Doctors, Nurses and the Pay Freeze

Martyn Goddard

THE *Crown Employees (Salaries) Bill 2014* is, perhaps unintentionally, the most radical piece of industrial relations legislation to be put forward by a government in Australia for many decades. It has these main elements:

- It overrides the Tasmanian Industrial Commission's powers in setting salaries;
- It overrides all agreements, awards and individual contracts;
- It specifies a 12-month freeze in salary for state employees, including doctors, nurses and police;
- Incremental increases, including qualification-based rises, performance payments and seniority advancement, specified in awards and agreements, will not be paid;
- Once the 12-month pay freeze is over, base-pay rates will *either* rise by 2% annually for an unspecified period *or* be set by government regulation as the Treasurer wishes.
- Under the provisions of the bill, public sector salaries will be set unilaterally by the employer.
- There is no avenue for appeal.
- There is no sunset clause. The unilateral setting of salaries by the employer will continue until, or unless, the law is repealed.

But in public hospitals, award-based salary rises are only one element – sometimes a relatively small element – in the make-up of annual changes to the total cost of paying doctors and nurses. The potential savings to be made by restricting award increases are likely to be massively outweighed by the cost of employees using unusual but newly necessary means to circumvent the measure.

It can also be expected to result in an exodus of senior doctors and nurses. Under the new system, well-qualified interstate and overseas personnel are likely to be reluctant to come to Tasmania. If departing staff are replaced, they will have to be replaced by locums or by existing staff returning under new contractual conditions. If they are not replaced, patient services will suffer.

It is therefore probable that the pay freeze and its associated measures will have the perverse effect of increasing rather than reducing overall labour costs in public hospitals, perhaps by a large margin. It is also likely that departing staff will not all be replaced, threatening the safety and availability of health care. In those circumstances, we can expect to pay more for poorer services.

DOCTORS

AN OBJECT-LESSON in the way a pay freeze might affect the public hospital system is already available in the case of hospital doctors, whose pay has been effectively frozen since the previous government's round of budget cuts in 2011. In the following two years, the number of full-time equivalent doctors fell by 21% but the cost of employing each one remaining rose by 32%. This is due both to the need to employ expensive locums to replace staff who have left or reduce their hours, and to the special deals struck between hospital administrators and individual clinicians who want to circumvent the formal industrial relations system.

All of these elements – increasingly inadequate staff numbers, locums and individual deals – can be expected to increase if the proposed legislation is enacted. This table shows the pattern of average doctors' salaries over eleven years. Apart from statistical gyrations in 2007-10 over the funding of the Mersey Hospital, annual *per capita* cost increases were relatively benign until the budget cuts and pay freeze of 2011.

Salaried medical officers, full-time equivalent numbers and average salaries, public acute and psychiatric hospitals, Tasmania, 2001-02 to 2012-13

	2001-02	*2002-03*	*2003-04*	*2004-05*	*2005-06*	*2006-07*	*2007-08*	*2008-09*	*2009-10*	*2010-11*	*2011-12*	*2012-13*
Number	347	348	367	442	472	519	512	750	922	977	857	771
Change	-	+1	+19	+75	+30	+47	-7	+238	+172	+55	-120	-86
Salary ($)	93 740	94 093	102 624	122 945	127 285	131 510	158 685	121 052	151 707	152 978	180 466	201 609
Change	-	+3.8%	+9.1%	+19.8%	+3.5%	+3.3%	+20.6%	-23.7%	+25.3%	+0.8%	+18.6%	+11.5%

Source: AIHW, Australian Hospital Statistics

From 2011, successive wage offers to the Australian Medical Association were rejected and the dispute is now before the Tasmanian Industrial Commission. This means that salaries and conditions under the Medical Practitioner (Public Sector) Award have not changed since 2011. In the eight years before that time, the average costs to the hospital system of employing a doctor rose by an average of 7% a year; in the two years following, under conditions of an effective pay freeze, they rose by an average of 15.9% a year. This is despite the departure of a disproportionate number of more expensive senior clinicians and an increasing reliance on much cheaper junior doctors.

