



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

COMMISSIONER PERICA

C2023/3617

s.739 - Application to deal with a dispute

**Mr Larry Goldsworthy
and
Victoria Police T/A Victoria Police
(C2023/3617)**

**Victoria Police (Police Officers, Protective Services Officers, Police Reservists and Police
Recruits) Enterprise Agreement 2019**

Melbourne

10.00 AM, MONDAY, 27 NOVEMBER 2023

Continued from 31/10/2023

PN1255

THE ASSOCIATE: This Commission is now in session. Please be seated.

PN1256

THE COMMISSIONER: Good morning, everybody.

PN1257

MR GOLDSWORTHY: Morning, sir.

PN1258

THE COMMISSIONER: A horrible day but we'll see how we go. Lucky we're all in here. Now, Sergeant, you finished your evidence last time, I think. Is that right?

PN1259

MR GOLDSWORTHY: Yes, that's correct.

PN1260

THE COMMISSIONER: Ms Leoncio, over to you.

PN1261

MS LEONCIO: Thank you, Commissioner.

PN1262

THE COMMISSIONER: Just let me get a bit oriented here first.

PN1263

MS LEONCIO: Yes.

PN1264

THE COMMISSIONER: Okay.

PN1265

MS LEONCIO: Yes. Yes, Commissioner, we have filed detailed written submissions so I don't intend to take you through those in great detail this morning.

PN1266

THE COMMISSIONER: All right.

PN1267

MS LEONCIO: We continue to rely on those.

PN1268

THE COMMISSIONER: Just so we're talking about the same thing. That's - - -

PN1269

MS LEONCIO: So it's at tab 4. It should be at page 313.

PN1270

THE COMMISSIONER: Yes. Yes, they are the – I had a look at them last night. The 25th of the 10th. Hang on that's – hang on a minute, that is Sergeant Goldsworthy. 12 October.

PN1271

MS LEONCIO: 12 October 2023.

PN1272

THE COMMISSIONER: Shall I mark that as R1?

PN1273

MS LEONCIO: Yes.

PN1274

THE COMMISSIONER: Okay.

**EXHIBIT #R1 RESPONDENT'S WRITTEN SUBMISSIONS DATED
12/10/2023**

PN1275

MS LEONCIO: Yes.

PN1276

THE COMMISSIONER: Okay. I'm right. I'm ready.

PN1277

MS LEONCIO: No, no, just making sure you're ready. So I will, just for the purposes of the opening, set out the key aspects of the respondent's case. Now, this is an application under section 739 of the Fair Work Act.

PN1278

THE COMMISSIONER: Yes.

PN1279

MS LEONCIO: It concerns a dispute under clause 10 of the enterprise agreement.

PN1280

THE COMMISSIONER: Yes.

PN1281

MS LEONCIO: Now, that enterprise agreement is behind tab 2. It's the 2019 agreement. And just to put the Commission at ease, there is no issue regarding jurisdiction, so we agree that there's jurisdiction. The dispute resolution procedures have been met.

PN1282

THE COMMISSIONER: I've had some fairly esoteric judicial claims recently, so thank god for that.

PN1283

MS LEONCIO: Yes, that's taken off your plate for the purposes of this matter. Obviously there's no issue taken with the fact that a purchase leave

application was made. The issue for the determination is really the question, as has been set for this arbitration, which is were the stated grounds for the rejection of the application reasonable business grounds in accordance with the 2019 agreement.

PN1284

Now, Victoria Police's case is that the answer to that question is yes. Before I turn to those grounds I do briefly want to take you to the provisions just so we understand the framework of the purchase leave entitlement under clause 129. So I'll take you to that clause. It's behind tab 2, as I said, Commission book 249.

PN1285

THE COMMISSIONER: I've been pre-arranging and I printed off my own, so I'll put it all in - - -

PN1286

MS LEONCIO: Seventy-eight.

PN1287

THE COMMISSIONER: Yes. No, no, I'll go with the one in the court book. Okay. Two-four-nine, you say?

PN1288

MS LEONCIO: Two-four-nine; that's right.

PN1289

THE COMMISSIONER: Yes.

PN1290

MS LEONCIO: You'll see there 129.1:

PN1291

Employees may apply to purchase between one and four weeks' leave per year in addition to that provided in clause 124.

PN1292

And 124 is dealing with recreational leave, and that's the nine-week entitlement that you are ordinarily entitled to.

PN1293

THE COMMISSIONER: Yes.

PN1294

MS LEONCIO: In terms of the purpose of this provision, we don't shy away from the fact that this is a 24/7 operating environment and this form of leave, as well as other forms of leave, are intended to provide employees with a break from work and to ensure that they have that rest and recreation.

PN1295

There are peppered throughout the 2019 agreement, references to that commitment and, as I said, we don't shy away from that commitment. But what is

built in – what the draft has built in to clause 129 is a mechanism to ensure that Victoria Police retains a right to reject applications in certain circumstances.

PN1296

THE COMMISSIONER: Yes.

PN1297

MS LEONCIO: So that's what's provided for in clause 129.2 where it says:

PN1298

Applications for purchase leave may only be rejected on reasonable business grounds as described in clause 14.

PN1299

So it's not an unfettered entitlement. It's a discretionary entitlement, although of course there are limits to that discretion. We say that mechanism really recognised that balance to be struck between these two competing interests. The interests in employees in taking that time for rest and recreation, which is to be balanced against a legitimate interest in Victoria Police needing to ensure that it can properly deliver its critical policing services.

PN1300

THE COMMISSIONER: You would say in ED4 it's climb every mountain for a purchase leave application compared to other areas.

PN1301

MS LEONCIO: I'm not sure I would put it in those terms, but we do say in the particular year that Sergeant Goldsworthy applied for purchase leave - - -

PN1302

THE COMMISSIONER: What about all the evidence on that? We'll get to this, but all the evidence on alpine region, big area, relatively low human resources, those things are immutable and don't change; are they?

PN1303

MS LEONCIO: That's correct, but that really provides the context and the picture for why we say - - -

PN1304

THE COMMISSIONER: Yes.

PN1305

MS LEONCIO: - - - the particular issues that we identified, why that's really significant in this application. We say that there may be other applications, there may be other circumstances where we don't have those pressure points where purchase leave may apply.

PN1306

THE COMMISSIONER: Yes. Look, I have to ask you this now, but – I won't ask you now. I'll ask you in closing. I'm just wondering what is the objective measure of productivity. Perhaps you might address me on that.

PN1307

MS LEONCIO: Yes.

PN1308

THE COMMISSIONER: Because I've had two jobs. One in a manufacturing context where individual measures of productivity are easy. And there's about 60 years of academic research that it's almost impossible to do a unit-basis of productivity in the service industry, and that difficulty is compounded in a public sector context. So if you could address me on that in closing, that would be good.

PN1309

MS LEONCIO: Yes, I will take you through the specifics of what we say the business involves, what the service level involves and, therefore, what we mean by productivity.

PN1310

THE COMMISSIONER: Yes. Well, because – and I'll tell you my context. I used to be, for my sins, involved in productivity bargaining in the Kennett government, and what they would say in collective bargaining was, if you give us purchase – if you give us your annual leave loading, then that will increase productivity. Well, I'm not sure unit of production would be enhanced by that. So you say your case, no doubt, would be the regional business grounds of an objective test. I want to know what the objective test for efficiency or productivity is.

PN1311

MS LEONCIO: Yes, and we say - just to deal with that point upfront, but I'll further develop that in the course of our case both in the evidence and also in closing, but really when it comes down to it we're talking about the shifts and the case really is about - - -

PN1312

THE COMMISSIONER: But how is that productivity?

PN1313

MS LEONCIO: Well, the first step is there's a loss of shifts. That's the first step.

PN1314

THE COMMISSIONER: But any leave would give rise to a loss of shifts.

PN1315

MS LEONCIO: Yes, yes.

PN1316

THE COMMISSIONER: So any leave, on that, would be against productivity.

PN1317

MS LEONCIO: No, no, no. I'm just taking you through the steps to where we get to - - -

PN1318

THE COMMISSIONER: No, but any leave would reduce the number of shifts.

PN1319

MS LEONCIO: And what I'm saying is the onflow effects of that. So the onflow effects of the loss of shifts, how does that actually impact the service level? Well, we say when you look at the picture, that there are actually losses of productivity in the sense of an inability to provide, say, a - - -

PN1320

THE COMMISSIONER: But is that productivity?

PN1321

MS LEONCIO: Well, I - - -

PN1322

THE COMMISSIONER: Is that a productivity measure? That's the question.

PN1323

MS LEONCIO: In terms of – yes, well, I make the submission - - -

PN1324

THE COMMISSIONER: The inputs and outputs - that's what productivity is about; isn't it?

PN1325

MS LEONCIO: Well, a minimum station profile – just as one example – we say is a clear measure in terms of the productivity. And it's the productivity of the minimum service level, but that is a negotiated outcome with the TPAV. That was something that the Police Association Victoria has been consulted on, and that's clear from the face of the document that that is something that is agreed. Well, in terms of what we say that that represents, we say that that represents productivity in the sense of being able to provide minimum service levels.

PN1326

THE COMMISSIONER: It's this conflation of the idea of a customer and a citizen. Those two things are not the same. So, you know - - -

PN1327

MS LEONCIO: Well, the customer in the context of Victoria Police's operations are the community.

PN1328

THE COMMISSIONER: Yes.

PN1329

MS LEONCIO: That - - -

PN1330

THE COMMISSIONER: You need to take me to the base service level. I need to unpack that and get my head around that.

PN1331

MS LEONCIO: Yes.

PN1332

THE COMMISSIONER: So perhaps that's a closing issue. Well, sorry, and, as I say, you're become what you despise. I used to hate people who used to interrupt me in my openings, so I'll be quiet.

PN1333

MS LEONCIO: No, no, no. If we can assist, I am grateful for the opportunity to clarify.

PN1334

THE COMMISSIONER: Okay.

PN1335

MS LEONCIO: So I was really just setting out the two competing interests that that clause 129 recognises.

PN1336

THE COMMISSIONER: Okay.

PN1337

MS LEONCIO: Then I wanted to just take you to clause 14.10 because that's where we talk about reasonable business grounds, where it's described. So if you turn then to 14.10, which is page 14 of the agreement or 185 of the Commission book.

PN1338

THE COMMISSIONER: Yes.

PN1339

MS LEONCIO: You'll see there, without remitting what are reasonable grounds, so it's a non-exhaustive list, but it includes the following, and there are a number of particular steps, and we have said that we rely on subparagraphs (d) and subparagraphs (e). We were just talking about these concepts, but that the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity. That the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

PN1340

THE COMMISSIONER: There's that word again.

PN1341

MS LEONCIO: Yes.

PN1342

THE COMMISSIONER: Okay.

PN1343

MS LEONCIO: In my submission, the relevant decision-makers did turn their mind – and so I will have to develop and explain to the Commission what we mean by 'significant' and 'likely' and how to approach this task. But just as a conclusion, to start with, the relevant decision-makers did turn their mind to this

test and considered the purchase leave applications in 2023 – sorry, for 2023 and 2024. And, unfortunately, the conclusion that was reached is that the purchase leave applications would be likely to result in a significant loss in efficiency or productivity or would be likely to have a significant impact on customer service. In - - -

PN1344

THE COMMISSIONER: So, just it's your case that the test would individually apply in relation to everybody in relation to purchase leave?

PN1345

MS LEONCIO: Yes.

PN1346

THE COMMISSIONER: So if you're the fourth person to express interest, you have less of a chance of getting it than the first?

PN1347

MS LEONCIO: Well - - -

PN1348

THE COMMISSIONER: Leaving aside the question that you had both asked for two days and not four weeks?

PN1349

MS LEONCIO: Yes.

PN1350

THE COMMISSIONER: It's less likely that assuming the same number of weeks, it's less likely the more applications there are?

PN1351

MS LEONCIO: Not in the sequencing that you suggested. So because of the way in which Victoria Police assesses purchase leave, it's done in advance. They have to do all of this stuff so that - - -

PN1352

THE COMMISSIONER: Yes, that's what the expression of interest is for.

PN1353

MS LEONCIO: Exactly. So the expression of interest collates all of them, but they're looked at together as a whole. So it's not a who comes first in best dressed situation. We do look at, and I would say it's legitimate for the Victoria Police, to look at both individually this four-week period and how that might impact, but to look at the context of, well, we also have 30 other applications or 40 other applications, or whatever it might be. If there are only two applications, perhaps that does give greater ability for those smaller number of applications to be approved.

PN1354

THE COMMISSIONER: Yes.

PN1355

MS LEONCIO: But if there's a large volume, then, in my submission, there might be a tipping point, and that's the kind of - - -

PN1356

THE COMMISSIONER: The other parts – and, I'm sorry, I've spent all day agitating this yesterday and it's fresh in mind and, please, if you – don't be shy in telling me I'm interrupting you too much. But, see, there's an asymmetry in the provision, and so in an individual flexibility arrangement, there is a great detail about the pro side. Okay. The individual things – elements you have to take into account in relation to the individual in relation to a decision to accept or refuse a flexibility agreement.

PN1357

As far as I understand your argument, and tell me if I'm wrong, in relation to the process by 14.9 there is a basis for which they are refused but there is nothing in the provisions in the EBA in relation to basis on which it could be approved. It's a blank box. The approval side is a blank box, as far as the regulation in the EBA is concerned.

PN1358

MS LEONCIO: Yes, that's correct.

PN1359

THE COMMISSIONER: Okay.

PN1360

MS LEONCIO: So, sorry, I've just – so where I was - - -

PN1361

THE COMMISSIONER: Okay. Yes, so we've got the 14.10, I've got that. And I'll try not to – just these are difficult concepts I'm trying to get my head around.

PN1362

MS LEONCIO: Yes, and we'll assist the Commission as best we can to ensure - -
-

PN1363

THE COMMISSIONER: Thank you.

PN1364

MS LEONCIO: - - - that this case is made as clear as possible.

PN1365

THE COMMISSIONER: Thank you.

PN1366

MS LEONCIO: But what we say is that the evidence will establish that the assessment that was undertaken and made by those decision-makers was the correct one, and that the Commission should also agree that there are reasonable business grounds for the refusal of the purchase leave application.

PN1367

Now, I just want to briefly touch on what the task of the Commission is having regard to the assessment of reasonable business grounds. And I won't take you to the authorities for the moment but I'll do that in closing submissions. But it is an objective assessment, as, Commissioner, you have already alluded to. We also say it's not a comparative assessment. So it's not a question of was this approved two years ago, last year? Was this approved in another division, in another region?

PN1368

THE COMMISSIONER: Well, it could be comparative. It depends on what sense - - -

PN1369

MS LEONCIO: I - - -

PN1370

THE COMMISSIONER: There's no historical concept. Like, there's no - if you have it 10 times before that is irrelevant to getting it this time.

PN1371

MS LEONCIO: Well, the submission that I wish to put is that just because it was approved in a previous year or in another division does not make this unreasonable. That we can't draw that conclusion directly. What we say is you need to look at the grounds that were relied upon and on a stand-alone basis consider whether those grounds are reasonable business grounds.

PN1372

So you may draw particular inferences from what happened in certain periods about something that might suggest this is not reasonable, but what I'm saying to you, Commissioner, is that you need to consider on a stand-alone basis whether the grounds that were put are reasonable business grounds. Not if that was approved before then that makes this unreasonable.

PN1373

THE COMMISSIONER: What do you say about their relatively - relative – the relative approvals of ED4 compared to everywhere else?

PN1374

MS LEONCIO: What we say about that is that that's a matter for those divisions. They all function differently. They all have different service areas.

PN1375

THE COMMISSIONER: Yes.

PN1376

MS LEONCIO: Again, the assessment needs to be considered in terms of what are the grounds that were relied upon in this division. Does that stand up? Does that stand up, regardless of what happened in any other division? Regardless of what happened in any other years, does it stand up? That's the question.

PN1377

THE COMMISSIONER: Then it invites the argument, doesn't it, that I can construct my business in such a way, and what the business is, is something that's totally in the hands of the employer. And, like, when enterprise bargaining started there was manufacturing would try and have four MBAs in the one place, and that was on the basis of, you know, you're powerful, less powerful, all that stuff.

PN1378

MS LEONCIO: That may be possible. In my submission, it seems to me pretty unlikely that that would be the reason why Victoria Police would be organising its work in a particular way, in order to project - - -

PN1379

THE COMMISSIONER: So the business is ED4?

PN1380

MS LEONCIO: Yes, that's correct.

PN1381

THE COMMISSIONER: Okay.

PN1382

MS LEONCIO: Now, in terms of what needs to be proved, we also say we don't need to prove that the business reasons that were relied upon would dissipate if the applications were refused. So you don't necessarily need to say these business grounds – so losses in productivity or whatever it might be – that they would somehow be completely resolved if we have this purchase leave application refused. I can take you through the authorities but that's a point that I will get to in closing submissions.

PN1383

THE COMMISSIONER: What about the relative approval of – the approval of some and the approval of others; does that reflect on the reasonableness of the business grounds?

PN1384

MS LEONCIO: Well, I think that comes back to the comparative assessment, so -
- -

PN1385

THE COMMISSIONER: Well, it's not. If the relative disadvantage of ED4 is immutable – some are approved, some are not - - -

PN1386

MS LEONCIO: Well, I haven't - - -

PN1387

THE COMMISSIONER: That may or may not be fair.

PN1388

MS LEONCIO: I haven't accepted that it's immutable, and it will depend on the particular - - -

PN1389

THE COMMISSIONER: But alpine region doesn't go away. The geographic size of it doesn't go away.

PN1390

MS LEONCIO: And - - -

PN1391

THE COMMISSIONER: The relative human resourcing, I don't think that will be cured in the next pay cycle. Those things don't change, and you say that's a reasonable business ground. It's all over your papers. Over a lot of your paperwork.

PN1392

MS LEONCIO: I wanted to come to that point in a moment, but those matters that you've identified provide the context for why the specific matters that we've identified are significant. So we don't say, 'Your purchase leave was refused because ED4 is really big.' That's not the way in which we characterise it.

PN1393

THE COMMISSIONER: Well, why give evidence of it - - -

PN1394

MS LEONCIO: Because - - -

PN1395

THE COMMISSIONER: - - - if that's relevant to the question of reasonable business grounds?

PN1396

MS LEONCIO: Because it's the context for the specific reasons which are things like the highway patrol, their capacity being 50 per cent down. Things like the fact that the minimum service levels have reduced. We say that's particularly significant in the context of ED4's geographical characteristics. Now, there may be other circumstances where it's surmountable, where we have enough staff, we have different circumstances. The highway patrol isn't going to need all of these resources from Wodonga Police Station. There may be other circumstances where that purchase leave application would be approved, and those geographical matters that I've referred to, won't stand in the way.

PN1397

THE COMMISSIONER: Okay. I follow that.

PN1398

MS LEONCIO: So in terms of the stated grounds, we have been talking about them a little bit but I did want to take you to the specific email that we rely on, which is annexure PH14. That's volume 2, tab PH14. It's Commission book 729. It's right at the back of the second folder. PH14.

PN1399

THE COMMISSIONER: I have PH14.

PN1400

MS LEONCIO: So this is an email from Inspector Paul Henry to Sergeant Larry Goldsworthy. You'll see there the four dot points, and these are really the reasonable business grounds that we are saying are the stated grounds.

PN1401

THE COMMISSIONER: Seven-two-nine, you said. Sorry, I was looking at 730.

PN1402

MS LEONCIO: Seven-two-nine.

PN1403

THE COMMISSIONER: I've got it, yes.

PN1404

MS LEONCIO: In summary, that that first dot point – or really there are four main issues. The first one is:

PN1405

Current resourcing at Wodonga Police Station is not able to satisfy and meet the full expectations of community safety and customer service.

PN1406

That has quite a strong relationship with the baseline minimum service levels which I'll take you to in a moment. But that's really the notion of what's being captured by that first bullet point. Then there are these additional resources challenges, and they are:

PN1407

The requirement to support Wodonga Highway Patrol.

PN1408

So that's in the second dot point. The third dot point is about the need to – sorry, that second dot point also deals with Corryong Police Station, and then the third dot point really is explaining how the resourcing constraints or challenges in Wodonga Highway Patrol in Corryong Police Station – why it's affected by any purchase leave application, which is this upgrading. So if Larry Goldsworthy – Sergeant Goldsworthy takes purchase leave, then Victoria Police's position is it will be upgraded from another rank, and that that will reduce the pool of other ranks. And other ranks are ranks below sergeant level.

PN1409

THE COMMISSIONER: Yes.

PN1410

MS LEONCIO: The other point is also in terms of the family violence – sorry, it's the investigations and response units, and the specific unit that Inspector Paul Henry had in mind was the support that would be required for the family violence investigation unit.

PN1411

THE COMMISSIONER: Yes, I follow.

PN1412

MS LEONCIO: Now, in terms of why we say those matters are likely to be significant in the sense contemplated by clause 14.10 – and I might just pause on that. It's likelihood, so we're not needing to establish with a certainty that these particular effects or particular impacts would occur. It's based on the information that we have available to us, what we think will be likely.

PN1413

It is important to appreciate the context, so in approving purchase leave applications the policy process is such that you'll be needing to consider applications very far in advance. So we're talking March or May, you know, 2024. And in those circumstances Victoria Police has to do its best to be able to understand what will be needed, what will be likely to occur. So it's its best estimate but it can't guarantee what will occur. It can't do that with certainty.

PN1414

So in terms of the, I guess, three key points that we wish to draw out, in terms of this question of significance, the first is what I've mentioned earlier, was the consequence of Sergeant Goldsworthy taking leave. So the position of Victoria Police, as I said, is that his role will likely be backfilled and that that will reduce the pool of other ranks. And it's the other ranks who are deployed to perform those response type services which we say are overly critical, and the need to keep that pool healthy as much as we can.

PN1415

Now, in terms of the second point, we say it's really significant or important because the services that were not likely to be able to be performed are really critical services. One, we're talking about the baseline minimum service level. So that's talking about the minimum staffing to provide the minimum service for responding to calls for assistance. That's Victoria Police's case.

PN1416

THE COMMISSIONER: Yes.

PN1417

MS LEONCIO: It's important of course, because, one, that is the core of Victoria Police's business.

PN1418

THE COMMISSIONER: Yes.

PN1419

MS LEONCIO: But there's another key part of that as well, which is that if you have a breach of the baseline minimum service level, it also indicates that there are other components of the services, delivery requirements that are not being met. So baseline is just the minimum, but there are proactive, preventative tasking which sit above those rostering figures which are also not able to be performed if they're being breached.

PN1420

THE COMMISSIONER: Like, what, (indistinct) effect?

PN1421

MS LEONCIO: Yes, yes, but also the drug taskforce which I understand they haven't been in a position to roster or to resource.

PN1422

THE COMMISSIONER: Yes.

PN1423

MS LEONCIO: Now, I understand part of the case for the applicant is that really those breaches of the BMSL - and there doesn't seem to be much dispute about the fact it's about an average of 15 breaches per month – that that's mostly due to unplanned leave, and that when the roster is posted it looks like it's compliant with the baseline minimum service level requirements.

PN1424

In my submission, because of the constant and frequent breaches of the baseline minimum service level, it's now gotten to a point where you can almost expect that that is going to occur because of the frequency of unplanned leave and that consistency of unplanned leave. So it is something, to some extent, you need to forecast for. Now, that, as I - - -

PN1425

THE COMMISSIONER: Forecast for insofar as you're assessment of reasonable business grounds; is that what you're saying?

PN1426

MS LEONCIO: In terms of its – yes, it's reasonable to have on the roster more than just the 42 shifts that are required to meet the BMSL, because there is a likelihood that that's going to go below. So the more shifts - - -

PN1427

THE COMMISSIONER: That's because the unplanned leave can't be predicted.

PN1428

MS LEONCIO: That's right. It's not can't be predicted but it's to some extent it can be expected.

PN1429

THE COMMISSIONER: Yes, yes, well, the exact times can't be predicted.

PN1430

MS LEONCIO: No. That's correct.

PN1431

THE COMMISSIONER: But the fact that there will be some can be anticipated.

PN1432

MS LEONCIO: That's correct.

PN1433

THE COMMISSIONER: Okay.

