



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

COMMISSIONER WILSON

C2023/5109

s.739 - Application to deal with a dispute

**Police Federation of Australia
and
Chief Commissioner of Police T/A Victoria Police
(C2023/5109)**

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

Melbourne

11.00 AM, WEDNESDAY, 31 JANUARY 2024

Continued from 30/01/2024

PN1586

THE COMMISSIONER: Good morning, parties. So, thank you, Ms Leoncio.

PN1587

MS LEONCIO: Thank you, Commissioner. I'll call my final witness, Superintendent Joy Arbuthnot.

PN1588

THE COMMISSIONER: All right. Thank you.

PN1589

THE ASSOCIATE: Would you state your full name and business address.

PN1590

MS ARBUTHNOT: Joy Elizabeth Arbuthnot. And it's Handley Street, Wangaratta.

<JOY ELIZABETH ARBUTHNOT, SWORN [11.09 AM]

EXAMINATION-IN-CHIEF BY MS LEONCIO [11.09 AM]

PN1591

THE COMMISSIONER: Thank you, Superintendent. Please be seated?---Thank you.

PN1592

MS LEONCIO: Yes, you need to get your glasses, is that right?---I do.

PN1593

Yes, okay. All right, could you please repeat your name for the purpose of the transcript?---My name is Joy Arbuthnot.

PN1594

And what is your professional address?---Handley Street, Wangaratta.

PN1595

What is your current occupation?---I'm a police officer.

PN1596

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

PN1597

I'll just ask you to turn to the second folder which has the number 1001 at the front. And if you could turn to 1163, one, one, six, three. Is that the statement that you have made in the proceedings?---Yes.

PN1598

And I'll just confirm that it's dated 18 December 2023 which should be on the final page?---Yes, it is.

*** JOY ELIZABETH ARBUTHNOT

XN MS LEONCIO

PN1599

It runs for 36 pages and 161 paragraphs?---That's right.

PN1600

I'll just take you to the page 1444. That's one, four, four, four?---1444?

PN1601

Four hundred and forty-four, so 1444?---Yes.

PN1602

And I'll just confirm that starting from that page there are 44 annexures annexed there marked JA1 to JA44. The last annexure, I understand is at 1683?---That would seem right.

PN1603

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

PN1604

Are the contents of that statement true and correct?---Yes, they are. Yes.

PN1605

I tender that statement and the annexures marked JA1 to JA44.

PN1606

THE COMMISSIONER: Thank you. The witness statement of Superintendent Arbuthnot with the 44 attachments will be marked as exhibit R7.

**EXHIBIT #R7 WITNESS STATEMENT OF SUPERINTENDENT
JOY ELIZABETH ARBUTHNOT WITH 44 ATTACHMENTS**

PN1607

MS LEONCIO: Thank you, Commissioner. I just have a few questions.

PN1608

THE COMMISSIONER: Right. Thank you.

PN1609

MS LEONCIO: Superintendent Arbuthnot, what authority, if any, do you have to move resources within the division?---So, I do hold the delegation to move resources within the division subject to their position descriptions and the industrial elements that sit around that. But yes, I can move resources within the Commission.

*** JOY ELIZABETH ARBUTHNOT

XN MS LEONCIO

PN1610

And in what circumstances would resources generally be moved across the division?---Generally we move people who are seeking career progression or professional development when we can, and subject to capacity. And we also move resources where we have a risk or there is a shortage and once again, subject to capacity we try fill those gaps and risks when we can, and that is a process of prioritisation sometimes. There are a number of gaps, if you like, and

you don't necessarily have the staff to fill all of them. So, I'll look at the risk elements and try and treat the highest risk first.

PN1611

What impact if any does cost or geography, in terms of distance, have on a decision to move resources across the division?---Well, it certainly forms a part of the decision-making. But it does depend on what risk we're talking about. The division is an extremely large piece of geography and it is divided into a number of different parts, if you like. And subject to some of those industrial things around position descriptions it can make it a little trickier. But when we can we try and move people but there – the things that may be factored in are accommodation and travel but first and foremost it will be, do we have the availability of resources to do that. Do we have a suitable person to do the work that we're asking them to do. And then we start to look through the elements of, can we industrially do this. And then depending on the risk if it's for professional development it might not happen if there's not enough staff. If there's a risk such as we need someone in an area where they're managing, say, registered sex offenders, we'll see that as high risk and say, well, we need to spend the money to manage this.

PN1612

I want to ask you then just to turn to a different topic to ask you some questions about annual leave roster planning. Could you describe what an annual leave roster plan is?---Well, an annual leave roster is focused on the equivalent of nine weeks' annual leave for every one of the 327 sworn employees and obviously our department, as well, or public service employees. And it's a planning document to forecast how we're going to acquit that leave. So, it's done annually and we try and look at a ratio so we can keep doing the business, if you like, of policing and what's going to impact their annual leave. And there are also certain elements of people requesting the leave they want, so trying to manage all that with the amount of people that we have. And we obviously know that we have to acquit some leave, and some leave is not acquitted if they're off from work a long time and they carry their leave over. And that can then make an impact in the next year's leave.

PN1613

In terms of purchase leave, to what extent would you expect there to be a reference to the annual leave rostering plan when the individual managers are considering whether to approve purchase leave?---Well, I think what's been the practice is that if some people are hoping to apply for purchase leave, given that the window is April/May for the application process, that in some local areas they may put those things into the annual leave plan. But that hasn't followed as an endorsement process on the (indistinct) process at that time. But in some other areas they may not put in their intention to apply for purchase leave.

*** JOY ELIZABETH ARBUTHNOT

XN MS LEONCIO

PN1614

And in terms of those circumstances where it may not be put into the annual leave roster plan, when considering the approval of purchase leave applications why or

why not would you look then back at the annual leave roster plan that was prepared earlier?---Why would I, or would not?

PN1615

I suppose the first question is, would it be expected that you would look at the annual leave roster plan?---Me personally, no.

PN1616

Sorry, the managers of?---So, the process is that around about the start of the year, around January the unit heads will start looking at the annual leave plan and they submit that to our divisional planning office and so that starts at around about the Senior Sergeant level, looking at what the plan looks like. And then it subsequently goes through a process of approval and at some stage it's approved by the inspectors.

PN1617

And in terms of when you're looking at purchase leave and you're – sorry, not you, yourself but a manager is looking at purchase leave, what does the annual leave roster illustrate in terms of whether the leave can be accommodated or not?---Well, the annual leave plan is a plan and I can say from personal experience it often doesn't represent what it started as when we get to any time within the year. And that's because annual leave plans can change for a variety of reasons. Generally that may be illness or injury, or it might be we've had an emergency situation and people have been recalled, so things have to be moved. So, it is a plan, if you like, a forecast that we have to acquit leave. But by June 30 we have to acquit it. So, there's some adjustments that will be made at times. And those adjustments, if I talk about that through means of there are a number of things that we would juggle in that space. One will be delivering the service and our minimum standards, and the other priorities that we need to service that have been on those minimum standards, and also the capacity of our staff. So, the things that factor in and I've mentioned this already, illness and injury and unavailability for response, which may also include people who are on maternity leave and things like that. So, at any given time when we're trying to effect leave and trying to balance our service delivery we're looking at the snapshot of what's happened at that time and what we can and can't do. So, it's generally a negotiated process with people where we've had to shift some leave around.

PN1618

You just mentioned that snapshot. So, in terms of the annual leave roster plan does that provide a snapshot?---It provides a snapshot of how we intend to acquit the leave. And at any given time it can change a bit.

*** JOY ELIZABETH ARBUTHNOT

XN MS LEONCIO

PN1619

What about in terms of service to the very requirements? Does it play any role?---We do have some staff who will voluntarily be flexible around their leave and that generally occurs where we're just really short and we need to fill the rosters. So, we'll ask people and they will just negotiate around their leave and shift things around. So, some people are, you know, very flexible and generous

with those sorts of things. And at the Sergeant, Senior Sergeant and Inspector level we're always swapping things around.

