



2007

PARLIAMENT OF TASMANIA

**AUDITOR-GENERAL
SPECIAL REPORT No. 65**

**Management of an award breach
and
Selected allowances and nurses'
overtime
April 2007**

*Presented to both Houses of Parliament in accordance with the
provisions of Section 57 of the Financial Management and Audit Act
1990*

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19 April 2007

President

Legislative Council

HOBART

Speaker

House of Assembly

HOBART

Dear Mr President

Dear Mr Speaker

SPECIAL REPORT NO. 65

Management of an award breach and Selected allowances and nurses' overtime

This report has been prepared consequent to examinations conducted under section 44 of the *Financial Management and Audit Act 1990*, for submission to Parliament under the provisions of section 57 of the Act.

The report contains two compliance audits. The first examines handling by Workplace Standards Tasmania of a breach of the Restaurant Keepers Award by an organisation operated as the Officers Mess. The second report looks at two distinct matters, namely salary allowances paid to Ambulance Officers, Visiting Medical Officers and Correctional Officers as well as reviewing patterns of overtime paid to nurses at the Royal Hobart Hospital.

Yours sincerely

H M Blake

AUDITOR-GENERAL

Contents

Foreword	i
List of acronyms and abbreviations.....	ii
Executive summary — Management of an award breach.....	2
Executive summary — Selected allowances and nurses’ overtime	5
Recommendations and management responses — Management of an award breach	8
Recommendations and management responses — Selected allowances and nurses’ overtime	9
1 Management of an award breach	12
1.1 Summary of the circumstances and of the award breach	14
1.2 Complying with sections 87A and 29 of the Act	19
1.3 WST’s administration of the Act in this instance	24
1.4 Role played by the Minister and by other parties	28
1.5 Conclusion on the ultimate outcome	29
2 Selected allowances and nurses’ overtime	32
2.1 Selected allowances	34
2.2 Nurses’ overtime	40
3 Recent reports	44
4 Future projects.....	46

List of Tables

Table 1: Types of allowances reviewed.....	36
Table 2: Allowances paid as a percentage of gross salary	38
Table 3: Overtime hours compared to FTEs	41

List of Figures

Figure 1: Overtime hours and nurse numbers 2004-06	40
Figure 2: Nurse resignations and overtime hours 2004-06	42

Foreword

This report contains two compliance audits conducted in 2006 and 2007. The first audit examines handling by Workplace Standards Tasmania of a breach of the Restaurant Keepers Award by an organisation trading as the Officers Mess. The second audit looks at two distinct matters, namely salary allowances paid to Ambulance Officers, Visiting Medical Officers and Correctional Officers as well as reviewing patterns of overtime paid to nurses at the Royal Hobart Hospital (RHH).

Where a breach of an award has been identified, section 87A of the *Industrial Relations Act 1984* requires the Secretary to institute, or cause to be instituted, proceedings for enforcing compliance with, or non-contravention of, that provision by that organisation or person. The Secretary can delegate this function but not this responsibility.

Section 29 of this Act provides for a matter to be referred to the Tasmanian Industrial Commission (TIC). Specifically, under section 29(1C) the Minister responsible for the Workplace Standards Authority may apply to the President for a hearing before a Commissioner in respect of an industrial dispute relating to a breach of an award or a registered agreement. The Minister can delegate this function. The Minister may also seek to withdraw a matter that has been referred to the TIC.

Workplace Standards Tasmania (WST) has systems and processes in place under which they investigate alleged award breaches. On occasions these allegations are resolved without reference to the TIC whilst, on other occasions, resolution is referred to the TIC. WST staff carry delegations enabling them to represent the Secretary and/or the Minister.

My audit of the manner in which WST investigated this matter sought to resolve and respond to instructions from the TIC that indicated to me that all parties involved may have benefited had there been clarity as to the nature of the breach, the quantum of the breach, who the applicant before the TIC was and whom the delegate was representing. Ultimately, a reasonable, and legal outcome was achieved although due process was not followed to its finality.

In the second audit, allowances that we tested for the previously mentioned staff classifications were paid in accordance with relevant awards, agreements, contracts and policy requirements. Those allowances related to work performed and were correctly and appropriately authorised.

Nurses at the RHH had not worked excessive levels of overtime when considered against the increased levels of care being provided.

HM Blake

AUDITOR-GENERAL

19 April 2007

List of acronyms and abbreviations

Agencies	Collective term used in this Report to cover Government departments and other entities reviewed
DHHS	Department of Health and Human Services
DIER	Department of Infrastructure, Energy and Resources
DoJ	Department of Justice
FTE	Full-time equivalent (employee)
NHPPD	Nursing hours per patient day
RHH	Royal Hobart Hospital
TAO	Tasmanian Audit Office
The Act	<i>Industrial Relations Act 1984</i>
The applicant	Effectively the Minister who applied to have this matter heard by the TIC
The award	Restaurant Keepers Award
The delegate	The Officer at WST who represented the Minister at the TIC
The owners	The owners of the entities operating the Officers Mess prior to 31 October 2001
The Minister	The Minister for Infrastructure during the period of the Officers Mess matter described in this Report
The Secretary	The Secretary responsible for the administration of the Act. At the time of the Officers Mess matter described in this Report, this was the Secretary of DIER.
TAS	Tasmanian Ambulance Service
TIC	Tasmanian Industrial Commission
VMO	Visiting Medical Officer
WST	Workplace Standards Tasmania

Definitions of key terms

Hearing — a hearing (also referred to as an arbitration hearing), is a formal proceeding with transcript. There may be evidence provided and witnesses may be called. A hearing usually results in a written, and in most cases binding, decision. Sometimes a Commissioner may make a recommendation only, which is not enforceable.

Conference — a conference (also referred to as a conciliation conference) is usually a private conference, closed to outsiders with no transcript. Matters discussed are confidential and any concessions made cannot be relied upon in the event that the same matters go to arbitration. Such conferences usually end in settlement.

Executive summaries

Executive summary — Management of an award breach

Introduction

On 14 July 2006 the Premier brought to my attention possible industrial relations matters at the Officers Mess, a restaurant on the Tasman Peninsula that may require review. Subsequently, on the assumption that I had commenced such a review, the leader of the Opposition wrote to me and provided documentation considered relevant.

This matter relates to the breach of an award prior to October 2001 by the then owners of the Officers Mess that Workplace Standards Tasmania (WST), as delegate of the Minister, took to the Tasmanian Industrial Commission (TIC) for consideration.

Following receipt of a complaint from an employee of the Officers Mess in October 2001, WST initiated an investigation under the Industrial Relations Act 1984 an outcome of which was WST's conclusion that a breach of the Restaurant Keepers Award had occurred. WST's investigation went on for a long time and ultimately resulted in it referring the matter to the Tasmanian Industrial Commission (TIC) in May 2003.

This was followed by a series of conferences and hearings before the TIC and a number of efforts by the parties to resolve the breach. Ultimately, following a request by the owners for the Minister for Infrastructure to intervene, a meeting was held between the owners, WST and a representative from the Minister's Office at which the owners offered to settle with the employees. As a result, the Minister instructed WST to withdraw the matter from the TIC.

At a hearing before the TIC on 15 June 2004, the applicant, as delegate of the Minister, noted that he had been directed to ask the Commissioner, on behalf of the Minister, to seek a further adjournment on the basis that the dispute may be settled shortly. The representatives of the owner who were present supported an adjournment to which the Commissioner then agreed. The Commissioner adjourned the matter *sine di*.

Relevant sections of the Industrial Relations Act 1984

There are two sections of the Act that are particularly relevant to this audit — sections 29 and 87A — and the implications are detailed in Chapter 2 of this Report.