PN1434

MS LEONCIO: Now, when we come to the other aspects of the service delivery requirements that we say are impacted, Wodonga Highway Patrol is a specialist unit which deals with road trauma and fatalities, and it's a priority area for Victoria Police. And we say it's a particular issue in ED4 with the second-highest road fatalities in the state in 2023. And with Wodonga Highway Patrol, 50 per cent down their usual capacity, we say that the plans to provide resourcing from Wodonga Police Station to the Wodonga Highway Patrol, that, you know, that's a critical service that we need to try and ensure as much as possible that we can provide.

PN1435

THE COMMISSIONER: Okay.

PN1436

MS LEONCIO: Now, in terms of the vacancies, there's some evidence around the likelihood of those positions being filled. The reality is we don't have certainty about when those positions will get back up to capacity in June 2023, and so we have to make plans on the basis that, you know, we don't know exactly when those positions will be filled.

PN1437

A similar kind of story for Corryong Station. That station had one sergeant and two other ranks. It's normally one sergeant and 4.8.

PN1438

THE COMMISSIONER: Yes, yes, yes.

PN1439

MS LEONCIO: So there was plans again to send staff, and at that point in June 2023 there were plans to send about three staff for about 12 weeks. Again, no guarantees about when those positions would be filled, and it's known to be a really remote and difficult to fill station.

PN1440

THE COMMISSIONER: Well, it's been gazetted about four times; hasn't it?

PN1441

MS LEONCIO: I'm not sure of the exact number but – yes.

PN1442

THE COMMISSIONER: More than twice.

PN1443

MS LEONCIO: Yes, that's correct. Now, that's again minimum service levels. So that's talking about just being able to run the station. You know, that's a key part of Victoria Police's services. So that's talking about the specific units or services that we have identified.

PN1444

THE COMMISSIONER: Okay.

PN1445

MS LEONCIO: And this third point, which is what I was alluding to earlier, is about we need to look at that in the context of the resourcing pressures in ED4. Things like increased crime in ED4. Things like the inability to provide proactive tasking. Things like emergency incidents and the frequency in ED4, and high levels of absenteeism. All of those things just provide the context to understanding why this is – these kind of particular issues reach that tipping point of being – of resulting in that significant loss. It's not just business as usual loss. These are above what you would normally expect.

PN1446

So in that context we say the loss of 20 shifts sounds like a small number, but in the context of all of these things, we say in the particular resourcing challenges that ED4 had, the services they were already unable to provide, that in those circumstances the loss of those shifts were likely to have or significantly exacerbate those resourcing pressures in ED4. And returning to that balance to be struck in clause 129.2, between those two competing interests, Victoria Police says that in this particular location, particular time of this application, that the balance weighs in favour of rejecting the application. That balance that needs to be struck, unfortunately, on this occasion we say it needed to be rejected.

PN1447

Now, for those reasons the Commission should find that Sergeant Goldsworthy's purchase leave application was likely to result in a significant loss in productivity and likely to have a significant negative impact on the community, which I'll develop that further, but that's my definition of customer service in the context of ED4, and accordingly that there were reasonable business grounds for the rejection of Sergeant Goldsworthy's application.

PN1448

THE COMMISSIONER: Okay.

PN1449

MS LEONCIO: Are there any matters that you'd like me to address you on at this moment?

PN1450

THE COMMISSIONER: No, I think I've thrown some curve balls enough. Yes, as I say, I used to hate it when people did that to me. Now I'm doing it. So, yes, please everyone forgive me.

PN1451

MS LEONCIO: Thank you, Commissioner.

PN1452

THE COMMISSIONER: Yes. No, no, thank you. That's very elucidating as far as I'm concerned. Thank you.

PN1453

MS LEONCIO: Yes. Now, we have three witnesses for Victoria Police, and the first witness who I call is Assistant Commissioner Anthony Langdon.

PN1454

THE COMMISSIONER: His witness statement is at 367; is it?

PN1455

MS LEONCIO: That's correct.

PN1456

MR GOLDSWORTHY: Excuse me, sir. I appreciate the other two witnesses aren't in the room, but is it possible to have an order to ensure that they're excluded whilst evidence is being given by witnesses?

PN1457

MS LEONCIO: Yes, that's fine.

PN1458

THE COMMISSIONER: I so order.

PN1459

MR GOLDSWORTHY: Thank you.

PN1460

THE COMMISSIONER: Would you like us to close the door as well?

PN1461

MR GOLDSWORTHY: No, no, it's okay.

PN1462

THE COMMISSIONER: We want to satisfy you.

PN1463

MR GOLDSWORTHY: Thank you.

PN1464

THE COMMISSIONER: All right.

PN1465

THE ASSOCIATE: Do you wish to give an oath or an affirmation?

PN1466

MR LANGDON: Affirmation, please.

PN1467

THE ASSOCIATE: Could you please state your full name and address for the record?

PN1468

MR LANGDON: Anthony Langdon, care of Knox Police Headquarters in Wantirna South.

PN1469

THE ASSOCIATE: Thank you.

<ANTHONY LANGDON, AFFIRMED

[10.35 AM]

EXAMINATION-IN-CHIEF BY MS LEONCIO

[10.35 AM]

PN1470

THE COMMISSIONER: Thank you, Assistant Commissioner, and thanks for coming?---My pleasure, Commissioner.

PN1471

You're kidding; aren't you?---No, I'm not.

PN1472

All right?---It's part of the business.

PN1473

Ms Leoncio.

PN1474

MS LEONCIO: Thank you. For the purposes of the transcript, could you just repeat your name?---Anthony Langdon.

PN1475

What is your current occupation?---I'm the Assistant Commissioner for Eastern Region.

PN1476

What is your professional address?---It is 420 Burwood Highway, Wantirna South.

PN1477

Thank you. Have you made a statement in this proceeding?---I have, Commissioner.

PN1478

You'll see that there are two folders in front of you. If you take the – I'm hoping that one says 'Volume 1' at the top, and if you turn to tab 8. It's right at the back?---Tab 8; was it?

PN1479

Yes, and that's page 367?---Yes.

PN1480

Is that the statement that you made in this proceeding?---It is, Commissioner.

PN1481

THE COMMISSIONER: Thank you.

PN1482

MS LEONCIO: And I confirm that it's dated 12 October 2023?---That is correct.

*** ANTHONY LANGDON

XN MS LEONCIO

PN1483

Does it run to 13 pages and 49 paragraphs?---Yes, I've got 13 pages and 49 paragraphs.

PN1484

Can I confirm that there are annexures. I think annexure TL1 to TL4 is in that folder?---That is correct.

PN1485

Are they the annexures that you refer to as TL1 to TL4?---That is correct, Commissioner.

PN1486

If you turn to the second volume you'll see that the rest of the annexures are there. That's TL5 to TL26. Just confirm that they're all there?---That's correct.

PN1487

Great. Have you had a chance to read that statement recently?---I have.

PN1488

Are the contents of that statement true and correct?---They are, Commissioner.

PN1489

I tender that statement and the annexures TL1 to TL6.

PN1490

THE COMMISSIONER: That statement and annexures are R2.

**EXHIBIT #R2 WITNESS STATEMENT OF ASSISTANT
COMMISSIONER PAUL LANGDON, TOGETHER WITH
ANNEXURES, DATED 12/10/2023**

PN1491

MS LEONCIO: Commissioner, if I could just seek leave to ask a couple of questions of evidence in chief?

PN1492

THE COMMISSIONER: Please.

PN1493

MS LEONCIO: Now, Assistant Commissioner, there has been some evidence dealing with the role of a patrol supervisor in the 251?---Yes.

*** ANTHONY LANGDON

XN MS LEONCIO

PN1494

Could you describe what the role of a patrol supervisor of the 251 is from your perspective?---Well, from my perspective it's one of the most critical roles we have on the road, so to speak. They're there to not only supervise but provide support and guidance for members who are out there patrolling. There's a criteria where they will have to attend things like serious criminal offending, members are injured, anything which requires that high level of supervision and support. And

then they are the initial go-to individuals in relation to managing those types of events. From my perspective, when being out of the road as a sergeant, it's probably one of the most crucial roles we have in relation to how we function providing community safety, and also how we support our members and provide safety for our members. Things like sieges, hostage-type situations, they're the initial go-to to actually start formulating the plan before maybe some more specialised support come in, or other additional resources.

PN1495

THE COMMISSIONER: So they're the specialists, on the ground supervision?---Yes, they're the managers on the ground, supervising.

PN1496

Yes, yes, yes?---And they're also there to ensure that policies are adhered to and that the ethical elements of what we have – we do our business are adhered to in relation to how we serve the community.

PN1497

Okay?---Things like ensuring they give safety briefings prior to going to certain events, ensuring body-worn cameras are turned on, etcetera. Providing safety directions to members before they actually may turn out to a specific type of event.

PN1498

Yes.

PN1499

MS LEONCIO: You mentioned there incidents that they may be required to attend. What policies, if any, dictate - - -?---There's a Victoria Police manual which actually clearly articulates the policy setting for supervisors in that case.

PN1500

I might just hand up a document to you Assistant Commissioner?---Thank you.

PN1501

And I've got a copy for the Commission as well.

PN1502

THE COMMISSIONER: Thank you.

PN1503

THE WITNESS: Yes, that's correct.

PN1504

MS LEONCIO: Was that the document that you were referring to?---It is, yes.

PN1505

Can you just briefly describe what that document is again, sorry?---Sorry, could you just repeat that?

*** ANTHONY LANGDON

XN MS LEONCIO

PN1506

Could you just describe what that document is?---Victoria Police has many procedures and processes in place that they generally – now, they're either guided by legislation, as you'd be aware, or we create what we call Victoria Police manual procedures to actually guide members in their duties and their roles. This one's specific to procedure involved in resource management patrol supervision. So it goes down from – I think it covers off the rank of inspector and below, but it might even cover superintendent. But it does clearly articulate in dot point expectations of sergeants and patrol supervisors.

PN1507

THE COMMISSIONER: Yes?---There also should be an assessment part of that where it indicates clearly what matters sergeants should attend to, and they're referred to as a 251. What matters they should attend to, like I was describing for – it's at page 9 and goes over. Yes, it's just on page 9 of this document.

PN1508

Okay. Right.

PN1509

MS LEONCIO: I'll just take you to page 5. That's dealing with patrol supervisor 251 metropolitan. And the next page talks about patrol supervisor 251 country.

PN1510

THE COMMISSIONER: Hang on. What page are we on?

PN1511

MS LEONCIO: I was looking at pages 5 and 6.

PN1512

THE COMMISSIONER: Okay. Right. I've got it.

PN1513

MS LEONCIO: Just in terms of Wodonga PSA, which parts of this should we be looking at? Is it considered country or - - -?---Well, they'd be termed as country, so they'd be covered by 4.4 paragraph and 4.5 paragraph, on page 6.

PN1514

Yes. I seek to tender that document.

PN1515

THE COMMISSIONER: That will be R3.

**EXHIBIT #R3 VICTORIA POLICE MANUAL PROCEDURES
DOCUMENT**

PN1516

MS LEONCIO: In terms of those 251 units, how many officers should be rostered for those units?---Sorry, I just didn't hear you again.

*** ANTHONY LANGDON

XN MS LEONCIO

PN1517

Form your perspective, how many officers should be rostered to a 251?---Well, generally speaking we have one a shift within the PSA or division, depending on how big they run. Some country areas they run a little bit differently, but you have one each shift.

PN1518

In terms of the number of officers in the 251?---Sorry, so that's a sergeant plus a driver.

PN1519

What's the reason for that, to have the two?---Safety's the main element. So that comes under the service profile. There was a – probably an operational conduct some time ago where rural areas would have one – a sergeant drive by themselves on occasion or a senior sergeant drive by themselves on occasion. And policy was brought put in place – called the Two-up Policy, which was 2015, from memory, which then started to articulate the safety premise around about supporting the sergeants so that they wouldn't be one-up, or the senior sergeants. That sort of went from another policy, and then we finally had them in a service profile which clearly articulated in the Chief Commissioner's Instructions, and now the Victoria Police Manual, exactly how we manage our workforce when it comes to those two areas.

PN1520

THE COMMISSIONER: Okay?---You'd always have – we'd always had a two-up position with our divisional bands, but it was inconsistent in relation to the 251 and 261 driver.

PN1521

Thank you.

PN1522

MS LEONCIO: If there is a breach in the minimum service profile or the baseline minimum service level, what in your opinion should occur? So if there's, for example, only one driver or one sergeant in the 251, or enough resourcing, I suppose, for that one driver in the 251, what's your view about how the service should operate?---Well, I'm pretty one-dimensional about my view about that. I don't like the fact that we have members out there one-up. Acknowledging we do have one-member stations where that occurs, but they're covered by policy as well. And if I have a sergeant who doesn't have a driver, then they don't go out. Where it leaves us is that we have on occasion to recall members – if we have absenteeism, recall members to supplement the sergeant driver or the senior sergeant driver. It's easy for the senior sergeant to stay in the station and do their role, from my opinion, because they're not as frontline.

PN1523

THE COMMISSIONER: No?---But the sergeant, not so.

*** ANTHONY LANGDON

XN MS LEONCIO

PN1524

Yes?---And I know, like, all change management, there have been times where we probably haven't achieved the exact outcome we'd like, but I've put out quite strong communications about my expectations on that.

PN1525

MS LEONCIO: Thank you, Assistant Commissioner. I have no further questions.

PN1526

THE COMMISSIONER: Sergeant.

CROSS-EXAMINATION BY MR GOLDSWORTHY

[10.47 AM]

PN1527

MR GOLDSWORTHY: Thank you. Assistant Commissioner Langdon, I have a few questions for you. Are you ultimately responsible for developing and overseeing and approving the strategies that are particular to Eastern Region?---I hold the mandate of managing the region from a strategical sense. Developing all the strategies, no. I would ultimately sign off on strategies but, yes, that would be a fair description of my role.

PN1528

Does Eastern Region have a service delivery plan?---We have an operations plan which actually brings in part of service delivery.

PN1529

Does Eastern Region have a workforce plan?---It does have a workforce plan, yes.

PN1530

Does Eastern Region have a service demand forecasting?---No, not specifically, no.

PN1531

So how do you know how many sworn members you need each roster throughout the different divisions?---Well, that's a varied equation to try and come to terms with. So we have our minimum service that we require, which is stipulated through policy and procedure. The reality is we have had police on the road 24/7. But because we have within the region varying areas, so we have our uniform area, we have our investigation response areas which is our CIU – criminal investigation units.

PN1532

Yes?---Our family violence units, etcetera. And then we have this other piece of business where our members have to not only perform roles on the road but then they have to actually be able to do administrative tasks, etcetera.

PN1533

Yes?---So there's a very minimum type level of – we suggest if we've got 70 per cent workforce, we should be able to deliver a service. But it does vary depending on the area where you work.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1534

Are you aware of the creation of the Eastern Region Division 4 purchase leave panel and its operation?---No. Eastern Region, no.

PN1535

Eastern Region Division 4?---Division 4, sorry. I missed that, sorry. I'm aware that they have a processing place, yes.

PN1536

So how do you think the purchase leave panel operates?---Well, I can only go by what I've read through the email processes and there's an assessment process, there's an application process. There's a determination based on each application relevant to police service need, and also the needs of the individuals.

PN1537

Who would you expect to be on the purchase leave panel?---I don't have an expectation who needs to be on it. That's the divisional superintendent's role.

PN1538

Would you expect the panel to keep minutes and notes of the meeting?---Again, that would be the role of the divisional superintendent.

PN1539

Would you expect the panel to approve applications on personal circumstances provided by the members applying for purchase leave?---No. So are you saying just because they applied they should get the application approved? I might misunderstand you.

PN1540

So should personal circumstances be taken into consideration by the purchase leave panel?---Yes, it definitely should, yes.

PN1541

How were members applying for purchase leave to know that their application would be decided on their discussions with the inspector and brief notes made on the application form?---I don't have the answer to that question, Commissioner.

PN1542

You don't know how they would know?---I wasn't part of the process, so I can't say. My understanding is that there was a feedback loop to the members, but I wasn't part of that decision-making.

PN1543

Do you believe that this is the best method to assess applications for purchase leave?---From my understanding I thought Eastern Division 4 had a reasonably coherent process and a feedback loop to members. I can't talk to the actual decision-making involved in it.

PN1544

Do you believe that personality conflicts could influence decisions?---I – no.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1545

What result would you expect from the purchase leave panel: a recommendation or an approval?---Again, I think I've stipulated this in my statement, Commissioner, my role is to provide strategic oversight. My role is not to tell the divisional superintendent what decisions they should and shouldn't make. I have six divisions to run, plus other areas. So I can't really answer that question in all honesty.

PN1546

From your perspective, who had the authority to approve applications for purchase leave in ED4 and other divisions? What level? What rank?---Well, it goes up to - the process that we put in place was a review process. It went up to superintendent in the end. The system, my understanding, allowed for senior sergeants to make approval when it actually should sit at the inspector level for recommendations. So the system in itself had a failing, which is our IT system, Commissioner, what we call HR Assist.

PN1547

THE COMMISSIONER: Yes.

PN1548

MR GOLDSWORTHY: So who could ultimately approve it?---The inspector could ultimately approve it, but given the context, what we're facing from a regional perspective, I help the responsibilities of the superintendent.

PN1549

Do you know how many weeks of purchase leave were ultimately approved in ED4 for sworn police members?---I'd have to look at the notes but I'm thinking nine.

PN1550

Nine weeks?---Approximately. It was either nine or 13, but it could be less than that.

PN1551

Are you aware that no members from the general duties across the entirety of ED4 had their purchase leave applications approved?---That is my understanding, yes.

PN1552

Are you able to provide an example of exceptional circumstances that allowed these members to have their purchase leave applications approved? The four that had theirs?---In the context of those applications and the basis of what the business need was and the community safety requirements, it'd just be supposition, Commissioner.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1553

THE COMMISSIONER: Yes. You've said over and over again that you didn't have the responsibility for it, because it was someone else doing it?---That's right. I can understand in certain context there may be a position – I've even put that in my statement.

PN1554

Yes?---That personal circumstances may be considered, but I'm not aware of each individual case there.

PN1555

MR GOLDSWORTHY: Would you classify having primary school aged children as an exceptional circumstance that would justify granting purchase leave?---Not necessarily, no. It depends on the circumstances of having the primary school children.

PN1556

Do you believe mental health grounds should be considered as exceptional circumstances to grant purchase leave?---It just – it depends on the context of the mental health grounds, Commissioner.

PN1557

THE COMMISSIONER: Yes?---If it's a blanket scenario, there are other things that we can do organisationally, apart from providing purchase leave to support members, and I would expect us to actually go through that process with the member if that was the case.

PN1558

MR GOLDSWORTHY: Could you please go to appendix 15 of your statement?---What number? Sixteen?

PN1559

Fifteen. One-five?---Fifteen. Sorry. Yes.

PN1560

THE COMMISSIONER: Is that 447? Exhibit 15 is at 447. Is that what you're talking about?

PN1561

MR GOLDSWORTHY: I do have a copy for the Commissioner, if you would like.

PN1562

THE COMMISSIONER: A big one.

PN1563

MR GOLDSWORTHY: Do you want that enlarged copy?---Thank you. Although my eyesight is good at this stage, so I do appreciate it. If it was against the wall I'd have trouble.

PN1564

THE COMMISSIONER: That's a relief.

PN1565

THE ASSOCIATE: There's an enlarged copy for yourself.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1566

THE WITNESS: Yes, the multi-focals don't even cut it, so the ravages of age, unfortunately.

PN1567

MS LEONCIO: Yes.

PN1568

MR GOLDSWORTHY: Now, in this email you constructed or sent out on 15 June, the business needs, after discussion with the Police Association of Victoria - business needs you've stated there needs to be face-to-face conversation, proper consultation. Consider the needs of the employee, childcare and travel booked, the timing of purchase leave. The consequence of any decisions, and if there are alternative grounds – reasonable grounds for business needs. Impact on the work location, staff and other employees. And negotiate in good faith with possible reduction in purchase leave. Was that your email that you sent out?---It is, Commissioner, yes.

PN1569

THE COMMISSIONER: Yes.

PN1570

MR GOLDSWORTHY: Could I just ask why that was not sent to anyone within ED4?---That was actually sent to the superintendent at ED4, and then any other communication that I had to members who had previously approved purchase leave, they received a different email, which was in similar context.

PN1571

So when I look at the 'Sent to', who was it sent to in ED4 in that list, please?---So I missed out on the acting superintendent. There should be another email that's actually followed up the next day, which was Ash Mason.

PN1572

So he received that email?---He did, yes. And that was my error because I probably hadn't kept up with who was acting superintendent at the time. But I do recall I did follow up that email to Ash Mason the next day.

PN1573

So that email itself to Acting Superintendent Mason, was that provided in the email list that you were requested to provide to the Fair Work Commission?---I believe I did follow that up, yes but I can confirm that.

PN1574

Acting Superintendent Mason sent an email to you. Now, I've got it as page 54 of 343 of the emails?---Three hundred and 43?

PN1575

Number 54. So that was all the emails that were sent out?---Yes.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1576

Yes, so there was 343 pages?---Right. Okay.

PN1577

I read through them all. On page 54 of that he sent an email to you. I'll see if I've got a copy here?---Sure.

PN1578

THE COMMISSIONER: Can someone help me? I'm at a loss myself, so - - -

PN1579

MR GOLDSWORTHY: All right. There was one that was provided previously when – while Martin was giving his emails. That's the one. So if the Commissioner could have a copy of that, please.

PN1580

THE COMMISSIONER: I'll photocopy one.

PN1581

MR GOLDSWORTHY: You will actually have a copy of it, sir.

PN1582

THE COMMISSIONER: Yes. No.

PN1583

MR GOLDSWORTHY: It was in A4.

PN1584

THE COMMISSIONER: Yes. A4. Well, I do have - - -

PN1585

MR GOLDSWORTHY: Sorry, A3, it was.

PN1586

THE COMMISSIONER: A3.

PN1587

MR GOLDSWORTHY: Yes.

PN1588

THE COMMISSIONER: So that's in A3; is it?

PN1589

MR GOLDSWORTHY: My apologies. The paper size was A3; not the - - -

PN1590

THE COMMISSIONER: The paper size was A3 as well:

PN1591

Thanks, Ash. Really appreciate it. Tony.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1592

MR GOLDSWORTHY: That's the one.

PN1593

THE COMMISSIONER: Yes, and as luck would have it, it's A4 and A3, so hence my confusion. All right. I've got it.

PN1594

MR GOLDSWORTHY: Now, Assistant Commissioner, are you able to see that email?---If you can direct me to it?

PN1595

THE COMMISSIONER: Yes, perhaps.

PN1596

THE WITNESS: The number.

PN1597

THE COMMISSIONER: If you could hand that back, please.

PN1598

MR GOLDSWORTHY: It may have been in your statement but the records that I'm referring to is from the emails?---I understand that. If I can just get a reference, that'd be fine. Sorry.

PN1599

It was page 54, 343.

PN1600

THE COMMISSIONER: Ms Leoncio has a copy?---Sorry. Thank you.

PN1601

MR GOLDSWORTHY: If you can read that you're doing well. It may ring a bell?---Yes.

PN1602

You're familiar with that?---I am, yes.

PN1603

Do you see the second-last dot point, it's got:

PN1604

Assess applications against demand unless extenuating circumstances/critical are not approved on reasonable business grounds.

PN1605

?---Yes, I can see that, yes.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1606

Do you think that complies with what you sent in your email in relation to considering the needs of the employee? So you've got Assistant Commissioner –

sorry, Acting Superintendent Mason specifying the threshold grounds of 'extenuating circumstances' or 'critical', whereas you've listed it down to, 'consider the needs of the employee'. Do you think they're compatible or contrary?---They're not exclusive to each other. Those dot points are run concurrently. So for me what – that dot point would be consistent in relation to reasonable grounds for business needs.

PN1607

Okay?---Not one dot point is exclusive to the other.

PN1608

All right?---That's the whole essence of an assessment process, in my opinion, Commissioner, and I would have thought - - -

PN1609

THE COMMISSIONER: So are you meaning they're complementary with one another or - - -?---Yes. To consider one without the other, then I don't think we've been fulsome in our assessment process.