PN1620

I then wanted to just ask you some questions about, in terms of the delegation levels for approving purchase leave, what role if any do you play in the approval of purchase leave?---I understand that the delegation sits at the Senior Sergeant level. However, because my division has been very resource poor for quite a period of time, years, we have had a conversation each year about purchase leave and we flag it, very similar to annual leave, around – well, we know people are likely to apply or to ask for it. So, at the divisional leadership level which is the inspector's and myself, we generally put a process in place and ultimately the delegation will sit with me in terms of approving or not approving. And that's mainly because of the capacity issue, as well.

PN1621

Thank you. They're all my questions, Commissioner.

PN1622

THE COMMISSIONER: Yes. Thank you. Mr Gome?

CROSS-EXAMINATION BY MR GOME

[11.22 AM]

PN1623

MR GOME: Thank you, Commissioner. Superintendent, I'd like for you to have a look at – it's a document to your left – no, to your far left on one of these photocopied pages. Now, we know it as R1. It's this on here. It's Wodonga PSA July 2023 to June 2024. You've got that there?---Mm-hm.

PN1624

And that's the iteration of the annual leave roster for the Wodonga Police Station. Actually, it goes – well, Wodonga PSA, as at 1 July last year. And if I can take you to the second page and if I can take you to the bottom of the first section, and if we look four lines up from the bottom of the column on the far left we've got 'OR's on recreation leave.' And the line below that, 'OR's on purchase leave', 'OR's on long service leave.' Can you see those?---Yes, I can, yes.

PN1625

And underneath there is a total in which the numbers of people on those paid leave, purchase leave, recreation leave, long service leave, are added up. Would you agree that that's the way that this table works?---Yes.

PN1626

Yes. And would you also agree that recreation leave, purchase leave and long service leave are planned leave in this planning document?---Well, in terms of the document they're recorded on it. But I wouldn't suggest that purchase leave is planned in the sense of endorsed leave. But I would say that we certainly discuss it in the planned leave.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1627

So, endorsement is a separate question. I guess what I'm asking you is, would you agree that purchase leave is something that people apply for and if it were approved it's done in advance? It can be planned for?---Members certainly plan for it, yes. And then the window opens and they apply for it and then it's put into the - - -

PN1628

The application needs to be made in advance of the members taking it and if it were approved it could be planned for in advance on a roster plan like this?---Yes, it could be put on a plan.

PN1629

Yes. It could be. Thank you. Do you have any knowledge of how the total number, where it says, 'Total OR's on leave', do you have any idea of where that figure comes from, how that figure is compiled?---That figure, generally speaking, the VPM talks about leave on a pro rata basis and there used to be historical quotas which we don't really follow any more because they were too rigid and they didn't factor in all of the other things that occur in the running of the station. And I broadly call that capacity issues and demand. So, they seem to have gone by the wayside. These numbers will be an indicative number from either the officers in charge in consultation with the Divisional Planning Office, and endorsed by the LAC(?) in perfect circumstances that they're the amount of people we would approve to go on leave at that point in time.

PN1630

So, it's an indicative amount for planned leave, the total number of, in this case, OR's, on planned leave at a particular period of time?---Yes.

PN1631

Yes?---It's an indicative number, yes.

PN1632

Yes. Yes, it's an indicative number. Can you see that there are some different shades in this line total, 'OR's o leave?' There are some shadings that are green, some that are yellow and some that are red. Can you explain – do you have any idea what that indicates?---Red would be under the threshold or at the threshold. And yellow would be close to the threshold, I would imagine, and red(sic) is over, in terms of leave only.

PN1633

Yes. Thank you. Can I now take you to page 1641 in the book?---Hang on.

PN1634

Which should be – do you have that there in front of you?---Yes, I do.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1635

So, that's the Workplace Relations Guideline Approval of Recreation Leave. Mr Rose and I were amongst the people who drafted this document. Can I just take you to the third paragraph in the first section and this confirms what you were saying is the current practice. 'Restrictions cannot arbitrarily be set by

management on the number of employees who can take leave at any given time during the year. Genuine consideration must be afforded to the individual circumstances of the employee when preparing leave rosters in addition to ensuring service delivery.' And the very last paragraph there you refer to, back in the day or previously, there was a quote mechanism to determine the maximum number of staff. 'Can't do that. Must consider service delivery requirements to determine the minimum number required at any particular time.' Now we know that there are reasonable demands, peak periods and in PD4, the alpine regions in particular is one where there are demands in the winter period. You would know that?---There's not rostered – that is seasonal. We have demand all year round.

PN1636

No, I understand that. But I guess what I'm saying is there are peak periods?---There are certainly priorities that we need to attend to but I'd say in ED4 that we don't really trough(?) very much, if at all, and that's due to the other priorities that we have which are around emergency management and then summer policing and the events and festivals that we have to service, as well. So, we've struggled around some of these things in terms of trying to find the period where there is less demand.

PN1637

Okay. So, I take it then if that's the case, if there are no peak periods in ED4, if it's high demand the whole time, it would follow then that your preference would be for the planned leave to be evenly spread throughout the financial year to the greatest extent possible?---To the extent possible, we try and plan leave.

PN1638

Yes?---And where there are, if you like, quieter times, and there are not many of them, we encourage leave in those periods.

PN1639

But sorry, quieter times are, I would say, non-peak periods. Are there differences or are there not?---So, I suppose to explain that we do have a priority around snow, which is winter. And then we also have an extensive tourism period for most of the year. It's one of the most popular parts of Victoria. And so we have a lot of visitors to the area. There is a period generally around about the end of April, going into the start of June when the snow season starts which we would say, from a police practice perspective that's possibly one of our quiet periods. But there are times when that can flood(?). So, we have demand all the time but we also have some priorities that we need to service.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1640

I'm going to explain to you how the rule of thumb, the leave guideline, the leave sort of average was traditionally calculated. I ask you to consider it. You don't have to accept it but my understanding is, and this comes from – he's now Deputy Commissioner, Bob Hill, that in the time that Mr Rose and I were dealing with him as the Assistant Commissioner of Crime Command and before that, Southern Metro, the rule of thumb is that at any given time approximately 20 per cent of people on the roster will be on leave. And that figure roughly comes from

dividing nine weeks of recreation leave, which full-time members get, by 52 weeks in the year. And that comes out to roughly, and I don't know exactly, it's 17 per cent. And then just to make it easier for accounting purposes, you say 20 per cent or one in five?

PN1641

MS LEONCIO: Objection, Commissioner. We haven't had any evidence to this effect in the applicant's case. It appears that Mr Gome is giving evidence from the Bar table as to his understanding of the matters but there's been no opportunity for me to cross-examine. It's a matter of fairness and the question should not be asked of this witness in circumstances where I've not had an opportunity to cross-examine.

PN1642

THE COMMISSIONER: Mr Gome, do you have any response to that?

PN1643

MR GOME: I'm not asking the witness to say whether or not it's true. I'm providing an explanation and I'm wanting to receive a response to that point.

PN1644

THE COMMISSIONER: Well, I haven't heard of the rule of thumb before. That's not to say I've read every single page of the 2000 pages in the hearing book but I haven't heard. You haven't led evidence on the subject with the other witnesses. I don't think I should allow the question.

PN1645

MR GOME: Very well, Commissioner. Superintendent, if I can take you back to the leave roster here. In ED4 there's a divisional planning office, isn't there?---Yes, there is.

PN1646

And they are the ones who compile these annual leave rosters?---Yes, they do.