There are two main probable reasons for this, both relating to the desire by doctors whose services are in demand to circumvent or leave what they regard as an unacceptable system:

- Senior doctors – those with the most employment choices – either chose to reduce their hours or to resign altogether. This meant the workload on colleagues increased and conditions of work deteriorated further, prompting others to consider leaving. Many joined the private health system. The absence of these senior clinicians led to the regular reliance of hospitals on much more expensive locums. At the time of writing one national agency was offering 20 locum positions in northern Tasmania alone, with rates ranging from $1200 a day for a registrars in general medicine and psychiatry to $2000 for fully-qualified specialists and $2500 a day for emergency specialists. For fully qualified locums, air fares and whole-family accommodation are paid by the hospital; they also get a car.[1]
- Individual surgeons and some physicians negotiated special arrangements with much greater

1 www.skilledmedical.com/JobList.aspx?state=TAS. Accessed 17 September 2014.

rates of pay, outside of the formal industrial relations system.

Passage of the *Crown Employees (Salaries) Bill* as now drafted would not only extend the freeze in award pay for another year but would permanently place the government – the employer – in unilateral control of pay rates outside of the industrial relations system. There would be no avenue of appeal.

It is highly probable that many doctors working in Tasmanian public hospitals would find this situation even less attractive that the one they have faced since 2011 and the rate of departure could be expected to accelerate. More locums would be required to replace them. Others, already seeing their colleagues with vastly better employment deals, will seek to negotiate similar arrangements.

Neither of these ways of circumventing normal industrial conditions is prevented by the proposed new law. It will have no effect on locum rates or conditions of employment. And special deals will still be able to be negotiated: although the bill seeks to prevent pay increases occurring within the terms of existing contracts, there is nothing to stop one contract being abandoned and replaced by a newer one with higher rates of pay and improved employment conditions.

The bill specifies that all 'salary progression increments' will be delayed for 12 months. After that, the bill gives the government the power, if it wishes, to pass regulations to limit or further extend such a ban on incremental increases. The term 'salary progression increments' is defined this way:

> Increments, salary progressions, performance payments, advancement assessment points, years of service progressions, accelerated advancements and qualification-based progressions within a classification specified in an award, industrial agreement, or instrument of appointment, to which a Crown employee is entitled on or after the commencement of this Act.[2]

For doctors and nurses the new law, if passed, will come into effect on 30 November. Anyone gaining a new level of skill, qualification and responsibility, no matter how significant, will not be able to paid in recognition of it unless they are able to move into a new job classification. Although someone newly qualifying as a registrar or as a specialist would be able to be paid as such, the annual rises within these broad classifications would be denied at least for a year: doctors would lose a year's seniority advancement forever. But – depending on what the government wants – it might not end there.

After the 12-month freeze ends, the government will retain complete control over salaries. The promised 2% rise may not happen. Section 7 of the bill specifies:

> Increases in salary for Crown employees are –
>
> (a) not to be greater or less than 2% per annum; or
>
> (b) as are prescribed by the regulations.[3]

Therefore, the government will be able to control salary rates unilaterally, through regulation. There is no sunset clause in the bill, so it and regulations made under it will be able to continue permanently. So first-year interns would remain on the starting salary until they qualified as registrars three years later. A first-year registrar would still be paid as such until qualifying as a specialist after another several years. And a newly qualified specialist would remain on that starting salary for as long as the employer wanted.

This would mean a substantial loss of income, even as experience, skill and responsibility increased. For interns, the present scales of annual pay range from $60,427 to $72,652; for registrars, from $78,220 to $110,682; for specialists, from $132,011 to $184,815.

The government has not specified the content of any such regulations but it has given itself wide

2 *Crown Employees (Salaries) Bill 2014,* Part 1, paragraph 3 *(*pp 4-5).

3 *Ibid,* Part 3, section 7, paragraph 1 (p 10).

prerogatives. They can apply to all employees, any group of employees or to an individual. They can apply whenever and for however long the government wants. The employer thus gains total power over the salaries of its employees, who are given no right of address and, specifically, no right to be heard by an independent authority.

The incentive to circumvent this situation will be powerful.

Senior practitioners, who have a great deal of power in their area of the labour market, will have many options in getting around the new system, or putting themselves outside of it altogether by becoming contractors. The new law, if enacted, would not come into force for doctors and nurses before 30 November. That leaves enough time for individual practitioners to negotiate new contracts before the new controls apply.

The bill covers salaries but not conditions: unions could seek offsetting improvements in employment conditions, such as shorter hours, expanded rights of private practice, sabbaticals, assistance to attend overseas conferences, and so on. All of these measures are likely to cost the government far more than is saved by the new industrial environment.