PN1610

Okay?---So they may not all exist together but not - - -

PN1611

I understand. I understand?---And I would have thought that the reasonable grounds for business needs would be similar to assess applications against them – are - - -

PN1612

Yes, thank you.

PN1613

MR GOLDSWORTHY: The threshold of assessment as specific by Acting Superintendent Mason is listed unless extenuating circumstances or critical, whereas you've had a more conciliatory approach, considering the needs of employee, childcare, travel books, timing of purchase leave. There seems to be two quite distinct thresholds as to what should be approved?---I'm just reading all the dot points. I don't necessarily agree with that statement. My email is the email for assessment – this email asks to set out and go through the process they went through. I wouldn't have thought that Ash's email is subservient to my email. I would have thought it was subservient to my email in relation to the process.

PN1614

Would it surprise you to learn that Inspector Henry sent an email to Superintendent Arbuthnot on 4 July, and he stated:

PN1615

I will not be putting forward any potential personal circumstances that are exceptional and compelling.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1616

Once again, that threshold of exceptionally compelling, do you think that is a different threshold to what you've listed?---It – in my statement I had to rectify a perception that was held in relation to that assessment process by Inspector Henry.

PN1617

THE COMMISSIONER: Yes?---There was an email pointed out which was inconsistent - - -

PN1618

Yes, it's the source of some controversy in this proceeding, and I was going to ask you questions about it, but I'll save it?---Which was inconsistent with my – the approach that I discussed with the Police Association.

PN1619

Yes?---So I rectified – I believed I'd rectified that process.

PN1620

MR GOLDSWORTHY: But the email that was sent that I'm referring to, was on 4 July. Your concern around that initial email from Inspector Henry was in the middle of June?---That may be the case but mine still stands. My expectations is that my process is the process that was to be followed. And then it's up to the determination of Superintendent Arbuthnot and her leadership group of how they interpret that and deliver upon it.

PN1621

THE COMMISSIONER: Yes. Yes?---Yes.

PN1622

MR GOLDSWORTHY: So going back to your criteria, how can you negotiate in good faith when you don't know what threshold applications are being assessed on, whether it's extenuating or critical circumstances, or exceptionally compelling?---Well, negotiating in good faith means you don't have a predetermined idea of an outcome, from my perspective. So for me you actually have an ability to actually listen to what the individuals have to say, and then you assess it against what the community safety needs are for that particular area. So that's how I would term that.

PN1623

Do you believe that the Wodonga uniform section has sufficient staff to undertake their policing roles?---There's a lot of variances attached to that, but at the moment their profile is at the level where they can deliver against minimum service delivery requirements. But due to absenteeism and other aspects, their ability to be proactive in certain areas is probably limited.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1624

Do you believe the unit or area that is at 100 per cent capacity should be entitled to take purchase leave?---No, no, it can. It's a one-dimensional question and I can't answer that in a simple way. From my perspective, each application, as per the enterprise bargaining agreement, needs to be assessed on its basis. And that basis

is not only relevant to the needs of the individual but also the needs of the service that we provide to allowing for a safer community. So I would expect that each individual case is assessed on its merits.

PN1625

So if it's not when there's 100 per cent of staff available, when will I ever be able to take purchase leave again?---Again, I could rudimentarily suggest that that's the case but just because you have 100 per cent staff doesn't mean you go through the rigor of assessment, because that's not the – from my interpretation of the EB, that's not the design of it. The design of it is actually for – it's a benefit that a member can apply for, and then the business decides on how they do it. So case in hand, if we had a border closure again with COVID, if you had 100 per cent people you still wouldn't get purchase leave. But that is an exceptional circumstance, so I couldn't answer that in a clear way, Commissioner.

PN1626

THE COMMISSIONER: Okay. Thank you.

PN1627

MR GOLDSWORTHY: Can you explain what strategy or action plans that you have developed to address purchase leave within the ED4, so that members are able to apply for it and have it approved?---It's not my role to develop a strategy and action plan for ED4, Commissioner.

PN1628

THE COMMISSIONER: Yes?---But, having said that, from a regional perspective, we're going through processes to ensure that we have consistent practice in relation to that.

PN1629

MR GOLDSWORTHY: Do you believe members should be able to take purchase leave?---I think it's an entitlement that members are able to apply for, yes.

PN1630

What about members selling their leave?---Again, it's an entitlement members are allowed to apply for, yes.

PN1631

What's your opinion on the email that's sent by Commander Nyholm to you on 12 June 2023, where she highlighted leadership decision-making in ED6. There was a lack of organisational planning and readiness to knock back applications, that:

PN1632

Purchase leave could be controlled because we are not obliged to approved it.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1633

?---The context of that email is that ED4 is a division within the region which was more or less the head of the other divisions in relation to how to manage significant absenteeism. In my statement I think I've indicated quite clearly we

put 13 resources up to that division due to absenteeism, and actually making sure that we deliver the service to the community that we needed to do. In case at hand, Wodonga, that's, you know, it was leveraged by the association and rightly so, in my opinion, in the need to do divisional things. ED6 is a different kettle of fish. ED6 is a different division. It doesn't have a cross-border township. It doesn't have those aspects going. And it also hadn't had – hadn't suffered the exact amount or the same absenteeism that ED4 had suffered. So I found that some of my superintendents weren't quite as forward as I would have liked in relation to their assessments of their business need. And that's why we started this work in the first place, why we commenced the piecework regionally, to actually try and understand the impacts of those decisions.

PN1634

The secondary part of that email, that purchase leave could be controlled, that you're not obliged to - - -?---Could you just point me to the – so I can just read it, sorry?

PN1635

It's TL3?---Thank you. Sorry.

PN1636

The second party, sorry. Yes, so at the bottom of that page. So:

PN1637

Let's talk on what and how we would like to address this. I think two issues. ED6 and leadership decision-making.

PN1638

And so:

PN1639

The lack of organisational planning and readiness to knock back applications.

PN1640

?---Yes, that's – so point 2 you want me to make comment about?

PN1641

Yes, and in addition to that, on the second paragraph, the last sentence. So it's the paragraph that starts with:

PN1642

I'm sure we did discuss the risks of approving purchase leave.

PN1643

And you go to the end of that paragraph:

PN1644

I'm sure our conversation was around what we could and could not control. Purchase leave was a could control because we're not obliged to approve it.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1645

?---Correct. Yes.

PN1646

Yes, so I'm just wondering your attitude towards that, specifically going into the approval process, was there a previous position that you are not obliged to approve purchase leave?---So in context this email was generated due to a list that we believed was being created due to decision-making regionally, I'm speaking about now, Commissioner.

PN1647

THE COMMISSIONER: Yes. Yes?---And while Karen may have written those words in that manner, if I go to my email where I set out the process which was done in consultation with the Police Association, that is from my perspective the leverage point in relation to the decision-making.

PN1648

Yes?---We were – we had previously discussed with the leadership team our concerns about this process and our concerns about the vision that we have.

PN1649

Can I capture it, though, this way. It wasn't done in the rigorous process before, as far as the reasonable business grounds, and so it's – not a crisis level but a level that was sort of a little bit out of control, so it had to be pulled back a bit and sort of elements put around it?---Correct, and that's why I approached it the way I did in that.

PN1650

Yes?---So, as you can appreciate, 3300 people, it's a big business to manage.

PN1651

Yes?---But my fundamental - - -

PN1652

I don't envy you; I can tell you?---My fundamental concern always lies around what our role is in relation to protecting life and property and serving the community. And there is a tension between that and the rights and the EB rights of members in relation to some decisions we make. In this context, the decision, in my opinion, allowed us to test the rigor of the process to actually ensure that we had the greatest capacity we can to serve the community. Karen's initial email - whilst I can't speak for her, we have discussed this post that email.

PN1653

Yes?---It was purely around identifying the risk as we saw it at the time.

PN1654

Yes?---And based on previous experiences we'd had in the region in relation to service demand.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1655

Okay. Thank you.

PN1656

MR GOLDSWORTHY: Just to confirm, does the Wodonga Police Station meet the minimum station profile for Eastern Region?---It does now, I believe. Back at the time – well, no, it did because of the additional resources that were placed up there prior to the last SAM. That's the SAM allocation model which is the model we use for actually placing police – uniformed police within the State.

PN1657

Yes?---And there's a complex equation around that. My understanding, it does meet it now because it has those additional staff.

PN1658

Just go to the Chief Commissioner's Instructions, CC123, station profiles. It's contained within the statements that are provided, but I'm happy to provide an additional copy for reference?---Thank you.

PN1659

THE COMMISSIONER: Do you know whose statement it's attached to?

PN1660

MR GOLDSWORTHY: I believe Superintendent Arbuthnot, and I'm not sure, it might even be in your - - -?---I think I have it in mine, yes.

PN1661

THE COMMISSIONER: That's good.

PN1662

MR GOLDSWORTHY: I'll just ask, if you're able to go to the scoping application on the first page?---Yes.

PN1663

If you go down to the third paragraph. So:

PN1664

Where a station has sufficient resources available to meet their MSP adherence to the CCI needs to be immediate. In cases where further resource allocation is required, the implementation of this CCI will be staged until the recruitment and deployment - - -

PN1665

THE COMMISSIONER: Sorry, I've lost it. In trying to find the folder, I've lost where you are.

PN1666

MR GOLDSWORTHY: Sorry, it's the first page, sir.

PN1667

THE COMMISSIONER: Yes.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1668

MR GOLDSWORTHY: Minimum station profiles.

PN1669

THE COMMISSIONER: Yes, it's okay. Yes, minimum station – yes, yes.

PN1670

MR GOLDSWORTHY: The first page, the third paragraph. It's the scoping application.

PN1671

THE COMMISSIONER: Yes, 'Where a station'?

PN1672

MR GOLDSWORTHY: Yes.

PN1673

THE COMMISSIONER: I've got it. Thank you.

PN1674

MR GOLDSWORTHY: So the implementation of this Chief Commissioner's Instruction would be staged until the recruitment and deployment of additional resources can be met. Is this applicable to Wodonga Police Station or the Wodonga PSA?---What's not in this is there are non-negotiables in relation to that, and that is in relation to the two-up part, Commissioner.

PN1675

THE COMMISSIONER: Yes?---So, from recollection, it's clearly stated that – and there has been communications that have gone out, although I don't have them. The non-negotiable part of that process is the fact that we have two-up people in – for 251, a division demand, and also in relation to the senior sergeant driver. Where organisationally we have tried to manage that demand is some police receptions have been closed at times because the priority is to have police on the road.

PN1676

Yes?---Not behind police reception. And there's been recent media in relation to that.

PN1677

MR GOLDSWORTHY: Just going to the CCI on general duties rostering. So paragraph 12?---This is in the same CCI we're talking about?

PN1678

Just the general duties?---I don't know if I have that.

PN1679

So on Superintendent Arbuthnot's statement it's JA6. I can provide that?---Thank you. So I haven't read this. I've read it in context but I haven't read this prior to the hearing, Commissioner.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1680

THE COMMISSIONER: That's okay.

PN1681

MR GOLDSWORTHY: So it's on the third page – the fourth page of that CCI, and the annual roster planning?---Correct.

PN1682

Paragraph 12. So:

PN1683

Annual roster plans, previously referred to as annual leave rosters, must be informed by service demand forecasting and other known services and seasonal demands. These plainly should be used to support a considered and balanced approach to the allocation of leave and other approvals impacting staff availability. To assist with the planning and to provide clarity, an annual roster plan should record known member commitments that impact rostering. For example –

PN1684

and it goes through a number of them, including workplace flexibility assignments and professional development?---Yes.

PN1685

Do you consider that the annual rostering plans for the Wodonga Police Station were a considered and balanced approach to the allocation of leave and other approvals impacting on staff availability?---I haven't seen them, Commissioner, I wouldn't be able to answer that question.

PN1686

Do you believe that minimum station profiles provide sufficient staffing to play a role in disrupting an event in time?---I think they are a part of that contest in relation to our response and our responses to the community in need. So when you think of the divisional demand, the divisional demand is not the answer to crime prevention or productive measures, the division demand is purely a demand response and whether to family violence matters, serious crime or mental health injury type incidents. It is a part of the puzzle in relation to how do we get to a proactive space for things like drug teams and other type of taskforces which treat a specific type of crime. ED4 and ED6, because of their profile, have difficulty in that space just because of the FTE and the way they're structured. So, therefore, we then go to a second level in relation to that where we have our criminal investigation units combined with certain other areas where they're potentially uniform in type to deliver against some of those risks.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1687

So you would agree then that the criminal investigation unit and family violence investigations unit and the sexual offences and child investigation team, all investigate crime and contribute to crime prevention, disrupting crime, and

community safety, in addition to general duties police?---It's every police person's responsibility. It's what we're here for.

PN1688

Yes. Do you agree that the prior policing unit, the crime scene unit, and the divisional intelligence unit, all contribute to crime prevention, disrupting crime and community safety, in addition to general duties police?---Yes.

PN1689

Do you believe that general duties police contribute to reducing road trauma, crime prevention and disrupting crime and community safety – or disrupting crime and enhancing community safety while out on patrol?---Yes.

PN1690

At paragraph 41 of Superintendent Arbuthnot's statement, she states:

PN1691

The difference between the number of staff allocated to each station in ED4 compared to BMSL requirements is minimal.

PN1692

?---I'm sorry, could you just lead me to where that is?

PN1693

Yes?---Because I haven't actually read this.

PN1694

THE COMMISSIONER: It's on page 499 of the court book?---Thank you.

PN1695

What paragraph were we - - -

PN1696

MR GOLDSWORTHY: It was paragraph 41.

PN1697

THE COMMISSIONER: Forty-one. 'Service forecasting for BMSL', is the heading?---Yes. Paragraph 41?

PN1698

Yes?---Yes.

PN1699

MR GOLDSWORTHY: So in that, the first line:

PN1700

The difference between the number of staff allocated to each station in ED4 compared to BMSL requirements is minimal.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1701

Are you able to say what the minimum station profile for the Wodonga Uniform Station is?---I'd have to review a table for that. I don't have that off the top of my head, Commissioner.

PN1702

Would you like me to provide you with the table?---That would be wonderful. Thank you.

PN1703

Maybe not at hand, but if I was to tell you that it was 40.063 for other ranks, and 13.559 for sergeants, would you be in a position to agree or disagree with that?---I couldn't be in a position to agree or disagree. There's been a new profile that's just recently been released which shows the expected station profile, and I don't actually have that handy at the moment.

PN1704

JA7, sorry.

PN1705

THE COMMISSIONER: Where are we?

PN1706

MR GOLDSWORTHY: JA7.

PN1707

MS LEONCIO: JA8.

PN1708

MR GOLDSWORTHY: JA8.

PN1709

MS LEONCIO: Sorry.

PN1710

MR GOLDSWORTHY: Sorry. JA8?---Sorry. Thank you.

PN1711

THE COMMISSIONER: No, no, no, there we go.

PN1712

THE WITNESS: I'd had to - - -

PN1713

THE COMMISSIONER: It's 567.

PN1714

THE WITNESS: So total FTE is 62.789.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1715

MR GOLDSWORTHY: Yes, and so for other ranks, you can see the numbers there?---So 45.158 and 40.063.

PN1716

If you go across to MSP, minimum for FTE required?---Yes.

PN1717

So you can see it's 40.063 and 15.559 for sergeants?---I've got – unless I'm reading it incorrectly - - -

PN1718

So it's the - - -?---I've got 13.559 for sergeants MSP, and the core position is 15.631 for sergeants, for Wodonga.

PN1719

So if you go to other ranks, there's 40.063?---Correct, yes.

PN1720

Yes, so you can see from that table, it's outdated as the updated core position FTE is, that Wodonga is in excess of the baseline minimum. Do you make that – do you agree with that?---Yes.

PN1721

If I was to tell you that we're actually 52 FTE at Wodonga and 16 sergeants, which equates to 15.5 FTE, are you in a position to agree or disagree with that?---I wouldn't be able to agree or disagree. I'm just wondering when this one was produced, because I know there was a - - -

PN1722

Up the top of the table it's got, 'As of 30 November '22'. One year?---Yes, so there is a more up-to-date version of this in relation to the last allocation of personnel for Wodonga, which we could provide to the court, Commissioner, I'd imagine.

PN1723

Regardless of that, you can see that Wodonga is in excess of the minimum station profile. Would that be correct? On either the current figures you have on front of you, or the additional updated ones that you have?---Yes.

PN1724

Let's suppose that we are at Wodonga, 12 additional OR members, ahead of the minimum station profile, and two sergeants above the MSP. Would you agree that this equates to an additional roughly – and I appreciate that you may not be that great at maths or have a calculator on hand – an additional 2580 shifts for ORs, and an additional 430 shifts for sergeants above the BMSL?---I couldn't answer that, Commissioner. I'd need a calculator.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1725

So a quick one, 12 times 43, which is let's say by weeks, is 515. You multiple 515 by five shifts you get 2580?---And, again, I don't know if this is up-to-date, to be quite honest.

PN1726

Yes?---So there's been a latest edition which is – would probably be a month or so old, which may have a different FTE value in it.

PN1727

So on supposition that there are 2500 additional OR shifts and 430 additional sergeant shifts, do you believe the MSP takes into account the number – sorry. Would you say that the difference between the number of staff allocated to Wodonga, compared to BMSL requirement is minimal?---No. Again, I can't answer that because I don't know if this is the most up-to-date version of what that is, because there was a reassessment done on the FTE required.

PN1728

We'll move on from that. Do you believe that the MSP takes into account the number of employees on flexible work agreements?---No.

PN1729

If you go to the first page of the document we've just been looking at, the second paragraph which is titled, 'The MSP based on'?---Yes.

PN1730

The second dot point, 'Member availability':

PN1731

The number of shifts that a position typically performs annually. The formula uses data over a three-year average that has been considered for each division and separated by rank. It considers rest days, recreational leave, ATO, long service leave, purchase leave, personal leave, carer's leave, WorkCover, night shift recovery and parental leave, leave without pay, loss to part-time, and assignments excluding non-core assignment positions are counted as part of the MSP.

PN1732

So in relation to that question that I asked, do you believe that MSP takes into account the number of employees on flexible work arrangements, do you hold to the answer no?---Having read that, now I realise it does take into account flexible work arrangements.

PN1733

THE COMMISSIONER: Where is it?

PN1734

MR GOLDSWORTHY: If you're looking at 'loss to part-time', it's the last line.

PN1735

THE COMMISSIONER: Yes.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1736

THE WITNESS: Sorry, where are you indicating now, sorry?

PN1737

MR GOLDSWORTHY: The sentence that I just read out?---Yes.

PN1738

The second line down at the end, and it's got, 'Vacancies', and then, 'Loss to part-time', and, 'Assignments'?---Loss of part-time and assignments, yes.

PN1739

Yes, so do you believe that that – in all that it caters for, do you believe that the MSP takes into account flexible work arrangements?---I said yes, having read that now, yes.

PN1740

Commissioner, are you satisfied with that point? Yes. Okay.

PN1741

THE COMMISSIONER: I think it's been asked and answered twice.

PN1742

MR GOLDSWORTHY: Yes.

PN1743

THE COMMISSIONER: So, yes.

PN1744

MR GOLDSWORTHY: I think you've touched on this already but why was baseline minimum service level introduced?---It was negotiated, as I said, back in 2015 – I should know this because I actually drafted the policy initially. We had the two-up policy, and that was in relation to – and it was publicised, there was a threat against police members from a counter-terrorism perspective.

PN1745

Right?---And it was brought in to ensure that two-up members were – the priority was that each member would be two-up in relation to how they undertake their duty. That then grew in relation to sponsorship from the Police Association and also an understanding from Victoria Police about the primary safety of our members in relation to how they undertake their roles. And it has changed not dramatically, the intent's still the same, but it's just, it's been enhanced as we've gone along. And then it actually goes to actually our output and delivery requirements for community.

PN1746

THE COMMISSIONER: Yes?---Because obviously there's an impact to - - -

PN1747

It's more - - -?---It's more – yes.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1748

- - - finely grained, to use the cliché?---Yes.

PN1749

It started out with a two-up thing, but it's - - -?---Yes.

PN1750

- - - not metamorphosed but it's sort of evolved into something a bit more comprehensive?---There's a cause and consequence with all decisions you make in those spaces, and one of them is in relation to having highway patrol members who used to patrol one-up now patrol two-up.

PN1751

Yes?---So you've reduced that footprint, but enhanced their safety.

PN1752

Yes.

PN1753

MR GOLDSWORTHY: What do you believe the risks are when BMSL is not achieved due to unplanned leave, so that the 251 supervising sergeant reallocates their driver to maintain two bands operational in Wodonga instead of one?---The risks. The risks for me would be whilst there's a service delivery component, the sergeant doesn't – isn't able to perform their duty, as I describe previously. And that's where from a regional perspective I have been quite strong in articulating it, if that is the case then the primary outcome is for a sergeant to have a driver. Which means we either recall people from duty, we change people's roles and responsibilities in the station if we can, or we close the police reception.

PN1754

I accept that there's approximately 15 breaches or non-compliance of BMSL per month in Wodonga in recent times. Of the three/four shifts at Wodonga that operate a day and afternoon and night shift, over a year that's approximately 1095 day/afternoon/night shifts combined per year. If I was not granted purchase leave that provides an additional 20 shifts per year. How is it that that would make an impact over an entire year? How do you roster to prevent a non-compliance of BMSL when you've got 20 additional shifts over 1095?---So, again, I'd have to sit down and go through the totality of decision-making. You know, I can't answer that question.

PN1755

If I could go to Chief Commissioner's Instruction 1 of '23 which I've previously handed out, I believe. In paragraph 12 it's the minimum station profile, Chief Commissioner's Instruction 1 of '23, paragraph 12:

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1756

Regional leadership teams will consider MSP compliance a standing agenda item. This review process will focus on sustained MSP challenges at individual workplaces in need of resource support, as well as ensuring escalation points are followed to address the risks and trends.

PN1757

You follow that Assistant Commissioner?---Do I follow what it says?

PN1758

Yes, yes, you appreciate it?---Yes.

PN1759

So I'm just wondering, when was the last time any minimum station profile challenges at Wodonga were raised at RLG?---It would have been in relation to when we put resources into ED4. It would have been one of the primary aspects when it would have been BMSL then. Baseline and service delivery, I think that's what it's called. But in totality there's a reporting mechanism that each division does in relation to whether they're compliant or not compliant with the BMSL requirements. And it's generally down to unplanned leave, etcetera.

PN1760

So that's at paragraph 11:

PN1761

The reporting will occur through a month workplace inspection reporting process.

PN1762

?---Yes.

PN1763

So you're not able to say specifically when it was last raised in relation to MSP challenges at Wodonga?---No.

PN1764

Given that such an issue has been raised in relation to what's been called breaches of BMSL, an average of 15 per month, do you believe that that is an issue that should have been raised at RLG? Isn't that important?---In the totality of the region that is a reasonably standard issue across a lot of divisions, whereas due to even in Eastern Division 1 and Eastern Division 2, which have a very large FTE component, I am now closing police receptions. So it's just a part of business, to be quite honest, in relation to how we function. My primary aim and the question I ask is what are we doing in relation to the safety of our members if that's the case. And that's purely my sole purpose of understanding.

PN1765

So effectively you're saying that it's pretty standard that BMSL is not achieved on a regular basis throughout the region?---No, that's not what I'm saying. I'm saying that we do get reports of non-compliance in relation to BMSL – sorry – MSP, but we have a mechanism of approach to try and ensure that we still maintain a service delivery component for the community.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1766

What's the average unplanned sick leave across the Eastern Region?---I don't have an answer to that, Commissioner. I'd have to look at it.

PN1767

THE COMMISSIONER: You'd have to have an eidetic memory to be able to say that, you'd think?---I remember a lot of things; that's not one of them.

PN1768

No.

PN1769

MR GOLDSWORTHY: Would it be in the order of perhaps 13 per member on average?---I think there is a reasonable standard around 13 or 15 per member.

PN1770

If you go to paragraph 13 of that report in CCI, it says:

PN1771

In consecutive roster periods where MSP could not be met through the approved escalation points, or there is an ongoing risk impacting your ability to meet MSP, the Regional Assistant Commissioner must notify the Deputy Commissioner Regional Operations, within a monthly reporting.