PN1647

Yes. And they take into account when doing that - all of the known events are taken into account whether it's snow season, whether it's Christmas time, they take into account all the known factors in drawing out the leave roster?---I don't - they couldn't possibly do that, only from the perspective of they don't know what the capacity is going to be like at any point in the future. So, that makes the leave roster difficult to manage. And they also don't know what the demands are going to be. So there are, if you like, predictable demands but there are also a number of unpredictable demands that I've talked about in my submission that we regularly service. So, it's very hard to plan a roster that's going to be set in concrete for 12 months and know all those facts.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1648

Superintendent, I'm not asking about whether it moves or not. Maybe I'll reframe it. Why have you decided to have a Divisional Planning Office? What's its purpose?---The Divisional Planning Office was put in place because we had very

low capacity and in each unit or station we had one staff member compiling a roster for that particular unit. And when we made an assessment about that it didn't seem very efficient and so we set up one Divisional Planning Office with the view to do - - -

PN1649

And how many people in that office?---Sorry?

PN1650

How many people in the office?---There are four. They are serviced – it is also serviced by people who are unavailable for response because we don't have committed staff for that particular function and that's helped us in terms of managing some of our staff who need to take a break. And they're well resourced, so to do the events and planning for all of the things that come in from the community, so they help us with that.

PN1651

So, they take into account the known factors at a divisional level, Superintendent?---Yes.

PN1652

Yes. All right. Would you agree with the proposition that any absence from the workplace has an effect on service delivery?---Yes, it can.

PN1653

And would you agree that potentially that absence would not only be felt in the individual workplace but perhaps also in neighbouring stations, say a cluster, for example?---It could, yes.

PN1654

Could it also have, an absence, a member's absence, it could have an effect at the PSA level?---I'm not really sure at that level. I couldn't say definitively, yes. But there could be circumstances depending on the capacity of those work units, so yes, it could.

PN1655

And potentially a member's absence could have an effect on a divisional level?---It could, yes.

PN1656

Would it matter for the purposes of this hypothetical why the member was absent, the cause of their absence?---No, it probably wouldn't matter, except for the different options that you would have in play around it, around what you might need to do to assist that member in some way. And also, depending on - - -

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1657

But in terms of the effect – the member is absent. In terms of the effect is there any difference between any type – any reason that the member might have for being absent? Is there any difference between the reason that they have and the

effect of that absence?---Not in terms of reason and effect. But I think that's very clinical.

PN1658

Thank you. Would you agree with the proposition that the purpose of the planning office is to balance the acquittal of leave, in drawing up annual leave rosters to balance the acquittal of leave and service delivery requirements?---That's part of their job, yes.

PN1659

In drawing up the annual leave roster?---Yes, they do draw up the annual leave roster.

PN1660

Yes. And what they're doing in drawing up the annual leave roster is balancing acquitting the leave and known service delivery requirements?---Yes, they do do that.

PN1661

Yes. If in the planning of the annual leave roster they formed the view that an absence at a particular period of time was likely to have significant adverse impacts on service delivery, would it be approved? Would it be incorporated into the annual leave roster?---Not necessarily.

PN1662

If it were likely, if the Divisional Planning Office, in the opinion of the Divisional Planning Office a member's absence at a particular period of time was likely to cause significant adverse impacts, would it be incorporated into the leave roster?---Well, it depends on – the leave roster's made at a particular part of the year, so it's not necessarily going to – that injury, that hypothetical injury or absence may not have occurred then, or it may have occurred.

PN1663

But I'm not actually talking about injuries because they're unplanned. I'm talking about planned, if in planning the roster. So, we're talking about, again, planned leave, recreation leave, long service leave, purchase leave. If a member applies to take, for example, four weeks of long service leave and in the opinion of the planning office absence at that time, in this case on long service leave, would have significant adverse impacts, would it be incorporated into the annual leave roster?---Not in the first instance, I don't think it would.

PN1664

Because it was likely to cause significant adverse impacts?---I think there would be discussions around that before it went into any roster. It would have to be endorsed or approved.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1665

Can you explain that process? Who would approve it?---Well, if someone was applying for long service leave at a time when it would have significant impact on our service delivery, it wouldn't just happen. There would be conversations with

the sergeants and with the senior sergeants and with the inspector. And that all, in the context of your question, would have to take place in the time that the annual leave plan was getting put together. So, in answer to that question, it won't necessarily be in the annual leave, no.

PN1666

Yes. Yes, I understand. How would you know, and again, I'll continue with this example with you, so if somebody is applying for a period of long service leave in the future and in my hypothetical they're doing it in a manner that can be incorporated into the annual leave roster, how would you know, how would managers know whether or not leave at that time, at a point in the future was likely to cause significant adverse effects to service delivery?---On one hand, we would know what we know in terms of what we have to deliver to. And so that is done through our Task and Coordination Committee. So, we have a list of events and festivals, et cetera. We also have seasonal risk that we look at. And of course, we have our baseline service. But in terms of, do we know exactly what's going to happen at that time? No, we don't.

PN1667

No, you don't. So, you know that a planned absence is going to have some impact on the work unit, or potentially the PSA and potentially the division. Any absence will have some impact on service delivery, yes?---Yes.

PN1668

And you don't know, looking into the future, whether or not it will have a significant adverse impact, do you?---No, sorry. No.

PN1669

Sorry, it's - - -?---No, I don't – I can't look into the future.

PN1670

You can't look into the future?---I can only rely on what I do know.

PN1671

Yes?---And then work with that.

PN1672

That's right. That's right. Can I get you to turn to the first page of the annual leave roster?---Okay.

PN1673

And we're looking at the sergeants now, and we're looking at about ten sergeants down, Sergeant Narelle Peterson. And if you go across on the roster to the blue shaded areas that start on 19 May and go to 9 June?---Mm-hm.

PN1674

Can you tell me what the blue shaded areas represent?---I'm assuming its requested purchase leave.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1675

Yes. And if I can take you to the right-hand corner, the explanation there where it says, 'Code, RPL, requested purchase leave not approved'?---That's right.

PN1676

So, this was made – I've said to you that this roster iteration is the 1 July 20223. And the leave requested at that time, four weeks of purchase leave, was rejected. Can I now ask you to have a look at – it's another photocopied roster. This is A2. And this is what the roster reiteration looks like – sorry, have you found it there, Superintendent? It's black and white. It's another Wodonga roster but I think it's only the Wodonga Police Station, this roster?---So, I've got two Wodonga (indistinct) and they're both black and white. I'm just trying to work out which one it is.

PN1677

So, this is an iteration of the roster from 16 January this year. And can I take you to, again, Sergeant Peterson – she's at the same position on the roster there, and if you can go to the same dates, 19 May to 9 June, can you tell me what that shaded area now represents?---It's represented as long service leave.

PN1678

Can I just get you to refer back to, just to be absolutely certain, are you satisfied that they are the identical dates as the dates that were rejected for purchase leave?---Yes.

PN1679

Yes. And can I ask you, in your opinion – no, not in your opinion, can you explain to me – no, I'll just – no, I'll leave it at that. It's leave requested at the same time. The effect of the absence, a future absence, is unknown. You've agreed to that. You can't know whether or not – none of us know, Superintendent, how likely is it that Sergeant Peterson's future absence for the four weeks that she now has approved leave, how likely is it that that's going to have a significant adverse effect on service delivery?---I don't know if that's approved. I don't know anything about that application, so I can't comment on it. All I can say is that I wouldn't have approved it.