Findings

I found:

- There had been a breach of the Restaurant Keepers Award. WST investigated this matter in a reasonable manner although this took a long time.
- The amount determined as owing to the owner's employees as a result of the breach fluctuated from a high of \$33 158.11 to a final offer of \$14 742.72.
- There was uncertainty on the part of the owners, their legal representatives and their employees about who had referred this breach to the TIC. It is apparent that these parties sought to withdraw the matter because the majority of the employees were satisfied with their working conditions and remuneration arrangements and provided declarations to this effect. However, the breach was taken to the TIC by WST on the basis that, once a breach had been established, sections 29 and 87A had to be complied with.
- The owners and their legal representatives were slow in responding to requests for information and in reaching agreement with WST on its calculations of any shortfall in wages. Incomplete wages records and complex workings exacerbated the delays.
- Had the owners and/or their legal representatives acknowledged much earlier that a breach had occurred, the matter may have been resolved between the employees and the employer without the need for reference to the TIC. It was unfortunate, however, that it was difficult to compute the amount due by the owners to its employees and this amount changed more than once.
- The Minister found himself in a position where the majority of the owner's employees held a high regard for their employer and sought no action but a breach of the Award existed.
- The Minister was aware that the owners had made an offer to resolve the breach and, as a result, directed that the matter be withdrawn from the TIC.
- Based on the legal advice I received, the Minister acted legally in regards to this matter and the Secretary fulfilled his responsibilities under section 87A.

- Ultimately, but with one exception, a reasonable solution was reached. The exception is that the initial complainant did not receive an adjusting payment to offset an acknowledged wages underpayment. However, a payment was offered to the complainant and not surprisingly rejected. It is unlikely that anonymity of this individual could have been maintained even if this matter had been finally referred back to the TIC.
- Whilst a resolution may have been reached, WST not ultimately concluding this matter before the TIC has the potential for setting a damaging precedent in that an established process was not followed to its conclusion.
- It would be in the best interests of the Secretary and the Minister, and their delegates, for there to be clarity in the application of sections 87A and 29(1C) of the Act.

Recommendations

This audit resulted in three recommendations being made. Two relate to the need for clarity in the application of sections 29 and 87A and the third recommends that matters referred to the TIC should be progressed to their finality through that process.

Executive summary — Selected allowances and nurses' overtime

Selected allowances

Introduction

In the State Service there are some employees whose take-home pay is made up of a large proportion of salary allowances. Such allowances may either be additional to normal pay or 'rolled up' in composite pay rates specific to their duties. This compliance audit examined the situation for Ambulance Officers, Visiting Medical Officers and Correctional Officers.

Findings

Allowances that we tested were paid in accordance with relevant awards, agreements, contracts and policy requirements. Those allowances related to work performed and were correctly and appropriately authorised.

Nurses' overtime

Introduction

Hospitals use rostering systems to ensure there are sufficient nurses on duty twenty-four hours a day, seven days a week. Occasionally, staff shortages lead to situations where overtime is necessary to maintain appropriate levels of clinical care. We considered whether overtime worked by nurses at the Royal Hobart Hospital (RHH) had increased over the past three years.

Findings

Overtime hours worked by nursing staff at RHH were not excessive considering increased levels of care being provided and failure by the hospital to recruit additional appropriately trained staff.

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Recommendations and management responses

Recommendations and management responses — Management of an award breach

List of recommendations

The following table reproduces the recommendations contained in the body of this Report.

Rec No	Report section	Recommendation
1	1.2.2	The Secretary should take action to resolve the differing legal interpretations of section 87A and if necessary seek to have the legislation clarified.
2	1.2.5	WST should review the <i>Industrial Relations Act 1984</i> and, if necessary, seek to resolve any inconsistency between sections 29(1C) and 87A(1).
3	1.3.4	Matters referred by the Minister to the Tasmanian Industrial Commission should be progressed to their finality through this process.

Management responses

Department of Justice

The Secretary of the Department of Justice has responded as follows:

I refer to your memorandum seeking my review of your draft report on WST's management of an award breach.

Following your clarification of a number of issues, I accept the report as a fair assessment of WST's involvement in the breach. I do not see a need for any amendment.

Department of Infrastructure, Energy and Resources

The Secretary of the Department of Infrastructure, Energy and Resources has responded as follows:

I acknowledge receipt of the confidential draft of the Report into WST's Management of an Award Breach and advise that my Department has no issue with the facts detailed therein nor the contents generally.

Recommendations and management responses — Selected allowances and nurses' overtime

No recommendations were made in this Report.

Management responses

Department of Health and Human Services

The findings of the Audit indicate that the Department is managing allowances for the selected employee categories appropriately and in accordance with relevant awards, agreements, contracts and policy requirements. The second part of the Audit covering nurses' overtime in the Royal Hobart Hospital (RHH) also provides results indicating that overtime hours worked in the financial years under review were less than, or only slightly in excess of, 1% of the Full Time Equivalent (FTE) hours of the total complement of nurses employed at the RHH.

The Audit which examined allowances paid to Ambulance Officers and Visiting Medical Officers raised no significant issues to be addressed by the Department. A minor issue raised regarding the filing of supporting documentation for certain Ambulance Officer Allowances will be reviewed and corrective action taken as needed. It is noted that the tested allowances as a proportion of total salaries were within reasonable limits and were correctly and appropriately authorised for the work undertaken.

In relation to overtime worked by nurses at the RHH, the audit concluded that the level of overtime worked by nursing staff was not considered excessive given the nature of the health care environment.

Various factors, including vacancy rates, planned and unplanned leave and increases in workloads as a result of the introduction of new health care programs and standards, along with seasonal peaks in activity all impact on overtime. It may have been more relevant to compare overtime hours to total FTEs or total hours rather than nurse numbers. Although there has been an upward trend, the hours of overtime worked expressed as a percentage of the total FTE hours for all nurses employed in the RHH are only around 1% for each of the three years reviewed.

Vacancy rates and the recruitment and retention of qualified nursing staff are no doubt factors in the levels of overtime worked and this is a significant challenge for the Department as it is for most health systems both nationally and internationally. The Department has

been working hard and will continue to do so to further improve the recruitment and retention of nursing staff.

Overall, the Department welcomes and acknowledges the positive findings of the Audit. The Department will continue to pursue initiatives to enhance our systems and practices to ensure full compliance with employment legislation and policies and responsible budget management.

Department of Justice

The Department made no formal response to the Report.

1 Management of an award breach

1 Management of an award breach

Introduction

On 14 July 2006 the Premier brought to my attention possible industrial relations matters at the Officers Mess, a restaurant on the Tasman Peninsula that may require review. Subsequently, on the assumption that I had commenced such a review, the leader of the Opposition wrote to me and provided documentation considered relevant.

This matter relates to the breach of an award by the then owners of the Officers Mess that Workplace Standards Tasmania (WST), as delegate of the Minister, took to the Tasmanian Industrial Commission (TIC) for consideration.

I read the documentation provided, as well as significant material built up by WST regarding this matter, and formed the preliminary conclusion that because a breach of the Restaurant Keepers Award (the Award) had occurred, this matter ultimately being allowed to lapse may have disadvantaged employee(s). Some of the documentation reviewed also suggested that allowing this matter to lapse might have resulted in the Secretary not fulfilling the requirements of section 87A(1) of the *Industrial Relations Act 1984* (the Act). These and other matters were considered in this audit.

WST is the agency responsible for administering the Act and is part of the Department of Justice (DoJ). However, at the time of the events described in this Report it was part of the Department of Infrastructure, Energy and Resources (DIER) and the Responsible Minister was the Minister for Infrastructure (the Minister).

The entities responsible for operating the Officers Mess are referred to in this Report as the owners. These were the owners prior to 31 October 2001, a date on which it is understood that the Officers Mess was sold. Any observations in this Report relating to the owners do not apply to the purchasers of the Officers Mess on this date.

Relevant sections of the Industrial Relations Act 1984

There are two sections of the Act that are particularly relevant to this audit — sections 29 and 87A — and the implications are detailed in Chapter 2 of this Report.

How did I approach this matter?

Whether or not there was a breach of the Award is a matter that was determined by WST and confirmed by the TIC. I sought to:

- document the circumstances including details of the breach of the Award
- consider the implications of section 87A of the Act
- assess the effectiveness of WST in administering the Act in this single instance
- consider any role played by the Minister, his staff or other parties
- conclude on the ultimate outcome.