PN1772

Have you ever had cause to do that either for Eastern Region or on behalf of the ED4?---ED4 would have been the MSL in relation to when we put the resources up there. That was the last time it would have gone to the Deputy Commissioner about that. And I just did that last month in relation to Eastern Division 1 where we're now closing two police receptions because we can't meet minimum service delivery requirements.

PN1773

That notification in relation to Wodonga would have been in the middle of last year; would that be correct?---Correct.

PN1774

You've had no cause to make further contact with the Deputy Commissioner in relation to MSP due to the 15 non-compliant BMSL entries each month?---So when we talk about MSP, in my mind that's not the totality of what we're talking about here. So, yes, that is a component of our service delivery but it's not the totality of our service delivery. So case in hand, I would talk to the Deputy Commissioner across a very broad sector of how the business is running and how we're meeting our demands. There's a reporting mechanism that goes in that I don't talk to him directly about, that goes in monthly, that actually clearly indicates where we're – where we have tension and where we're not meeting requirements as we'd like. Having said that, again I'll come back to it, whilst we might not be compliant in relation to MSP - i.e. we're rostered to it, but we don't deliver upon it – we do not put members out who are one-up, and I've been very, very strong on that. So if it means I have to close the police reception, like I said, or I'm recalling members on duty, or I don't put the person on the road and they work from the station, that's the primary aim.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1775

I'll change issues now onto the Protracted Emergency Response Management Model. What can you tell the Commissioner in relation to resource commitments as relevant to Eastern Region as a result of the PERMM?---It's a tiered response. I should know because I was the police commander for closing the borders during COVID, and it's the initial stages where it came out. To know exactly what we meant to pull out from Eastern Region at each tier, I would have to refer to the PERMM to do that. So that means that when an event like bushfires, like floods or a pandemic, where we have a huge need for frontline police service delivery, each area within the organisation has a pre-identified number once it reached a threshold of police deployed, if that makes sense, Commissioner.

PN1776

THE COMMISSIONER: Yes.

PN1777

MR GOLDSWORTHY: If we could look at page - - -?---Just, again, you're just going to have to refer me to where.

PN1778

Yes, so it's Superintendent Arbuthnot's statement?---Thank you.

PN1779

Paragraph 64, page 14 of the statement.

PN1780

THE COMMISSIONER: There's a lot of paperwork?---Sorry, I do apologise.

PN1781

Sixty-four.

PN1782

MR GOLDSWORTHY: The bottom of page 13, it goes over.

PN1783

THE COMMISSIONER: Yes, it's 503 and 504. So 503 and 504?---I'm at 503. Yes, go on, sorry.

PN1784

MR GOLDSWORTHY: Yes, so paragraph 64 down the bottom?---Yes.

PN1785

It's the second sentence in:

PN1786

Power of the PERMM is an acceptance that local areas and regions will stand alone for the first 72 hours whilst extra resources are coordinated and developed centrally. This means that all available resources, including staff who are not on duty, will be recalled to duty for deployment. ED4 is well known for the management of emergency events.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1787

Is it correct that ED4 would have to manage a large scale event for the first 72 hours, without assistance from outside the division or potentially outside the region?---No, not entirely. It all depends on the event.

PN1788

Could you give some clarity to that, please?---So generally speaking it will be the first 24 to 48 hours, from my perspective. If I have to try and push resources up, it'll generally be in relation to the context of supporting what we call the main police operations centre for the division.

PN1789

Yes?---And then we will go into planning about gaining resources going forward. It doesn't mean they get them within the 24 to 48 hours, but the plans start then. Sometimes it does take 72 hours to get or 48 hours to get resources up there.

PN1790

Okay?---And it depends on the scale of the incident. Case in hand, where we just recently had floods and fires in ED6, we also had impact in relation to floods for ED4, though at a lower scale. So I don't – I have a tension there. I can't pull resources from ED4 to take them down to ED6, so then I supplement a different way if I can.

PN1791

So speaking of comparisons between ED4 and ED6, would you say there's much in the way of difference for emergency events in relation to the – or naturally occurring emergency events like fire and flood – the difference between the two divisions?---They're not exactly the same, but in the context of emergency management, they would be the highest risk divisions that I have within the region, especially in relation to floods and fire.

PN1792

Yes. Onto the Wodonga Highway Patrol. It's been claimed in the opening that they were down 50 per cent of their staffing levels. Do you actually know the staffing levels at the Wodonga Highway Patrol?---One and – I'm trying to recall actually. I think it's one and nine.

PN1793

That's correct. Are you aware of how many are currently off-duty, on WorkCover?---Currently now, no, I don't.

PN1794

If I said that there were three members off on WorkCover, would you be in a position to agree or disagree with that?---That could be the case, Commissioner.

PN1795

Yes. So three members out of a total of nine ORs, that would put the capacity down by 33 per cent; would that be correct?---Correct.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1796

Not 50 per cent. Right. You've been the Assistant Commissioner for Eastern Region for two years. What have you done in relation to increasing the capacity for the Wodonga Highway Patrol, if it is an issue?---At times I've pushed highway patrol members up from other areas in the region. I've discussed with Superintendent Arbuthnot in relation to supplementing from her workforce. I don't have an ability to actually put resources permanently into a highway patrol. Highway patrols aren't, at this stage, included in the SAM allocation model. Not the latest ones anyway.

PN1797

Yes. So Wodonga Uniform, moving onto that. Are sergeants who are performing 251 duties interchangeable? Does it matter who it is provided there is one there?---Could you just clarify that question?

PN1798

Are we interchangeable? If you have somebody who is capable and competent at performing 251 supervisory duties, does it matter who the individual member is? Can it be member A or member B? Does it matter who it is, provided they are capable and competent?---If you've got the number, I would suggest not, no. As long as they've got the competency, and you've got the human resource to do it.

PN1799

If you've got 16 sergeants and you're able to provide a sergeant on every operational shift, it doesn't matter who it is providing it's somebody. Would that be correct?---If we're talking about uniformed sergeants - - -

PN1800

Yes?--- - - - I wouldn't say it doesn't matter. That is the business profile that we run, so the reality is that all sergeants have a competency to do the same job.

PN1801

Yes?---If that makes sense, Commissioner.

PN1802

THE COMMISSIONER: Yes.

PN1803

MR GOLDSWORTHY: With the one-up policy that you mentioned earlier, just for clarity, single-member stations and 16-hour stations, do they frequently work one-up?---Sixteen-hour stations less so now. One-member stations are excluded. Well, not excluded. One-member stations are called out specifically in relation to their workability in the policy.

PN1804

So do you think it's incongruent that you are able to have a police member at a single-member station or a 16-hour station working one-up, but not a supervising 251 sergeant who would attend jobs when there's already a unit there?--It's not my position to call out the policy and the government policy of the day, Commissioner.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1805

But you could see the inconsistency in it?---I can see there's a point of difference in policy. There's also safety parameters in place around those members in doing that role.

PN1806

If the achievement of BMSL is an issue, is it appropriate to keep removing uniformed members from Wodonga Uniform to be used backfilling in I&R positions?---Again, as I've tried to explain before, the business is not one-dimensional. So whilst we have a discussion in relation to minimum service delivery and uniform policing, there's a whole context in relation to how we provide community safety in this organisation, especially in relation to regional policing. If it means that we push a uniformed member to the criminal investigation unit or other units, either for development or because their loss of capacity like highway patrol, then I think that's a reasonable decision to make, yes.

PN1807

Just in relation to member development, are you aware that specifically within the policy it suggests that that not take place at the risk of breaching BMSL?---Yes, it doesn't – that's if we're not meeting BMSL, but there are also other elements in relation to if I can't – if I have one work unit that can't work, so if it's development then we have actually taken people out of those support areas to do that, if needed. If it's in relation to supplementing a workforce because they won't be able to perform their duty, then I've made decisions at times to say they can stay there. Not individual decisions, in a policy setting as far strategic outcome for the region.

PN1808

In relation to Corryong, what have you done to make it a more attractive proposition to transfer to Corryong?---Nothing, Commissioner.

PN1809

Do you have it within your liberty to make it a more attractive proposition?---Contextually we have tried to highlight the benefits of rural policing, not only in Corryong, not particular in other areas, that I'm looking at whether we can purchase residences because they're hard to get people into. I understand Corryong now is – their supplement is quite full almost. They're almost full FTE, but it is a – it's an outer fringe country town and it takes a particular individual who wants to go and work there.

PN1810

THE COMMISSIONER: So is the issue the remoteness?---It's remoteness.

PN1811

Yes?---It's distance to travel. I visited there three weeks ago.

PN1812

Right?---It's a long way from a long way.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1813

Right?---And the road is windy, etcetera.

PN1814

Right?---But you speak to the members there, they go there for lifestyle. They go there because they want to be connected to their community.

PN1815

Yes?---Not all members are like that.

PN1816

MR GOLDSWORTHY: You're aware that two additional vacancies have been assigned to Corryong on top of what they already had in the last six months?---Sorry, you just broke up.

PN1817

Are you aware that two additional vacancies were assigned to the Corryong Police Station?---Yes, I am.

PN1818

If you had the option, would you have assigned those two positions to Corryong?---Not my decision, Commissioner.

PN1819

Who made that decision?---That's the SAM allocation model team.

PN1820

Does the workload in Corryong justify having eight OR members there?---From the members, when I went and spoke to them, yes, it does because it's the exhaustion factor from being available. When you take in member's leave and personal leave, are on availability quite often and when you have a reduced capacity – and that's not the only area in my region that's like this – they cited an exhaustion factor in relation to always being on available and not being able to switch off. So that alone, in the context of additional two staff, I'm quite supportive of.

PN1821

THE COMMISSIONER: So they've got to be on call?---Correct. And Tallangatta is an hour – an hour away. Tallangatta's the nearest – closet, and Tallangatta is not 24/7. And then you've got Wodonga which is an hour and 20 away. An hour and 20 – and hour and 30.

PN1822

MR GOLDSWORTHY: Yarrawonga is a bit closer but - yes?---Yes. I'm just asking the local sergeant because he probably knows better than I do.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1823

Are you aware that the reported crime for Corryong last year was roughly 106 crimes in total?---Again, I come back to that point, that may be the case but in

relation to the area they cover and the exhaustion in relation to availability, I don't think it's unreasonable to put two additional staff there.

PN1824

Would it surprise you to learn that Senior Sergeant Parr is giving evidence to this Fair Work Commission to say that the majority – there is one member who disagrees, but the majority are actually happy with the amount of availability that they're performing. They're actually concerned if those other two spots are filled that they won't get as much because financially - - -?---That's contrary to the conversation I had.

PN1825

Okay?---Literally.

PN1826

No worries. I might get you to go to the data. So we've discussed some A3 pages, which hopefully the Commissioner still has?---So, again, can you just direct me to where I'm going so I've got - - -

PN1827

What I'll do is I'll find that?---Thank you.

PN1828

THE COMMISSIONER: I think the trouble with the folder, Assistant Commissioner, is that it's microscopic, so the - - -?---No, that's fair enough. And, you know, and I don't think I'd be able to read it, so this is fine. I'm happy.

PN1829

MR GOLDSWORTHY: So hopefully – look, I don't know what it was marked last time. It was definitely marked but I didn't have the wherewithal - - -

PN1830

THE COMMISSIONER: Okay. Well, I might be able to help you.

PN1831

MR GOLDSWORTHY: Do you recall, Commissioner, there's the one with the blue headings?

PN1832

THE COMMISSIONER: Yes, yes.

PN1833

MR GOLDSWORTHY: And there's the other one that has a couple of lines that are in red. A table.

PN1834

THE COMMISSIONER: I think it's 336 and 335. Is that the one in there?

PN1835

MR GOLDSWORTHY: Okay.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1836

THE COMMISSIONER: Yes, maybe if you can just turn up 336 and 363 – well, let's do it in order. Three-three-five and 336. These are the documents you're being taken to?---Yes.

PN1837

MR GOLDSWORTHY: So in relation to the document - - -

PN1838

THE COMMISSIONER: Hold on a second.

PN1839

MR GOLDSWORTHY: Yes.

PN1840

THE WITNESS: So what pages, sorry, are we looking at?

PN1841

THE COMMISSIONER: If you go to the court book or the Commission book, more accurately?---Yes.

PN1842

It's at page 335 and 336?---Three-three-five and 336.

PN1843

According to my note on the top of here?---Yes, I've got that.

PN1844

You've got that. Good. All right.

PN1845

MR GOLDSWORTHY: So, yes, it might be easier to read off the - - -?---Yes, that's all right.

PN1846

- - - A3 document, with the - - -

PN1847

THE COMMISSIONER: We're going to the blue heading?

PN1848

MR GOLDSWORTHY: Blue heading, yes?---With the blue heading?

PN1849

Yes?---Got you.

PN1850

So these figures were drawn directly from what was provided to you in an email from Siobhan Owen?---Yes.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1851

Then under an order to produce, the second part of that document is a copy of what was shown then. So these figures are I'll say almost identical to what was provided by Siobhan Owen. It's the figures on the right-hand side that I've added, where I've included percentages?---Yes.

PN1852

I'll just ask you to have a look at the ED4 at the top, at June 2023?---Yes.

PN1853

And if you go to – go across to the very right-hand side, the grand total of purchase leave approved at that stage was 10.84 weeks?---Correct.

PN1854

And the percentage of that in comparison to all the leave that was approved in Eastern Region was 3.6 per cent?---Correct.

PN1855

If you go down to the October figures, which is at the third table down, and Eastern Region Division 4. If you go across the grand total, it's 3.8. So these are FTEs. And that's 1.3 per cent of the grand total?---Correct.

PN1856

So it's reduced from 3.6 down to 1.3 in relation to the overall approved applications for FTE. If you go back to the second table, purchase leave for weeks, and it's Eastern Region Division 4. If you go across to the grand total, there was a total of 25.37 weeks approved out of 807, and that was what was in your email originally?---Yes.

PN1857

Then if you go to the very bottom table, we end up with in October a total of 9.37 weeks, which is 1.3 per cent of the overall total?---Correct.

PN1858

When you compare ED4 to any other division within your region, do you think it's justifiable to have such low figures for the approval of purchase leave?---I don't think it's unreasonable at all.

PN1859

Could you expand on that, please?---Well, as I said, ED4, from my perspective, Commissioner, had honed their business because of absenteeism some 12, 18 months before, where we had to supplement with 13 people into the division. So their approach to understanding that this has an impact on decision-making with flexible work arrangements – certain flexible work arrangements, was probably in the position where I would like it to be. Having said that, at this point in time that was the decision that was made by the superintendent of the division, based on what they believed they were facing.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1860

THE COMMISSIONER: Yes?---As I've indicated, I would expect my other superintendent group to have a very similar – not necessarily the same outcome but a very similar approach to understanding the risk attached with those decisions and the impact on their service delivery. I would think you would see a different set of numbers for the next financial year.

PN1861

Right?---And they're the discussions we've had as a leadership team. That's not saying there's a prohibition on purchased leave, because it could very well change for ED4 next year, because it's not a set-and-forget. But I expect my superintendents to have a greater understanding of rigor around their decision-making when it comes to impacting on their service delivery and community safety.

PN1862

Yes. Okay?---As long as they're consistent with the EB and the requirements of the EB, which I've always asked for – that's why I went to the association in the first place when we started this review process – and I'm comfortable that they understand what I require of them from a strategic sense.

PN1863

MR GOLDSWORTHY: So if you go to the second document that you were provided?---Yes.

PN1864

It's an A3 document. And the top part of the table, so ED4, and the number of applications it's actually highlighted in red, is 46. It's in dispute as to whether that's accurate or not. What we do know is right on the very right-hand side there were definitely 29 applications and four were approved. And that's an approval rate of 13.8 per cent?---So which – we're talking about this top part, yes? I'm following you, yes.

PN1865

Yes, so on the very top right-hand side?---Yes.

PN1866

You'll see the actual ED4 numbers, and so it was 29 applications, four were approved. An approval rate of 13.8 per cent?---Yes.

PN1867

If you have a look at the percentage of applications approved, which is six – seven columns from the left?---I've got that, Commissioner.

PN1868

The percentage of applications approved?---Yes.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1869

You can see that across Eastern Region the average percentage approved for the '23/'24 period was 65 per cent. Across the entirety of the Eastern, Western, North-West, Metro, Southern, Family Violence and Road Policing Transit, it was 71 per

cent. So you've got a comparative figure of approval rate of 71 per cent in relation to 13. It is an outlier by a very long margin?---Yes.

PN1870

Do you think that is fair on the members within ED4? A fair outcome?---I think it's actually a decision-based on the business need for the division at the time. And my responsibility – and I own this – my responsibility as the Regional Assistant Commissioner, is to set the strategic intent and direction for the region. When I first got there my main aim for the region was actually to have a professional frontline police service. What I mean by that is that all the members knew their responsibilities and they knew what was required of them. It was surprising to me that when we did a back-capture, that year the number of purchase leave applications were approved. This is why we went to this discussion at the start of this year in relation to the risk and need that was carried there. And organizationally I don't believe we actually fully understood where we were sitting with purchase leave applications. So, that's what I was saying, it's a steppingstone process for me. I think ED4 – it could be argued one way or the other whether they've hit the right mark or not, but they've literally booked it in relation to the business need of the community and their service. From my perspective, for the region, my other superintendents will do a very similar thing. It may have different outcomes and there may be different needs. And, as I've said, ED4 may very well not have the same profile next year. But organizationally, from my perspective, this is a piece of business that we need to look at it, and it's something that I decided to look at this year. Last year was really setting the foundation of our police response. This year was actually the governance and understanding the impact of the decision-making that we do in relation to providing service to the community.

PN1871

THE COMMISSIONER: Yes, I understand. Thank you.

PN1872

MR GOLDSWORTHY: As the AC of Eastern Region, you have more than 3000 sworn members. You've said 3300 under your command?---Approximately, yes, Commissioner.

PN1873

Is it correct that if you give a lawful direction, you have a reasonable expectation it will be carried out?---If I do?

PN1874

Yes?---As the Assistant Commissioner I would hope that would be the case.

PN1875

THE COMMISSIONER: Yes?---I don't know if I'd do that many lawful directions at the time but go on.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1876

MR GOLDSWORTHY: Do you expect compliance when you send out an email to your subordinates?---Yes, I do.

PN1877

In general, do members under your command want to follow your instructions and your requests?---Ninety-nine point nine per cent of them do, Commissioner.

PN1878

Is it the case that if your subordinates do not follow your directions, there is a possibility of an unfavourable outcome for them, from something as simple as a performance discussion which could affect future chances of promotion, through to the chance of them being discipline via admonishment notice or even a charge?---I - - -

PN1879

MS LEONCIO: Commissioner, I just object to that question. I'm struggling to understand the relevance, and I don't see how – yes, I don't see how the question bears any relevance on his application.

PN1880

THE COMMISSIONER: Perhaps you might give - - -

PN1881

MR GOLDSWORTHY: I'm happy to clarify that.

PN1882

THE COMMISSIONER: Yes, please.

PN1883

MR GOLDSWORTHY: So there was an email sent out by the Assistant Commissioner on 13 June. It was very strongly worded, and there's a reasonable expectation that those under his command would follow it. And either the – for fear or favour of not following it, it was done.

PN1884

THE COMMISSIONER: Well, there's rank; isn't there?

PN1885

MR GOLDSWORTHY: That's correct.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1886

THE COMMISSIONER: I mean, I know you don't seem the sort of person that would give orders often but, you know, insofar as you have capacity, there's issues with, you know – there's also issue of, you know, when – I don't suppose you give orders all the time. You ask people to do things, and most of the time they comply with that, and that's just a human thing, not necessarily a rank thing?---I agree, Commissioner. So if anybody knows me from when I started this organisation to where I am now, I use my power in a manner which is – befits the circumstance. It would not be correct to say that every time someone doesn't follow an instruction in an email that they'd be susceptible to risk, whether it's a

complaint or workplace guidance. Workplace guidance for me was saying, as much as what – why did you make that decision. So I – it's not a correct statement.

PN1887

MR GOLDSWORTHY: So is it correct that Commander Nyholm sent an email to you? Now, I've got page 237 of 343 open?---Two-thirty-seven?

PN1888

Yes. Now, this is the email, so you may not have it AC, Assistant Commissioner.

PN1889

THE COMMISSIONER: I think you're referring to the emails, not the court book, are you, Sergeant?

PN1890

MR GOLDSWORTHY: Yes, that's correct?---Sorry.

PN1891

THE COMMISSIONER: Yes, so I've done the same.

PN1892

THE WITNESS: What page are we? Sorry, I do apologise.

PN1893

MR GOLDSWORTHY: Yes, so - - -

PN1894

THE COMMISSIONER: Is it in the court book, this document?

PN1895

MR GOLDSWORTHY: The court was provided with 343 pages of emails from the - - -

PN1896

THE COMMISSIONER: Yes, yes, I know.

PN1897

MR GOLDSWORTHY: Yes.

PN1898

THE COMMISSIONER: I'm well aware.

PN1899

MR GOLDSWORTHY: And I don't know whether you've got a copy of those.

PN1900

THE COMMISSIONER: I might.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1901

MR GOLDSWORTHY: I've had the privilege of reading through them twice now.

PN1902

THE COMMISSIONER: Yes.

PN1903

THE WITNESS: Is there a page? Sorry.

PN1904

MR GOLDSWORTHY: Yes?---Yes.

PN1905

So that's my copy, and I'll go with what I've got. So in that, Commander Nyholm has sent an email to you:

PN1906

Can we discuss purchase leave today at RLT. I'm concerned Joy, ED4 and DLT, considering approving some in areas where we can't meet MSP and have shortages. I think this can be addressed directly with a divisional super ED4. Joy would be good to share expectations for all supers.

PN1907

Can you tell me what the discussion was and any directions given to Superintendent Arbuthnot at that meeting?---I don't – from recollection it wasn't Joy that actually approved those ones. I believe it was Inspector Sprague with his – through his authorisation level and delegation he approved them. I don't recall speaking to Superintendent Arbuthnot in relation to this email.

PN1908

Okay, thanks. I'll just retrieve that email?---Yes. Sure.

PN1909

I think we're done. Thank you. With the email that you sent to the superintendent. So it was on the 13 June. It's TL9, page 59 in your statement at 124?---Yes.

PN1910

Right. So you quote data that 298 members applying for a total of 4,036 shifts for the '23-'24 financial year. And quoting from your email, 'I simply do not understand how we could sustain this and would like to know how you are going to manage your workforces with these absenteeisms. My ability to support holiday policing and is unlikely for you not taking into account your capacity, seasonal demands and need to service the community in an efficient way. The only way to manage this would be to deny members recreational leave, over these periods which I also find unacceptable given some of the business decision making.' You sent that email out to the Eastern Region divisional superintendents?---I did, Commissioner.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1911

Would you describe your communication as forthright in this email and was that your intention?---I think it was succinct, Commissioner.

PN1912

Is it possible that this email could be interpreted as an expectation it would be a blanket refusal of purchased leave?---No, Commissioner, because it was also followed up with conversations during meetings and also other communications that I sent out.

PN1913

Right. Is it possible that this email could be interpreted as at the very least to minimise purchased leave?---Sorry, just somebody opened something when you were talking?

PN1914

Yes. Do you believe that this email could be interpreted that you had a reasonable expectation that purchased leave would be minimised?---It is possible that's the case, Commissioner.

PN1915

THE COMMISSIONER: Yes. I think there's not much qualification in there. I mean the sentence, 'I've already asked our ADCs to contact HR to work through a mechanism of cancelling their approvals then to apply a risk of assessment approach going forward.' And I understand what your evidence in about surrounding the context of emails on that, that the words themselves is a pretty clear message to me about where purchase leave is and where it should be?---It's definitely – when you say where it should be – it's definitely in the realms of we need to reassess what we have done.

PN1916

Yes?---Because from my perspective it is unacceptable that we had that much – that many weeks going out of the system - - -

PN1917

Yes?---- - -without some form of qualification against business needs.

PN1918

Well, you give the data there?---Yes.

PN1919

Yes. Okay?---Yes. So also what followed up with this was the process to do that.