PN1680

Where does the delegation for approval of long service leave sit?---I think it sits with the senior sergeant.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1681

Okay. One moment, superintendent. I'm wondering now, superintendent, if I can get you to turn to, I think it's the first folder in front of you, page 452. That's an email that was sent by Acting Superintendent Mason when you were on leave and it outlines what he refers to as the 'ED4 Methodology.' So, it's sent to the Assistant Commissioner, but then the Assistant Commissioner, Tony Langdon, at his request. And it's sent to the other superintendents in Eastern Region explaining the process of assessing purchase leave that have taken place in ED4 over that previous financial year, and the upcoming one. In his evidence yesterday Acting Superintendent Mason said that he had received verbal

instructions from you along with a series of documents for him to refer to that he had been sent out this encapsulation of the ED4 methodology. And that he hadn't had a formal handover with you when he returned to – or when you resumed your substantive position and that he hadn't received any feedback from you in relation to this document. So, I guess I want to ask you, and you can have as much time as you need to look through it, my question for you would be is that an accurate representation of the ED4 methodology as you understand it?---As you say, it was a - I think he's cut and pasted some material from emails that I've sent him based on the conversations I had.

PN1682

Yes. But is there anything that you take issue with? Has he misrepresented you in any way?---I don't think so.

PN1683

No. Can I take you to the third last dot point and this is regarding the instructions that are given to the LAC panel which is the panel of inspectors. It says there, 'Assessment of the ability to use other leaves, i.e., long service leave.' So, you are aware of the possibility that members might take other forms of leave rather than purchase leave?---That was something that we'd done the year before, yes. But on this occasion we didn't.

PN1684

Sorry, can you explain that?---So, in the year before we were in a similar situation of not having sufficient resources to accommodate the purchase leave applications and we worked with the Police Association. We've just recently been approved 13 additional resources to try and help us with some of our capacity issues. And we were working with TPAV around purchase leave, knowing that we were unable to approve it. And so these dot points reference some of the process that was in place at that time. And we've had a panel where the inspectors had spoken to applicants. Some had withdrawn their applications and others still wished to forge ahead. So, there was a panel where there were conversations with applicants around why they needed purchase leave. And one of the reasons we did that is because people don't necessarily put a lot of information in their applications and we get on pretty well with our staff, so we wanted to talk to them about, you know, are there particularly – even though it's really tight, are there really quite difficult circumstances for people, and as such two staff members, I believe, still had some purchase leave that year as a result of those panel conversations, and recognition that they were in really quite bad situations. But in this particular circumstance we weren't in a position to offer alternate leave because our capacity is very tight, so we didn't go down that path this year.

PN1685

Right. I'd like to tender a document. This comes from the produced materials, Commissioner.

PN1686

THE COMMISSIONER: When you say it comes from the produced materials is it an actual document from the produced materials?

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1687

MR GOME: Yes, it is. I'll try and find the - - -

PN1688

THE COMMISSIONER: No, no, that's okay. I just trying to - - -

PN1689

MR GOME: Yes, it's number 10, Commissioner.

PN1690

THE COMMISSIONER: Sure.

PN1691

MR GOME: It's a spreadsheet compiled by ED4 management summarising personal – it says, 'personal', but it's actually purchase leave applications, and the status, approved or not.

PN1692

THE COMMISSIONER: All right. Thank you.

PN1693

MR GOME: So, superintendent, can I take you to the bottom corner of this document. And the description of the table in the bottom corner is, 'Wangaratta PSA Purchase Leave Substitution after Non Approval'?---Mm-hm.

PN1694

And the first example is Senior Constable German who had four weeks of long service leave at half pay substituted after non-approval of purchase leave. And the second example is Senior Constable Tim Jones who had his rec leave realigned. So, I put it to you that there is an example in this financial year where a member who applied for purchase leave was rejected. And as the document here says, it was substituted to long service leave?---All right, so Senior Constable Natalie German doesn't work in ED4, she works in ED3. My understanding is that – so, she transferred earlier last year - I'll just get my head right around which year we're in, after the purchase leave was rejected. And she now works in a different division and she may have negotiated that but I haven't been part of any of that, so I'd only be surmising that.

PN1695

But you can see that it does say that the data relates to Wangaratta PSA?---I can see that.

PN1696

Yes?---But I'm not aware of it. And I don't think that it was approved by us. You can tell me otherwise.

PN1697

Sorry, us?---As in, ED4. So, she works in a different division.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1698

Yes. That's all right. We've spoken to other witnesses about that.

PN1699

THE COMMISSIONER: When you say she works in a different division, does she work from your premises?---No, she doesn't work at Wangaratta.

PN1700

Right?---She works elsewhere.

PN1701

Right?---So, not within my area of command, at all.

PN1702

Sure. Okay, thank you.

PN1703

MR GOME: And we've shown you this further example, at least of Sergeant Peterson where that's another example of – sorry, I put it to you that that's an example of a substitution where the member's purchase leave was rejected and it's been substituted for long service leave?---I don't know anything that.

PN1704

No, no. But that - - -?---I don't have that.

PN1705

Yes. But do you accept, at least, that it's a substitution?---It may well be. But I don't know anything about it.

PN1706

Yes. But they're the same dates and it's leave at the same time. I characterise that as a substitution. Would you agree with that?---No. And I've answered it. I haven't – I don't know if it's approved and so I can't really answer that question. I don't know who's approved it or if it is approved, so I can't really answer it.

PN1707

I understand that. Assuming that it were approved, would that be a substitution?---If it – yes, I would agree.

PN1708

Thank you. If I can now take you to paragraph 23 in your statement which should be at 1167.

PN1709

THE COMMISSIONER: Mr Gome, did you wish to tender that document?

PN1710

MR GOME: Yes, Commissioner.

PN1711

THE COMMISSIONER: All right.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1712

MR GOME: Yes, I would like to tender that table.

PN1713

THE COMMISSIONER: The summary of purchase leave applications will be exhibit A11.

EXHIBIT #A11 SUMMARY OF PURCHASE LEAVE APPLICATIONS

PN1714

Please proceed.

PN1715

MR GOME: All right. So, just following on from the examination-in-chief, I was just wondering how often in practice you move police members across the PSA boundary, the boundary between Wangaratta and Wodonga. How often in practice would it be – the capacity exists in theory but how often does it happen in practice?---Not particularly often. It can happen, but not particularly often.

PN1716

Can you give me an indication of some quantification of that? Once - - -?---I probably could have, yes, if you've asked me beforehand but on the spot – there are - - -

PN1717

Just, well, how many times – how many times a year?---One or two.

PN1718

One or two?---If that.

PN1719

Yes?---It really only happens when someone has a personal issue that requires them to live closer to their work, or something like that.

PN1720

Yes?---And we've had a gap and we've been able to accommodate that to support them but – and we occasionally have people who are upgraded, so for professional development reasons who are prepared to travel to either of the stations voluntarily for their professional development.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1721

Yes. All right. Now, if I could take you to page 1477. One moment please. My apologies. I think it's the following – yes, if I can take you to, sorry, 1488. And if I can take you to the fourth dot point in that second section there. 'Any available police resources above minimum station profile may be tasked at the discretion of local management.' So, we heard in evidence yesterday from the local area commander that the Wodonga Police Station is above MSF, minimum station profile, and it's actually even above the core funded profile. So that the core funded profile is 45 members and there's an additional seven which is noted as

being allocated in the staff allocation model. And in addition that there's two that are backfilling parental leave. So, in those circumstances there is a discretion for the local area commander to task those other resources. And we know from your statement that there are some priority areas that you've directed Inspector Henry's attention to, so Family Violence Investigation Unit, Corryong Police Station and the Highway Patrol. Have you monitored the degree to which he's been able to satisfy that request?---Can I go back to the first part of your context?

PN1722

Sure?---You mentioned that where we got seven additional resources.

PN1723

Yes?---So, they've been (indistinct).

PN1724

Yes?---So, we got them two years ago, close enough to. And we're not getting any more as a result of getting those supplementary resources earlier. So, is that what you're talking about there?

PN1725

No. My question is, have you monitored Inspector Henry's efforts in allocating discretionary resources to those high priority areas?---Well, I don't monitor the inspector that closely. He's quite experienced. But I have regularly asked that any additional resources be placed into, particularly the Highway Patrol, and as things have changed across the SOCIT, in particular. So they had people return, all the vacancies filled and that assisted. But I have recently asked that all of our additional resources, or spare resources at Wodonga be placed in the Highway Patrol where we have low capacity. But do I monitor it? No.

