSTRALIA

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15 November 2005

Mr John Carter
Secretary
Senate Employment, Workplace Relations and Education Legislation Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

Dear Mr Carter

I refer to our various discussions regarding the Association's appearance before the Committee and the lack of time available for such purpose.

As you appreciate, AMA (WA) is deeply concerned that the draft legislation in its present form could preclude AMA (WA) from being able to continue to represent Salaried Medical Practitioners for the purposes of Awards and Industrial Agreements.

Enclosed is a copy of the AMA (WA)'s submission it sought to present to, and discuss with the Committee.

It would obviously be appreciated if the submission could be circulated to members of Committee and considered accordingly.

The Association is available to provide any detail or further information the Committee requires.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Boyatzis', written over a white background.

PAUL BOYATZIS
EXECUTIVE DIRECTOR

Enc: AMA Submission

**WORKPLACE RELATIONS AMENDMENT
(WORKCHOICE) BILL 2005**

INQUIRY



WESTERN AUSTRALIA

**Australian Medical Association
(Western Australia) Inc**

Submission

November 2005

Inquiry into the Workplace Relations Amendment (Work Choice) Bill 2005

Australian Medical Association (Western Australia) Incorporated

Executive Summary

- The AMA (WA) Inc seeks to retain its ability to industrially represent Salaried Medical Practitioners under the proposed Federal Reforms to continue to be able to represent Medical Practitioners as their Professional Association.
- Doctors in Western Australia, unlike all other States, are represented industrially by the AMA (WA).
- AMA (WA) is unique in terms of its function and has been recognised not only as a Professional body, but as a Union for Salaried Medical Practitioners in Western Australia for over twenty years.
- The State Industrial Relations Act, at Section 72B, specifically and uniquely deems AMA (WA) as a Union consequent on amendments passed by the State Labour Government in 1984 and further amendments by the Liberal Government in 1995 at the time of its Privatisation Agenda and Workplace Agreements / Minimum Conditions reforms.
- AMA (WA) is party to two State registered Awards and numerous State Industrial Agreements covering over 2000 salaried Medical Practitioners throughout the public and private systems, including rural and outer metropolitan areas.
- AMA (WA) works very closely with the State Government to attract and retain Medical Practitioners in areas of need.
- AMA (WA), through its sponsorship / recruitment arm is also the major provider of Medical Practitioners to rural and outer metropolitan areas.
- "... from my observations over the last few years the Association has had a remarkably good record, both in its practical Industrial Relations and in its recognition of the public interest. It has accepted the need to restrain its demands so that the public purse is not strained or indeed broken."
State Industrial Relations Commissioner G Fielding 71 WAIG 1841
- AMA (WA) is constituted under the Associations Incorporations Act (and is a separate legal entity from the Federal AMA and other State AMA's). This effectively precludes AMA (WA) Inc from being able to be registered as an organisation under the Federal Workplace Relations Act.
- As a matter of equity and consistency, the proposed WorkChoices Bill needs to be amended so AMA (WA) is not inadvertently precluded from industrially representing the Salaried Medical Practitioners bound by the State Awards and Industrial Agreements when they transition into the Federal System and at the

same time ensure that it continues to act as the Professional Association for all Medical Practitioners in Western Australia and can continue to represent Salaried Medical Practitioners.

Proposal:

That the WorkChoices legislation be amended to reflect the AMA (WA)'s existing rights pursuant to the State IR Act so that AMA (WA) can continue to represent Salaried Medical Practitioners for the purposes of being a party to Awards and Industrial Agreements in the Federal system without effectively disenfranchising the AMA (WA)'s members.

AMA (WA) Inc Submission

Background

1. The AMA (WA) Inc is incorporated under the Associations' Incorporations Act of WA and, uniquely, is "recognised" as a Union under the State IR Act. The State Industrial Relations Act recognises organisations of employees registered under the State IR Act, registered under the Commonwealth Act and the AMA (WA) Inc.

The AMA (WA) Inc has been expressly recognised under the State IR Act since 1984 (Appendix I) for the purposes of representation of Salaried Practitioners in public hospitals. Coverage was extended as a consequence of the then State Liberal Government's / The Hon Graham Kierath's privatisation of government services and introduction of Workplace Agreements, Minimum Conditions and IR Act Reform legislation in 1995 (Appendix II) to include doctors employed in the private sector.

The AMA (WA)'s status in respect to coverage of particular areas has also been determined in proceedings before the Full Bench of the Western Australia Industrial Relations Commission in which other Unions recognise AMA (WA)'s role (Appendix III).

The Industrial Commission itself has observed:

"... from my observations over the last few years the Association has had a remarkably good record, both in its practical Industrial Relations and in its recognition of the public interest. It has accepted the need to restrain its demands so that the public purse is not strained or indeed broken."

Commissioner G Fielding 71 WAIG 1841

The State IR Act recognises AMA (WA)'s unique status. Unlike Unions which are incorporated as a result of their registration as employee associations (unions) pursuant to the IR Act, AMA (WA) is an incorporated body pursuant to the Association's Incorporation Act. Due to the conflicting obligations under the two forms of incorporation, AMA (WA) could not be registered under the State IR Act and was therefore legislatively deemed a Union.

Coverage

2. AMA (WA) represents well over 2000 Salaried Medical Practitioners in WA from first year (interns) through to Senior Specialists. They are principally employed by the Metropolitan Health Service (a Constitutional Corporation), throughout rural Western Australia and in the Private Sector, eg Royal Flying Doctor Service, Red Cross Blood Transfusion Service, and St John of God Murdoch Emergency Department.

The AMA (WA) is party to State Industrial Awards, namely:

1. Metropolitan Teaching Hospitals – Salaries and Conditions of Service Award 1986 (Medical Officers)
2. Western Australian State Public Hospitals, Medical Practitioners' Award 1987

Currently the AMA (WA) is seeking to establish an Award to cover Medical Practitioners employed by the Aboriginal Medical Services.