All of this indicates that the new law, as applied to the employment of hospital doctors, will have the perverse effect of increasing costs rather than of controlling them. It will the government will have less control of pay rates than it has enjoyed in the past.

NURSES

A SIMILAR situation faces nurses, particularly the already-depleted ranks of senior nursing staff. Their labour-market power has been increased by the shortage of nurses and by the immense costs of overtime and agency nurses. Unlike doctors, nurses have not experienced a freeze in award salary rates: under their agreement there was a rise of 2.75% in 2011-12, 3% in 2012-13 and 2% in 2013-14. The relative unimportance of award rates in real salary-cost increases is evident in this table:

Nurses, full-time equivalent numbers and average salaries, public acute and psychiatric hospitals, Tasmania, 2001-02 to 2012-13

	2001-02	*2002-03*	*2003-4*	*2004-05*	*2005-06*	*2006-07*	*2007-08*	*2008-09*	*2009-10*	*2010-11*	*2011-12*	*2012-13*
Number	1 734	1 742	1 806	2 186	2 287	2 245	2 222	2 464	2 708	2 801	2 736	2 634
Change	-	+8	+64	+380	+101	-42	-23	+242	+244	+93	-65	-102
Salary ($)	52 615	54 285	56 202	58 558	65 735	68 755	71 293	75 319	79 273	81 908	86 968	91 611
Change	-	+3.2%	+3.5%	+4.2%	+12.2%	+4.6%	+3.7%	+5.6%	+5.2%	+3.3%	+6.1%	+5.3%

Source: AIHW, Australian Hospital Statistics

Most of the cost increases in 2011-12 and 2012-13 were not due to award increases but by costs of agency nurses and, more particularly, huge amounts of overtime made necessary by the decline in numbers of nursing staff. Overtime levels are now so high that they cannot realistically be expected to increase much further. If more nurses leave, as now seems highly probable, their places will have to be filled by new recruits – which will be difficult in the new environment – or by expensive agency nurses. The alternative will be to run staffing levels down further, thus potentially

endangering the availability, safety and quality of care.

The average annual award increases were heavily boosted by an Industrial Commission ruling in 2005 to award a large catch-up increase to bring the salaries of Tasmanian nurses more into line with those interstate. The average increase from that point until the 2011 budget and staff cuts was 4.9%; in the two years following those cuts, it was 5.9% (6.3% and 5.3% respectively). This indicates the potential for further staff declines, such as those likely in the wake of this new industrial legislation, to result in an increase in overall costs.

Although nurses have fewer options open to them for circumventing the proposed law, they can be expected to take advantage of whatever opportunities they can find. These may include resigning, lowering hours, or signing up with an agency. Their union can be expected to warn interstate nurses about the new risks of working in Tasmanian public hospitals.

It is already urgent for nurse numbers to be restored after being run down under the previous government but the recent state budget does not provide enough money to do that. The government has not announced any plans to recruit nurses or doctors, apart from an extra 10 places for junior graduate nurses.

Important questions must also be answered about the range and scope of potential regulations under the bill, particular as they affect nurses.

Section 11 of the bill says:

> (1) The Governor may make regulations for the purposes of this Act.

and

> (3) The regulations may restrict the performance and exerciser of the functions and powers of the Tasmanian Industrial Commission under the *Industrial Relations Act 1984* and may override any provisions of the Act in the manner specified in the regulations.

The purposes of the Act are defined in the introduction:

> An Act to give effect to Government policy on the salary of Crown employees, to amend the Industrial Relations Act 1984 and *for related purposes*.' (my italics).

This leaves the question: what are 'related purposes'? They are not further defined. Could the regulations enter into areas beyond salary amounts? Could the government regulate to alter nurse-to-bed ratios, the ratios of cheaper enrolled nurses to more expensive and more qualified registered nurses, leave entitlements, hours worked or other matters relating to the cost of employment other than nominal wage rates?

The mere threat of the unknown scope of this bill will add to the motivation for nurses to circumvent its provisions or to seek employment elsewhere. The uncertainty will add further to the difficulties of recruitment.

As with doctors, the most likely outcome is that there will be both an increase in costs beyond the savings envisaged by government policy, and a continued decline in the numbers of staff – with an inevitable decline in the capacity of hospitals to meet growing demand, and with serious implications for the safety and quality of patient care.

Martyn Goddard

20 September 2014