PN1726

And now that we're talking about the Wodonga Highway Patrol, it's had chronic resourcing issues, hasn't it?---Yes.

PN1727

And there have been a number of members there on long-term WorkCover leave that have been a significant part of that equation?---There's been a number of members who have been absent from the workplace, yes.

PN1728

Yes. And in particular, absent on WorkCover for a long period of time?---Yes, some on WorkCover, yes.

PN1729

Yes. Thank you. If I could take you to paragraph 36 of your statement, please which is on page 1170. I want to ask you, in the first six months of last year how often did you need to use any of those escalation points? So, from January to June?---Is this paragraph 36?

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1730

Paragraph 36. So, there are escalation points to consider when developing a roster. So, how many occasions in the first six months of last year did you need to use any of those escalation points?---So, in terms of developing the roster, at Wodonga PSA it's my understanding there was no need to – or none that I'm aware of. And at Wangaratta PSA, I think there were 16 occasions where the roster was posted and it was in breach and we had to escalate some of those things.

PN1731

So, that would have been relating to Wangaratta Police Station, wouldn't it?---Yes.

PN1732

Yes. And so, 16 occasions in the six months. And were all of those deficiencies rectified, at least in terms of planning a forthcoming roster?---Not necessarily, no.

PN1733

So, of those 16, how many were not?---I don't know the exact number. But I do know that we were in breach and unable to fill some of those gaps which meant that we – you know, we were in breach of the safety policy.

PN1734

Okay, yes. Yes, in the Wangaratta PSA?---Yes.

PN1735

Yes. Can I just take you quickly to page 1342 which should be the BMSL breaches on posted rosters. So, what we were just talking about was the preparation of rosters. Now what we're talking about is after the roster has been posted, whether or not due to unexpected circumstances there were BMSL breaches. And can we disregard any of the data after June because none of that's relevant to the assessment of the purchase leave applications that are the subject of this dispute, and we confine our attention to the first six months. Now, you say in your statement that this document came from the Divisional Planning Office. So, I probably should ask you at the beginning, do you have any other knowledge outside what appears on the printed page here?---About the BMSL?

PN1736

About these particular breaches?---Not specific to each incident. But I can talk generally around why they occur and what we do.

PN1737

So, these are breaches that have arisen due to unexpected absence. All right. So, maybe it would be helpful to know. What are some of those unexpected absences?---So, predominantly they are driven by unplanned leave. So, just an unexpected absence. And that can be, if you like, in a situation where we're already tight for resources, so it has an impact in terms of finding an alternative. So there's not an extra person to simply replace that person on the shift. And did you want me to talk about what we do?

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1738

Yes. Yes, yes. Thank you, yes?---So, what we did when the policy position was first introduced there was some sense that it was sort of okay to go without a sergeant or a senior sergeant driver. And I wouldn't say there was a – there weren't a lot of sophistication around the reporting of the breaches, either. But I fundamentally agree with the BMSL and the safety instructions, so I try to put some rigor into that. And the division now operates that a sergeant and a senior sergeant driver must be provided. So, what we will do is generally we will either pay people overtime or we might, I'll call it scratch around, and try and find someone who might be working a different shift. So, it might be someone who's in a completely different role, not a general duty role, who may volunteer to assist us with that shift. But that's not frequent. And as you can see, there are times where we simply just breach and we will either have – we won't have someone assisting the sergeant inside the police station.

PN1739

And if we look at the three columns that appear in each of those months, the first column recorded is the total number and then if you like, the second two columns represent what happened. And if we look at Wangaratta, again just from January to June the actual number of breaches in most cases is very close to the reported numbers, aren't they? So, for example, in January there are 11 reported. There's only a possible – well, two successful mitigation attempts and the actual number is nine. So, it's very close to the reported number. And I'm sure you'll agree with me that that's the general flavour that happens in Wangaratta. In Wangaratta it's much harder to mitigate any breach?---It has been, yes.

PN1740

Yes, in this time. Again, we're just looking at this information. And on the other hand, at least in – there are some occasions in Wodonga – say, in May, for example, in Wodonga, and actually in Wangaratta, in May the mitigation was successful, so it's – yes. And yes, just to confirm, these are unplanned absences and what this shows is the capacity to respond to unforeseen, unrostered events?---Well, this affects our ability to provide a base level of service.

PN1741

Yes. Yes, and this is one that's actually monitored for the base level of service for the 24 hour station?---Yes.

PN1742

Yes. Thank you. If I can take you to paragraph 104 of your statement which is at page 1189, and can I just confirm that the first sentence in paragraph 104 relates to sworn employees of Victoria Police?---Yes, it does.

PN1743

Yes. So, there are 800 vacancies and 900 members absent from their workplaces throughout Victoria Police sworn membership?---Yes. And the figures are not specific. They're just – as you can see. I'd say about.

PN1744

Yes?---But yes, it's state-wide.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1745

Yes. So, there were recently some shortages existing state-wide and not just in ED4?---That's correct.

PN1746

That is correct. Can we now go to paragraph 106 and there's an assertion there that there are a number of resourcing challenges that are specific to ED4. The Chief Commissioner's instruction about minimum station profiles and general duties rostering applies to areas outside Eastern region, doesn't it?---Yes, it does.

PN1747

Yes. And we've just heard that outside of Eastern region there are vacancies and shortages. The BMSL applies to other regions in Victoria Police, doesn't it?---Yes, it does.

PN1748

Yes. And so, I put it to you that the resourcing challenges that you've outlined in paragraph (e) and the assertion beginning at 106, I put it to you that that's not true, that they're not unique to ED4. What would you say to that?---Well, I know what's happening within my area of command and I know about the numbers state-wide. And you can see in the context there that I've talked about – I've put that sentence in to talk about the availability of resources that I might be able to take into it to explain why I can't get them. In terms of the resourcing challenges in ED4 there are a number of resourcing challenges which I don't write in my submission.

PN1749

So, I put it to you that they're not unique circumstances. What do you say to that?---They're unique to my position, so - - -

PN1750

THE COMMISSIONER: In fairness, Mr Gome, the word, 'specific', not 'unique', in 106.

PN1751

MR GOME: My apologies, Commissioner.

PN1752

THE COMMISSIONER: Right.

PN1753

MR GOME: My apologies. I stand corrected.

PN1754

THE COMMISSIONER: Right. I think the way I read those paragraphs commencing at 106 is, 'I had a job to do and these are the issues that make it harder.' Isn't that the way I should be reading it, superintendent?---Yes.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1755

MR GOME: But you're not alone, superintendent, on this. I think I've got one more question and one more document for you, and this was just for further context. At paragraph 128, dot point 4, I'm wondering if – I'm not familiar with the cooperative model. Can you explain that to us please?---Certainly. So, because of our experiences in the year before we were mindful – our capacity was similar, so we were mindful that we needed to manage purchase leave again in this year that we're talking about. The cooperative model was something that I'd discussed. It was just an idea that I'd discussed with TPAV the year before and we - - -

PN1756

I'm sorry. Who at TPVA, if you remember? We're not monolithic?---No, I can't remember.

PN1757

That's all right?---I probably could if I was looking at a list.

PN1758

Yes?---But I can't remember. But it was about consulting TPAV around the fact that we couldn't support purchase leave and we wanted to have those conversations with them.