It is also the Union respondent to the following State Registered Industrial Agreements:

- a. Department of Health Medical Practitioners (Metropolitan Health Services) AMA Industrial Agreement 2004 – PSAAG 3 of 2004*
 - b. Department of Health Medical Practitioners (Director General) AMA Industrial Agreement 2004 – PSAAG 8 of 2004
 - c. Department of Health Medical Practitioners (Country Health Services) AMA Industrial Agreement 2004 – PSAAG 8 of 2004* (Board hospitals only)
 - d. Department of Health Medical Practitioners (Drug and Alcohol Office) AMA Industrial Agreement 2004 – PSAAG 5 of 2004
 - e. Department of Health Medical Practitioners (PathCentre) AMA Industrial Agreement 2004 – PSAAG 6 of 2004*
 - f. Department of Health (Clinical Academics) AMA Industrial Agreement 2004 – PSAAG 12 of 2004*
 - g. Royal Flying Doctor Services of Australia Western Operation, Medical Practitioners Industrial Agreement 2003 – PAAG 23 of 2004*
 - h. Australian Red Cross Blood Service (WA) AMA Medical Practitioners Industrial Agreement 2004 AG 260 of 2004*
 - i. St John of God Health Care Murdoch AMA Medical Practitioners Industrial Agreement 2005, A657 of 2005*
 - j. Aboriginal Medical Services of Western Australia and Australian Medical Association (WA) Practitioners Award 2005 (current application)*
- * Likely to be subject to the Federal reforms as these entities are corporations (Appendix IV)

Given the scope of these Agreements, whilst some will remain covered by the State system, those for which the employer is a Corporation will come within the ambit of the Federal Reforms.

If the AMA (WA) is not recognised under the Federal Reforms, which Union would have coverage of these transitional awards and notional agreements?

Workplace Relations Bill - Comments

3. Schedule 17 – 3735 (page 546) Explanatory Memorandum of the Workplace Relations Amendment (Workchoice) Bill (2005), seeks to allow State registered employer and employee associations who have rights under State industrial laws to retain their rights to represent members. As this only applies to a “registered” organisation, AMA (WA) Inc as a “recognised” as distinct from “registered” organisation would not be able to comply and hence would lose its ability to represent Medical Practitioners, who would be forced to seek other representation for the purposes of Award / Registered Agreement coverage.

A transitionally registered association would have three years to become fully registered under Schedule 1B (3736). Point 3749 makes it clear the non application of Schedule 1B to a transitionally registered association for three years "is to avoid them being required to comply with two substantive sets of governance provisions as they will remain subject to whatever regulatory requirements are imposed upon them by virtue of their registration or status under state industrial laws" (underlining added)

This reflects the same logic as to why AMA (WA) Inc is recognised as distinct from being "registered" under the State Act, given its governance pursuant to the Association's Incorporation Act. It logically follows that to avoid being required to comply with two substantive sets of governance provisions AMA (WA) Inc should be similarly "recognised" under the Commonwealth Act and hence be subject to one substantive set of governance provisions.

Legal advice stipulates that under the proposed Work Choice Legislation the AMA (WA) Inc needs explicit recognition for it to continue to be a party to registered Agreements on the same basis as other Unions (Appendix V).

The Bill needs to be amended so as not to disenfranchise AMA (WA) Inc as the Industrial representative in WA from continuing to represent salaried Medical Practitioners under the Federal system.

The Problem

4. In the absence of appropriate amendments, the proposed changes to the Federal IR Act will remove the AMA (WA)'s representative role as a party to Awards or Registered Agreements Unions. This would disadvantage the AMA (WA) as a deemed / recognised Union compared to registered Unions. It would also disadvantage Medical Practitioners who are currently faced with losing their industrial representation and would/could be forced to seek representation by a Union recognised under the Workchoices legislation.

The Solution

5. AMA (WA) seeks recognition consistent with the approach that has applied for the last 20 odd years under the State IR Act for the purposes of:
 - Being a party to Awards and Workplace Agreements and continuing to represent its salaried Doctor members.ie AMA (WA) needs to be able to continue to function for the purposes of being a party to the Awards and Workplace Agreements referred to above.

Proposal:

That the Act be amended to reflect the AMA (WA)'s existing rights pursuant to the State IR Act under the proposed Federal Act so that AMA (WA) can continue to represent Salaried Medical Practitioners for the purposes of being a party to Awards and Workplace Agreements and avoid the creation of a vacuum in the industrial regulation of salaried Medical Practitioners in WA.



WESTERN AUSTRALIA

APPENDIX I

LEGISLATIVE COUNCIL


ACTS AMENDMENT AND REPEAL (INDUSTRIAL RELATIONS) BILL 1984

SECOND READING SPEECH

HON. D.K. DANS, M.L.C.

IN RELATION TO THE PUBLIC SERVICE ARBITRATOR, ESSENTIALLY THE SAME FORMAT HAS BEEN FOLLOWED. IN ADDITION, THOSE SALARIED EMPLOYEES OF PUBLIC AUTHORITIES WHO, FOR HISTORICAL REASONS HAVE NOT BEEN CLASSIFIED AS GOVERNMENT OFFICERS, WILL IN FUTURE BE DEALT WITH BY THE PUBLIC SERVICE ARBITRATOR DIVISION OF THE COMMISSION. THIS WILL ENSURE GREATER UNIFORMITY OF TREATMENT FOR SALARIED EMPLOYEES OF ALL PUBLIC AUTHORITIES.