PN1920

Yes?---So that's – this was the start of the – so we had a conversation. This is the start of the main identification of the risk and then we went through the steps with the Police Association, Workplace Relations, to actually understand what the process would be to actually try and articulate the best way possible to achieve an outcome where we understood members' needs but also to service the community in the way that I think we should.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1921

Yes.

PN1922

MR GOLDSWORTHY: How then do you explain the understanding that was brought out of that email by Inspector Henry and Inspector Sprague?---I just have to see what date they sent that email. So I do recall that was, I believe, after I sent the email with the dot points after discussions with the Police Association. I believe their email followed that email. I could be stand to be corrected. So their interpretation is an interpretation which, at times, obviously you get when you send out emails. And that's why I asked them to resend it.

PN1923

It's happened to me a few times, Assistant Commissioner. Don't worry. I know?---And the fact that I quickly had their communications rescinded and the members spoken to - - -

PN1924

Yes?---- - - is probably an indication where that's potentially happened before where you may get people who want to interpret for their own – from their own perspective.

PN1925

So the email that I received from Paul Henry that stated that purchase leave shall not be approved was on the 13 June. So at 4.35 pm which was about eight hours after you sent out that original email?---Yes.

PN1926

No, sorry it was actual hours. Two hours after you sent that email. The email came out from Paul Henry, amongst other things, it says, 'Purchase leave application shall not be approved in the '20 through to '24 financial year.'?---Yes. I'm just trying to find when I sent that following email with the dot points. So just excuse me.

PN1927

THE COMMISSIONER: I think you, at paragraph 35, which is on page 373 you say – no, that's the one that Macey sent you?---That could very well be the case, Commissioner, that Paul Henry did do that.

PN1928

I understand Acting Superintendent Macey then sent an email on the 14th to all superintendents?---Yes. So the - - -

PN1929

I thought in this you did reference that Henry correspondence but I might be conflating this with other - - -?---In my statement I do reference that correspondence.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1930

Yes. Yes?---And the rescinding document.

PN1931

You found out from some nurse. Anyway, let's not get distracted.

PN1932

MR GOLDSWORTHY: Yes. And, equally, unbeknownst to you that Inspector Sprague sent a reply email to Superintendent Arbuthnot stating, effectively, that no purchase leave would be approved?---Yes. That's not known to me.

PN1933

Yes. I appreciate that it's not. It was a communication between the two. What I am suggesting is that that forthright email set a previous decision for the approval or lack of purchase leave in ED4. You spoke. They listened. Would you agree with that?---Not specific to ED4. No, I don't agree with that because there was a process to follow this. It wasn't blanket disapproval of applications at this point in time.

PN1934

Okay. The following day you obtained further data from Ron Owen in relation to the current status of purchase leave for the last financial year, that being '22, '23. It stated that there was 1,113 weeks or 5,565 shifts with purchase leave in the last financial year. Do you recall that?---I do. Could you just reference me to that? What page that's in? Because I do know it's in the papers.

PN1935

It's got a sad smiley face on it.

PN1936

THE COMMISSIONER: I don't think that is in the Assistant Commissioner's statement.

PN1937

MR GOLDSWORTHY: Yes?---Here it is. Yes. It's reference TL13, Commissioner. Page 440 I believe.

PN1938

There it is. Excellent?---It's one of the ones I remember.

PN1939

Yes. You would.

PN1940

Okay. So those figures are correct? The last financial year it was 1,113 weeks of purchase leave approved and undertaken is that correct?---Correct.

PN1941

And going on your previous email. So you stated that in the original email on the 13 June there were 4,036 shifts?---Correct.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1942

This year there was 5,565 shifts for last year. So that's actually a decrease of 27.5 per cent or 1529 shifts when compared to the current year. Did you send that out to the superintendents to keep them informed of where things were going? That there had been a decrease?---Not that I recall, Commissioner.

PN1943

Why not?---I don't think it was relevant to the position I was holding at the time.

PN1944

Okay. They seem to be relatively large numbers when you look at them in isolation. Would you like to – would you have an indication of how many shifts per year members take within the eastern region on recreational leave?---I don't have that in front of me, Commissioner.

PN1945

If we did some rough calculations, let's say 3,000 or 3,300 multiplied by nine weeks per year you get 27,000 weeks. You multiply that by five shifts per week, you get 135,000 shifts per year. When you compare 135,000 shifts of recreational leave in relation to the 4,036 shifts that were required for purchase leave you're only talking about three per cent. So do you really think that it makes that much difference to not approve purchase leave?---I don't think that's a reasonable argument to hold, Commissioner. I'd have to do the numbers to be quite honest.

PN1946

Yes?---If you give me a calculator I haven't worked that out.

PN1947

THE COMMISSIONER: Pumped out - - -?---So let's say the numbers are what was said Sergeant Goldsworthy. I don't think that's a reasonable argument because those numbers that are taken are built into the system. So it's built into the system in totality in relation to what workforce we have and what workforce we don't have. When you start looking at the flexible work arrangements they're add-ons in relation to – and rightly so – they're conditions within the EB that members are entitled to. But they're add-ons to that when you take that into account. You take into WorkCover. You take into other aspects of the EB which impacts on that - - -

PN1948

Well, the thresholds for EFAs and for purchased leave is different as far as the - - -?---Correct.

PN1949

- - - consideration of the employer is concerned?---Correct. Exactly. So I don't agree with that point about three per cent. It doesn't make a difference. It makes a big difference.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1950

MR GOLDSWORTHY: When you look at MSP, we've already discussed this, it does take into account purchase leave?---From a theoretical position it does, yes. But not in the totality of how it's managed. So each divisional

superintendent, rightly so, is entitled to view their business in a manner that they'd be – see fit – to actually provide the best service they can to the community. And at times that will be consistent with members' application for flexible work arrangements and at other times it will be contrary to it. But they have an entitlement to do that because that's my expectation of it. And as I indicated before I would imagine that other superintendents from the division will be reviewing and viewing their business in a manner which has a focus on what they have to deliver upon. So when we talk about this number if I – the number which was for - - -

PN1951

THE COMMISSIONER: Yes?---- - - '20 – of 1,000 - - -

PN1952

Yes, 1120?---That year was a year I was supplementing a lot of divisions in relation to FTE.

PN1953

Yes?---So, yes there is reduction but I still had to supplement as well post that.

PN1954

MR GOLDSWORTHY: What's your understanding of the definition of 'reasonable grounds' as listed in the enterprise agreement of the Fair Work Act that you've had to apply to them?---I haven't read that, Commissioner.

PN1955

THE COMMISSIONER: Well, that's a submission of law but you're asking him to make an opinion on a law which is better done from the Bar table, not from the witness box if I may say so, sergeant.

PN1956

MR GOLDSWORTHY: Sir, did you have a conversation with Superintendent Arbuthnot on or about the 7 July in which she detailed three purchase leave applications by members – I believe from the Highway Patrol and from the CIU and you agreed that reasonable business grounds applied?---I don't recall that conversation. I do recall the fact that there are those applications. I don't recall that conversation.

PN1957

Right. If you go to page 133 of 343 of the emails?---Sorry, I don't have those. Thank you.

PN1958

I don't know if you're able to access them, sir. I don't - - -

PN1959

THE COMMISSIONER: I've got them. Don't worry. We'll deal with that before the close of business tomorrow. I'll bring them tomorrow.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1960

MR GOLDSWORTHY: Are you able to read that top line, please, sir?---'Hi Brad. I spoke to the OC re the three you mentioned. He agrees that reasonable business grounds supplies and importantly concentration has been done.' I can't remember the context of that conversation if I had it, which obviously I would have.

PN1961

So from the understanding of Superintendent Arbuthnot, you had a conversation with her in relation to reasonable business grounds but you're unable to articulate what the reasonable business grounds would be in relation to the enterprise agreement in the Fair Work Act. Is that correct?---Yes.

PN1962

You were issued with an order to produce. As it happens there were two. One was rescinded and the order to produce was from the Fair Work Commission. Why is it that attachments to the emails were not included in the documents provided?---Could you be more specific?

PN1963

Yes. So there was an email from Superintendent Arbuthnot which you'd had numerous attachments and none of those were provided. I am just wondering how did you go about enforcing the direction that was given to you?---So is this from me?

PN1964

Yes?---I did not assist – could you just clarify please?

PN1965

THE COMMISSIONER: This is – well, I don't know perhaps – (indistinct) could you give some enlightenment on this? Obviously that would have been done in conversation with the lawyers et cetera. You can't answer that - - -?---I – I don't know the answer to that.

PN1966

You're handed over the emails but then something happened after that. That's what legal advisors do?---Yes. I don't know the specifics, Commissioner.

PN1967

MR GOLDSWORTHY: So how do I elicit a response from the respondent?

PN1968

THE COMMISSIONER: Well, you can't. You think it – (indistinct) you haven't been prepared for the purpose of this proceeding so it's probably legally privileged. Well, put the question and then he'll answer it for you.

PN1969

MR GOLDSWORTHY: So there are attachments that weren't provided. Do you know why that was the case?---Commissioner, I ask for – if you can show me the email but specifically I don't know the answer to that question unless I see it.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1970

Okay. While I'm looking for the specific email there were a huge amount of data that was blacked out. Are you able to explain why that was done?---It wasn't relevant to the case, Commissioner.

PN1971

Okay?---And that was also done under legal advice.

PN1972

So the reasons for requesting purchase leave and the consequences of not approving purchase leave you believe they were not relevant?---Anything that's redacted, Commissioner, was done over legal advice.

PN1973

THE COMMISSIONER: You made the assumptions about what was in there if I may so.

PN1974

MR GOLDSWORTHY: These are tabled, sir.

PN1975

THE COMMISSIONER: Right.

PN1976

MR GOLDSWORTHY: And it's tabled. At the top of it the reasons requested for purchase leave and the consequences of not approving them.

PN1977

THE COMMISSIONER: Okay. Right.

PN1978

MR GOLDSWORTHY: And there was a huge swathe of data that was blacked out in that regard?---If you can take me to that? I might be able to explain.

PN1979

THE COMMISSIONER: Is it worth us adjourning for five minutes for you to get
- - -

PN1980

MR GOLDSWORTHY: Absolutely, sir.

PN1981

THE COMMISSIONER: All right. I'm under a bit of a thing to drive this so we actually finish tomorrow. So how long do you reckon you will need?

PN1982

MR GOLDSWORTHY: I think another half hour.

PN1983

THE COMMISSIONER: No, no. I mean to get your document.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1984

MR GOLDSWORTHY: Sorry.

PN1985

THE COMMISSIONER: To give a copy to me et cetera - - -

PN1986

MR GOLDSWORTHY: I can't send you the list of emails because it's that large that it wouldn't go through.

PN1987

THE COMMISSIONER: All right. Okay. So perhaps the process is your learned friend will assist you to getting them. The questions can be put but, of course, you always had that here and say, 'Well, that was done on advice from my lawyers.' And then that's the end of it. But you can put it. All right. So I'll leave the Bench for 10 minutes. Ruben, if you could stay here and get copies of the documents and get copies of those. So sit there and fill – hand it over – and I'll leave the Bench?---Can I be excused just to go to the restroom?

PN1988

Yes. That would be a good idea too. So, the Assistant Commissioner is excused to come back. I'll leave the Bench for 10 minutes. The documents will be exchanged and then I'll come back and Ruben will come and get you when all that's done. And also get the copies of those other two emails that were (indistinct). Okay? Thank you.

<THE WITNESS WITHDREW [12.28 PM]

SHORT ADJOURNMENT [12.28 PM]

RESUMED [12.45 PM]

<ANTHONY LANGDON, RECALLED [12.45 PM]

CROSS-EXAMINATION BY MR GOLDSWORTHY, CONTINUING [12.45 PM]

PN1989

THE COMMISSIONER: So we know what's going on we'll go for another 15 minutes until lunch and we'll start again at 2.00 sharp and we'll see where we get to. And sorry, Assistant Commissioner, I had assumed you'd be over in the morning but it doesn't look like that?---That's fine, Commissioner.

PN1990

We'll have to – okay. Right.

PN1991

MR GOLDSWORTHY: Sir, I hope that's not an indictment on me.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN1992

THE COMMISSIONER: I thought that it's folly to ask anyone from the Bar table to give an estimate of how long they're going to be it's always – it's never – it's well – yes. I'll take that as a given.

PN1993

MR GOLDSWORTHY: Assistant Commissioner, would you happen to have a copy of the Eastern Region Action Plan in front of you? I know that - - -?---If you can - - -

PN1994

- - - Superintendent Arbuthnot provided one in her statement?---If you just direct me to where that's located?

PN1995

THE COMMISSIONER: Yes. It's in Arbuthnot's statement.

PN1996

MR GOLDSWORTHY: JA3.

PN1997

THE COMMISSIONER: Yes. JA3 to the Victoria Police Strategy which is JA3.

PN1998

MR GOLDSWORTHY: 540 onwards?---Sorry. Wrong folder. My fault. Yes?

PN1999

Just for the sake of clarity did you actually approve this action plan?---I did.

PN2000

So I'll go through a couple of items with you at the top we will focus on and it's 'People enhancing the health, safety and wellbeing of our people in order to reduce exposure to trauma, physical injury and inequity in the workplace.'?---Yes.

PN2001

You'd agree with that?---Yes.

PN2002

What best practise looks like. It's effective leadership and governance and ensures the earlier identification of workplace risk in order to quickly implement productive mitigation strategies?---Yes.

PN2003

Do you see the non-approval of purchase leave within the ED4 as a potential risk for mental health for those who have applied for it?---Not to my knowledge, Commissioner.

PN2004

It's a foregone conclusion that on the right-hand side Living Our Values where you talk respect – everybody is treated fairly and with dignity and feels valued and included?---Yes.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN2005

Integrity, acting with honour, being fair and respectful for both the law and human rights, leadership, being focused, confident but still humble and committed to living our values. And it goes on. I'll ask the questions but I am guessing you agree with all those values?---I do, Commissioner. Yes.

PN2006

Do you see any conflict between the application of those values and the non-approval of purchase leave at ED4?---No, Commissioner.

PN2007

Right. Victoria Police continues to promote policing as a job where you can achieve a work life balance. Do you agree with that characterisation?---Yes, Commissioner.

PN2008

I have, Commissioner, the Victoria Police manual from Workplace Flexibility. I provide a copy?---Thank you.

PN2009

THE COMMISSIONER: Will I mark this or - - -

PN2010

MR GOLDSWORTHY: If it's appropriate to mark it by all means mark it.

PN2011

THE COMMISSIONER: I think that will be A11 wouldn't it? A11 – okay, thank you.

EXHIBIT #A11 VICTORIA POLICE MANUAL - WORKPLACE FLEXIBILITY

PN2012

MR GOLDSWORTHY: Flexibility – the context – the workplace flexibility. All positions in Victoria Police - - -?---So – just – thank you.

PN2013

So Victoria Police Manual - - -?---Page three. And what paragraph are we looking at?

PN2014

No. The first page Victoria Police Manual before the - - -?---I'm sorry. Thank you.

PN2015

The context itself?---I've got it. Yes.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN2016

So, 'All positions in Victoria Police may be worked flexibly and Victoria Police officers arrange flexible work options across the organisation. Victoria Police

recognise the importance of promoting diversity, gender equity, access to be more flexible, working arrangement options to assist employees in achieving appropriate balance between organisational requirements and family and personal commitments. As well as to give employees a meaningful level of control over when, where and how work is accomplished, along with reasonable workplace adjustments, flexible work options include part-time employment, support while pregnant in the workplace and upon return to the workforce following the birth of the child, hours of work with flexible time. Variations to rostering and working from alternative locations and supplementary duties. Other flexible options are available to the Victoria Police employees, such as cashing out accrued time off, deferred salary schemes, purchase leave, study leave, voluntary duties and transfer from one location to another.' Do you agree with all that statement?---It's in the manual. Yes, I do, Commissioner.

PN2017

Do you see any conflict between what has been stated in the context of that VPN and how purchase leave applications have been dealt with in ED4?---No, Commissioner. Words like 'reasonable workplace adjustments, other flexible options are available'. It's not succinct.

PN2018

Do you believe you have a role in ensuring compliance with the Victoria Police Enterprise Agreement?---I certainly do, Commissioner.

PN2019

Do you agree with the preamble to the Victoria Police Enterprise Agreement where it states, 'The employee is committed to providing flexible work options to assist employees in achieving the appropriate balance between organisational requirements and personal lives.'?---So, again, I'd have to – I do know certain sections because I am continually dealing with them – but I'd have to - - -

PN2020

THE COMMISSIONER: We don't expect you to know it off by heart. But, yes, it's in the preamble to that?---If that's what it says, Commissioner. Yes, I do agree with that.

PN2021

Yes.

PN2022

MR GOLDSWORTHY: I do believe it's hiding in the book?---It's in the papers somewhere.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

PN2023

It's page 23 of the book one. So if you turn it over to the first page. Victoria Police. So go down to the two-thirds of the page down. So it's just above the third line of (a), (b), (c) – 'The employer is committed to providing flexible work options to assist employees in achieving the appropriate balance between

organisational requirements and personal lives.' Do you agree with that?---Correct.

PN2024

Right. Are you aware that as a direct result of the decisions to be denied purchase leave two members from Wodonga have already taken sick leave for prolonged periods and it's likely more will follow?---No, Commissioner.

PN2025

Are you aware that several members who initially went to the TPAV for assistance in the hope of getting purchase leave have pulled out of the process over the stress it has caused them and concern for their policing careers?---No, Commissioner.

PN2026

Are you aware that other members who were promised last year that if they withdrew their applications back then they would be approved this year?---Not aware, Commissioner.

PN2027

Has it occurred to you that the decision to deny purchase leave applications has done irreparable damage to the wellbeing of members across ED4 Eastern Region and that you will lose more shifts, lose more goodwill and cost significant public funds in denying purchase leave applications and have they just been approved?---Not aware, Commissioner.

PN2028

I've no further questions for this witness.

PN2029

THE COMMISSIONER: Re-examination, Ms Leoncio? Or do you want to start after lunch?

PN2030

MS LEONCIO: Would that be fine? I know we are behind schedule but if we could start on - - -

PN2031

THE COMMISSIONER: No, I think – yes, well – well, you can always start early tomorrow or go till 4.30 or whatever.

PN2032

MS LEONCIO: Yes. That would be more convenient.

PN2033

THE COMMISSIONER: Assistant Commissioner, I needn't remind you. You're under oath but there you go. Look, perhaps we might hold on to your re-examination until after lunch and then hopefully it will fix – I don't imagine that will be an hour worth. You can be excused and you can go about your business. So, thank you, everybody. With that we're complete.

*** ANTHONY LANGDON

XXN MR GOLDSWORTHY

<THE WITNESS WITHDREW [12.55 PM]

LUNCHEON ADJOURNMENT [12.55 PM]

RESUMED [2.00 PM]

PN2034

THE COMMISSIONER: Assistant Commissioner? Ms Leoncio, are you ready to go?

<ANTHONY LANGDON, RECALLED [2.00 PM]

RE-EXAMINATION BY MS LEONCIO [2.00 PM]

PN2035

MS LEONCIO: All right. Assistant Commissioner, I might just get you to turn to volume two of the folder in front of you?---Volume two?

PN2036

Yes, that's correct?---Yes.

PN2037

The second folder. And just turn to annexure JA8 which is page 567?---Yes.

PN2038

And now you might recall you were asked some questions about this document which is the minimum station profile?---Yes.

PN2039

And there were the dot points there where there's a reference to member availability?---Yes.

PN2040

And Sergeant Goldsworthy drew your attention to this reference to part-time?---Yes.

PN2041

Now, I just want to understand what's your understanding of part-time as compared with say, for example – well, as compared with flexible work? Is there a difference, or are they the same?---Well, the assessment in relation to how you go through the process of agreeing to part-time policing is a different threshold of decision making.

PN2042

But in terms of say, for example, if someone wants to change their working hours. So rather than 10 by eight – you're doing – sorry, five by eight - - -?---Yes.

*** ANTHONY LANGDON

RXN MS LEONCIO

PN2043

- - -in a week, you're doing four by 10 or something like that. So there's a rearrangement of hours. Is that also considered a part-time arrangement?---Yes, it

can be. It depends on the permanency of the arrangement that you're talking about.

PN2044

Okay. So is it perhaps a better way to ask is part time limited to a reduction in full-time hours? Or is it also encompassed the changing of the hours as well?---Generally, it goes in relation to the reduction of hours worked.

PN2045

Yes. Okay. Now you were taken to the Wodonga PSA and Wodonga Police Station MSP. So if you just turn over to the next page?---Yes.

PN2046

And you were asked some questions about the allocations?---Yes.

PN2047

And it was drawn to your attention that this is dated 30 November or the data is in terms of 30 November 2022. Do you recall that?---Yes.

PN2048

Yes. And you were talking about in some of your responses you gave you referred to additional allocations to Wodonga PSA?---Correct.

PN2049

What were those? Could you just provide some context about those additional allocations?---So those allocation of the additional resource was a funding by government in relation to ensuring that Victoria Police could meet them in the service profile. There is an additional 502 personnel that went into – that were allocated to that. And there have been tranches of placement in relation to those numbers. The allocation to Wodonga PSA and ED4 as being based around the premise of meeting the minimum service profile requirements as per the police commissioner CCI. So not just limited to being able to put vans on the roads or – but also took into consideration the actual number – the reception hours that the station runs. So a non-24 hour station or a 16-hour police station will still have a police reception running. The case in hand that was mentioned Corryong. So it's to enhance the ability in relation to the station to run a shopfront, the police reception, but also that other factor I mentioned about fatigue.

PN2050

And in terms of the allocation for Wodonga PSA when did that occur? Or when is that planned to occur?---The final number would have been a month and a half ago. Maybe a little bit longer. Maybe two months ago.

PN2051

So in terms of the accuracy of this – these figures here in the document – are you able to comment on whether they're accurate as at June 2023?---They would be close. I know there were some minimal changes but I'd have to refer to both documents but they would both be quite close to that I'd imagine.

*** ANTHONY LANGDON

RXN MS LEONCIO

PN2052

And just to be clear, in your evidence, you've given or you've made reference to there being 13 additional resources that had been previously allocated that went above the FTE or the gazetted positions?---Correct.

PN2053

That's not captured in that document is that correct? As a core position FTE?---Well – yes – sorry, so it is captured. So Wodonga PSA or Wodonga Police Station had an additional seven personnel allocated to it through the 502 allocation. They're actually not landing at the police station. They're not on top of the 13 or the number that we had for Wodonga. That's been absorbed into that additional resourcing when we put it in place and that was part of the agreement.

PN2054

Now, just to take a step back. So when they were allocated I think it was around 2021. Is that right?---I beg your pardon?

PN2055

Was it around 2021 those 13?---Correct.

PN2056

When they were allocated they weren't taken as part of the gazetted profile?---They were on top of the gazetted profile.

PN2057

They were on top. Yes?---Because of absenteeism et cetera.

PN2058

Yes. And so in June 2023 this 45 – sorry, the total FTE of 62 doesn't reflect the 13 additional - - -?---I don't believe it does. No.

PN2059

Okay. And what you were saying there about the 502 was that what you were talking about in terms of the five that would be – sorry, not the five – the allocation to Wodonga PSA. How does that 502 - - -?---So, if I go back in time. So we had 13 personnel that I put up to – which is in my statement – put up to ED4 – Wangaratta, Wodonga in particular. The allocation of 502 took into consideration, in Wodonga's case, of those additional personnel that I put up there. The allocation for the 502 is not something that I actually have an influence on. So that's an organisational position that's mandated from the – from ex-com – through decision making through the same allocation model. So I don't have an ability to shift members based on that number of personnel.

*** ANTHONY LANGDON

RXN MS LEONCIO

PN2060

Okay. And just so I'm clear what does 502 mean? What's that referring to?---502 – it's the way that we term the additional recruiting required to meet the minimum service profile requirements for the position that was negotiated between Victoria Police and the Police Association. Now this goes back to what I was saying in relation to the safety element. So delivering the service. So making sure that we actually had people delivering the service as we were required to do but also in relation to the safety element for our members. The number that we had out the

front line didn't enable us to do those four or five specific elements attached to that instruction. Just because our resources weren't placed adequately in our profile it was over a profile if that makes sense.