PN1759

Yes?---And so, I was just flagging a cooperative model which is in my mind. So, we know that our staff really want purchase leave. And fundamentally I understand that people who have more flexibility, better balance in their life, that they're happier and they work more productively. And fundamentally I'd like to support that. I have just really struggled. And so, I pondered the thought of a cooperative model where some of our staff will be factoring in their children are not going to get to school for the next three years; some are factoring in that they want to go on a big holiday around Australia or overseas. But they're sort of more future based. And I wondered whether we could do a model where those who had purchase leave this year won't get it next year, but those people who are planning to do that trip but need another 12 months or two years that they can try and - - -

PN1760

So, this is an embryonic idea?---It is, yes.

PN1761

Yes. Yes?---And it's interesting because when I spoke to some of the staff about it they were like, 'Oh, no. I'm not quite sure about that.' Because I think it's about giving up an application process.

PN1762

But perhaps later, superintendent?---Yes.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1763

I think I've just got one final document to hand up. So, this is the VPM workplace flexibility and if I could just take you to page 6. If you have a look at the table there it's got types of workplace flexibility. And if we work from the bottom, five

lines up it has – can you confirm that the policy has purchase leave as a type of workplace flexibility that applies to sworn and unsworn members of Victoria Police?---Yes.

PN1764

Thank you, superintendent. I have no further questions for you.

PN1765

THE COMMISSIONER: Superintendent, the question I've got is, when I look at those leave rosters that have been put to you, aside from parental leave or worker's compensation it would appear that most of the blocks of leave are for maybe one week or two weeks, or perhaps three weeks. But It's somewhat rare that it's longer than that. Is that your experience?---Well, it can be. So, part of it is driven by the employees' desire, you know, what they want. And some people like to take their leave in lots of one week and others want more. So, we do try and factor in what they want and then sort of negotiate around the fringes on that where we can.

PN1766

Right. But the reason I ask that, aside from the observation is that you were, a moment ago, speaking about someone who might be wanting to take a long holiday. If a staff member came to you and said, 'I wish to take the whole of the six months off from July until December and I've got accrued annual leave and I've got accrued long service leave, and maybe I need a week's purchase leave' – walk me through how you, or your staff would consider such an application?---So, can I explain something else you first, about the one week of leave?

PN1767

Sure?---So, members will roster a nightshift two weeks before that and they will then get six days off.

PN1768

The missing detail?---And so they're actually taking two weeks.

PN1769

Okay?---Our staff know how to manipulate the roster to the best advantage, and good on them.

PN1770

Sure?---So, they're actually taking two weeks.

PN1771

Yes?---And with a rest day or so around it.

*** JOY ELIZABETH ARBUTHNOT

XXN MR GOME

PN1772

All right. The penny's just dropped?---Yes. So, in terms of someone wanting to take six months off on annual leave, we have a process where leave is taken pro rata throughout the year, and so that's how it's generally planned. Some people may negotiate that they wish to take more than that because of – but it's not very common. So, generally speaking the planning is around three weeks, three weeks and three weeks, or you know, things like that.

PN1773

All right?---But that's really about a health and wellbeing focus, so people are taking a break. But there are the odd occasions where people will take a bit longer. If in the current climate someone put a long service leave application in to take the six months off, I would be, I think in the same position that I am now. So, the process is to apply for it. So, it's just an automated system. They put in what they want. It steps through the line of control and it's endorsed or not. So, generally speaking the delegation's at the senior sergeant level, but because our division has been so resource poor we would not move it along in the system. There would be some conversations with the next manager up and the next manager up. If there was some way of approving leave in certain circumstances we will try. But we have just really struggled to support people with additional - - -

PN1774

Okay, thank you. That helps me. Mr Gome, did you have any questions arising?

PN1775

MR GOME: Sorry, Commissioner. I did just want to tender that final document.

PN1776

THE COMMISSIONER: All right. Thank you. The extract from the Victorian Police Manual on Workplace Flexibility will be marked as exhibit A12.

**EXHIBIT #A12 EXTRACT FROM VICTORIA POLICE MANUAL
ON WORKPLACE FLEXIBILITY**

PN1777

Yes, Ms Leoncio.

RE-EXAMINATION BY MS LEONCIO

[12.30 PM]

PN1778

MS LEONCIO: I just want to take you to a document that you were taken to first, I think, which was the Wodonga Annual Leave Roster Plan. It should be exhibit A2? Sorry, R1. And you were asked some questions about, if you go to the second page, the shading there. You may recall questions about the colour green, yellow and red. And you gave a response around being above or at, sorry, being under or at threshold, being close to threshold and above threshold. Could you just describe what you mean by 'threshold'?---Well, looking at the numbers within any station, like here, we will look at what is a, I suppose a number of personnel that could take leave at any time in order to acquit it over the year. And so, the number is an indication of, I suppose, best practice or optimum levels to have that amount of people on leave at any time. But it only factors in leave and not all the other things that sit behind that.

*** JOY ELIZABETH ARBUTHNOT

RXN MS LEONCIO

PN1779

And what kind of other things are you referring to?---So, we have to acquit the leave and that's non-negotiable except in circumstances where someone is absent from the workplace and so can't take their leave and subsequently that has to be

acquitted and they return to work. However, these numbers are, if you're like, they're guides. Because it's, I suppose, accepting that everybody is available and it's the best case scenario. But that doesn't happen in real life because we're dealing with people. And we have people who are ill or injured, or unavailable for response for a variety of reasons. And that can then affect our ability to provide a service if we were to put all those people on leave. So, we do try very hard to stick to leave. It's very difficult to move people from their leave periods but some people are flexible and will work with us to make some adjustments around the annual leave roster.

PN1780

You mentioned there, absences due to illness or injury. In terms of long-term absences, say for example, workers compensation, do you know to what extent that is calculated in the numbers below?---Well, generally speaking what we do is we put everybody's leave in if they're at work to request it. So, if they're not at work to request it then it may or may not go in. There is always – we're still in contact with people and we're trying to support people, so sometimes people will actually let their contacts know, I still want you to put this leave in for this year because I'm planning to come back. So, sometimes it's in and sometimes it's not.

PN1781

You were then asked some questions about the effect of absences on the workplace and in particular you went on to give some evidence about long service leave. But you gave a response earlier in response to a question about, does it matter in terms of the effect on service delivery what the cause of the absence is. Your response was, you referred to a reason and effect as being a potential thing that matters. Could you just explain what you mean by that?---So, we have a number of – we only have two 24 hour police stations and then we have a number of non 24 hour police stations among member stations. So, based on the staff profile there if you've only got, say, four staff and one member is absent, that can have quite an impact on their ability to provide a service. Many of those small stations work in cluster arrangements where they roster amongst themselves, or complimentary roster. And so, it can then impact the other stations. And what that means is that generally when you have absences in those smaller locations, smaller FTE locations, that people will work additional availability, which is a health and wellbeing issue. They may have less shift flexibility. They may have had split rest days. And they may not be able to get the requests that they want. So, overall it can have quite a significant impact in those arrangements. The other factor that I think needs to overlay this is how many people are absent. So, one person in those situations may seem like nothing in a 24 hour police station but if you've got a number of other things and a number of capacity issues going on in other units such as in our specialist units where we need to support them, as well, it can start to have an impact, a big impact in those locations, as well.

*** JOY ELIZABETH ARBUTHNOT

RXN MS LEONCIO

PN1782

So, when you're talking about those capacity issues can I just understand what you're referring to, what kinds of absences were you referring to here?---So, if I speak about what's happened in our division, yes, we've had people on

WorkCover; we've had people on personal leave; we've had people who are transitioning to retirement and who are also using some of their personal leave; we've had people on family leave; on military leave; we've had people who are absent from work due to disciplinary matters and they're a bit (indistinct), so some of them can also be on WorkCover and others may be suspended; and we also have people who are unavailable for response, so they may be coming into work but they're unable to work on a response unit because of certain medical or health conditions.