THE PUBLIC SERVICE RECLASSIFICATION APPEAL SYSTEM IS TO BE REPLACED BY A RIGHT TO APPLY TO THE COMMISSION TO REVIEW THE SALRY AND CLASSIFICATION OF ANY POSITION WITHIN THE PRINCIPLES OF WAGE DETERMINAJION SET BY THE COMMISSION. AS A NECESSARY CONSEQUENCE OF HAVING THIS DIVISION OF THE COMMISSION REGULATE ALL SALARIED EMPLOYEES OF PUBLIC AUTHORITIES, ACCESS TO THIS DIVISION OF THE COMMISSION WILL BE OPEN TO ORGANISATIONS OTHER THAN THE CIVIL SERVICE ASSOCIATION. FOR THE PURPOSES OF MEDICAL PRACTITIONERS IN PUBLIC HOSPITALS ONLY, THE AUSTRALIAN MEDICAL ASSOCIATION IS GIVEN THE SAME STANDING AS ANY OTHER ORGANISATION.



1985

WESTERN AUSTRALIA

INDUSTRIAL RELATIONS ACT 1979

(5) In relation to—

- (a) an application or claim made to an Arbitrator in respect of a medical practitioner employed in a public hospital, or a group of medical practitioners so employed, or medical practitioners so employed generally, and any proceedings in relation to such an application or claim; and
- (b) any award, order or industrial agreement made or registered under this Division that is applicable to a medical practitioner employed in a public hospital, or a group of medical practitioners so employed, or medical practitioners so employed generally,

the Western Australian Branch of the Australian Medical Association Incorporated shall be deemed to be an organization for the purposes of subsection (4), section 80F, and the provisions applied by section 80G.

(6) In subsection (5) “medical practitioner” means a medical practitioner as defined in the Medical Act 1894.

[S. 80C. inserted by No. 94 of 1984, s. 47.]

Appointment of Public Service Arbitrators.

80D. (1) At least one Public Service Arbitrator shall be appointed within the Commission.

(2) An additional Public Service Arbitrator or additional Public Service Arbitrators may be appointed within the Commission.

(3) An Arbitrator shall be appointed by the Chief Commissioner from amongst the other Commissioners.

(4) An Arbitrator shall hold office for such period not exceeding 2 years as is specified in the instrument of his appointment and is eligible for reappointment.

(5) The office of an Arbitrator becomes vacant if—

- (a) he ceases to be a Commissioner; or
- (b) his appointment as an Arbitrator is terminated pursuant to subsection (6).

(6) The Chief Commissioner may at any time terminate the appointment of an Arbitrator.

[S. 80D. inserted by No. 94 of 1984, s.47.]

- (b) an employer's representative appointed by the employer of the appellant; and
- (c) an employee's representative appointed by the relevant organization.

(5) In subsections (3) and (4) "relevant organization" means the Association unless the appellant is a member of another organization in which case it means that organization.

(6) In this section and section 80J "organization" means an organization of employees registered under Division 4 of Part II, a Trade Union within the meaning of the Trade Unions Act 1902, an association of employees registered as an organization pursuant to the provisions of the Commonwealth Act or, in the case of an appeal by a medical practitioner employed in a public hospital, the Western Australian Branch of the Australian Medical Association Incorporated.

(7) In subsection (4) "Public Service Arbitrator" means a Commissioner who is, for the time being, a Public Service Arbitrator appointed under section 80D.

[S. 80H. inserted by No. 94 of 1984, s. 47.]

Appeals.

80 I. (1) A Board has jurisdiction to hear and determine—

- (a) an appeal by any public servant, against any decision of the Public Service Board in relation to an interpretation of any provision of the Public Service Act 1978, and the regulations made thereunder, concerning the conditions of service (other than salaries and allowances) of public servants;
- (b) an appeal by a public servant who is—

- (i) a Permanent Head within the meaning of the Public Service Act 1978;
- (ii) the holder of an office included in the Special Division of the Public Service under the Public Service Act 1978; or
- (iii) both such a Permanent Head and the holder of such an office,

under section 51 of the Public Service Act 1978, from a decision or recommendation made by the Public Service Board in relation to that public servant;



WESTERN AUSTRALIA

APPENDIX II



- 8 NOV 1996

MINISTER FOR LABOUR RELATIONS; HOUSING

13TH FLOOR, 2 HAVELOCK STREET, WEST PERTH, WESTERN AUSTRALIA 6005
TELEPHONE: (09) 481 2133 FACSIMILE: (09) 324 2320

05 NOV 1996

Dr Paul Boyatzis
Executive Director
Australian Medical Association
PO Box 133
PERTH WA

Dear Paul

REPRESENTATION RIGHTS FOR AUSTRALIAN MEDICAL ASSOCIATION

On 23 October 1996 His Excellency the Lieutenant Governor proclaimed sections 35 and 36 of the Industrial Relations Legislation Amendment and Repeal Act 1995 to come into effect on 1 November 1996.

These sections give the Australian Medical Association (AMA) extended rights to represent medical practitioners in proceedings in the WA Industrial Relations Commission. Prior to the amendments, those rights were limited to representing medical practitioners in public hospitals. With the delivery of medical services increasingly being carried out in places that are not defined as public hospitals, the amendment ensures that the AMA does not lose its right to represent medical practitioners merely because they are working in places that are not public hospitals.

Yours sincerely



GRAHAM KIERATH MLA
MINISTER FOR LABOUR RELATIONS

- (c) activities carried on by a public authority, or part of those activities; or
- (d) a single project, undertaking or place of work;

“organisation” means an organisation of employees and includes the Western Australian Branch of the Australian Medical Association Incorporated.