Objective

The objective of the audit was to document and understand the circumstances of this matter, to assess whether or not WST managed it effectively and efficiently and to consider the roles, if any, played by the Minister or other parties.

Scope

The audit examined documentation covering the period October 2001 to February 2006 including TIC transcripts.

Criteria

Documentation at WST was examined with a view to answering:

- whether or not the Secretary had complied with section 87A of the Act
- whether or not WST managed the award breach effectively in its administration of the Act in this single instance
- what impact, if any, the Minister or third parties had on the outcome?

Audit methodology

The audit was conducted through:

- documentation review
- interviews with relevant staff at WST, representatives from DIER, the two Commissioners who considered this matter in the TIC, certain representatives of the owners, the Minister and his staff and with other third parties

- obtaining independent legal advice.

Timing

Planning for the audit began in September 2006 with fieldwork conducted in the period September 2006 to January 2007. The Report was completed in February 2007.

Resources

The total cost of the audit excluding report production costs was approximately \$42 000.

1.1 Summary of the circumstances and of the award breach

This section summarises the circumstances commencing with the initial complaint in 2001 and ending with the decision to allow this matter to lapse in February 2006.

1.1.1 The circumstances

The Officers Mess matter took place over a lengthy period as follows:

- October 2001 — an employee of the entities operating the Officers Mess lodged a complaint with WST to the effect that wages paid were not in accordance with the Award.
- WST wrote to the entities on 31 October 2001 seeking access to wages records by no later than 14 November 2001. An extension of time was allowed and WST received the wages records on 12 December 2001.
- WST examined the records, concluding there had been a breach of section 29(1) of the Act and on 1 February 2002 wrote to the owners advising of this. WST concluded initially that there had been an underpayment of \$33 158.11 to up to 16 employees noting: ‘If you intend to pay the arrears or wish to discuss the calculation please contact me. If you dispute the matter it will be referred to the Tasmanian Industrial Commission for determination’.
- Over the 16-month period February 2002 to May 2003 WST attempted, on a number of occasions, to resolve this matter with the owners. Various computations of any shortfalls in wages, and reason therefore, were put forward. Many employees indicated satisfaction with their wages and conditions. In this regard, in an attempt

to assist the owners to minimise any potential underpayment, WST initiated, in July 2002, the preparation by many of the employees of statutory declarations advising WST that they wished no action to be taken in respect to this matter. Some employees also noted in writing their satisfaction with all aspects of their employment including wages and conditions.

- However, a resolution was not found although indications were that the owners were well-regarded employers. Incomplete wages records and a change in ownership of the Officers Mess in October 2001 exacerbated the situation.
- From WST's perspective, the wages records as provided by the owners met the requirements of the Act and the *Industrial Relations Regulations* and provided all the information to enable it to determine compliance with the Award. The problem regarding the adequacy or otherwise of the wages records arose when the owners indicated that the wages records required corrections regarding details of hours worked, breaks taken and employee classifications.
- From the perspective of the owners, they noted their view that the computations provided by WST representing additional wages due were complex and difficult to substantiate.
- On 28 May 2003 the TIC lodged and listed 16 individual industrial disputes in a notice of hearing pursuant to an application by the Minister for Infrastructure's delegate in respect of an industrial dispute. The hearing was listed to be held on 16 June 2003 and the Presiding Member made it clear that the parties were directed to confer prior to the conference.
- On 16 June 2003 the conference took place with the Presiding Member attempting to have the matter resolved without an arbitration hearing. This did not succeed and on this date the matter was listed for a hearing on 28 July 2003.
- The hearing on 28 July proceeded and on 18 August the Presiding Member issued the reasons for his preliminary decision. In summary, it was concluded that the wages records were incomplete but the employer provided employees with rest periods. However, it was concluded

in favour of the applicant (the Minister) that employees in question did not receive meal breaks as required by clause 23(a) of the Award. The matter was listed for hearing on 2 October 2003 at which the TIC wished to take further submissions and evidence in respect of the remaining issues.

- The hearing on 2 October 2003 was brief — after seven minutes the Commissioner appeared to note that the applicant was still refining the amounts claimed as underpaid, which were expected to decrease, and the Commissioner took the matter off the record in another attempt at resolution. It appears further that the parties were directed to agree on employee classifications and on the quantum of the arrears in wages.
- After the hearing on 2 October, WST recalculated the shortfall in wages to an amount of \$16 829.45 in relation to 15 employees. On 26 November 2003, WST wrote to the legal advisors of the owner advising of this, providing copies of the calculations and seeking a response by 17 December and ultimate resolution within a further 28 days.
- WST received no response to this correspondence and the Minister’s delegate applied to have the matter listed for mention and directions by the TIC on 19 March 2004.
- The hearing on 19 March 2004 proceeded before a different Commissioner (with the owner now represented by different advisors). During this hearing the Commissioner noted: ‘... having heard the parties I am satisfied that the Minister does have a responsibility under section 87A to enforce compliance with the awards and as such I form the view that this matter is properly before the Commission’.
- Following this hearing, the Commissioner issued directions on 22 March 2004 as follows:
 - the Department will on request provide a copy of all the necessary documentation to the employer
 - in the event that the employer wishes to dispute the Minister’s contentions either in whole or in part, the employer shall advise the Minister in writing ... by no later than 5.00 pm on Monday 24 May 2004

- the matter is listed for further hearing on 15 June 2004.
- Following this direction further attempts were made by both WST and the owners to resolve the matter. This included acknowledgement by the owner that the wages records were incomplete and taking of various actions including requests to the Minister for Infrastructure to intervene. In this regard a meeting was held with the owners attended by a representative from WST and from the Minister's Office although the Minister was not present. A significant outcome of this meeting is that the employers offered to settle with the employees.
- It was clear from the documentation audited that the Minister was aware of the Officers Mess matter and, was supportive of the principle behind WST's management of the breach. However, in view of the circumstances of this case (all but one employee being happy with their terms and conditions and the owner having made an offer to settle), he directed that it be withdrawn from the TIC.
- Another hearing before the TIC was held on 15 June 2004 at which the applicant noted that various documentation had passed between the parties and there had been further alterations made to the quantum of the wages shortfall. The applicant also noted that he had been directed to ask the Commissioner, on behalf of the Minister, to seek a further adjournment on the basis that the dispute may be settled shortly. The representatives of the owner who was present supported an adjournment to which the Commissioner then agreed. The Commissioner adjourned the matter *sine di* and he noted further that he would follow up the matter with the parties in three months to ascertain progress or whether the matter should be dismissed.
- Subsequent to this hearing, in the period June to December 2004, efforts were made by WST to contact the employees to enable payments (calculated by WST as being due) to be made. The process involved WST agreeing with those employees whom they were able to contact the exact amount due, with payment to be made by the employer. However, the employees contacted advised that no payment was sought. This included the employee who had made the initial complaint.

- On 15 February 2006 the Commissioner wrote to the Minister noting: ‘The Commissioner has had no advice since that time (15 June 2004). Will you please advise me whether there has been any progress in these matters, or whether there is any reason why these files should remain open?’
- No written response was provided to the Commissioner. On instruction from senior management, a senior officer at WST contacted the Commissioner advising the Commissioner that he should not expect to receive a response to his letter. Effectively, this resulted in the matter being allowed to lapse.

1.1.2 *Details of the award breach*

On 18 August 2003, following the hearing on 28 July, the Deputy President of the Commission handed down a written decision. Relevant extracts from which are (numbers represent paragraph numbers in the decision):

67 Determining this preliminary issue has been made all the more difficult because the records required to be kept were incomplete. This matter is a good example of the need to keep accurate time of wages records for the purposes of, not only recording that employees have received their lawful entitlements, but also to protect the employer’s interests.

Paragraph 68 of the Deputy President’s decision documents the requirements of Clause 23 of the award, which deals with meal periods and rest periods. This Paragraph has not been included here.

