

Establishment of a Medical Registry for Professional Divers
AUSTRALIAN CONCILIATION AND ARBITRATION COMMISSION DECISION
MIS 102/77 SD PRINT D2841 (C NO 2580 OF 1976)

Mr Commissioner Mansini

Wednesday 20 April 1977

In this matter, which was heard at Sydney on 23 and 24 November 1976 and at Melbourne on 20 December 1976 and 3, 24 and 25 February 1977, the Professional Divers' Association of Australasia ("the PDAA") seeks by award prescription the establishment of a central medical registry for the purpose of filing and reviewing all professional divers' X-ray films, medical histories of compression and decompression and results of six monthly medical examinations.

The PDAA seeks to have such a registry established at The Prince Henry Hospital, Sydney, where on 23 November 1976, during an inspection of the hyperbaric and radiology sections, Dr I Unsworth, the Director of Hyperbaric Medicine and Professor HBL Williams, Director of Diagnostic Radiology at the hospital, indicated a willingness to co-operate and assist in such project, subject, of course, to authorisation by the proper authority. I am indebted to both Dr Unsworth and Professor Williams and to Dr CG MacFarlane of Bairnsdale, Victoria, who later gave evidence in Melbourne in relation to his experience of examination and treatment of divers generally and the question of establishment of a registry for the purpose sought by the PDAA, for the time they gave and the expert evidence presented to the Commission.

Employers opposed the application on three principal grounds:

- (a) that it was not an industrial matter within the meaning of the Conciliation and Arbitration Act,
- (b) that it was neither practicable nor desirable for the Commission to prescribe by award, terms and conditions relating to health and safety of divers, and
- (c) it was not possible for the Commission to require a hospital not bound by the award to observe certain terms and conditions of that award.

They suggested that what the PDAA was seeking was a matter for appropriate government legislation. Some States already had certain legislation on some of the subject matter of the application and the PDAA should seek to have this updated and similar legislation introduced into other States where professional divers operate.

The PDAA submitted that on matters so vital to the health and safety of its members engaged in diving work around Australia and in an industry where employees moved to and from places as far apart as Mackay in North Queensland to the north-west shelf off the Western Australian coast, it was essential to have common and uniform safety regulation and the only practicable way it could see to effect that was by provision in the award which covered most employers in the industry. The establishment of a central medical registry would form an integral part of such regulation. Mr B O'Brien, Assistant Federal Secretary of the PDAA, told the Commission that his enquiries had revealed there were "real jurisdictional problems" in having Federal legislation covering Part II employees; other States, according to Mr O'Brien either had outdated legislation or none at all (ref. transcript at pages 178, 179).

Firstly, I consider this is an industrial matter within the meaning of the Act. It relates directly to the work of divers in the employ of employers covered by an award of the Commission. There is, of course, already some provision relating to safety

in the current Professional Divers Award. However, the Prince Henry Hospital is not a party to the dispute, it cannot be made a respondent to an award made in settlement of the dispute and therefore the Commission is unable, by award prescription, to have the Prince Henry Hospital establish and maintain a medical registry in the manner sought by the PDAA.

At the same time the material presented to the Commission in these proceedings has established that there is considerable merit in the proposal of the PDAA. Professor Williams and Dr Unsworth favour the establishment of a central medical registry for X-rays and medical records of divers as a means of detecting the disease known as aseptic bone necrosis and prevention of the disease in divers. They indicated that proper facilities were available at Prince Henry for keeping such a register. Dr MacFarlane agreed to the extent of keeping a register or record of long bone X-rays, but was not so enthusiastic about the practicability of keeping other medical records of divers in a central registry. They all agreed it was most important that the quality of long bone X-rays be of a high standard and that it was possible to miss early detection of aseptic bone necrosis unless a high standard of X-ray was maintained. Professor Williams suggested it was desirable for all radiology clinics taking X-rays of the long bone to adopt standard techniques and preferably those recommended by the British Medical Research Council which are used at Prince Henry Hospital.

During these proceedings Mr T Taylor, appearing for a number of respondent employers, said:

"I submit that an award is not the document or the legislation or the law that should cover these aspects. I suggest that if there is to be control, then it should be done through appropriate legislation made by the government of the day" (ref. transcript at page 153), and later Mr R Taylor, appearing for other respondent employers, said:

"We do therefore ask that you dismiss the application by the union which seeks the formation of a central medical registry in the ageas of the award but to give consideration to using the influence of the Commission wherever possible to assist in the formation such a body under the appropriate government authority." (ref. transcript at page 176).

In my view the matters raised in this application are of such importance to both employers and employees engaged in the professional diving industry that they should be pursued at an industry level and not only by one or other of the parties. The parties are already agreed on the necessity to have a central registry for X-rays of divers and if it be found to be practicable, I would suggest consideration should also be given to keeping their medical histories in the same manner, or at least, other alternative and effective means should be investigated. With this in mind I propose to arrange as early as possible for industry representatives (ie. from both the PDAA and employers) to discuss the matter with appropriate federal government officers so that the PDAA proposals can be considered and investigated by the proper authorities. The parties will be notified when such arrangements have been made.

The PDAA also sought an order in respect of additional safety standards, divers log books, etc. (proposed clause 4), but as there is insufficient material before the Commission on which to reach a conclusion at this point in time, leave is reserved to the PDAA to present argument on those matters when other outstanding issues in the log of claims are being considered.