- (2) An organisation, an employer or the Minister may apply to the Full Bench for an order —
 - (a) that an organisation has the right, to the exclusion of another organisation or other organisations, to represent under this Act the industrial interests of a particular class or group of employees employed in an enterprise who are eligible for membership of the organisation;
 - (b) that an organisation that does not have the right to represent under this Act the industrial interests of a particular class or group of employees employed in an enterprise has that right;
 - (c) that an organisation does not have the right to represent under this Act the industrial interests of a particular class or group of employees employed in an enterprise who are eligible for membership of the organisation.
- (3) The Registrar shall publish notice of an application under subsection (2) in the *Industrial Gazette* and —
 - (a) in a newspaper circulating throughout the State; or
 - (b) on an internet website maintained by the Commission,and the application shall not be listed for hearing before the Full Bench until after the expiration of 30 days from the day on which the notice is first published.
- (4) On an application under subsection (2), the Full Bench may make one or more of the orders applied for, and may make any such order subject to any condition or limitation.

Industrial Relations Act 1979

Part II The Western Australian Industrial Relations Commission
Division 4 Industrial organisations and associations

s. 72B

- (5) The Full Bench shall not make any order described in subsection (2) without giving persons who, in the opinion of the Full Bench, have a sufficient interest in the matter an opportunity of being heard.
- (6) Where an order is made under subsection (4), the Full Bench is to refer the matter to the President unless the Full Bench is satisfied that the rules of the organisations concerned do not need to be altered.
- (7) On a referral under subsection (6) the President shall, after giving the organisations concerned an opportunity of being heard, make such alterations (if any) to the rules of the organisations as are, in the President's opinion, necessary to reflect the order made by the Full Bench.
- (8) An alteration shall be made by instrument in writing signed by the President and shall take effect on a day specified in the instrument.

[Section 72A inserted by No. 15 of 1993 s. 20; amended by No. 79 of 1995 s. 35; No. 20 of 2002 s. 190(6).]

72B. AMA may represent interests of medical practitioners

- (1) In this section —
 “medical practitioner” means a medical practitioner as defined in the *Medical Act 1894*;
 “WA Branch of the AMA” means the Western Australian Branch of the Australian Medical Association Incorporated.
- (2) The WA Branch of the AMA may represent under this Act the industrial interests of medical practitioners as if it were an organisation of employees and for that purpose —
 - (a) the references to **“organisation”** in paragraphs (e), (i), (j), (k) and (l) of the definition of “industrial matter” in section 7(1) include the WA Branch of the AMA; and

- (b) Divisions 2 and 3 of Part II, sections 80C(4) and 80F and Parts III and VIA apply to the WA Branch of the AMA as if it were an organisation of employees.
- (3) The WA Branch of the AMA does not have the right, to the exclusion of an organisation or organisations, to represent under this Act the industrial interests of medical practitioners, unless an order to that effect is made under section 72A.
- (4) Within 30 days of the coming into operation of section 36 of the *Industrial Relations Legislation Amendment and Repeal Act 1995*¹ the WA Branch of the AMA shall lodge with the Registrar a copy of its rules as then in force.
- (5) The WA Branch of the AMA shall lodge with the Registrar, within 30 days of the making of the alteration, any alteration made to the rules lodged under subsection (4) as altered from time to time.
- (6) The WA Branch of the AMA shall file with the Registrar once in each year, at such time as is prescribed —
- (a) a list of the names, residential addresses, and occupations of the persons holding offices in the Branch; and
 - (b) a record of the number of members of the Branch,
- certified by statutory declaration by the Executive Director of the Branch to be a correct statement of the information contained in the list and the record.

[Section 72B inserted by No. 79 of 1995 s. 36.]

73. Summons for cancellation or suspension of registration of organisation

- (1) Subject to this section, the Commission may of its own motion or at the request of the Minister or any employer or organisation at any time direct the Registrar in writing to issue to an organisation a summons to appear before the Full Bench on a

80H. Public Service Appeal Board

- (1) For the purpose of an appeal under section 80I there shall be established, within and as part of the Commission, a Board to be known as a Public Service Appeal Board.
- (2) A Board shall consist of 3 members.
- (3) In the case of an appeal referred to in section 80I(1)(a), (b) or (c), the members of a Board shall be —
 - (a) the President, who shall be the Chairman;
 - (b) an employer's representative appointed by the employer of the appellant; and
 - (c) an employee's representative appointed by the relevant organisation.
- (4) In the case of an appeal referred to in section 80I(1)(d) or (e), the members of a Board shall be —
 - (a) a Public Service Arbitrator, who shall be the Chairman;
 - (b) an employer's representative appointed by the employer of the appellant; and
 - (c) an employee's representative appointed by the relevant organisation.
- (5) In subsections (3) and (4) "**relevant organisation**" means the Association unless the appellant is a member of another organisation in which case it means that organisation.
- (6) In this section and section 80J "**organisation**" means an organisation of employees registered under Division 4 of Part II, an association of employees registered as an organisation pursuant to the provisions of the Commonwealth Act or, in the case of an appeal by a medical practitioner employed in a public hospital, the Western Australian Branch of the Australian Medical Association Incorporated.



WESTERN AUSTRALIA

APPENDIX III

INDUSTRIAL RELATIONS ACT: AMA COVERAGE

"... from my observations over the last few years the Association has had a remarkably good record, both in its practical Industrial Relations and in its recognition of the public interest. It has accepted the need to restrain its demands so that the public purse is not strained or indeed broken."

Commissioner G Fielding
71 WAIG 1841

shall, whenever reasonably practicable, be given ten consecutive hours off duty before the employee's usual starting time on the next day. If this is not practicable then the provision of paragraph (b) shall apply.

- (d) The provisions of this subclause shall apply in the case of shift employees who rotate from one shift to another, as if eight hours were substituted for ten when overtime is worked for the purpose of changing shift rosters.
- (e) The provisions of paragraphs (a) and (b) of this subclause shall not apply to employees included in subclause 10 of this clause.

WESTERN AUSTRALIAN STATE PUBLIC HOSPITALS (MEDICAL PRACTITIONERS) AWARD 1987.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Branch of the Australian Medical Association Incorporated

and

The Boards of Management, Royal Perth Hospital and Others

No. P 57 of 1990

COMMISSIONER G.L. FIELDING.