69 I have no doubt the employer provided the employees with rest periods and on a number of occasions, very generously, provided food and drinks to them free of charge. Therefore, I am satisfied the employees subject to these applications had their rest periods as described by clause 23(b) of the award and the applicant did not contest this.

70 I now turn my attention to the issue in dispute, that is, did the employees in question receive meal breaks as required by clause 23(a) of the award.

72 Simply stated clause 23(a) requires each employee to be provided with a 30 minute meal period. The time for taking that meal period must be after the completion of one hours’ service and before the expiration of six hours’ service. If a 30-minute meal period is not granted in that time, then a penalty rate applies until the employee is released for a meal or the end of the shift.

73 If, for example, an employee worked a four-hour shift, they could be granted their 30-minute meal period at the end of the shift. There would be no breach of the award as the 30-minute meal period would be after one and before the completion of six hours' service. In that situation I would expect that most employees would prefer to go home rather than stay at work for another 30 minutes.

74 On the other hand, if an employee was required to work a seven-hour shift and they were not granted a 30-minute meal period [as opposed to a rest period(s)] after one and before the completion of six hours' service, then that person would be entitled to a penalty payment in accordance with the provisions contained in subclause 23(a)(1).

75 Therefore, in deciding this issue, I am required to establish whether or not employees, on each occasion they were required to work more than a six-hour shift, were granted a 30-minute meal period after one and before the completion of six hours' service.

78 The evidence was of such a general nature that it is not possible for me to establish, with any certainty, that those employees who worked a shift exceeding six hours were granted a meal period of not less than 30 minutes.

79 It is not sufficient to say that, just because some or all of the employees had a break(s) during which they may have consumed food that it was a meal period as described in clause 23(a) of the award.

80 For the above reasons, this preliminary issue is decided in favour of the applicant. Therefore, it must follow that the Commission is not prepared to exclude the amount claimed in those applications for a penalty payment in lieu of a meal period prescribed by the award and I so order.

1.2 *Complying with sections 87A and 29 of the Act*

Discussion of the implications of section 87A of the Act is essential to understanding the approach taken by WST to identified breaches of awards. Section 87A reads (items underlined are my emphasis):

87A. Responsibility of Secretary and Registrar for enforcement of certain provisions of Act

(1) Subject to subsection (2), if an obligation is placed on an organization or person to comply with, or not to contravene, a provision of Division 2 or 3 of Part III, Part IV, Part IVA, Part VII or this Part, the Secretary must institute or cause to be instituted proceedings for enforcing compliance with, or non-contravention of, that provision by that organization or person.

(2) If an obligation is placed on an organization or person by any provision of an order or notice made under section 31, 43, 65A(8), 71(20) or 75(7E), the Registrar must institute or cause to be instituted proceedings for enforcing compliance with, or non-contravention of, that provision by that organization or person.

(3) The Secretary may delegate the Secretary's responsibility under subsection (1).

The Secretary had delegated the performance and exercise of the powers and functions section 87A(1) to an officer within WST. It was this officer who progressed the Officers Mess matter to the TIC and in doing so this officer was also the delegate of the Minister for Infrastructure.

Section 29 of the Act provides for a matter to be referred to the TIC. In the circumstances of this audit, subsections 29(1C), 29(2) and 29(3) are relevant and read as follows:

29. Hearings for settling disputes

(1C) The Minister responsible for the Workplace Standards Authority may apply to the President for a hearing before a Commissioner in respect of an industrial dispute relating to a breach of an award or a registered agreement.

(2) The President must –

(a) allocate to a Commissioner for hearing an application made under this section; and

(b) cause notice of the time and place of the hearing to be given to a person who, or an organisation which, the President considers is able to assist in the settlement or prevention of the industrial dispute.

(3) At any stage of proceedings relating to a hearing under subsection (2), the Commission, of its own motion or at the request of one or more of the parties to the proceedings, may attempt to conciliate the dispute.

1.2.1. WST's interpretation of section 87A(1)

The documentation reviewed suggested to me that the officer acting as the Secretary's (and the Minister's) delegate considered that once a breach of an award had been identified, not only must the Secretary institute or cause to be instituted proceedings for enforcing compliance with, or non-contravention of, that provision by that organisation, but that in doing so the Secretary will have failed in his/her responsibilities if steps are not taken to ultimately conclude a matter before the TIC.

1.2.2 *Audit's interpretation of section 87A(1)*

A legal opinion was sought and the opinion provided focussed on the words in section 87A(1) underlined in paragraph 2.1 above. Relevant extracts from the opinion provided include (my emphasis underlined):

‘... the important thing to note about the form of the requirement is that it is to institute proceedings or cause them to be instituted. It is not expressed in terms which indicate an intention to impose any obligation beyond the institution of proceedings. That most likely recognises the fact that, once commenced, proceedings come under the control of the court, tribunal or other body in which they are instituted, so that (absent legislative prescription) their ultimate disposition is a matter for that body, ...’

In the circumstances of the Officers Mess matter, as I understand them, I therefore concluded, based on the legal advice obtained, that:

- The Secretary had delegated his responsibility under section 87A(1) to an Officer of WST.
- This officer therefore assumed the Secretary’s responsibilities under section 87A(1).
- The delegate instituted proceedings as required by that subsection.
- After proceedings commenced, and as noted in Chapter 1 of this Report, a protracted process was engaged in before the TIC, which ultimately led to the proceedings being withdrawn.
- There being no contrary legislative prescription, the TIC, in exercise of its inherent power of control over proceedings before it, could have either allowed or refused application to withdraw.
- The employer (the owners) offered in the course of the proceedings to resolve the matter by complying to the full extent with the statutory requirements in retrospect, so the proceedings in fact achieved their desired purpose. That of itself is likely to have been ample justification for the TIC approving their withdrawal.
- The fact that the original complainant chose not to take the payments offered by the owners in satisfaction of their statutory obligations does not bear upon the issue of whether or not the requirements of section 87A(1) had been complied with.

Therefore, in my view, the Secretary, via the delegate, properly complied with section 87A(1). However, in view of the differing point of view held by the Secretary's (and the Minister's) delegate, this matter should be given further legal consideration.

Recommendation 1

The Secretary should take action to resolve the differing legal interpretations of section 87A and if necessary seek to have the legislation clarified.

1.2.3 Declarations by most employees of no underpayment

The owners argued that, despite a complaint for underpayment of wages having been made to WST, their staff understood the conditions under which they had been employed. Further, statutory declarations — initiated by WST — had been provided by most staff indicating they were satisfied with their remuneration.

There is evidence in the WST files reviewed to confirm that many employees of the owner held these views and that such views were expressed to the TIC.

WST argued, however, that because a breach of an award had been identified and subsequently proven, the views of these staff were not relevant to the requirement that the owners rectify the breach. The Commissioner concurred:

Having heard the parties I am satisfied that the Minister does have a responsibility under section 87A to enforce compliance with the awards and as such I form the view that this matter is properly before the Commission. I take on board the points that ... (representing the defendant) ... has raised as a matter of merit, but that is not something I can take into account. If an application is properly made, by the Minister seeking an enforcement of this award, then this Commission doesn't have any discretion but to hear and determine that application.

Also relevant is that the matter before the Commission had been brought to it by WST representing the Minister. That is, the employees had not brought the matter to the Commission. Therefore, despite their views that there had been no breach, neither the employees nor the owners were in a position to withdraw the matter in their own right. Only the Minister or the Minister's delegate could withdraw.

1.2.4 *Can WST or the Minister withdraw a matter before the Commission?*

Having identified a breach of an award, WST, through the Minister's delegate, appropriately applied to the President for a hearing before a Commissioner of the TIC under section 29(1C) of the Act.

As noted previously, the Minister's delegate was of the view that achieving compliance by the Secretary with section 87A of the Act meant that the identified breach had to be pursued to finality before the TIC. In this case compliance required payment of an agreed shortfall in wages. However, reaching agreement on the amount of the shortfall was proving problematic and events seemed to indicate it would be necessary for this to be determined by the TIC.