PN2061

THE COMMISSIONER: Profile. Yes?---Yes.

PN2062

All right. You were also asked some questions about 86 and you said that the 84 and 86 are not exactly the same. So what do you mean by that? What's different between those two divisions?---Each division is not exactly the same, is that what you're saying?

PN2063

Yes. Well, ED4 and ED6?---ED6. Yes. So, sorry it's just a little bit hard for me to hear with this air-conditioning.

PN2064

No, no. That's all right.

PN2065

THE COMMISSIONER: Yes, the air-conditioning - - -?---So I do apologise.

PN2066

MS LEONCIO: Sorry. I'll speak up?---So when I started to explain that. So ED4 has even the metropolitan – well, so – sorry the rural townships attached to it. Wodonga is on the fringe with Albury. It's a combined population over 100,000 people and we police specifically with New South Wales police in that environment on a regular basis. Wangaratta is a smaller township but it has regional areas like alpine policing, roadways – the Hume Freeway going through – et cetera. ED4 is a large division. It's got a smaller FTE profile than ED – sorry, ED6 I'm talking about. It's a large geographical location. It's got a smaller profile than ED4 and it's two main - - -

PN2067

THE COMMISSIONER: So there's less resources – human resources in ED4 or ED6?---ED4.

PN2068

Right. Okay?---And it has two main rural centres being Bairnsdale and Sale.

PN2069

Yes?---And they're fundamentally different townships.

PN2070

Yes?---And the road system through there is different as well.

PN2071

Yes?---And also the outer fringes. It's not as populated on the northern element of that division because it goes up to the border of New South Wales.

*** ANTHONY LANGDON

RXN MS LEONCIO

PN2072

Yes?---So it's mainly populated around Lakes Entrance. So you've this sort of mass of broad population around Lakes Entrance, Bairnsdale, Sale, and then along the coastline. But it's fundamentally – it runs differently to what ED4 does. Just by the mere nature of the road systems, the tourist activity attached to it. So it's a high concentration around a smaller area.

PN2073

Thank you?---From my opinion.

PN2074

MS LEONCIO: Okay. All right. I want to take you to a different topic. You were asked some questions about the Wodonga Highway Patrol and about their capacity and you were taken to some figures around the recent capacity in the Wodonga Highway Patrol. Do you have any knowledge of what the capacity was in June 2023?---I'm thinking it was one and – it's either one and three or one and four.

PN2075

Okay?---At the time.

PN2076

And it was normally one and nine?---One and nine. Yes.

PN2077

Okay. So this reference to 33 per cent as compared with 50 per cent, would you agree that in June 2023 the proportion was similar to 50 per cent?---Agree.

PN2078

All right. No further questions, thank you.

PN2079

THE COMMISSIONER: Thank you very much for your time Assistant Commissioner. That's been very helpful and you're excused?---Thank you, Commissioner.

<THE WITNESS WITHDREW

[2.12 PM]

PN2080

MS LEONCIO: Commissioner, I'll call the second witness.

PN2081

THE COMMISSIONER: Yes. Which one is that?

PN2082

MS LEONCIO: Superintendent Joy Arbuthnot.

PN2083

THE COMMISSIONER: Okay.

*** ANTHONY LANGDON

RXN MS LEONCIO

PN2084

MS LEONCIO: Who I think is just outside.

PN2085

THE COMMISSIONER: Well, that's in the order in the court book. So that's good. We love all that here.

PN2086

THE ASSOCIATE: Just state your full name and address for the record.

PN2087

MS ARBUTHNOT: My name is Joy Arbuthnot and my address is (address supplied).

<JOY ARBUTHNOT, SWORN [2.13 PM]

EXAMINATION-IN-CHIEF BY MS LEONCIO [2.13 PM]

PN2088

THE COMMISSIONER: Please be seated, superintendent.

PN2089

MS LEONCIO: Thank you, superintendent. You'll see there are two folders there in front of you. I might just ask you to open up the second folder?---Part 1?

PN2090

Yes. Just have that in front of you. Now, before we open that I just want to confirm for the purposes of the transcript, could you just repeat your name?---My name is Joy Arbuthnot.

PN2091

And what's your current occupation?---I'm a police officer.

PN2092

What is your professional address?---21 Handley Street in Wangaratta.

PN2093

Have you made a statement in this proceeding?---Yes, I have.

PN2094

I'll just get you to turn to tab nine, behind that folder – in that folder. It's page 491 I think. So, 491 if you look at the top right-hand corner. This hopefully is the numbering. Okay, yes. Now, so is that the statement that you made? Sorry – tab nine. Have you got it there? So if you've got – I think – yes, if you go to the front- - -?---Sorry. My apologies. I started at tab - - -

PN2095

Yes?---At the wrong tab.

*** JOY ARBUTHNOT

XN MS LEONCIO

PN2096

THE COMMISSIONER: Yes. That's JA4. So if you move this way towards the front you'll find it. 591 – 491?

PN2097

MS LEONCIO: 491. So if you look at the top of the page you will see a page number and then - - -

PN2098

THE COMMISSIONER: 491.

PN2099

MS LEONCIO: - - -that might help you?---Yes. I've finally got to it. Thank you.

PN2100

Okay. Now, is that the statement that you made in this proceeding?---Yes.

PN2101

Can I confirm that it's dated 12 October 2023, on the last page?---Yes, it is.

PN2102

And does it run to 26 pages and 119 paragraphs?---Yes, it does.

PN2103

And sitting behind that statement are they the annexures JA1 to JA24 to your statement?---Yes, they are.

PN2104

Now, I understand that you wish to make some amendments to your statement. Is that correct?---That's correct.

PN2105

Yes. And I understand you want to make an amendment to paragraph 41?---That's right.

PN2106

So that's that page 499 of the Commission book. And could you just tell the Commission what amendment you wish to make?---So, in paragraph 41 I referred to other factors, such as flexible work arrangements.

PN2107

THE COMMISSIONER: Yes?---Are not calculated in the minimum – the station profiles but they are actually considered in it and I was advised of that on the 30 October this year. There has been a recent change to the calculations to include flexible work arrangements.

PN2108

So what changes are we making to it? Are we excluding - - -?---So it says - - -

*** JOY ARBUTHNOT

XN MS LEONCIO

PN2109

- - - other factors that flexible work arrangements operating four times 10 shifts – hour shifts?---Formerly known as compressed working arrangements are not. They are included.

PN2110

All right. Okay.

PN2111

MS LEONCIO: So perhaps – where it says FWAs where a member changes from five by eight hour shifts to four by 10 hour shifts per week formerly known as the compressed working arrangements. So that's - - -

PN2112

THE COMMISSIONER: Aren't included but they're not. They are - - -?---They are included.

PN2113

It says that they're not but they really are?---Yes.

PN2114

MS LEONCIO: So the deletion of 'not' is that correct?

PN2115

THE COMMISSIONER: Well, if you delete 'are not'. Okay – I follow what you're doing now. I'm sorry.

PN2116

MS LEONCIO: I thought I might just ask. So if we delete the 'not' and perhaps if you can just tell us how the end of that sentence should end. So it says are - - - ?---Are now included.

PN2117

Okay. And I understand you wanted to make a change to paragraph 64?---Yes. I just used the wrong word. In paragraph 64 on the top of page 504 I refer on the fourth sentence down to situations including plane crashes, floods, fires and avalanches. I'd like to change the word 'avalanche' to 'land slides'.

PN2118

Okay?---Please.

PN2119

So it's the one, two, three – fourth line down. There's 'avalanches' written there in the middle of that sentence. We'll just delete 'avalanches' and put the word 'landslide'?---Yes.

PN2120

THE COMMISSIONER: What's the difference? Is one involving snow and the other is involving land? Is that it?---Well, landslides and land slips have different definitions under the Emergency Management Act.

*** JOY ARBUTHNOT

XN MS LEONCIO

PN2121

Right?---In relation to avalanches. And I just thought I'd - - -

PN2122

So there's a term of art lying behind there okay?---I need it to be specific.

PN2123

Right then. That's very commendable of you.

PN2124

MS LEONCIO: All right. Now, with those amendments are the contents of your statement true and correct?---Yes.

PN2125

I tender that statement and the annexures marked J1 to J24.

PN2126

THE COMMISSIONER: Is that R3 or R4?

PN2127

MS LEONCIO: R4.

PN2128

THE COMMISSIONER: R4. Thank you, Associate. That's appreciated.

**EXHIBIT #R4 WITNESS STATEMENT OF JOY ARBUTHNOT
TOGETHER WITH ANNEXURES J1 TO J24**

PN2129

MS LEONCIO: Commissioner, I'll just seek leave again to ask a few questions.

PN2130

THE COMMISSIONER: Sure.

PN2131

MS LEONCIO: In chief. All right. Just starting with that amendment that you just made to paragraph 41, so perhaps if we turn to 41 again. So with the leave of the word 'not' – we have now got 'now included'. What was the basis of that change?---The basis is that I have been advised that flexible work arrangements are now included in the calculations for our minimum station profiles. However, the calculation is minimal. It's under two shifts per position per annum.

PN2132

And what was your understanding - - -

PN2133

THE COMMISSIONER: Hang on. Per shifts per - - -?---Two shifts.

PN2134

Two shifts?---Under two shifts.

*** JOY ARBUTHNOT

XN MS LEONCIO

PN2135

Yes?---Per position at the sergeant one.

PN2136

Per annum?---Per annum.

PN2137

Well, that sounds – yes. Okay, great.

PN2138

MS LEONCIO: And what was your understanding previously based on when you said that it wasn't included?---So there's Victoria Police manual and the FAQs for flexible work arrangements all represented that they weren't included when I compiled the statement and I subsequently made some enquiries just to understand that. And there has been a recent change to – and so they're now included at that very small amount.

PN2139

I might just hand that document up to you. Now you refer to an FAQ document. Is that the document that you were referring to?---That's right.

PN2140

And what part of that document were you referring to? It looks like it's on the first page at the bottom. Are part-time or flexible workplace arrangements accounted for MSPs? Is that the part?---Sorry, yes. Yes, that's right. So it's down in the bottom – the last paragraph.

PN2141

Okay. And in terms of what this document is are you able to explain to the Commission what the FAQ document is?---Well, it is what it is. We have had a number of questions around the minimum station profiles because they're a relatively new thing for Victoria Police.

PN2142

THE COMMISSIONER: Yes.

PN2143

THE WITNESS: And because everything is conducted centrally we needed information around – you know – what does and doesn't apply. And I think in the context also of trying to understand how many resources you have got allocated to do the work that you need to do we obviously would have a number of questions around what has been included in that calculation, particularly, when we're trying to balance things like flexible work arrangements. Have they been included or not?

PN2144

MS LEONCIO: Right. I'll tender that document.

PN2145

THE COMMISSIONER: Okay, that's R5.

*** JOY ARBUTHNOT

XN MS LEONCIO

EXHIBIT #R5 FAQ DOCUMENT

PN2146

MS LEONCIO: All right. I wanted to take you to an annexure JA8 in that folder. Now you will see this is the minimum station profile which also includes references to Wodonga and there's a bullet point there that says 'Member availability'. That's under the heading or under the start of the sentence that says, 'MSPs are based on', and it says that 'the number of shifts that a position typically performs annually this formula uses data over a three-year average and have been considered for each division and separated by rank.' And you'll see it says, it considers purchase leave. So it considers a number of things and one of the things that you will see on the next line is purchase leave. What is your understanding, if any, of how the purchase leave is taken into account on this member availability section of the MSPs?---Purchase leave is considered in the MSP, but once again it has a very small quota attached to it. It's under two shifts per position per annum. The member availability is calculated, and this is my understanding. I don't do the calculations of course. There are a number of factors that are calculated into create an algorithm. Generally speaking the data that's used is over a three-year average. However, due to COVID, some of the data that they're using is the '17-'18 period and also the '21-'22 period. And it is a maturing process. The minimum station profiles and baseline minimum standards are all a relatively new thing for our organisation. So with COVID in the middle of those data periods it's made it difficult to average out at the three-year period to create, if you like, a more stable environment to come to some conclusions and the numbers that might be required.

PN2147

THE COMMISSIONER: Because of the kind of effect that it made it just (indistinct)?---So - - -

PN2148

So a bit – you wouldn't put in the junk. But it's a little bit junk-in, junk-out as far as the predictive is concerned?---It's certainly not from a practical perspective of what we need and what we see.

PN2149

Yes?---It's not very helpful.

PN2150

I understand that.

PN2151

MS LEONCIO: Now, you said that was your understanding. What was that understanding based on?---I have spoken to a person from the SAM allocations committee and they explained how they do those calculations and what's included in that.

*** JOY ARBUTHNOT

XN MS LEONCIO

PN2152

THE COMMISSIONER: I have been told. Well, what does the acronym stand for?---Staff allocations.

PN2153

So well - - -?---Or the SAM allocation model.

PN2154

Right?---Sorry, there will be a few acronyms.

PN2155

MS LEONCIO: There's been some evidence that has been given around the family violence command. Are you able to describe what the family violence command is? What their role is?---Well, they're a command in Victoria Police and they're considered a specialist command focusing on family violence and applying a victim centre approach to family violence survivors and their children. The command is a central command but we have units that sit locally and provide the specialist investigation services to aggrieved family members and their children and also holding perpetrators of family violence to account.

PN2156

And what ability, if any, is there to provide - is there for the family violence command to provide assistance to the family violence investigation in terms of resources, when I talk about assistance?---That's not something that happens. Family violence commands if you like considers the strategic arm of the command. They're not an investigative arm. They provide our specialist resources with advice and guidance and do – create the strategy, do the intelligence – and et cetera – to inform all of those things. They create those specific training requirements and capabilities for our staff. So it's more of a strategic arm. The actual response arm sits locally within the regions where the family violence is occurring.

PN2157

And in terms of the road policing command what do they do? ---That's very similar, although at road policing command they do have specialist road responders, a small number of those and we can apply to – with everybody else – compete for those resources and ask for them to come into our local areas. But predominantly our road patrollers are once again in the local areas and responding to road matters.

*** JOY ARBUTHNOT

XN MS LEONCIO

PN2158

And what capacity, if any, does the road policing command have to be able to provide assistance to the Wodonga Highway Patrol?---Well, they haven't been able to and I can explain that from the point of view that we have asked for assistance for Wodonga Highway Patrol through our regional command and if we were to ask for the specialist responders. So they're people like heavy vehicle specialists. They may be motor cycle specialists and what we call our State highway patrol. They are used to target where road trauma occurs and they're shared across the State. So there's an application process to get those resources to

your particular division but they never use the backfill vacancies without own division or backfill positions that are currently not being filled.

PN2159

THE COMMISSIONER: So they're specialists sort of thing?---They're a fly-in, fly-out squad.

PN2160

Yes. Okay.

PN2161

MS LEONCIO: And what about the public order response team? What's their responsibilities?---Well, it's the same type of model. They're a fly-in, fly-out type squad with particular capabilities around public order and protests. And they also can, if we have specific requirements, such as – if we have crime spikes, we can once again ask for them to come and they will be prioritised at the State level. And if we're lucky enough we do get them. But that's very rare for us.

PN2162

And, again, what capacity do they have to provide assistance to ED4, in particular, in terms of shortages in the highway patrol, or in Corryong Station?---They don't. No. We don't – we've never really had them do that. We had used them for things like helping us with our alpine response and that's been on an annual commitment. But we haven't been able to use them for backfilling of those positions where a member is unavailable.

PN2163

What about for the family violence investigation unit? Is there any capacity for the command to provide resources to that unit?---No.

PN2164

All right. Now there's also been some evidence given about the unplanned leave and WorkCover absences. What's your understanding about the rate of unplanned leave and WorkCover absences as compared with – sorry, in 2023 – as compared with previous years?---So we have seen a steady increase from around about '19/'20 – the '19/'20. Each year we have seen a steady increase in both of those categories which means that staff are unavailable.

PN2165

And what is that based on? Your observation about the increases?---Well, we count these things as part of our normal governance and, not only do we count it, we're also very aware of the people in the workplace that are ill or injured who sit under the categories of WorkCover or unplanned leave, so, through the management levels, we're dealing with people on a day to day basis who may have different injuries or different illnesses that require us to work with them and their treaters and make sure that we have treatment plans in place, all with the aim to get them better and return them to work.

*** JOY ARBUTHNOT

XN MS LEONCIO

PN2166

What about in terms of any data of unplanned leave or WorkCover absences? Is that something you've had to consider?---Well, we track our unplanned leave and WorkCover data, amongst many other, if you like, people data, it's something that we look at daily because we understand – and we track that through our governance processes and it is tracked, literally, from the top of the organisation down. So, it's a strong focus for us to understand how many staff we have unavailable, that's one side of it, but the other side is, obviously, the health and wellbeing element to make sure that we either prevent them from – help them from - - -

PN2167

THE COMMISSIONER: It's partly because of the absence and partly it's pastoral, if I can use that expression?---That's right, so if we don't have them available, then we can't put them in the shifts that we need to.

PN2168

Yes?---So being ready is the type of language that we would use, so we are operationally ready.

PN2169

I suppose it is also evident, where it's occurring and to who is something that you feed into the calculations, I suppose, although how do you – as a preventative thing?---Well, we track all of the material. So, understanding what causes people to be unwell - - -

PN2170

Yes?--- - - - so the causation, also, so that can – and where it occurs. There's all sort of things that we look at.

PN2171

Yes?---And we analyse that data and then we put things in place to try and target that from an early intervention and prevention focus.

PN2172

Right?---And we have a Senior Sergeant in our division who specifically holds that portfolio to be digging in that data and making sure that we are looking where can we target to make sure that we're raising awareness and working with our staff to try and keep them safe.

PN2173

MS LEONCIO: I'll just hand up a document to you. Now, are you familiar with this document?---Yes, I am.

PN2174

Can you just describe to the Commission what this is?---So, it is a list of employee numbers from ED4 and their workplaces, the employee type is obvious, they're police members, and their ranks, and then it, if we go across to the right-hand side of the page, it then represents each year from '18/'19, '19/'20, '20/'21, and so on.

*** JOY ARBUTHNOT

XN MS LEONCIO

PN2175

And what's captured in those columns, sorry?---What's captured in the columns is unplanned leave and WorkCover and the number of shifts lost.

PN2176

And, in terms of – this doesn't have totals, unfortunately, in this spreadsheet – but, if I was to suggest to you the totals at the bottom, which is really just a mathematical addition, an exercise of mathematics, but, in terms of the 2018/2019 year, that total column equals 6917.29?---That's right, I have read that, yes.

PN2177

And, in terms of that number, what is that unit – is that hours or shifts?---It's my understanding that's shifts.

PN2178

Okay, and then if we go across to the next bolded column, that's 2019/2020. Now, that total, I understand, is 6170.81. So, that's the total for '19/'20?---That's right.

PN2179

Then, when we go across to the next bolded column, that's 2020/2021. My understanding is that that total is 8069.03?---Yes.

PN2180

And then if we move across to the next bolded column, that's 2021/2022, and that's 10,704.92. And then, if we move across to the next bolded column, that total for 2022/2023 is 9536.86. Now, I know I've given you a lot of numbers there, but we've got 6000, then around 6000, then around 8000, then around 10,000, and then around 9000 - - -

PN2181

THE COMMISSIONER: The first is 6729, isn't it? The '18/'19?

PN2182

MS LEONCIO: '18/'19 was 6917.29.

PN2183

THE COMMISSIONER: 6917.

PN2184

MS LEONCIO: Yes. So, if you round that up, that's 7.

PN2185

THE COMMISSIONER: So there's a 7000, 6000, 8000, 10,000, 9000.

PN2186

MS LEONCIO: Yes.

PN2187

THE COMMISSIONER: Okay.

*** JOY ARBUTHNOT

XN MS LEONCIO

PN2188

MS LEONCIO: So, from your perspective, is that consistent with your experience with your understanding of unplanned leave and WorkCover absences in the ED4?---Yes, that is consistent.

PN2189

THE COMMISSIONER: So, the trend is upwards, is that what you're trying to say?

PN2190

MS LEONCIO: It appears that way, but I just wanted to confirm that that's the understanding.

PN2191

THE COMMISSIONER: Okay, well, you've just read her a whole lot of mathematical (indistinct).

PN2192

MS LEONCIO: All right. What's your observation of that and is it consistent with your experience?---It is consistent, and so, from the years '19/'20, there has been an increase in our unplanned leave and WorkCover.

PN2193

Just in terms of – I know the document doesn't necessarily indicate this, but do you have a reason why that might be the case?---Sorry?

PN2194

Do you have an opinion as to why there was this increase?---Well, broadly speaking, I can say that we've had a number of – that mental health absolutely impacts our workforce and the majority of our claims across this period have been mental health claims, and mental health claims generally take much longer for people to get better and return to work, and unfortunately, a number of our staff have actually exited the workforce as a result of mental health injury. There is also physical injuries that occur within the workplace. Predominantly, they occur around dealing with offenders of dealing with the community, such as mental health, where people get physically injured and that may require surgery and longer periods of recovery. We also have some people who are injured or ill off work, so they don't sit within the WorkCover system, they sit within their own personal leave, so that's calculated as unplanned leave, and we're also seeing, in this time, that there was an introduction in the enterprise agreement that was intended to motivate people to transition out of the organisation, and there was a clause where they could cash out their sick leave so they – police being police – were able to calculate it was 12 months they were able to cash out and some of them would calculate how much that meant and then take the additional amount under medical certificate, so that has certainly blown out some of our unplanned leave statistics.

*** JOY ARBUTHNOT

XN MS LEONCIO

PN2195

And, in terms of 2021/2022, which is when it gets to that 10,000 figure, is there anything different about that year that would have made that jump between 8000 the previous year and 10,000 in the next year?---No, I don't think so, other than – we had actively incentivised people who – and by that, I mean, we'd talked to people about what their options were. So, some people may be really unwell but they're hanging on because of, perhaps, financial stability. These things were put into our enterprise agreement to try and assist people to make some decisions and its there decision alone, in conjunction with their treating practitioner, so we told people about it and our injury management team also worked with people to explain what it meant and, subsequently, a lot of people actually took up the offer.

PN2196

Yes. I want to then move to a different topic which is to ask some questions about additional staff - - -

PN2197

THE COMMISSIONER: Do you want to - - -

PN2198

MS LEONCIO: Yes, sorry, tender that document. Thank you.

PN2199

THE COMMISSIONER: That will be R6.

**EXHIBIT #R6 UNPLANNED LEAVE AND WORKCOVER
SPREADSHEET DOCUMENT**

PN2200

MS LEONCIO: Now, there's been some evidence about additional staff allocations to ED4. What is your understanding about the additional allocations for this year, is it, to Wodonga Police Station, I think?---So, specifically to Wodonga, there is a Senior Sergeant position that's been allocated, and we're hoping to get it soon, and also, in the allocation there's reference to seven other – so Constables or Senior Constables.

PN2201

THE COMMISSIONER: Yes?---However, I've been advised that, because we got seven supplementary resources at Wodonga in the last year when we had a resourcing, I call it, crisis - - -

PN2202

Yes, yes?--- - - - that they will simply be formalised into ongoing positions rather than supplementary.

*** JOY ARBUTHNOT

XN MS LEONCIO

PN2203

MS LEONCIO: I'll just hand up another document. Okay, unfortunately, I only have three copies. I've got this copy here that I'll hand up to – actually, I might – I've just got pen there, that's my own pen, but I can hand that up to the Commission, just so that you've got a copy. Now, what is this document? Have you seen this before?---It's an internal memo, if you like, from our Deputy

Commissioner just updating us all, at every rank, on the additional 502 police deployment. They're currently recruiting those police officers.

PN2204

THE COMMISSIONER: Is there any magic in that number? What's it refer to?---It's the number set by government in terms of how many they'll fund.

PN2205

So, it's bodies, is it?---Sorry?

PN2206

It's bodies, 502 bodies?---Yes, sorry, it's 502 police officers.

PN2207

Right, okay, I see.

PN2208

MS LEONCIO: I didn't realise that.

PN2209

THE COMMISSIONER: I thought it was some mystery thing. Okay, all right, well that's straight forward, thank you.