1 July 1991.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, taken from the transcript as edited by the Commissioner)

THE COMMISSIONER: This is an application to amend the Western Australian State Public Hospital (Medical Practitioners) Award 1987. That Award, as its title implies, came into force early in 1987. At that time it was seen as rather revolutionary because it contained, amongst other things, three separate arrangements governing the remuneration of full-time medical practitioners and their rights to private practice.

In the main, though not entirely, those private practice arrangements, as I recall it, mirrored the arrangements which had been awarded to medical practitioners in New South Wales.

Arrangements B and C—there were three, A, B and C were inserted into the Award, although at that time it was indicated that there was no intention to implement them. It was freely acknowledged, at least by the Association, that those arrangements, B and C, gave rise to the potential for administrative problems associated with the hospital trust fund into which part of the moneys earned from private practice are paid.

Thereafter the parties entered into discussions regarding ways and means to overcome those problems or, alternatively, reach new arrangements. Indeed, the review of those arrangements was, as Mr Jennings has so rightly said, the subject of undertakings in the course of the structural efficiency wage adjustment proceedings in 1989 and later on in 1990.

The parties have since then reached agreement on new arrangements, new arrangements which Mr Jennings, on behalf of the Association, has been at pains to point out result in a reduction in takings for the doctors against those which they might have taken under the Arrangements B and C as they are now included in the Award.

The Association, nonetheless, takes the view that the new arrangements are more professional in that they provide a balance both in benefits to the doctors and to the modern system of delivering private medical services to patients in the hospitals covered by the Award. It is not surprising to hear the Association's agent, Mr Jennings, make that point, because from my observations over the last few years the Association in this State has had a remarkably good record, both in its practical industrial relations and in its recognition of the public interest. It has accepted the need to restrain its demands so that the public purse is not strained or indeed broken.

In the circumstances I am quite satisfied that the Award ought to be amended in the way in which the Association, and indeed, the Respondent hospitals, agree it should be awarded. It is, as Mr Mott on behalf of the Respondents has said, really a continuation of the undertaking given in the structural efficiency proceedings and completes the task, so far as the private practice arrangements are concerned, which was begun many years ago. Moreover, I accept that the new arrangements streamline those already provided for in the Award and that, if nothing else, commends them to me.

In the circumstances I am prepared to make the amendment in the terms, at least in substance, which the parties seek. As well, I am prepared to make the amendment as they ask, retrospective to 1 July 1990, notwithstanding that the application was made after that date. The parties are ad idem on the matter and the Commission has jurisdiction, as Mr Jennings has mentioned, under section 39(3)(a) of the Industrial Relations Act 1979, to make the changes operative before the date of lodgement of the application.

Appearances: Mr P.L. Jennings on behalf of the Applicant.

Mr P.R. Mott on behalf of the Respondents.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Branch of The Australian Medical Association Incorporated

and

The Boards of Management, Royal Perth Hospital and Others

No. P 57 of 1990

Western Australian State Public Hospitals, Medical Practitioners' Award 1987

(No. PSA A 19 of 1986)

COMMISSIONER G.L. FIELDING.

1 July 1991.

Order.

HAVING heard Mr P.L. Jennings on behalf of the Applicant and Mr P.R. Mott on behalf of the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders—

That the Western Australian State Public Hospitals, Medical Practitioners' Award 1987 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the date hereof.

(Sgd.) G.L. FIELDING,
Commissioner.

[L.S.]

whilst that situation ((ie) of Government control of the PATHCENTRE) continues. Our reasons do not reflect that there should be any coverage conferred in relation to private enterprise employees privately employed in the PATHCENTRE. The original minute would have conferred that coverage. That would not have been in accordance with the evidence and our reasons, and the minutes will be amended accordingly.

Because of these amendments we think it only fair that the applicants be offered the opportunity to speak further to these amended minutes should they wish. That, of course, will be restricted, as all speaking to the minutes are, as to whether the minutes reflect accurately our reasons for decision.

Some submissions were made but not pressed as to the right of a person given leave to be heard under s.72A of the Act to speak to the minutes. The point was not pressed and it was not necessary to decide it on this occasion.

Should the applicants wish to speak to the minutes they should advise the Associate to the President within 24 hours of the date of issue hereof and file any minutes of proposed amendments to the minutes of proposed order, together with any outlines of submissions within 48 hours following.

Order accordingly

Appearances: Mr A Drake-Brockman (of Counsel), by leave, on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers).

Mr P Nisbet QC, by leave, and with him Mr T Carmody (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated).

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia
(Union of Workers)
(Applicant)

Nos 168-210 of 1995

Nos 214-267 of 1995

Nos 278-329 of 1995

and

Civil Service Association of Western Australia
(Incorporated)
(Applicant)

No 496 of 1995.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER R H GIFFORD.

2 May 1996.

Order.