When the owner sought the Minister's assistance to have this matter withdrawn from the TIC, the advice by WST to the Minister was that he write to the owners stating that it was in the public interest that the TIC complete its examination of the allegations before it and that the matter not be withdrawn. This advice was not taken.

Instead, and because the owners offered to resolve the breach by paying the amounts determined as owing to its employees, the matter was effectively resolved and the Minister instructed that it be withdrawn. The case was adjourned sine die on 15 June 2004 to enable the parties to resolve this matter.

I then sought a legal opinion as to whether or not, once proceedings had been instituted under section 29(1C), the Minister, or the Minister's delegate, could lawfully withdraw such proceedings. The opinion provided was that:

... once instituted, such proceedings can be lawfully withdrawn if the Commission allows it, which would almost certainly happen should the breach to which they relate be rectified. However, it is easy to conceive of other circumstances in which the Commission might allow withdrawal as, for example, where the original complainants in relation to the breach refused to give evidence to support it, so that it could not be proved or where the Commission was satisfied that for some other reason further pursuit of the proceedings would be futile.

Therefore, either the Minister or the Minister's delegate can seek to have a matter before the TIC withdrawn.

1.2.5 Roles of the Minister and of the Secretary

I have noted previously that:

- Under section 87A(1) the Secretary must institute proceedings or cause them to be instituted for enforcing compliance with the provisions of an award.
- However, under section 29(1C) the Minister may apply for a hearing before a Commissioner in relation to the breach of an award.

In the Officers Mess matter both sections were exercised and the same Officer from WST represented both the Minister and the Secretary. It could be argued that, in effect, the Secretary engaged the Minister, via the Secretary's delegate, to exercise the Minister's powers under section 29(1C). While unlikely, it is possible for a situation to arise where the Secretary finds that he/she wishes to institute proceedings that require application for a hearing, but the Minister does not. The position the Secretary may find himself/herself in would be exacerbated should one Officer at WST hold the delegation for both the Secretary and the Minister. It has been suggested to me that a solution might be for the Secretary to be able to refer a matter to the TIC. However, the ability of the Minister to seek to withdraw such a matter needs to be considered.

Recommendation 2

WST should review the *Industrial Relations Act 1984* and, if necessary, seek to resolve any inconsistency between sections 29(1C) and 87A(1).

1.3 *WST's administration of the Act in this instance*

WST is responsible for the administration of the Act. It is a division of the Department of Justice (DoJ) although at the time of the Officers Mess matter, it was part of the Department of Infrastructure, Energy and Resources (DIER) and the Responsible Minister was the Minister for Infrastructure.

As documented in Section 1.1.1, the original complainant raised this matter with WST in 2001 and WST took the actions outlined in that section.

During the course of this audit suggestions were made to the effect that WST took a heavy-handed approach to addressing this complaint and that the Award breach was being handled by WST as a 'test case' aimed at preventing similar breaches.

Another matter raised related to the not unexpected desire for the complainant to remain anonymous.

1.3.1 Was WST heavy-handed in its approach and was this a 'test case'?

WST documentation, including its policies and procedures, was examined and officers and others interviewed with a view to ascertaining whether or not evidence of heavy-handedness, or that this complaint was being considered as a test case, existed. I also interviewed representatives of the owners and some of their legal advisors.

While suggestions were made that a heavy-handed approach was taken and that the Officers Mess matter was regarded as a test case, I concluded from this component of my work, that WST was not heavy-handed nor did it intend the Officers Mess award breach to be a test case. There is no doubt that, having established that a breach of the award had occurred, and as outlined in Chapter 2, WST took steps to ensure that the Secretary complied with section 87A and this may have led to the view that WST's approach was heavy-handed.

1.3.2 Anonymity of the original complainant

WST investigated the alleged breach of the Award based on a complaint by an employee of the Officers Mess who wished to remain anonymous. This was respected by WST.

Once the owner had made an offer to settle the breach, this person was contacted, along with those other employees that could be contacted, by WST in order to arrange payment. It is understood from the documentation audited, that one reason for not accepting payment was because to do so would have resulted in the complainant becoming known to all parties.

Discussions were held with relevant parties to ascertain whether or not anonymity could have been assured throughout the process. I was advised that ultimately, the name of the complainant would have to have been made known and, for this reason, it is not surprising to me that the offered payment was refused.

1.3.3 Computations of amounts due to employees and WST's attempts to contact them to make payment

I have noted elsewhere in this Report that the initial amount computed by WST as being due to the employees as a result of the

Award breach totalled \$33 158.11. The Deputy President's preliminary decision (extracts from which are included in Section 1.1.2 of this Report) suggested to me that computation of the amount due was going to prove difficult and the summary of events described in Chapter 1 confirm that this is what happened. Ultimately, and as a result of actions, described in Section 1.1.1 of this Report, WST and the owners appear to have agreed that the owners pay the employees an amount of \$14 742.72.

It was now about two and a half years after the owners had sold the Officers Mess and WST found it difficult to contact all of the employees considered to have been underpaid. The employees that were contacted indicated that no payment was sought. This included the original complainant who appeared to reluctantly refuse acceptance of any payment, perhaps because his/her anonymity could not be assured.

The issue of anonymity is a relevant consideration but one that is unlikely to have been overcome regardless of how this matter was resolved.

1.3.4 Despite resolution, should WST have referred this matter back to the TIC?

Previously in this Report it has been noted that the last occasion on which the Officers Mess matter was considered by the TIC was 15 June 2004. On this occasion the TIC adjourned the matter sine die with the Commissioner noting:

We will make a diary note to contact the parties in three months time, if we haven't heard from either side and that will be in the nature of a request to indicate whether there is progress or whether the matter should be dismissed for lack of prosecution or that there is continuing negotiations.

Also reported elsewhere in this Report is that efforts by WST to effect payment of the underpaid wages did not succeed. Although there was a suitable offer to settle the underpayment at a determined value, because there were no persons to whom the entitlement accrued willing to accept payment, the matter was allowed to lapse.

However, whilst a resolution may have been reached, WST not ultimately concluding this matter before the Commission has the potential for setting a damaging precedent in that an established process was not followed to its conclusion.

Recommendation 3

Matters referred by the Minister to the Tasmanian Industrial Commission should be progressed to their finality through this process.

1.3.5 Findings in relations to WST's overall performance

From audit work conducted, it was concluded that WST:

- properly identified a breach of the Award
- took reasonable steps to address this with the owners of the Officers Mess
- took reasonable steps to achieve compliance by the owners with the Award prior to having the matter dealt with by the TIC
- responded to the efforts made by the TIC to resolve this matter without arbitration
- responded to the directions made by the TIC
- ultimately responded reasonably to the offer to settle made by the owners.

It is normal practice for WST to attempt to have the parties to an industrial dispute settle the matter between themselves — the employee(s) and employer(s). In this case, despite efforts to do so by both WST and the owners, such attempts failed in my view because:

- the incident coincided with the sale of the business operated as the Officers Mess by the owners
- the parties could not reach agreement on the quantum of any shortfall in wages paid. This was not helped by:
 - the complexity, as far as the owners were concerned, of the regulations and the consequent need for very detailed wages records to be maintained including the recording of meal breaks
 - the incomplete wages records and changes to the amount determined by WST over time
 - most employees who were the subject of the shortfall computations determined by WST declaring that they were satisfied with their working conditions and were not seeking additional wages

- delays, for reasons outlined previously, by the owners in responding to requests by WST for information and to directions by the TIC
- the reasonable belief, based on declarations by most of their staff, by the owners that they did not have a case to answer other than incomplete record-keeping
- the reasonable desire of the original complainant to remain confidential.

1.4 *Role played by the Minister and by other parties*

The documentation reviewed as part of this audit included various suggestions of involvement by the Minister and by other parties apparently aimed at inappropriately influencing the process or outcome of this matter.

This section reviews whether or not certain parties were involved and if so to what extent and for what purpose.