PN2210

MS LEONCIO: And there's some highlighting on that document, was that your highlighting or is that - - - ?---That's not my highlighting.

PN2211

That's not your highlighting, apologies. Okay, just ignore the highlighting, sorry, that's how we had it. Okay, now, just in terms of what we were just talking about now, if we turn to the second page, is that what you were referring to in terms of the allocations to Wodonga?---Yes.

PN2212

So, there's the seven and one, but effectively, that is not going to be additional but that absorbs the staff that has already been allocated?---That's right.

PN2213

THE COMMISSIONER: So, it's one rather than eight?---One Senior Sergeant, yes.

PN2214

MS LEONCIO: Yes, okay. I tender that document.

PN2215

THE COMMISSIONER: Okay. That's R7.

**EXHIBIT #R7 INTERNAL MEMO FROM DEPUTY
COMMISSIONER**

*** JOY ARBUTHNOT

XN MS LEONCIO

PN2216

MS LEONCIO: Thank you, Commissioner.

PN2217

THE COMMISSIONER: That's it?

PN2218

MS LEONCIO: They're my questions, yes.

PN2219

THE COMMISSIONER: Okay. Sergeant, please.

CROSS-EXAMINATION BY MR GOLDSWORTHY

[2.46 PM]

PN2220

MR GOLDSWORTHY: Superintendent Arbuthnot, I do have a few questions for you. Are you ultimately responsible for the developing, overseeing and approval of strategies that are particular to ED4?---Yes, I am.

PN2221

Does ED4 have a service delivery plan?---The PSAs have a service delivery plan, yes.

PN2222

Does ED4 have a workforce plan?---No, it doesn't.

PN2223

Does ED4 have a service demand forecasting plan?---Sorry, I - - -

PN2224

Does it have a service demand forecasting plan?---Yes, we do do service demand forecasting.

PN2225

Right. How do you know how many sworn members you need on each roster?---It depends on two things: one is our minimum service profile and what we need to deliver for that, bare bones; and then the other calculation of staff is completed through tasking coordination. So, we're an intelligence-led organisation, so we're looking at our crime and traffic and community data all the time and, subsequently, our – through the processes of the Sergeants, Senior Sergeants and Inspectors and myself – we hold meetings, and sometimes out of session, because nothing is - - -

PN2226

THE COMMISSIONER: Fixed?---It's quite dynamic.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2227

Yes?---And it, to give an example, it might be something like a community event that we've just become aware of, so we run a calendar of events that tell us things that we know are going to happen annually or we're advised of and we start to

resource to, and sometimes things just happen spontaneously and we need to make adjustments around that, and we have a divisional planning office that looks at the number of resources that we have, and then we try to adjust that by the demand that we have.

PN2228

MR GOLDSWORTHY: Would it surprise you to hear that the Sergeant from the divisional planning office had never seen a service delivery plan for ED4?---I'm not – I don't think it surprises me. The service delivery plan is created by the LAC.

PN2229

Equally, he had never seen the workforce plan. Does that surprise you?---I'm not surprised by it, no.

PN2230

Did you approve the creation of the ED4 purchase leave panel?---Yes, I did.

PN2231

Whose idea was it to create the purchase leave panel?---It was done on the advice of our human resource business partner.

PN2232

Could you please explain how the ED4 purchase leave panel came into fruition?---So, in the last year – so that's '22/'23 purchase leave cycle – we were, and had been for an extended period of time, in a very resource-poor environment and we were aware that there is a window for applications for purchase leave. At this time, we had asked for those supplementary resources and we'd been through quite a bit of industrial agitation and consultation, not only with our own organisation, me reporting up and asking for help, but also, I was regularly speaking to TPAV around our situation and, so, we knew that our resource environment was very poor and we knew that it was going to coincide with that window of applications for purchase leave, so, in talking – I spoke to the HR business partner and asked for advice around what is the best way to deal with this and she recommended that we set up a panel and I subsequently spoke with TPAV and advised them of what we were going to do and talked through that with them so I could gain a level of participation with them.

PN2233

How is the purchase leave panel designed to operate?---So it's designed to operate so there are people looking at applications and assessing the merits of applications, if you like, and gaining advice from the HR business partner, plus or minus themselves, as to whether they meet pressing necessity, and also, to subsequently look at our demand to see whether we can actually – whether we have reasonable business grounds to approve or not approve.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2234

Did you develop any terms of reference for it?---No, there wasn't any terms of reference, but I did provide some written advice in emails to the LACs – the

Inspectors – and we had some meetings to discuss what we were going to do. Subsequently, in that year, Inspector Hargreaves coordinated the panel.

PN2235

So, there are instructions on how the purchase leave panel is to operate?---Well, there was emails and some verbal conversations. I'm not sure if there's any written instructions perse.

PN2236

Who was intended to be on the panel?---In that year, it was the three Inspectors. All three Inspectors sat on it.

PN2237

And this year?---This year, it was coordinated by Inspector Henry and I provided some – the material from last year, which was just emails, and some written advice around that and I understand that he set up some panels to assess the applications.

PN2238

So, do you know who was on that panel?---No, not all of them, no I don't.

PN2239

Are you able to name any of them?---Sorry?

PN2240

Are you able to name any of the members of the panel?---Well, I would expect that it would be whoever was sitting in the Inspector positions at that time. So, it could be Acting Inspector Chris Parr, but I can't say with any level of accuracy.

PN2241

Would you expect that Inspector Brad Sprague would have been on that if he was around at that time?---Potentially.

PN2242

Would it surprise you to learn that he wasn't in on the conversation that the panel had?---Not necessarily.

PN2243

Did you expect the panel to keep any minutes or notes in the meeting?---I expected they would probably write their own notes, but I didn't dictate those terms. They're Inspectors and they can set that up.

PN2244

Are you able to tell me how the decisions are made by the panel?---How the decisions were made?

PN2245

Yes, how did they go about making the decision on the determination on who gets their purchase leave applications approved and who doesn't?---I don't think I can really answer what their decision making was.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2246

The process, I'm after. So, I gathered there was no process?---Okay, I understand you now. So, they would have met with applicants, they would have gotten a written application and read that and often the written applications may not have a lot of information in them. There's probably reasons for that, but they may just put the weeks and the time in them and nothing else, and so, my expectation would be that they would meet with that person or make contact with that person and try to understand more around their application, and there may be a process of meetings with the individual, whether that's one-on-one or whether it is in a panel situation, to try and clearly understand the reason for the purchase leave application and for them to make a consideration of is there any pressing necessity components here, and then, obviously for them, they also need to look at what our service requirements are at the same time.

PN2247

So, just to clarify, did you mention that applicants may be required to appear before the panel to plead their case?---This year?

PN2248

At any – last year or this year?---Well, last year, my understanding is that applicants did meet with panel members and I wasn't part of that panel so I can't give you exact details around that - - -

PN2249

No, sorry, no, my question was around appearing before the panel, not meeting with panel members. So, would they have sat in front of two to three inspectors to justify why they want to purchase leave?---I wouldn't agree with that proposition, that they were justifying why they wanted to purchase leave. They were having a discussion with one of their senior officers who is responsible for assessing them.

PN2250

Yes, so that would have been done on an individual basis, not in front of the panel?---It may have been if you're talking about this year.

PN2251

Okay. Did you expect the panel to approve applications on the personal circumstances provided by the members applying for purchase leave?---Sorry, could you ask that again?

PN2252

Yes. Did you expect the panel to approve applications on the personal circumstances provided by the members applying for purchase leave?---I expected them to consider the circumstances and I expected them to bring them back to the table for discussion.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2253

How were members applying for purchase leave to know that their applications would be decided on their discussions with the Inspector and the brief notes made

on the application form?---I don't know. I can't answer that question on behalf of them. There's a - - -

PN2254

I'm saying that, the process, how would a member know that this is going to be the process; that you need to justify yourself to an Inspector as to why you want it, either in person or on an application form. How would a member know that?---I don't accept that they have to justify themselves. My view is that they were having a conversation and some of them had meetings with their managers around their purchase leave applications.

PN2255

Do you believe this process could be arbitrary?---No, I don't.

PN2256

You've given no instructions, no terms of reference, no particular guidance and members don't know how to apply, so would it not be arbitrary, or open to being arbitrary?---Well, there is a guideline for purchase leave applications. It's available on the Intranet, and prior to the process taking place, we had sent out an expression of interest form, if you like, with some commentary around trying to assess and work through what the applications would look like, etcetera, so that material had gone out, and there was also the ability for people to ask should they need clarification, given that the window opens every year and it is a standard procedure within the Victoria Police to apply for purchase leave.

PN2257

How many times did the panel meet this year?---I don't know.

PN2258

Do you know when they met?---No, I don't.

PN2259

What result did you expect from the purchase leave panel? A recommendation or an approval?---I expected them to assess the applications and I also expected the Inspectors to understand our resourcing environment and come back to the divisional leadership team for a discussion.

PN2260

So, how many applications for purchase leave were made within ED4 by sworn police members this year?---My understanding is there's 30.

PN2261

How many weeks of purchase leave were requested by police members in ED4 for this financial year?---I couldn't tell you.

PN2262

Do you know how many weeks of purchase leave were ultimately approved within ED4 by sworn police members under your direct line of control?---It was a small amount but I couldn't tell you the exact number of weeks.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2263

Are you aware of any members that work within ED4 that have been permitted to take purchase leave this financial year?---Yes.

PN2264

What areas or units are the members from who had their purchase leave applications approved?---My understanding, from crime scene services and from the DIU, from the divisional intelligence unit.

PN2265

Are you aware that no members from the general duties, across the entirety of ED4, had their purchase leave application approved?---Yes.

PN2266

Are you able to provide an example of the exceptional circumstances that allowed these members to have their purchase leave applications approved?---No.

PN2267

Would you classify having primary school aged children as exceptional circumstances?---Not in isolation without other information.

PN2268

Do you believe mental health grounds should be considered as exceptional circumstances?---Not in isolation. There's not enough information for me to actually answer that question.

PN2269

All right. Just have an email that – between yourself and Inspector Sprague that I'd like to get you to look at please. Just on page 2, so overleaf, the second dot point down. This is an email in reply to Brad and, you can see, there's a number of items that are blanked out on the table and you've given him a reply, second dot point down, you've got, 'Mental health. All members could raise this precedence.' What did you mean when you wrote this?---I think, if you go back in the document, you'll see that the context around this document is some advice that was being received from our HR business partner around that mental health is generally – there are other leave for mental health, for illnesses, whether that's WorkCover or personal leave, etcetera, and what I mean by that is, within that context that we've provided that advice, that purchase leave is not necessarily – or mental health may not necessarily fit the criteria for purchase leave – what I mean by that dot point is that I think every police officer has an accumulation of harm that may lead to mental health and we certainly see that, and particularly the longer tenured members have an accumulation of mental health issues. So, my dot point is around that I think everybody could potentially raise that, it was a general comment, it's not specific to any one individual.

PN2270

Do you think it's valid that members may want to take purchase leave for mental health grounds?---Do I think?

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2271

It's a valid concern that members may submit for purchase leave on the grounds of mental health?---Well, they may submit an application on that ground, yes.

PN2272

And do you think it's valid to assess that as a reasonable concern or exceptional circumstances?---I think it's reasonable to assess it, yes.

PN2273

Given that no general duties members had their applications for purchase leave approved, do you believe that the email from AC Langdon on 15 June this year was complied with? If you have a look at TL15, you'll – on page 81 of 124 – you'll see the email?---Is that TL15?

PN2274

It is, 1-5.

PN2275

THE COMMISSIONER: That's 447.

PN2276

MR GOLDSWORTHY: So, on that email from Assistant Commissioner Langdon to the majority of Eastern Region Superintendents - I do note that nobody from ED4 is listed initially in there. We've had evidence from the Assistant Commissioner that he did forward it on to Acting Superintendent Mason at the time. Have you seen that email?---Yes, I have.

PN2277

Do you believe, reading the contents of that email, that that process was complied with in ED4?---Yes, I do.

PN2278

Who had the authority to approve purchase leave applications in ED4?---From a policy perspective, a Senior Sergeant can, but in ED4, given our resourcing situation, we had raised that because we needed to finely balance our service delivery requirements with consideration to the purchase leave.

PN2279

So, sorry, who had the authority to authorise it?---So, ultimately, it sat with the divisional leadership team, led by me.

PN2280

So, (indistinct) in the email, the one that your provided on 24 May this year, if you could please look overleaf and, the third line down, it says, 'This requires coordination with me to approve or reject applications.' So, that's confirming that, as far as your concerned, you had the ultimate say on what was approved or rejected; is that correct?---Well, ultimately, yes, in consultation with my divisional leadership team.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2281

Thank you.

PN2282

THE COMMISSIONER: Should we mark that? Do you want to mark that? I'm asking the question.

PN2283

MR GOLDSWORTHY: It is in the emails that were provided, the 43 pages of them, but I'm more than happy for it to be marked if it's relevant.

PN2284

THE COMMISSIONER: Okay, R8.

EXHIBIT #R8 EMAILS

PN2285

MS LEONCIO: I note it is actually annexure JA23.

PN2286

THE COMMISSIONER: It is JA23.

PN2287

MR GOLDSWORTHY: Which one?

PN2288

MS LEONCIO: It's a bit of a duplicate.

PN2289

THE COMMISSIONER: I'm trying not to make a call, but I'm trying to determine whether – remember whether they are or are not, so any assistance you could give me would be appreciated. When I say determine, remember.

PN2290

MR GOLDSWORTHY: I'm looking at an email at page 54 of 343 and it is one that has been circulated previously and it's the one that we spoke about earlier and it was the one that said, 'Thanks Ash, really appreciated. Tony', up the top.

PN2291

THE COMMISSIONER: Yes.

PN2292

MR GOLDSWORTHY: The trick will be, is there a copy for the Superintendent.

PN2293

THE COMMISSIONER: Here we go – that's the last one. That's the A4 that is in A3.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2294

MR GOLDSWORTHY: Yes, and I do not have a copy for the Superintendent, but I will give her mine. (indistinct). So, on 14 June, she, Acting Superintendent

Mason, sent an email to AC Langdon allegedly outlining the process undertaken in ED4 and that he stated – and I think it's the second last dot point, but I'm not absolutely sure – 'assess applications against demand unless extenuating circumstances/critical. Not approved on reasonable business grounds.' Are you aware that the process that's been outlined by the Acting Superintendent at the time - is that an accurate account of how things were done in ED4?---So, I think – I can't really comment on what he's written.

PN2295

Okay?---It's his work and his thinking. Having a look at it, it seems to articulate some dot points of a process.

PN2296

Do you accept that, on there, he's listed that the applications to be assessed against demand unless extenuating circumstances or critical circumstances, it's not approved on reasonable business grounds?---So, I think the key part about that is that they assess the applications against demand, I think that's the key part of that dot point.

PN2297

Yes, I'm trying to determine the threshold of the application process, what you have to – what hurdle you have to get over, and by this email, it's suggesting that, unless extenuating circumstances or critical circumstances exist, you're not going to have your leave approved. Is that a fair interpretation of what's been written?---That's your interpretation. My interpretation is that we need to look at our business demand and what we need to service and also assess the applications and I think that's what the dot point is about. That's my interpretation.

PN2298

If I may have that back again, thank you?---Sure.

PN2299

Now, the next email – page 180 of 343 – and that's from Inspector Henry to the Superintendent.

PN2300

THE COMMISSIONER: What date is it?

PN2301

MR GOLDSWORTHY: The date of the email was 4 July. And, my apologies, but given that I've been away for two weeks, I haven't been able to copy as much.

PN2302

THE COMMISSIONER: No, no. You're doing well, Sergeant.

PN2303

MS LEONCIO: I know (indistinct). I mean, we haven't got this bit at the top, (indistinct).

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2304

MR GOLDSWORTHY: Yes, pretty much.

PN2305

MS LEONCIO: But it's 4 July.

PN2306

MR GOLDSWORTHY: Yes, it is. PH16 will do the same trick.

PN2307

THE COMMISSIONER: Yes.

PN2308

MR GOLDSWORTHY: Sorry.

PN2309

THE COMMISSIONER: Yes, well I was reading, not having got there yet. So PH16.

PN2310

MR GOLDSWORTHY: PH16.

PN2311

THE COMMISSIONER: Okay. Thank you. There is it, PH16, 739. Got it? Better than me. All right.

PN2312

MR GOLDSWORTHY: So, the email from Paul Henry to yourself, it's got:

PN2313

Good afternoon, Joy. I've engaged with all the Wodonga PHA members who applied for purchase leave.

PN2314

This is the sentence I'm interested in:

PN2315

I will not be putting forward any potential personal circumstances that are exceptionally compelling.

PN2316

Do you recall getting that email?---Yes, I did receive it.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2317

All right. So, Acting Superintendent Mason has got a threshold of extenuating circumstances or critical circumstances for approval. Inspector Henry has listed that it is an exceptional or compelling circumstance where you need to get over a particular threshold. You've got an email from the AC who details a kind of process. What was your interpretation of how or what threshold did members have to get over in order to have their purchase leave applications approved?---So, I've mentioned this before, we had a long period of being in a particularly poor

resourcing environment and we'd already been through our purchase leave applications the year before and had to work with the union around those, and I can say, it doesn't make me – it doesn't give me any pleasure to say no to people around these things. Because of that set of circumstance and then going on from that into this next year, we were still in a poor resourcing environment. My view around this was to make sure we understood what we needed to service and also make sure that we assess the purchase leave applications through the process of having some one-on-one or individual conversations with people and, in some cases, I think they were had with a number of people this year, or a couple of people. So, it was important for me to – that they were consulted and that they were listened to and that we actually really understood whether there were some pressing necessities or some things that we could work around and I know, in some cases, there was offers to try and move leave and make adjustments to try and accommodate people's particular issues, so it wasn't a carte blanche we're just not going to grant people purchase leave, but it is a balance between what we need to service and the number of people that we have to provide that service.

PN2318

Look, I appreciate that statement, but the overall effect was no members from general duties had their purchase leave approved; is that correct?---That is correct, yes.

PN2319

So, going back to TL15, just that last dot point, 'negotiating in good faith with possible reduction of purchase leave.' How can you negotiate in good faith when you don't know what the threshold is in determining what level - - -

PN2320

THE COMMISSIONER: Sergeant, I think - - -

PN2321

MR GOLDSWORTHY: Yes.

PN2322

THE COMMISSIONER: - - - we're just trying to find where TL15 is.

PN2323

MR GOLDSWORTHY: Sure?---I understand the preface of your question. So, Tony Langdon sent an email that says 'negotiate in good faith.'

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2324

Yes. And so, I'm just wondering, how can you negotiate in good faith when there is no established threshold about the application requirements to get over the hurdle that has to be jumped in order to get leave, so, as I say, the circumstances being either extenuating or critical, exceptionally compelling, or is it something else? So, I can't see how, in good faith, you can ask for an application when they don't know what they're applying or how hard they've got to go with their application?---So, I go back to what I've said before, and that is that we do need to look at what we have to provide and that is community safety and, unfortunately,

in these last two years, it hasn't been an easy environment for any of us to – whether it's been around any employee flexibility, flexible work arrangements, purchase leave, etcetera – and that's because we simply haven't had the resources and, you know, I would say this to the Commission: I understand that when people are given more flexibility or the balance of work/life, that they're probably happier and more productive, but unfortunately, we've not been in a position where we've been able to provide a service to what we need to. So, I've put it in my submission and – around things that we're not achieving based on the number of resources that we have. I do understand it doesn't make people happy but I – there's an application process. That application process, unfortunately, doesn't include the criteria that you will get it.

PN2325

Do you believe that the Wodonga uniform section has sufficient staff to undertake their policing role?---No.

PN2326

Do you believe that a unit or area that is at 100 per cent capacity should be entitled to take purchase leave?---Not necessarily, it depends on how many staff you have.

PN2327

If not when there is 100 per cent of staff available, when will I ever be able to take purchase leave again?---It's a good question, and I think it's a reasonable question. So, I think there's two things that I would say about that: one is that the staff allocation model is maturing and it is by no means perfect and we are seeing the impact of that at those local levels where we're making decisions like this. I have been told that they're motoring along and are starting to look at all the things that I've outlined in my statement around the things that we need to do as police, and so they're maturing the process, so I'd like to think that that will happen over a period of time and then the staff that are allocated to our areas, that there is a calculation within that that we can have far more flexibility and discretion to give people these types of arrangements. The other thing that I would say is that this hearing is certainly under the microscope of our state command – and I think it should be.

PN2328

THE COMMISSIONER: Well, it won't be the first, apparently. There are others. ED4, in particular, is the hotspot because - - - ?---We don't have enough staff.

PN2329

- - - don't have enough staff, the fact that it's a huge area, the Alpine region, the road trauma, and so, it really highlights the problem insofar as, relative to other areas, if you're balancing what's called reasonable business grounds, it's a hard balance to make in those circumstances?---I would like to be able to say yes to everybody, to be honest.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2330

Yes?---It would make my life and the other managers' life easier, and I think it would make our staff – it would make their life easier. I think they're more productive – you know, the reading that I've done and working with people where they have flexibility, they do – they're happier and they're more productive.

PN2331

Yes?---I just have to say no occasionally because I also have to deliver to the community.

PN2332

Of course?---And I don't quite like the decision, to be perfectly honest.

PN2333

No. No, no. I don't envy people in management for that reason.

PN2334

MR GOLDSWORTHY: Can you explain what strategies or action plans that you have developed to address purchase leave within ED4 so that members are able to apply for purchase leave and have it approved?---None.

PN2335

Do you believe that members should be able to take purchase leave?---As I just said, yes, I would like to see - - -

PN2336

THE COMMISSIONER: Yes, I think that's been asked and answered.

PN2337

MR GOLDSWORTHY: Do you believe that members should be able to sell their leave?---I'm not quite sure what that's got to do with it but I think we already can sell some of our leave.

PN2338

Yes, so there was a trade off in EB negotiations, so that members could sell or purchase leave?---I'm not aware of the purchase leave element. I know they can sell their ATOs.

PN2339

Yes, but there's currently – just to expand on that point – within Bright, this year, it's been offered that members can sell their leave and go to Bright for holiday policing?---I'm sorry, you're talking about our – I now understand what you're talking about, my apologies. So, we have applied for – because we're so resource poor, we've applied to the region for more resources to help us from the start of December until March, it's our – it's a peak period for us for tourism and we did an intel product that shows us quite clearly that everything is going to increase and it's going to mean a higher demand and a higher workload for our staff.

PN2340

Yes?---So we asked for additional staff and we've got some additional staff, but that's prefaced on whether people will cash out their ATOs.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2341

Right, okay.

PN2342

THE COMMISSIONER: So you're not – sorry, I misunderstood you, Sergeant. People aren't selling leave they've purchased?

PN2343

MR GOLDSWORTHY: They can sell some of their nine weeks annual leave in order to get more money but work more. So, it was a tradeoff - - -

PN2344

THE COMMISSIONER: Yes, yes, yes yes.

PN2345

MR GOLDSWORTHY: - - - that you can either purchase leave or you can sell leave.

PN2346

THE COMMISSIONER: Sell leave, yes, and is that under the agreement, or - - -

PN2347

MR GOLDSWORTHY: That was how it was developed along the way.

PN2348

THE COMMISSIONER: Right, right. So, you can sell leave – I mean, it's not uncommon in enterprise agreements – you can sell leave if you want to (indistinct). Okay, right, I think I've recovered my incorrect review, thank you.

PN2349

MR GOLDSWORTHY: So, going back to the large email that I handed out before. It was an email between Inspector Sprague and Superintendent Arbuthnot, the point where it was around mental health and all members could raise precedence. So, if you could just go back to that one, please. In that, so – approximately two fifths of the page down – the email from you to Inspector Sprague:

PN2350

Spoke to the AC re three you mentioned. He agrees that reasonable business grounds applies. Importantly, the consultation has been done.

PN2351

So, initially – have you got that email in front of you, Superintendent?---Yes, I do.

PN2352

So, could you go through – you had a specific discussion with the AC around reasonable business grounds for three members, is that correct?---Yes, I did.