PN1783

And in terms of the difference between those categories that you just described and purchase leave, what is it that you understand to be the major difference that you were referring to in your evidence earlier about this reason and effect? What's the major difference between those two categories from your perspective?---Well, I suppose I look at it this way. Our staff get nine weeks' annual leave and I was asked to, you know, approve extra annual leave. Most of the unavailable for response people, if I call them that broadly, they generally sit in either a health and wellbeing space, or there are a smattering of people who have sat in the disciplinary space and they're not available. And I don't like to put family leave into either of those categories, so - it's just choice.

PN1784

I'm sorry, just in terms of the difference though, between those on purchase leave, what do you understand the difference from your perspective? You were explaining why they're each different. Why are they different?---I'm not quite sure what you're asking me.

PN1785

Okay. I'll move on. Now, you were asked some questions about if recreational leave was going to have a significant adverse impact in a particular period of time would that be approved. And your response was, 'Not in the first instance.' Could you just explain to us what you mean by, 'in the first instance'? Is there another instance in which – you know, does it get escalated, or what else – if it's not in the first instance, in what other instances would it be approved?---Well, if there was a significant reason why the leave couldn't be approved, as in a business reason then we wouldn't approve it. We would try and negotiate with the staff member around the leave, or other staff members to see if they can just their leave and sometimes that does happen but – I'm not – the leave planning seems to – there's a negotiation around some people and generally speaking they move things around and subsequently their leave is booked in. But as I've said, it's a point in time and the leave roster in my experience has never looked the same at the end of the annual period.

*** JOY ELIZABETH ARBUTHNOT

RXN MS LEONCIO

PN1786

Would there be instances where this leave roster plan, where leave would be approved that could have a significant adverse impact, just in terms of this document? So, if you look at all of the numbers below could any of that approved leave have a significant impact?---Well, I think it has had an impact. So, when we've had low capacity and we still have to have people on annual leave because

we have to acquit it, it does have an impact on our rosters. And I go back to what I said before. People lose that flexibility around choice and when they want to work, so their own preferences, but also having rest days together, member break nightshifts and all of those sorts of things. So, it does have an impact on people.

PN1787

So, I'll take you to a different topic now. You were asked some questions around the baseline and minimum service level or the BMSL as it's known. And you were making reference to a two-up policy and that you agreed with the policy for safety reasons. Can you explain why you agree with it?---Well, fundamentally it's right. So, we have people who are working by themselves and we've had situations in the state of Victoria where people have been injured or killed working one-up and so the policy changed. I think dealing with the public, in my experience, can be sometimes wonderful but quite dangerous. So, fundamentally I think that we should be working two-up. And we still have some members who are working one-up in our one-member station locations but recently we've had a member who was significantly injured just doing a routine traffic stop and that really emphasises why we should be working two-up and have our safety practices very rigid. So, there's a lot of procedure that sits around working one up in risk assessments.

PN1788

And you gave some evidence about the escalations. So, there's a table that you were taken to in terms of the BMFSL breaches and those that were remedied and you gave some evidence that there had been a practice whereby a sergeant didn't go out without a driver. Could you just explain to the Commission. What is that particular unit? What's their responsibility?---So, we had a supervising sergeant who was supervising all the units within the police service area and traditionally they worked one up. And they were triaging jobs around, you know, what's the risk, and tasking units to go to different things, and monitoring and supervising. However, they were also responding to those incidents as the secondary responder. And when the policy was implemented it was seen that they should also have someone working with them and I agree with that. So, they now have someone assisting them and working with them from a safety perspective, but also to assist them around the things that they need to do. So, taking notes, et cetera, and assisting them with the communications. So, when the policy first came in there was a bit of a sense that, oh, we can still keep doing what we've done in the past, and we adjusted that reasonably quickly.

PN1789

I just want to hand up – you were asking questions about the Wangaratta PSA and in particular Senior Constable German. I just want to hand up a document which is the annual leave roster for Wangaratta PSA, January 2024.

PN1790

THE COMMISSIONER: Did you say 'January 2024'?

PN1791

MS LEONCIO: January 2024. Superintendent Arbuthnot, are you familiar with this document?---Not necessarily, no.

PN1792

In terms of the form of the document, is there something that - - -?---I know what it is, yes.

PN1793

Okay. Can you just describe from your knowledge what the document is?---So, it's a document that incorporates the leave periods for PSA at Wangaratta. Yes, all of the Wangaratta PSA. And it also indicates the – 'UG' refers to 'upgraded.' So, they're setting out their position as an upgraded into generally a rank higher.

PN1794

And just in terms of the other rank of Senior Constable German, can you see where she is on that document?---Yes.

PN1795

What does that document indicate in terms of Senior Constable German?---It shows that she has a week's leave in August, and a week's leave in September and then she transferred to Shepparton Crime Scene Services, and then she has leave after that for (indistinct).

PN1796

And what is the Shepparton Crime Scene Services? Where is that located?---At Shepparton. It's outside of ED4 and ED3, so a separate command. She's transferred to a job as a crime scene officer.

PN1797

I see. I seek to tender that document, Commissioner.

PN1798

THE COMMISSIONER: The annual leave roster for Wangaratta, January 2024 will be marked as exhibit R8.

EXHIBIT #R8 ANNUAL LEAVE ROSTER FOR WANGARATTA FOR JANUARY 2024

PN1799

MS LEONCIO: They are all my questions, Commissioner.

PN1800

THE COMMISSIONER: All right, thank you. Superintendent, there was one question I should have asked before. I apologise. You told me that there were four people employed in the Divisional Planning Office. Are they sworn officers or clerical staff?---Yes, they are sworn officers.

PN1801

Thank you. Is there anything arising from that question? I just clarified if the Divisional Planning Office staff were sworn officers, which they were.

PN1802

MS LEONCIO: Yes.

*** JOY ELIZABETH ARBUTHNOT

RXN MS LEONCIO

PN1803

THE COMMISSIONER: So, is there anything arising?

PN1804

MS LEONCIO: No, thank you.

PN1805

THE COMMISSIONER: All right. Thank you very much for coming down and giving evidence. You're released and free to go, so thank you?---Thank you.

<THE WITNESS WITHDREW

[12.50 PM]

PN1806

All right. Thank you.

PN1807

MS LEONCIO: Commissioner, that does end our case and we are conveniently just approaching the lunch break.

PN1808

THE COMMISSIONER: Well done.

PN1809

MS LEONCIO: So, we have proposed to move to closing submissions this afternoon if that is convenient.

PN1810

THE COMMISSIONER: All right. Can you give me some insight as to, is that likely to go past 4 o'clock, do you think?

PN1811

MS LEONCIO: We may need to have discussions over the lunch break but we haven't discussed whether it would go past 4 o'clock.

PN1812

THE COMMISSIONER: Okay. Well, if it does, if you would let me know please.

PN1813

MS LEONCIO: Yes. Yes, we can have those discussions.

PN1814

THE COMMISSIONER: All right. In that case we'll adjourn until 2 o'clock. Thank you.

LUNCHEON ADJOURNMENT

[12.51 PM]

RESUMED

[2.01 PM]

PN1815

THE COMMISSIONER: Good afternoon, parties. So I'll turn to you first, Mr Gome.

PN1816

MR GOME: Thank you, Commissioner. I really don't want to add too much more to the written material that we've already filed. Suffice to say that in its absolute essence, we see this dispute as being about whether or not a planned absence from the workplace in the form of purchased leave is any more likely than a planned absence on long-service leave or recreation leave to cause significant adverse impact. Because the definition of, 'Reasonable business grounds', that appears in the Act, for flexible working arrangements, has been adopted into the agreement and then by reference used as the definition, albeit a non-exhaustive definition of how purchased leave applications may be refused, we say what flows from that is that some of the considerations and the case law which you yourself, Commissioner, have been involved in is relevant to applying the concept of reasonable business grounds to, in this particular instance.