1.4.1 *Roles played by other parties*

It has been suggested that a third party, Mr Michael Field, exercised undue influence in having this matter withdrawn from the TIC. I held discussions with Mr Field regarding these suggestions. He confirmed that he had held discussions with the Minister's advisors about the Officers Mess matter, that he knew the owners and its employees, and in his view, these employees regarded the owners as exemplary employers.

Mr Field acknowledged to me that he approached the Minister's staff expressing his opinion that the Officers Mess matter had gone on for far too long and that a resolution was needed. Mr Field denied exerting undue influence and he indicated to me that he did not set out to do so.

Nothing from my discussions with Mr Field indicated to me that he had attempted to apply undue influence on the Minister's staff to resolve this matter in favour of the owners.

1.4.2 *Role played by the Minister or his staff and the ultimate settlement of this matter*

In May 2004 the owners contacted the Minister seeking his intervention in resolving this matter. Subsequently, at a meeting between the owners, a member of the Minister's staff and a representative of WST, the owners offered to compensate the employees for the wages shortfall. This resulted in a direction by the Minister to WST for the matter to be withdrawn from the TIC.

1.4.3 *Role played by DIER*

At the time of the Officers Mess matter described in this Report, WST was part of DIER. In February 2006, following receipt of correspondence from the TIC enquiring into the status of this matter, WST enacted the direction provided by senior management to allow the matter to lapse and not to re-list it before the TIC. This decision was made based on advice provided by senior management and was consistent with the direction given in June 2004 that the matter be withdrawn from the TIC at that time.

1.5 *Conclusion on the ultimate outcome*

I concluded that:

- The owners were genuine in their belief that they provided their employees with satisfactory working conditions and remuneration arrangements.
- Many employees concurred with this view and were not seeking additional wages.
- The owners and their legal representatives were slow in responding to requests for information and in reaching agreement with WST on its calculations of any shortfall in wages. Incomplete wages records and complex workings exacerbated the delays.
- Had the owners and/or their legal representatives acknowledged much earlier that a breach had occurred, the matter may have been resolved between the employees and the employer without the need for reference to the TIC. It was unfortunate, however, that it was difficult to compute the amount due by the owners to its employees and this amount changed more than once.
- WST made reasonable efforts to resolve this matter prior to referring it to the TIC.
- The TIC made reasonable attempts to resolve this matter in conciliation.
- WST made reasonable attempts to implement the directives made by the Commissioner.
- The Minister found himself in a position where the majority of the owner's employees had high regard for their employer and sought no action but a breach of the Award existed.

- The Minister was aware that the owners had made an offer to resolve the breach and, as a result, directed that the matter be withdrawn from the TIC.
- Based on the legal advice I received, the Minister acted legally in regards to this matter and the Secretary fulfilled his responsibilities under section 87A.
- Ultimately, but with one exception, a reasonable solution was reached. The exception is that the initial complainant did not receive an adjusting payment to offset an acknowledged wages underpayment. However, a payment was offered to the complainant and not surprisingly rejected. It is unlikely that anonymity of this individual could have been maintained even if this matter had been finally referred back to the TIC.
- Whilst a resolution may have been reached, WST not ultimately concluding this matter before the TIC has the potential for setting a damaging precedent in that an established process was not followed to its conclusion.
- It would be in the best interests of the Secretary and the Minister, and their delegates, for there to be clarity in the application of sections 87A and 29(1C) of the Act.

2 Selected allowances and nurses' overtime

2 Selected allowances and nurses' overtime

Introduction:

Selected allowances

This audit focuses on selected allowances paid to certain State Service employees and on overtime worked by nurses employed at the Royal Hobart Hospital (RHH).

In the State Service there are situations where a significant proportion of employees' take-home pay is made up of salary allowances. These allowances may either be additional to normal pay or 'rolled up' in composite pay rates specific to their duties. This is the case for Ambulance Officers, Visiting Medical Officers (VMOs) and Correctional Officers.

This audit follows on from earlier audits of salaries and associated payments. Those audits found that there were some shortcomings in the management of some pay-related areas, a situation also reflected in results of similar audits in other jurisdictions.

Nurses' overtime

Hospitals use rostering systems to ensure they have sufficient nurses on duty twenty-four hours a day, seven days a week. Increasing workloads and the inability to recruit appropriately trained staff have the potential to impact on the level of overtime worked by nurses.

Objective:

Selected allowances

The audit objectives were to determine whether selected allowances paid to staff in specific classifications:

- complied with appropriate awards, agreements, contracts and policy requirements
- related to work performed
- were properly authorised

and to compare allowances paid as a percentage of total salary over a three-year period and analyse any emerging trends.

Nurses' overtime

The audit objectives were to:

- review overtime levels worked by nurses

- determine whether there has been any significant increase in overtime over the past three years
- determine whether there is any correlation between overtime hours worked and staff separations.

Scope

The scope of the audit was to review selected salary allowances paid to Ambulance Officers, VMOs and Correctional Officers and to review nurses' overtime levels at the RHH.

The audit focussed on the following departments:

- Health and Human Services (DHHS)
- Justice (DoJ).

For selected salary allowances the period under review was January to April 2006. We also examined three-year trends in allowances and as a proportion of gross salary.

We examined nurses' overtime for the three-year period 2004 to 2006.

Audit criteria:

Selected allowances

The audit was based upon specified criteria that the allowances were paid by reference to:

- appropriate awards and related documentation
- the appropriateness of the work performed.

Nurses' overtime

The purpose of the audit was to conduct a review of overtime worked over the test period and to review any emerging trends.

Audit methodology:

Selected allowances

We audited selected allowances within the departments by:

- review of related awards, workplace agreements, contracts and relevant departmental policies and procedures
- data download of all allowances paid for the testing period to ascertain the predominant allowance types paid and also any unusual types of allowances paid
- selection of a judgement sample

- review of personnel records of officers identified in the testing sample.

Nurses' overtime

We compared total overtime hours worked by nurses to ascertain any trends that may indicate overtime levels have increased. The audit reviewed overtime hours worked by considering separately data for the whole of RHH and that for the hospital's high dependency units.

We also considered whether there was any relationship between overtime hours worked and staff separation rates.

Timing

Initial planning of the audit commenced in November 2005. The fieldwork was conducted from early April 2006 through to September 2006. This Report was finalised in January 2007.

Resources

The total cost of the audit excluding report production costs was approximately \$20 500.

2.1 Selected allowances

Situations exist in the State Service where a significant proportion of employees' take-home pay is made up of salary allowances. These allowances may either be additional to normal pay or 'rolled up' in composite pay rates specific to their duties. This is the case for Ambulance Officers, VMOs and Correctional Officers.

This audit follows on from earlier audits of salaries and associated payments. Those audits found that there were some shortcomings in the management of some pay-related areas, a situation also reflected in results of similar audits interstate.

Ambulance officers

The Tasmanian Ambulance Service (TAS) provides emergency ambulance care, rescue and transport services and a non-emergency patient transport service.

It works closely with local and interstate acute care hospitals and organisations such as Tasmania Police, Search and Rescue Division, Fire Services and the Royal Flying Doctor Service.

Under the Tasmanian Ambulance Service Award, shift workers are paid a composite wage. It is calculated as the weekly wage multiplied by the rostered weekly hours factor. This is based on a 64-week roster system which includes: annual leave loadings; a shift allowance

to compensate for penalties; and provisions for extra annual leave, including additions for statutory public holidays. Consequently, allowances paid to ambulance officers are not easily identifiable. For example, when officers are called out they are paid overtime rates that are reported as wages, not allowances. Where any wage inconsistency occurs, an Enterprise Bargaining Agreement prevails over the award.

Visiting Medical Officers

Visiting Medical Officers (VMOs) are specialists that have their own private practices, but who contract their time, skill and expertise to the public sector on a specified number of hours per day or per week basis. VMOs are paid in accordance with the Tasmanian Visiting Medical Practitioners (Public Sector) Agreement 2002. To enable the public health system to be more effective in attracting and retaining medical specialists, VMOs are placed on individual contracts as fixed-term employees¹. These contracts give an option for paid or unpaid leave entitlements to be 'rolled up' into the hourly rate. Contracts specify that all callbacks be paid at the 'rolled up' rate. There is an on-call hourly payment and overtime payments are made when VMOs are called out.