PN2353

Do you recall that conversation?---I recall the gist of the conversation, yes.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2354

So, do you recall, the reasonable business grounds, how were they determined?---So, the three members that were – I can't remember who the three members were – what I can remember is we were talking about our resource poor environment and, you know, how we make assessments around the balance between that and the applications. I can't remember which three members were discussed though, Larry, so it's probably not - - -

PN2355

I'd have a stab in the dark, given who it's to as the two highway patrol members and potentially one from the CI, but that would be a guess?---So, if it was the highway patrol members, given the fact that we had a very low capacity in our highway patrol then I would say that that could have been the conversation, but I can't distinctly remember, and if it was crime scene – the crime scene members then I had made some enquiries around their position description and they're unable, based on their position description, to assist us in baseline minimum service.

PN2356

Yes, right?---So we can't shift them out of their – we can by consent, but we can't shift them to help us with our baseline service.

PN2357

Yes, no, I don't believe it was in – you're saying reasonable business grounds actually applies. The next line is, 'Members should', and it should be 'be':

PN2358

Members should be advised to access other relevant leave entitlements rather than we approve additional leave plus those entitlements.

PN2359

Why shouldn't members be able to access purchase leave if they can access other entitlements like long service leave?---So, to contextualise this, the advice that we were provided by our HR business partner was around people who were putting in their applications things like, 'I'd like purchase leave so I can manage my mental health over time', and the advice that we were provided is that mental health and those types of things sit clearly under WorkCover and personal leave. So, that's the context around those things.

PN2360

THE COMMISSIONER: Yes, there's evidence before. Earlier today you said that's, you know, when there's alternatives?---Yes.

PN2361

All right.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2362

MR GOLDSWORTHY: So, if you go further down the page, it's reply from Inspector Sprague, it says, 'Hi Joy', and then the line, 'I've spoken with payroll', if

you go to the very bottom, it says, 'In essence, we won't support any PL.' I gather that to mean purchase leave?---Yes.

PN2363

Is that your interpretation that that's the status quo? That no purchase leave will be supported?---I'd be speaking on behalf of Brad Sprague here, but he's saying that, in his portfolio, we won't be supporting any purchase leave.

PN2364

Okay, and this is on the back of an email from Inspector Henry to say that no purchase leave will be approved for ED4. Can you offer an explanation as to how they got it so wrong?---I can't really answer that question.

PN2365

There's an email at page 141 of 343. I do not have copies of it and I don't believe we've referred to it previously, and it's between yourself and Acting Superintendent Mason. Just in the top line there, and it briefly, it just says:

PN2366

I've advised PH2 that no PL if we can't meet MSL and backfill HWP, FVIU and SCOT.

PN2367

So, the highway patrol, family violence and SOCIT. Could you just give an explanation around that?---So that's a very short sentence around trying to balance all of the things that we need to balance. There were gaps in all of those units and I had responded to Paul where he had put forward some applications said can we actually backfill these critical risk areas - - -

PN2368

Yes?---And I've subsequently emailed to Ash who was sitting in my position as the Acting Superintendent that I provided that advice to Paul.

PN2369

THE COMMISSIONER: What's the date of that for a start?---11 June, and I was on leave at that time.

PN2370

Thank you.

PN2371

MR GOLDSWORTHY: Now, the minimum station profiles. If you could look at the CI from general duties rostering. I know that in your statement, Superintendent, you've included that. That's at page 64 of 179.

PN2372

THE COMMISSIONER: So minimum station profiles?

PN2373

MR GOLDSWORTHY: Yes.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2374

THE COMMISSIONER: That's JA7 which – the number is obscured on that. That's 560, I think.

PN2375

MR GOLDSWORTHY: It's the general duties rostering, minimum station profiles.

PN2376

THE COMMISSIONER: Hang on.

PN2377

MS LEONCIO: JA6. JA6.

PN2378

MR GOLDSWORTHY: That will be apparent.

PN2379

THE COMMISSIONER: Okay, we're one in front. JA6 which is at 551.

PN2380

MR GOLDSWORTHY: Okay, page 554. Down the bottom, annual rostering planning. So have you got that page there and the paragraph 12:

PN2381

Annual roster planning, previously referred to as annual leave rosters, must be formed by service demand forecasting and other known service and seasonal demands. These plans should be used to support a considered and balanced approach to the allocation of leave and other approvals impacting on staff availability.

PN2382

Would you say that the refusal of all purchase leave for general duties members was a 'considered and balanced approach to the allocation of leave'?---Yes, I would.

PN2383

All right. We're going to paragraph 37 of your statement?---What page number?

PN2384

It's page 498. Second full paragraph on page 37.

PN2385

Importantly, BMSL only deals with one threshold and that is the response to community calls for assistance. BMSL does not play a role in disrupting crime or preventing crime. In order to perform that function, we need more police resources beyond what is required to satisfy the minimum BMSL levels.

PN2386

Do you stand by that paragraph?---Yes, I do.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2387

All right. Can you please go to the minimum station profiles for Eastern Region?

PN2388

MS LEONCIO: J8.

PN2389

MR GOLDSWORTHY: I haven't nominated a page but hopefully people have got it.

PN2390

MS LEONCIO: 567.

PN2391

MR GOLDSWORTHY: 567.

PN2392

THE COMMISSIONER: 567, was it?

PN2393

MS LEONCIO: Yes.

PN2394

THE COMMISSIONER: Okay, J8. Yes, J8.

PN2395

MS LEONCIO: Is it the instruction?

PN2396

MR GOLDSWORTHY: That'll do. I was actually after the Eastern Region – so, it's JA4 – not JA4.

PN2397

MS LEONCIO: JA3?

PN2398

MR GOLDSWORTHY: JA3, excellent.

PN2399

MS LEONCIO: The action plan?

PN2400

MR GOLDSWORTHY: No, not the action plan. I was after the minimum station profiles for Eastern Region.

PN2401

MS LEONCIO: It's J8. It should be eight on 567. I think you might have been on seven.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2402

MR GOLDSWORTHY: Yes, that's it. Sorry about that. So, if you can go to page 567, please, Superintendent, if you're not already there?---I'm there.

PN2403

And if you go down to the first paragraph under 'Eastern Region':

PN2404

Minimum station profiles describe the minimum level of staffing appropriate to the station that are informed by key inputs of response demand, including calls for assistance, reception duty, supervision requirements, crime prevention and community safety, as well as additional units, additional police tasks already factored into the centre. It also acknowledges additional demand for family violence and mental health related tasks and the need for continuance of training in tasks to support the criminal justice process.

PN2405

So, when you say that BMSL does not play a role in disrupting crime or preventing crime, how do you equate that to what is written in relation to the minimum station profiles where it clearly states that it's:

PN2406

Informed by response demand, including calls for assistance, reception duties, supervision requirements, crime prevention and community safety.

PN2407

?---Well, I think, under the note at the third dot point, it says, quite explicitly, that the MSP figure is what you must have on your roster as a minimum, and it is the bare bones, and the difference between the station profile and an actual staff allocation is minimal. So, when I talk about playing a role in the disruption of crime, we're talking about things that are proactive in nature such as tasking units and proactive presences and proactive work around family violence recidivous offenders and things like that and that's in addition to the minimum service levels.

PN2408

Yes?---So MSP is the absolute bare bones that we need to provide and there are a lot of other things that I've outlined in my statement that we also need to provide service to.

PN2409

Right. Do you agree that the Criminal Investigations Unit, Family Violence Unit, and the Sexual Offences Child Investigation Team all investigate crime, contribute to crime prevention, disrupting crime, providing community safety in addition to general duties police?---Do I believe that?

PN2410

Yes?---They have to respond to particular types of crime and generally more serious crime. That's their charter.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2411

Okay. So, do you agree that the Priority Policing Unit, Crime Scene Unit and Divisional Intelligence Unit all contribute to crime prevention, disrupting crime, community safety in addition to general duties police?---I think they have roles to play, some of that is about engaging with the community, some of that is about supporting our specialist responder with things like crime scene analysis so that we all play a part in a big piece around delivering a service. Are they there, necessarily, to assist in responding to their jobs? No. They have their own core functions.

PN2412

But they do contribute to preventing crime and disrupting crime?---Well, I couldn't say with any certainty that they do. I haven't done any type of analysis of how much they contribute to physical police presence and crime prevention because they are allocated to positions that are specialist core functions.

PN2413

The very nature of the crime scene unit, they investigate crime scenes and try and identify offenders, so surely, if they identify offenders, they're contributing to crime prevention and disrupting crime?---They're responding to crimes that have already been committed and analysing crime scenes and gathering evidence from those crimes. If they're speaking to people who are nearby and (indistinct) and doing those things, that is part of their job, yes.

PN2414

Do you agree that general duties police contribute to reducing road trauma, crime prevention, disrupting crime and community safety while out on patrol?---Yes, they can by their physical presence and also some of the activities that they undertake.

PN2415

At paragraph 16, page 3, of the Victoria Police submission, it paraphrases you, stating that the MSP is the minimum - - -

PN2416

THE COMMISSIONER: Why don't we just turn it up for her so she can read it? Okay, what - - -

PN2417

MR GOLDSWORTHY: So, it's paragraph 16, page 3 of the Victoria Police submission.

PN2418

THE COMMISSIONER: I had a big post-it on it, but it's fallen out. Okay, yes, it's 313 is the outline. Sorry, what paragraph are we going to, Sergeant?

PN2419

MS LEONCIO: 16.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2420

THE COMMISSIONER: Right?---313.

PN2421

MR GOLDSWORTHY: Paragraph 16 which is actually on 315. So, the second sentence in after the small 18 that's there, the index:

PN2422

MSP is the minimum number of FTE required to be rostered to ensure the minimum service levels to respond to calls for assistance. It does not take into account the resources dedicated to priority areas such as road trauma or crime prevention.

PN2423

And, at 19, it's the acknowledgement that that is attributed to yourself on paragraph 30 and 37 of your statement. So, if I could go to your statement, paragraph 30 and 37. So, do you agree with that statement that I just read out in relation to the Victoria Police submission at paragraph 16? Just wondering, Superintendent - - -?---Sorry, I - - -

PN2424

Yes, I just asked do you agree with - - - ?---No, I was waiting for you to ask me a question.

PN2425

No, sorry, I did. It was just do you agree with paragraph 16 that was in the Victoria Police response that quotes you from two of your paragraphs; 30 and 37?---It's attributed to me?

PN2426

Yes. Sorry, my question – I don't know whether you can answer it or not – is do you agree with that statement at paragraph 16 that I read out?---Yes, MSP is the minimum FTE required to be rostered to ensure the minimum service level, I agree with that.

PN2427

Yes?---To respond to calls for assistance, and does not take into account resources dedicated to priority areas such as road trauma or crime prevention, and I also agree with that.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2428

All right. So, in relation to the Eastern Region MSP when it talks about crime prevention, that it is included, how do you reconcile the two?---So, within our – within any police service area, we have resources that – we have one level which is the minimum service to respond to calls for assistance, yet we're an intel-led environment and we have a number of different, if you like, spikes or problems that occur around our geography that we need to respond to and on a regular basis – and you'll see in my statement, part of the appendixes are things like events and operations – so we do targeted operations to things like road trauma and we are consistently trying to resource those things. So, we'll have a high physical presence or we might be targeting mobile phones or drug driving and those sorts

of things so we're always looking at how we can actually apply more resources to the problem. So, when I - - -

PN2429

THE COMMISSIONER: Those signs, 'Today we are targeting.'?---It's intel-led.

PN2430

Right?---And we need to analyse what's in the data to see what's causing the problem and then we do – we create specific plans and we target that, and we need to resource those things. So, when we're talking about things like road priority, every member in my area has a responsibility, sure, to respond to road trauma, so if they're on a divisional van, they're responding to a car accident. But we might have road trauma that's occurring all over the division and we need to really look at how can we really target that specifically and try and make that stop.

PN2431

Yes?---So, we run different operations.

PN2432

Right?---And you'll see a number of those are listed in our event matrix.

PN2433

MR GOLDSWORTHY: Do you believe that the neighbourhood policing shifts are accounted for in the minimum station profiles?---They're supposed to be, yes.

PN2434

Yes. So, at paragraph 57 on the police response – the submission – which is page 322 of volume 1?---322?

PN2435

Yes. Again, it paraphrases you:

PN2436

The BMSL is not concerned with the minimum resourcing requirements to meet the minimum service levels. It does not take into account the resources required to support the Wodonga Highway Patrol, Corryong Police Station, the units within the INR/TNC, neighbourhood policing shifts or to perform crime prevention functions.

PN2437

So, is that statement – do you still stand by that given that you just indicated that the neighbourhood policing shifts are included in BMSL?---They're supposed to be included in the BMSL, yes.

PN2438

So that statement is not correct?---No, but there is an answer to that.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2439

Please?---So, neighbourhood policing shifts are supposed to be achieved within the minimum station profiles and they're focused on crime prevention, patrols,

particularly to high-risk locations but we are unable to achieve them often and we do run a second divisional response car, or a response car at Wodonga, and it is predominately for response but sometimes will change its call sign to mimic, if you like, that they're a neighbourhood policing shift. But we're not – in simple terms, we're not rostering standalone neighbourhood policing shifts, we are rostering two response units and that's in response to the lobbying from the members and TPAV last year around needing additional resources for an additional response car.

PN2440

Okay. So, just on that, on page 505 at paragraph 71?---Is this my statement?

PN2441

Yes. Okay, got that there. So:

PN2442

The MSP FTE quota also includes the minimum number of sworn positions a station needs to equip neighbourhood policing shifts outlined in the regional MSP document. ED4 has not been able to roster standalone neighbourhood policing shifts due to resourcing constraints.

PN2443

Is that still your opinion?---I think I've just answered that.

PN2444

Okay. Once again, my apologies, I only have one copy of this - - -

PN2445

THE COMMISSIONER: Look, now, look – I just, if this is okay with everyone, I'm feeling the paperwork is getting away from me. I think, if – Superintendent, you're quite welcome to sit there, but I think we need a five-minute break where I talk to my learned friends about – so I can get on top of the documents, particularly the emails. So, have you got any others you're going to go to? Yes?

PN2446

MR GOLDSWORTHY: Sorry. My apologies, as I said, I've only had a day and a bit to get ready for this.

PN2447

THE COMMISSIONER: No, no, that's fine. No, I'm just wondering have you got other – because I'm going to ask for two.

PN2448

MR GOLDSWORTHY: Yes, so this document, it is quite a few pages, but it is the duty summary of all the shifts that have been allocated since June and it clearly shows the neighbourhood policing shifts that have been rostered, and so I don't know whether it can be copied or not.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2449

THE COMMISSIONER: Okay, look, Superintendent, perhaps if you can leave the witness box for two minutes while we sort this out, that would be great, because I just feel I'm losing grip of where the paperwork are and I've got to make a decision on this, so thank you.

<THE WITNESS WITHDREW

[3.53 PM]

PN2450

THE COMMISSIONER: Okay, I need that 11 June email between Arbuthnot and Mason. The document that you were about to hand over. I've got PA16, yes. Yes, look, if you give me those two and then we can fix the rest at the end of the day.

PN2451

MR GOLDSWORTHY: Okay.

PN2452

THE COMMISSIONER: It's 121 of 343 and the emails, apparently.

PN2453

MR GOLDSWORTHY: Okay.

PN2454

THE COMMISSIONER: Arbuthnot to Mason. Reuben, if you can get that and the document that the Sergeant is about to hand over and get copies.

PN2455

MR GOLDSWORTHY: Is it okay if I have a quick toilet break?

PN2456

THE COMMISSIONER: Yes, yes, I think – Reuben, you can do the formality of adjourning, I'll sit here.

SHORT ADJOURNMENT

[3.54 PM]

RESUMED

[4.15 PM]

<JOY ARBUTHNOT, RECALLED

[4.15 PM]

CROSS-EXAMINATION BY MR GOLDSWORTHY, CONTINUING [4.15 PM]

PN2457

THE COMMISSIONER: Now, Superintendent, before we resume, I'm going to pull the mercy rule at 4:30 today and, unfortunately, Sergeant Goldsworthy has got some more questions for you so you'll have to be held over to tomorrow if that's okay with you. Okay, right, please.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2458

MR GOLDSWORTHY: First of all, apologies, Reuben, for making this a difficult situation for you. Superintendent Arbuthnot, could you please have a look at the duty summary report that's in front of you? You'll not that there's approximately 13 fortnights within that duty summary. The particular fortnight that it's pertinent to is listed on the top of each page, so from 14 June and it goes through, at the very last page, to 19 November which incorporates this current fortnight. On the rear of each document I've highlighted – if you turn the first page, if you just turn it over and look at the back of it - - -

PN2459

THE COMMISSIONER: Yes.

PN2460

MR GOLDSWORTHY: So, neighbourhood police patrols, and so there's four listings there for start times of when a patrol has occurred. The numbers that are on there are the numbers of police members that are rostered on that particular day for a neighbourhood policing patrol at that particular time. So, if you have a look at the very first page from the fortnight from commencing 14 June 2023, you turn it over, and you see that on Tuesday 6 June there were 3 members rostered at 9 o'clock for a neighbourhood police patrol. On the following day there was two, on the next day there was two, then on 13 June there was one member, and then on 14 June there was a member rostered on the neighbourhood police patrol at 1300 – two members.

PN2461

So, I've done that for each of the fortnights and there's 13 fortnights in there and I've added up – and I've counted them so if there was one member on or three, one member constituted a neighbourhood policing patrol and three members constituted two neighbourhood policing patrols because you normally go out two up. The only proviso I would say in there is if it's a one up member roster of neighbourhood policing patrol, they may not go out, they may stay inside, they may be re-tasked or to go with somebody else.

PN2462

THE COMMISSIONER: Okay.

PN2463

MR GOLDSWORTHY: But, of the 13 fortnights in there, there are 84 shifts for neighbourhood policing patrols. Superintendent, how do you reconcile this information with what you've stated that ED4 has been unable – ED4 has not been able to roster standalone neighbourhood policing shifts due to resourcing restraints?---So, in order to explain that, I sought some advice from our divisional planning office to inform my statement and I was told by the Sergeant there, Wal Larkin, that on some small occasions when there are an excess of members which is not very frequent - - -

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2464

THE COMMISSIONER: Yes?--- - - - they will roster a standalone neighbourhood policing shift, but the majority of time, the neighbourhood

policing shift that's nominated in a roster is actually the second response vehicle that was lobbied for in terms of member safety and subsequently we got the 13 additional members. So, yes, we are putting some call signs into our roster to reflect that we are trying to achieve that but they are supposed to be stand alone. So, there will be some, no doubt, in here where they have been standalone but my advice from the DPO is that they're generally mimicking that response unit.

PN2465

MR GOLDSWORTHY: So, I appreciate that that's the advice that you've been given, but you're unable to substantiate that?---Well, that's the advice I've been given from the divisional planning office.

PN2466

Okay. So, if there's 84 neighbourhood policing shifts that are stand alone and are not 301 shifts or 309, which is an additional second van, over 13 weeks, would you agree that that basically equates to six-and-a-half neighbourhood policing shifts per fortnight?---Well, I'm not sure what this says, I'd have to actually have a look at the roster and analyse whether they're the second van or whether they are stand alone. All I can say is that's the advice I got from the divisional planning office.

PN2467

Okay. If there are six-and-a-half neighbourhood policing shifts per roster, does that comply with the requirements under the minimum service plan – the MSP – which dictates that there should be a minimum of five?---Per fortnight?

PN2468

Per fortnight?---If there was six standalone neighbourhood policing shifts in that fortnight, that would comply.

PN2469

Thank you. I shall move on from that issue.

PN2470

THE COMMISSIONER: So, what do you want to do with this?

PN2471

MR GOLDSWORTHY: Yes, if we could mark that in as evidence, perhaps.

PN2472

THE COMMISSIONER: Ms Leoncio, do you have an issue with that?

PN2473

MS LEONCIO: I'm not sure that the witness has identified that this document is.

PN2474

THE COMMISSIONER: No.

PN2475

MS LEONCIO: I don't mean to be difficult and I can just do that in re-examination but, if it's going to be marked, I think it should at least be explained what the document is.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2476

MR GOLDSWORTHY: So, it's a duty summary report - - -

PN2477

MS LEONCIO: From the witness.

PN2478

THE COMMISSIONER: Yes, okay.

PN2479

MR GOLDSWORTHY: So, okay, Superintendent, are you able to identify what this document actually shows?

PN2480

THE COMMISSIONER: Or what it is, I suppose?---Not really. I would – if I was looking at it, I would look at a roster and make some assumptions based on what I see in the roster every fortnight. So, I can't really - - -

PN2481

Perhaps we can park that and then you could get into the box later and we can deal with that then.

PN2482

MR GOLDSWORTHY: Sure. Thank you. Okay. At paragraph 41 of your statement, page 491, it's one that's been altered. In the first sentence, you've stated:

PN2483

The difference between the number of staff allocated to each station in ED4 compared to BMSL requirements is minimal.

PN2484

Are you able to say what the minimum station profile is for the Wodonga uniform section?---Not with any level of exactness. I do know it's around about 45 FTE, or at the overall.

PN2485

So, if we go to - - - ?---Sorry, I think it's 55. My apologies.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2486

At JA8, so an attachment – an appendix to your statement. On the second page of that document, go down to Eastern Region Division 4, and at your right into the Wodonga PSA, down the bottom of that table you've got 'Uniform Wodonga, 24-hour cells.' And the core position FTE, as at 30 November 2022, you've got a total FTE of 62 plus some decimal points. The other ranks was 45, the Sergeants

was 15.63. If you go across to the minimum FTE for rostered shifts to meet MSP, you need 40.063 ORs, so that's – there's five more, according to the list on 30 November, and for the Sergeants, you've got 13.59, and currently, back then, it was 15.63 were actually on the list. So, you've got an additional five staff, or thereabouts, over the MSP for Wodonga and an additional two Sergeants. Now, you're aware that those figures aren't entirely accurate in relation to – as of the middle of this year. Are you able to say, approximately, how many ORs were added to that list subsequent to this being published?---Are you talking about the supplementary resources.

PN2487

Yes, I am?---So there were eight supplementary resources allocated to Wodonga, but I don't believe they sit under our MSP.

PN2488

So, the overall numbers would be in excess of 50, would that be correct?---Is this for ORs?

PN2489

Yes?---On my calculation, looking at this, it would be around about 48. 48.063.

PN2490

So, as of 30 November, there were 45 - - - ?---Sorry, I'm looking at the wrong column. Yes, around 53.

PN2491

Yes. So, if I said there was actually 52 FTE, do you want to dispute that?---No.

PN2492

Okay. And approximately 15.5 FTE for Sergeants. All right. Would you agree that, if there was 52 FTE currently at Wodonga, that's 12 above the MSP requirements?---Yes. And, there'd be two Sergeants above the MSP requirements as it stands as of June – I appreciate that's not the current situation?---Yes, if all the positions are functioning, as in everybody is in them, yes.

PN2493

Yes. Okay. Little bit of maths here?---Not my strong point.

PN2494

Okay. Would you agree that with 12 additional ORs, if you were to multiply that, let's go by 43 for the amount of weeks that they'd be working, roughly, and this is very general, you would get an additional 515 weeks – roughly. Not your strong point, okay?---Not my strong point.

PN2495

Okay?---If your point is that you're trying to say that, based on these numbers, that there would be additional shifts theoretically.

PN2496

Yes?---Theoretically, that's right, but the ebb and flow of capacity and the availability of staff impacts that and subsequently impacts our ability to meet baseline.

PN2497

Yes. Okay. I will move on from that.

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

PN2498

THE COMMISSIONER: Well, is that a convenient time given it's 4:29?

PN2499

MR GOLDSWORTHY: It's convenient for me, Sir.

PN2500

THE COMMISSIONER: Okay, we're done. Okay, I thank everybody. Superintendent, I'm sorry that you have to sit there and thank you for your indulgence today and, unfortunately, you've got to come back tomorrow?---That's okay, I had factored that it.

PN2501

All right. Thank you, everybody. With that, I'll adjourn until 10 am tomorrow and we'll keep going until it's finished. Okay, maybe have a half-an-hour lunch even.

<THE WITNESS WITHDREW [4.29 PM]

ADJOURNED UNTIL TUESDAY, 28 NOVEMBER 2023 [4.29 PM]

*** JOY ARBUTHNOT

XXN MR GOLDSWORTHY

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