THESE matters having come on for hearing before the Full Bench on the 7th, 10th, 11th, 12th, 13th and 14th days of July 1995, the 11th, 12th, 13th, 14th, 15th, 18th, 19th, 20th, 21st and 22nd days of September 1995, the 16th, 17th and 30th days of November 1995, and the 1st, 7th and 11th days of December 1995, and having heard Mr A Drake-Brockman (of Counsel), by leave, and with him Mr R Castiglione (of Counsel), by leave, on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers) ("the HSOA"), Mr J Serich on behalf of the Honourable Minister for Health, Commissioner of Health and the Boards of Management of the Public Hospitals and Health Services listed in Schedule A headed "Board Hospitals & Departmental Hospitals" filed herein on the 29th day of June 1995, and Mr P Nisbet QC, by leave, and with him Mr P Harris (of Counsel), by leave, on behalf of The Civil Service Association of Western Australia (Incorporated) ("the CSA"), and these matters having come on for a speaking to the minutes of proposed order on the 29th day of April 1996, and having heard Mr A Drake-Brockman (of Counsel), by leave, on behalf of the HSOA and Mr P Nisbet QC, by leave, and with him Mr T Carmody (of Counsel), by leave, on behalf of the CSA, and further reasons for decision being delivered on the 2nd day of

May 1996, it is this day, the 2nd day of May 1996, ordered and directed as follows—

- (1) THAT leave be and is hereby granted to The Western Australian Branch of the Australian Medical Association Inc ("the AMA") to withdraw from the proceedings herein.
- (2) THAT leave be and is hereby granted to The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch ("the ALHMWU") to withdraw from the proceedings herein.
- (3) THAT leave be and is hereby granted to the CSA to amend its application to substitute for the name "The Australian Medical Association" the name of the said Association as follows, "The Western Australian Branch of the Australian Medical Association Inc" wherever it appears in the said application.
- (4) THAT the abovenamed HSOA henceforth have the right to represent constitutionally and industrially the interests of all salaried employees (being professional, administrative, clerical, technical and supervisory employees) (including those listed in Schedule B to the applications herein) employed by the boards of any public hospital constituted under the Hospitals and Health Services Act 1927 (as amended) in such hospitals or for the provision of health services in any district or area in which such board or boards are required or have a duty to provide such services, to the exclusion of the CSA and any other organisation of employees registered under the Industrial Relations Act 1979 (as amended) ("the Act"), save for employees eligible for membership of the AMA and the ALHMWU.
- (5) THAT the abovenamed CSA henceforth have the right to represent constitutionally and industrially the interests of all salaried employees (being professional, administrative, clerical, technical and supervisory employees) employed by the Board of the Western Australian Centre for Pathology and Medical Research and/or any other Western Australian State Government controlled person, enterprise or corporation who is presently or henceforth the employer of employees in the said Western Australian Centre for Pathology and Medical Research to the exclusion of the HSOA and any other organisation of employees registered under the Act, save for persons eligible for membership of the AMA.
- (6) THAT the Full Bench, being satisfied that the rules of the abovenamed applicant organisations need to be altered, does hereby order pursuant to s.72A(6) of the Act, that the rules of the said applicant organisations be referred to the President.
- (7) THAT the applications herein otherwise be and are hereby wholly dismissed.

By the Full Bench

(Sgd.) P.J. SHARKEY,
President.

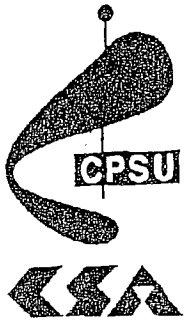
[L.S.]

30-OCT-97 THU 12:25

CIVIL SERVICE ASSOC
61893233876

FAX NO. 61893233876

P. 01



Community and Public Sector Union
SPSF Group • WA Branch

Civil Service Association of WA Inc

445 Hay Street, Perth WA 6000
GPO Box X2252, Perth WA 6001
(08) 9323 3800 • 1800 1999 10

Fax: (08) 9323 3878

Website at: <http://www.cpsu.asn.au/csawa/>
e-mail: postbox@csawa.cpsu.asn.au

Mr P Jennings
Deputy Executive Director
Australian Medical Association
PO Box 133
NEDLANDS WA 6009

YOUR REF:

D010070/97/1

OUR REF:

(Please quote this reference in correspondence)

28 October, 1997

Dear Mr Jennings,

WITHOUT PREJUDICE

APPLICATION 1442 OF 1997 AND PSA A3 OF 1997

We refer to your correspondence on the above matter and subsequent discussions on the points raised by your organisation.

After careful consideration, the CSA proposes the following in full and final settlement of the objections your organisation has with applications 1442 of 1997 and PSA A3 of 1997:

The CPSU/CSA will seek leave to amend application 1442 of 1997 at Schedule D to insert the following:

Western Australian Branch of the Australian Medical Association.

Further, the CPSU/CSA will seek leave to amend application PSA A3 of 1997 at Clause 4 - Scope, to insert after government employees "save for those persons eligible for membership of the WA Branch of the Australian Medical Association,..."

We do this on the understanding that your organisation notify both the Public Service Arbitrator and the Full Bench that you have no further interest in applications 1442 of 1997 and PSA A3 of 1997.

Yours sincerely,

DAVE ROBINSON
BRANCH SECRETARY

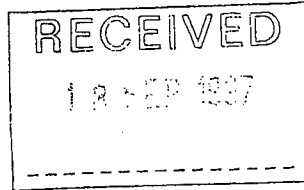


HEALTH SERVICES UNION OF AUSTRALIA
W.A. No. 3 BRANCH



*Hospital Salaried Officers Association
of Western Australia*

OUR REF: Cdp/cdp:HO.343.97
YOUR REF:
ATTENTION: Peter Jennings



8 COOLGARDIE TERRACE, PERTH, 6000
TELEPHONE: (08) 9328 5155
FACSIMILE: (08) 9328 9107

The Executive Director
Australian Medical Association
Western Australia
PO Box 133
Nedlands WA 6009

17 September, 1997

Dear Peter

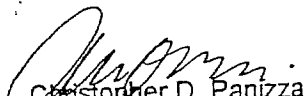
Re: Applications P26 of 1995 and P38 of 1997

We refer to your letter of 4 March 1997 and our letter of 27 February 1997. We confirm your understanding of our proposal regarding our intentions in regard to the scope of our Hospital Salaried Officers Award No 39 of 1968. It is not our intention to cover medical practitioners.