VMOs keep their own records of attendance according to administrative instructions and must submit a claim for payment within eight weeks.

Correctional officers

The Tasmania Prison Service, a division of the Department of Justice, employs correctional officers. There are about 240 uniformed staff that carry out the functions of providing safe custody and supervision of detainees and prisoners. Correctional officers work in the minimum-, medium- and maximum-security prisons at Risdon, Hayes prison farm, and the Hobart and Launceston Reception Prisons.

Correctional officers are paid in accordance with the General Conditions of Employment Award, (more specifically the Custodial Officers Award and the Correctional Officers Agreement 2005) and DoJ policies relating to standard operating procedures. Correctional officers initially undertake a twelve-week training period and after successful completion are placed in positions on a roster. All related penalty payments are attached to positions and paid as an annualised salary allowance. That includes a basic first aid allowance as every

¹ Section 37(2) *State Service Act 2000*

rostered officer obtained a first-aid qualification as part of his or her initial training.

2.1.1 Awards and related documents

We tested to ensure that allowances paid were correct by nature and amount, and complied with related awards, agreements, contracts and departmental policy requirements.

DHHS

The department has enterprise agreements for both ambulance officers² and VMOs³. Each VMO has a contract (Instrument of Appointment) outlining rights and responsibilities of both the department and the contractor. The Instruments of Appointment are specific in relation to current legislative requirements and the schedule of pay allowances.

DoJ

The Public Sector Union Wages Agreement and the above awards and agreements, govern the salaries and special payments for the correctional officers and identify the allowances available and the conditions to be met for payment of them. The department's intranet also contains definitions and conditions of other relevant allowances.

2.1.1.1 Sample selection and testing

Rather than relying on a random sample, we determined that the judgmental method of sample selection would be the best methodology to use as it allowed all allowance types to be targeted.

A number of allowances paid during the period under review were selected for testing. These are detailed in Table 1 below.

Table 1: Types of allowances reviewed

Ambulance officers	VMOs	Correctional officers
On Call/Availability	More Responsible Duties (MRDA)	MRDA
Patient Extrication	On Call/Availability	Assessor
Travel	Relocation Reimbursement	HDA

² Tasmanian Ambulance Award

³ Tasmanian Visiting Medical Practitioners (Public Sector) Agreement 2002

Ambulance officers	VMOs	Correctional officers
Higher Duties (HDA)	Retention	Remote Call
In Charge	Director's	Key
Living Away From Home	Fixed on Call	Testing and Tagging
Meal	Managerial	On call/Availability
Mentor		

We found that all allowances tested had been paid in compliance with related awards, agreements, contracts and departmental policy requirements.

2.1.2 Appropriateness of work performed

2.1.2.1 Allowances paid in accordance with work performed

We tested that allowances were paid in accordance with the work performed to ensure that they were appropriate and supported by authorised documentation.

Ambulance officers

We were satisfied that all allowances paid to ambulance officers were paid in accordance with the work performed.

We noted that for some of the more significant of these allowances, there was no supporting documentation in the employee's personnel file. For example, our enquiry revealed that On Call and Living Away From Home allowances were authorised on timesheets by the relevant officer in each station. All rosters and authority numbers or forms were kept at ambulance stations and not in personnel files. Accordingly, the only document authorising payment of the allowance received by pay staff at the department was the timesheet itself.

VMOs

VMO allowances are set out in the individual Instruments of Appointment. We found that the allowances were reasonable and were paid in accordance with work performed. Payments were appropriately authorised and adequately documented.

Correctional officers

We tested a sample of significant allowances paid to correctional officers. The personnel files of the officers who had received these payments were reviewed and we found that the allowances had been subject to appropriate authorisation procedures. For example, in the case of Higher Duties and More Responsible Duties allowances, departmental authorisation forms had been correctly approved by an appropriate supervisor or manager before being forwarded to payroll personnel for processing.

The approved form was held on each officer's personnel file for reference, along with any other related correspondence.

We found that all allowances tested had been paid in accordance with work performed and correctly authorised by an appropriate officer.

2.1.2.2 Trend analysis

We tested to determine whether high or unusual levels of allowances were being paid and conducted trend analysis over a three-year period to ascertain whether allowances were reasonable in relation to total salary levels. Our findings, as shown in Table 2, satisfied us that the level of allowances paid during that period was reasonable.

Table 2: Allowances paid as a percentage of gross salary

Employees	Item	2003-04	2004-05	2005-06
Ambulance officers	Salary gross (\$M)	\$11.435	\$14.026	\$15.457
	Allowances (\$M)	\$0.248	\$0.315	\$0.332
	Allowances as percentage	2.17%	2.25%	2.15%
VMOs	Salary gross (\$M)	\$11.590	\$15.261	\$18.688
	Allowances(\$M)	\$1.554	\$1.764	\$2.027
	Allowances as percentage	13.42%	11.57%	10.85%
Correctional officers	Salary gross (\$M)	\$9.095	\$9.329	\$15.604
	Allowances (\$M)	\$1.865	\$1.983	\$0.199
	Allowances as percentage	20.50%	21.25%	1.27% [#]

[#] See *Correctional officers* section below

Ambulance officers

Allowances received by ambulance officers as a proportion of the total salaries for the review period averaged 2.19%. We were satisfied that the proportion of allowances to salaries for ambulance officers was reasonable and consistent over the three-year period.

VMOs

The proportion of allowances to salaries for the review period averaged 11.94%. It was to be expected that allowances paid to VMOs will be considerably greater than those paid to ambulance officers.

Correctional officers

The increase in gross salary in the third year reflects new salary rates approved as part of the Correctional Officers Agreement 2005 introduced during the 2005-06 financial year. Most of the allowances paid prior to the wage increase were built into the new salary structure by the new wages agreement, with the result that total salary for the year increased while allowances decreased. We considered that the proportion of total salaries to allowances paid for the period under review was reasonable and would not have been significantly different from prior years if the revised salary arrangements had not occurred.

2.1.2.3 First-aid allowances

We noted that all correctional officers complete basic first-aid training as part of their induction program. Correctional officers are compensated for this by way of an allowance incorporated in their salaries but they are not required to up-date their first-aid skills and no certificate is issued.

There were no requirements for officers with basic first-aid to receive refresher training, nor was any procedure in place to ensure that first-aid skills remained current so as to warrant continued payment of the allowance. Only those officers with first-aid qualifications from accredited organisations such as St Johns Ambulance are required to undergo refresher training. DoJ should consider making this a mandatory requirement for all correctional officers.

2.1.3 Conclusion

We are satisfied that allowances tested were paid in accordance with relevant awards, agreements, contracts and policy requirements. They related to work performed and were correctly and appropriately authorised.

2.2 Nurses' overtime

Hospitals use rostering systems to ensure there are sufficient nurses on duty twenty-four hours a day, seven days a week. The Nurses (Tasmanian Public Sector) Award 2003 contains various checks and balances relating to overtime (in the context of shiftwork) and penalties relating to the rostering system. The Nurses (Tasmanian Public Sector) Enterprise Agreement 2004 (effective to 30 June 2007) provides for such things as:

- wage increases
- development and implementation of the benchmarking tool Nursing Hours Per Patient Day (NHPPD) which is used as an aid to determining staff numbers required
- professional development opportunities
- redundancy provisions.

2.2.1 Review of overtime worked

We considered whether overtime worked by nurses had increased over the past three years. A comparison of the total overtime hours worked in each of the three years reviewed is shown in Figure 1.

Figure 1: Overtime hours and nurse numbers 2004-06

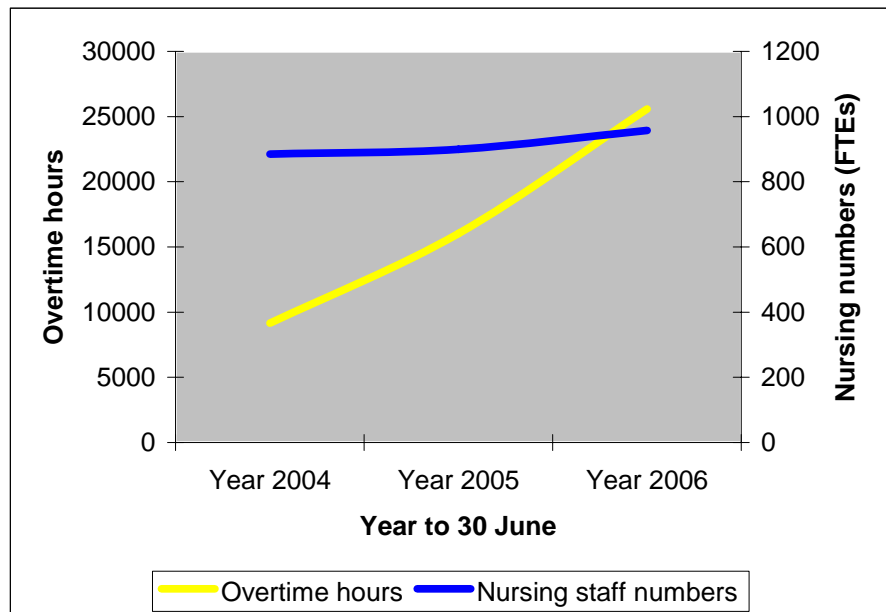


Figure 1 indicates a substantial upward overall trend in overtime hours worked whilst staff nursing numbers have remained relatively static. A similar review at unit level yielded comparable results.

We were initially concerned at the increase in the number of overtime hours worked during the period under review. However, to consider overtime hours in the sole context as displayed above has the potential to skew the results. We were advised that there were a number of factors that influenced the overtime hours worked. These include:

- Increased workloads in specific areas of high care within the hospital, specifically in neo-natal and paediatric units as improved health-care standards are being continually adopted.
- Increased specialisation has meant that it is no longer possible to readily move nurses between areas in order to plug roster gaps.
- Agreed minimum staffing numbers introduced as part of the NHPPD industrial agreement process permitted overtime to be worked in order to maintain agreed benchmark levels of staffing.

We were advised that the RHH had created some additional 100 positions during the period as a result of funding initiatives to increase staff/patient ratios. However, the hospital has not filled all of those positions to date.

2.2.2 Overtime per Full-Time Equivalent (FTE)

When we compared the number of overtime hours worked during the above period to equivalent staff positions, the increase was not significant, as depicted in Table 3.

Table 3: Overtime hours compared to FTEs

Financial Year	OT Hours Worked	FTEs
2003-04	9 149	4.63
2004-05	16 029	8.11
2005-06	25 569	12.94

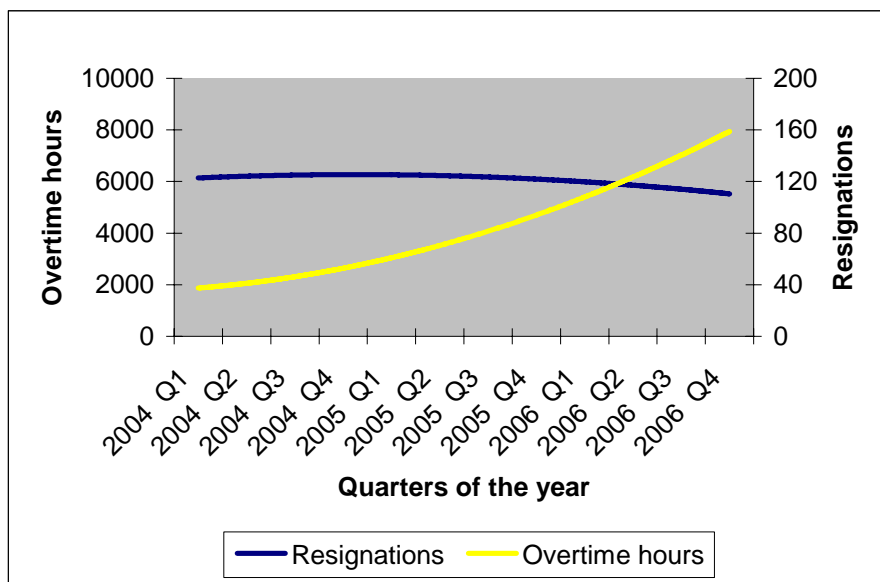
The increased number of FTEs in the above table represents less than 1% of a total nursing staff establishment of 957.3 FTEs as at 30 June 2006.

2.2.3 Resignations compared to overtime worked

We considered that there might have been a relationship between overtime worked by nurses of the RHH (specifically within the high dependency and critical care units) and resignations for the period under review. Accordingly, we conducted testing to determine whether that was the case.

A full comparison of the resignations compared to the overtime worked for 2004-06 is shown by year and by quarter in Figure 2 below.

Figure 2: Nurse resignations and overtime hours 2004-06



Our review revealed that there is no correlation, pattern or relationship between overtime worked and staff resignations. In fact, the data shows that when overtime increased, there was a decrease in resignations. The lack of any relationship may reflect the relatively low level of increased overtime discussed in paragraph 2.2.1.

2.2.4 Conclusion

We are satisfied that overtime hours worked by nursing staff at RHH are not excessive considering increased levels of care being provided and failure by the hospital to recruit additional appropriately trained staff. It is anticipated that recruitment of the additional staff required, as already identified by the hospital, will reduce the need for some of the overtime hours presently being worked.

3 Recent reports

3 Recent reports

Year	Special Report No.	Title
2002	41	Keeping schools safe
2002	42	Follow up of performance audits
2002	43	Oral health service: Something to smile about?
2002	44	Managing community service orders
2003	45	Business names and incorporated associations: What's in a name?
2003	46	Leave in government departments
2003	47	Public sector web sites
2003	48	Grants to the community sector
2003	49	Staff selection in government agencies
2003	50	Police response times
2004	-	Ex-gratia payment to the former Governor Mr R W Butler AC
2004	51	Special purpose and trust funds: Department of Health and Human Services
2004	52	Internal audit in the public sector
2005	53	Follow-up audits
2005	54	Compliance audits
2005	55	Gun control in Tasmania
2005	56	TT-Line: Governance review
2005	57	Public housing: Meeting the need?
2005	58	FBT, Payment of Accounts and Bridges
2006	59	Delegations in government agencies, Local government delegations, Overseas travel
2006	60	Building security and Contracts appointing Global Value Management
2006	61	Elective surgery in public hospitals
2006	62	Training and development
2006	63	Environmental management and pollution control by local government
2006	64	Implementation of aspects of the <i>Building Act 2000</i>

4 Future projects

4 Future projects

Details of performance and compliance audits that the Auditor-General is considering are:

PERFORMANCE AUDITS:

Business case and recurrent funding for new Risdon Prison	Examines: <ul style="list-style-type: none">▪ some economic aspects of the business case for the new prison▪ adequacy of planning and provision of recurrent funding to run the new prison.
Follow up of previous performance audits	Examines the degree to which auditees have implemented recommendations in selected performance audits between July 2001 and December 2004: <ul style="list-style-type: none">No 37: Archives Office of TasmaniaNo 40: Environmental management and pollution controlNo 43: Oral health services: Something to smile about?No 44: Managing community service ordersNo 45: Business names and incorporated associations: What's in a name?No 50: Police response timesNo 52: Internal audit in the public sector.

COMPLIANCE AUDITS:

Building security: Part 2	Continuing on from Special Report No. 60, the audit examines physical security at public access sites such as schools, hospitals and libraries.
Portable and attractive items	Examines asset control activities at government departments with respect to items that are portable and attractive.
Confiscated property	Reviews management of confiscated and forfeited property by Tasmania Police.