In regard to our application P38 of 1997, despite the fact that we went through the process of advertising the application as if it were amending the scope of the award, it is our view that in fact we already have coverage of Graylands Selby-Lemnos & Special Health care Health Services. The advertising was just a precaution to avoid any technicalities. Therefore it is our view that we are making no change to the scope of the award and therefore no change in regard to the respective coverage in regard to your organisation

I trust this clarifies matters for you.

Yours Faithfully


Christopher D. Panizza
Assistant Secretary



WESTERN AUSTRALIA

APPENDIX IV



OPERATIONAL CIRCULAR

Enquiries to: Legal and Legislative Services
9222 4038

Supersedes: OP 1492/01 (11/10/2001)

Number: OP 1573/02

Date: 18 July 2002

File No: 02-00291

Subject: METROPOLITAN HEALTH SERVICES - LEGAL ARRANGEMENTS

PURPOSE:

Following the signing of a new delegation from the Minister for Health to the Director General in respect of metropolitan hospitals, this Operational Circular replaces Operation Circular No. OP 1492/01.

On 9 March 2001 the Metropolitan Health Service Board ("**MHSB**") was formally abolished by the Governor.

The purpose of this instruction is to clarify the procedures which should be adopted in relation to legal documents as a result of the abolition of the MHSB and the new delegation signed by the Minister for Health.

BACKGROUND:

With the abolition of the MHSB, the Minister for Health ("**MFH**") assumed the role formerly undertaken by the MHSB under the *Hospitals and Health Services Act 1927* (WA) in an incorporated capacity as the board of all of the hospitals formerly under the control of the MHSB.

The MFH delegated his powers and duties in that capacity to the Commissioner of Health. Following the recommendations of the Machinery of Government Task Force, the title of the chief executive officer of the Department of Health has changed to Director General. The MFH has therefore signed a new delegation, delegating his powers and duties as the board of all metropolitan hospitals to the chief executive officer of the Department of Health, known as the Director General of Health ("**DG**").

The effective date of the new delegation is 9 July 2002.

The MFH has continued with the adopted name **Metropolitan Health Services** for the purpose of exercising day-to-day administrative functions.

PROCEDURES:

As a result of the new delegation, and until further notice, the following procedures should be adopted:

Decisions and Legal Documents - Referral

1. Any matter that would, prior to these changes, have been referred for decision to the MHSB should now be referred to the DG.

2. Any legal document which would, prior to these changes, have been referred for execution (signing) to the MHSB should now be referred to the DG.
3. Any matter and/or document referred to the DG in this way should include a covering note which clearly indicates:
 - (i) that it is being referred to the DG in accordance with this instruction;
 - (ii) that it would, prior to these changes, have been referred to the MHSB and why it would have been referred to the MHSB.
4. Any matter which would, prior to these changes, have been decided at the hospital level should continue to be decided at that level.
5. Any legal document which would, prior to these changes, have been executed (signed) at the hospital level by a person with appropriate authority should continue to be executed (signed) at that level.
6. In cases of doubt, decisions and/or documents may be referred to the DG for guidance as to whether they need to be made and/or executed (signed) by the DG or whether this can be done at the hospital level.
7. You need to consider whether the matter/document etc. affects one, some or all of the Hospitals formerly comprised in the MHSB and select the appropriate Recitals and other clauses below.

Designations and Execution (Signing) Clauses

8. Letters, hospital forms, day-to-day administrative type documents and contracts which would usually be entered into by way of standard forms or exchange of letters and which are to be signed at the hospital level in accordance with this operational instruction:
 - (a) may be under the name of:

METROPOLITAN HEALTH SERVICES
 - (b) should be signed by the appropriately authorised person in the usual manner.
9. Legal documents (such as agreements and deeds) which are to be executed at the hospital level in accordance with this operational instruction are to:
 - (a) describe the relevant party as follows:

MINISTER FOR HEALTH
 - (b) include within the 'Recitals' to the document (sometimes described as the 'Background') the following statements:

If affecting only one or more (but not all) of the Hospitals formerly comprised in the MHSB:

The Minister for Health is incorporated as the board of [Insert Name of relevant Hospital(s)] under s7 of the *Hospitals and Health Services Act 1927* (WA) and has delegated all the powers and duties as such to the Director General of Health.

If affecting all of the Hospitals formerly comprised in the MHSB:

The Minister for Health is incorporated as the board of the Hospitals formerly comprised in the Metropolitan Health Service Board under s7 of the *Hospitals and Health Services Act 1927 (WA)* and has delegated all the powers and duties as such to the Director General of Health.

- (c) use the following execution clause:

SIGNED BY [INSERT NAME], [INSERT POSITION]
FOR AND ON BEHALF OF THE DIRECTOR GENERAL OF
HEALTH AS DELEGATE OF THE MINISTER FOR HEALTH

10. Legal documents which are to be executed by the DG in accordance with this operational instruction are to:

- (a) describe the relevant party as follows:

MINISTER FOR HEALTH

- (b) include within the 'Recitals' to the document (sometimes described as the 'Background') the following statement:

If affecting only one or more (but not all) of the Hospitals formerly comprised in the MHSB:

The Minister for Health is incorporated as the board of [Insert Name of relevant Hospital(s)] under s7 of the *Hospitals and Health Services Act 1927 (WA)* and has delegated all the powers and duties as such to the Director General of Health

If affecting all of the Hospitals formerly comprised in the MHSB:

The Minister for Health is incorporated as the board of the Hospitals formerly comprised in the Metropolitan Health Service Board under s7 of the *Hospitals and Health Services Act 1927 (WA)* and has delegated all the powers and duties as such to the Director General of Health.

- (c) use the following execution clause:

SIGNED BY MIKE DAUBE,
DIRECTOR GENERAL OF HEALTH
AS DELEGATE OF THE MINISTER FOR HEALTH

11. Legal proceedings which would previously have been brought on behalf of, or against, the MHSB:

- (a) should describe the relevant party as follows:

MINISTER FOR HEALTH

- (b) may include within the pleadings the following statements:

On 9 March 2001 the Metropolitan Health Service Board ("the Board") was abolished by the Governor, at which time the Minister for Health was incorporated under s7 of the *Hospitals and Health Services Act 1927 (WA)* as the board of the Hospitals formerly controlled by the Board and was vested with the material rights and liabilities of the Board.

ENQUIRIES:

Please direct any enquiries about this instruction to: Legal and Legislative Services Branch, Health Department of Western Australia.

Mike Daube
DIRECTOR GENERAL



WESTERN AUSTRALIA

APPENDIX V

MALLESONS STEPHEN JAQUES

By email

Mr P Boyatzis
Executive Director
Australian Medical Association (WA) Inc
14 Stirling Highway
NEDLANDS WA 6009
Paul.Boyatzis@amawa.com.au

7 October 2005

Dear Paul

AMA's ability to industrially represent members

I confirm your request for advice as to how the Australian Medical Association (AMA) can replicate its right to industrially represent medical practitioners under the *Industrial Relations Act 1979 (WA)* (the State Act) under the *Workplace Relations Act 1996 (Cth)* (Federal Act).

I confirm your instructions as follows.

The AMA is an association which is incorporated under the *Associations Incorporation Act 1987 (WA)* (AI Act).

The AMA has had its rights to industrially represent medical practitioners in Western Australia under the State Act for over 20 years.

In 1995 those rights were set out in section 72B of the State Act - a copy of which is attached for your convenience.

A reason that the AMA's industrial rights under the State Act were expressed in this way included the conflict between its rights and obligations as a legal entity under the AI Act and those as a separate legal entity if also registered as an association under the State Act.

The AMA understands that substantial amendments to the Federal Act are proposed which are likely to result in most of its members being removed from the industrial jurisdiction of the State Act and into that of the Federal Act.

The AMA has no right to represent its members under the Federal Act and, therefore, seeks advice as to how it can replicate its rights in the State Act under the Federal Act.

Advice

The rights and obligations of associations of the Federal Act is currently quite similar to that of associations under the State Act.

MALLESONS STEPHEN JAQUES

Australian Medical Association (WA) Inc

7 October 2005

Accordingly, it is possible to replicate the AMA's rights to industrially represent its members under the Federal Act in much the same form as that set out in section 72B of the State Act. In my view this would be the neatest and most convenient way for those rights to be expressed. Attached, for discussion purposes, is a suggested draft provision.

You will see that this provision would expressly enable the AMA to represent its members under the Federal Act in relation to industrial disputes, awards, certified agreements, compliance with such industrial instruments and on appeals without the need to be registered as an association pursuant to Schedule 1B of the Federal Act. This reflects the structure and rights the AMA has under the State Act.

Obviously, an alternate method to express these rights would be to insert provisions in each of the identified sections, Divisions and Parts of the Federal Act confirming the AMA's rights. However, in my view, this would be a less efficient method of drafting.

If you have any queries or wish to discuss please call.

Yours sincerely

[Sgd] Rob Lilburne

Robert Lilburne
Partner
Direct line +61 8 9269 7085
Email robert.lilburne@malleasons.com

SCHEDULE 1

- 1 The AMA -WA and other branches may represent under this Act the industrial interests of medical practitioners as if they were organisations and, for that purpose, the reference to organisation in section 42, section 45, Divisions 1A to 3 inclusive and Division 6 of Part VI, Division 3 of Part VIA, Part VIB and Part VIII apply to the AMA branches as if they were organisations.
-

Explanation of Operation of Parts of Federal Act referred to in the proposed section.

Section 42 - Representation

Section 45 - Appeals

Division 1A to 3 inclusive of Part VI - AIRC general power in relation to industrial disputes.

Division 6 of Part VI - Awards of AIRC

Division 3 of Part VIA - Applications on termination of employment

Division 3 of Part VIB - Certified Agreement

Division 3 of Part VIII - Compliance

MALLESONS STEPHEN JAQUES

By email

7 October 2005

Mr P Boyatzis
Executive Director
Australian Medical Association (WA) Inc
14 Stirling Highway
NEDLANDS WA 6009
Paul.Boyatzis@amawa.com.au

Dear Paul

AMA's industrial rights to represent members

I refer to our meeting on Thursday, 6 October 2005 in relation to the above matter.

Attached is my letter of advice in relation to the above matter together with a schedule of a suggested amendment to the Workplace Relations Act 1996 (Cwlth) (**Federal Act**) to replicate the AMA's current rights to industrially represent its members in the WA jurisdiction in the Federal Act.

You will see that I have touched on the reasons why the AMA should not be registered as an association pursuant to the Federal Act, but rather be a deemed association for various specific purposes. The nub of this issue turns on the fact that the AMA is already a legal entity pursuant to its incorporation under the Associations Incorporation Act 1987 (WA) (**AI Act**). The affect of the AMA registering as an association pursuant to the Federal Act is that it would become a separate corporate body pursuant to clause 27 of Schedule 1B. This being case, it is arguable that the AMA would cease to be entitled to incorporation pursuant to the AI Act as it would be a corporate entity under the Federal Act. See section 34 of the AI Act which empowers the Commissioner under the Consumer Affairs Act 1971 (WA), in establishing that the entity is being carried out by a body corporate incorporated under some other Act, to transfer its operations to the new body corporate ie become exclusively a union. In addition to this there are potential conflicts in rights and obligations for legal entities which obtain their incorporated status under these separate pieces of legislation.

I have endeavoured to keep the letter of advice short and only address the issue of how to replicate the AMA's rights to industrially represent its members pursuant to the Western Australian Industrial Relations Act 1979 (WA).

Please call to discuss.

Regards

Robert Lilburne
Partner
Direct line +61 8 9269 7085
Email robert.lilburne@malleasons.com

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