PN1817

And I guess in particular we want to keep grounding, you know, any inquiry and any sort of discussion in the likelihood of significant adverse impacts and not other considerations. I think there's a large volume of material for you to consider, Commissioner, and although it's taken this amount of time, in fact there's a lot of common ground between the parties in terms of what the Chief Commissioner's instruction means and what the respective policies may – the key point of contention is specifically the effect of purchased leave, that it might have.

PN1818

I would like to point out, unless you ask me to I won't take you to each of these references in the material but I would just like to note that after the ED4 purchased leave panel met. The communication that was sent out by the respective inspectors, so Inspector Henry on 8 July sent something to LSC Morris and that's at page 189UUU. Acting Inspector Hughes on 14 July sent out something in substantially similar terms to Senior Constable Jones and that's at page 182A. On the same day, 14 July, Acting Inspector Hughes sent out a similarly-worded email to LSC Rappell, 184A and Inspector Sprague on 18 July sent out an email in similar terms to LSC Allerdice at 296 and LSC Tinsley at 307G.

PN1819

The combined messaging was that the panel had met, the divisional commander was a member of that panel and that the panel had considered the combined effects of purchased leave applications. As you will know from our written submissions, Commissioner, we are suggesting to you – in fact, we're inviting you to consider the five applications as individual applications with references to the particular times the members are requesting leave and the particular annual leave rosters and work units that they're working at, so something concrete and not the cumulative effect.

PN1820

There's a couple of other bits of evidence that I'd like to draw your attention to and again, unless you would like me to take you there, and we can discuss it now, just for your reference at page 188, paragraph 35 of LSC Morris's statement, there's unchallenged evidence that Inspector Henry discussed long service leave with her and long service leave in lieu of purchased leave. Similarly, with Senior Constable Jones, paragraph 8 of his statement which appears at page 177 and Acting Inspector Hughes you might recall, Commissioner, did acknowledge that he had a conversation with Senior Constable Jones about long service leave and discovered that SC Jones's length of service wasn't such that he had accrued any long service leave. So that wasn't an option in the particular instance of Senior Constable Jones.

PN1821

At paragraph 32 of Inspector Henry's statement – and that's at page 706 – there's a reference to a conversation that he has with Superintendent Arbuthnot. It doesn't have a date but it does say prior to 10 June and the wording in there is there was a conversation with Superintendent Arbuthnot. There were other means by which purchased leave applicants could take periods of leave. We in conjunction with the – what we call the ED4 methodology and that appears at page 452 as an attachment to Acting Superintendent Mason's statement. We understand the reference in paragraph 32 of Inspector Henry's statement to be a reference to long service leave being taken in lieu of purchased leave because that's consistent with the instructions that were issued in the email that I've just referred to from Acting Superintendent, as he was, Mason.

PN1822

Really, there's one final thing just by way of clarification, Commissioner, just to make it absolutely clear: we're only seeking a review of the reasonable business grounds, the grounds on which the applications for purchased leave were rejected. You won't need to inquire into the personal circumstances or whether or not the discretion that was subsequently enlivened was appropriately discharged. So I'm in your hands, Commissioner.

PN1823

THE COMMISSIONER: Thank you for that. Can I just ask you a question, please, about the submission and evidence that's been led: you say you're putting the proposition that it was wrong on the part of Victoria Police to say, well, 'You may not be able to have purchased leave but you can have long service leave'. Am I to - - -

PN1824

MR GOME: Yes, yes - - -

PN1825

THE COMMISSIONER: - - - understand that?

PN1826

MR GOME: And the reason for that, Commissioner, is we say if you're absent from the workplace we know that there will be an impact, because there's less people at the station and Superintendent Arbuthnot's position as we understand it

is they're a ripple effect. You can't just look at the station in isolation. We know that there will be effects. If anybody is absent the pool of resources is smaller. That's true - - -

PN1827

THE COMMISSIONER: But the question I'm getting to is that for the purposes of my inquiry, the inquiry is about the communication to the officer that, 'I'm not giving you purchased leave'.

PN1828

MR GOME: Yes.

PN1829

THE COMMISSIONER: Anything said by the officer after that point is not part of my inquiry. If they then say, 'You can have long service leave', they've still refused purchased leave'.

PN1830

MR GOME: Yes, Commissioner, so the reason why we say that the subsequent granting of long service leave in that time is relevant is the reasonable business grounds for rejecting purchased leave at a point in the future are – or need to be, sorry, and I don't need to establish this – but they need to be likely to cause significant adverse effects and I guess what we're suggesting is if a period of long service leave – and we do have the example that we saw this morning and yesterday of Sergeant Peterson and she was one of the original applicants in this particular matters - nobody knows what's going to happen in May to June, those four weeks.

PN1831

But the fact that she is on long service leave or if she were on purchased leave has no bearing, we say, on the likelihood of there being significant adverse impacts and what we're suggesting is it seriously undermines the credibility of the employer's reliance on reasonable business grounds for rejecting purchased leave.

PN1832

THE COMMISSIONER: Right, I just wanted to clarify that aspect so thank you for taking me through that.

PN1833

MR GOME: Thank you, Commissioner.

PN1834

THE COMMISSIONER: That was the only question I had so thank you.

PN1835

MR GOME: Thank you.

PN1836

THE COMMISSIONER: All right, Ms Leoncio.

PN1837

MS LEONCIO: Thank you, Commissioner. I'm not sure I'll be quite as quick but I will endeavour to be as efficient as possible. But we do continue to rely on our written submissions, which you will find in the Commission book at page 318.

PN1838

THE COMMISSIONER: May I just pause you there, if you don't mind? I should actually mark Mr Gomes's submissions as an exhibit.

PN1839

MS LEONCIO: Yes.

PN1840

THE COMMISSIONER: And do the same with yours.

PN1841

MS LEONCIO: Before you do that, Commissioner, I actually have an amended version that I was going to hand up - - -

PN1842

THE COMMISSIONER: All right.

PN1843

MS LEONCIO: - - - which does have the updated Commission book references so it may be that that's the version to mark.

PN1844

THE COMMISSIONER: All right. We'll do it that way. Before we do that, I'll just mark Mr Gomes's outline of submission, the one filed on 17 November 2023, as exhibit A13.

**EXHIBIT #A13 APPLICANT'S OUTLINE OF SUBMISSION FILED
ON 17/11/2023**

PN1845

All right, please proceed.

PN1846

MS LEONCIO: I'll just hand up the amended outline of submissions.

PN1847

THE COMMISSIONER: Thank you, and I'll mark the amended outline of submissions of the respondent as exhibit R9.

**EXHIBIT #R9 RESPONDENT'S AMENDED OUTLINE OF
SUBMISSIONS**

PN1848

MS LEONCIO: I do also have a bundle of authorities that I was going to hand up, if that would assist the Commission. It just identifies the decisions that are referred to in our submissions. I've provided a copy to our friend as well.

PN1849

THE COMMISSIONER: While I remember, could I request you to provide a soft copy of the amended outline of submissions?

PN1850

MS LEONCIO: Yes.

PN1851

THE COMMISSIONER: Thank you.

PN1852

MS LEONCIO: And just one other document: in terms of housekeeping, we've prepared a chronology which may assist the Commission because in our submissions we've sought to group together the various portfolios. So I'll just hand up this document. I've also provided a copy to my friend as well.

PN1853

THE COMMISSIONER: Thank you. Another colour-coded document.

PN1854

MS LEONCIO: Yes, you'll see there that there's – we tried to make it easier so you could understand which events relate to which units.

PN1855

THE COMMISSIONER: Sure. I'll mark the chronology as exhibit R10.

EXHIBIT #R10 RESPONDENT'S CHRONOLOGY OF EVENTS

PN1856

MS LEONCIO: Yes, so the principle issue as identified by the applicant appears to be the question of reasonable business grounds in this application. Now, it does seem – and I will take you through my submissions in a moment – but just to deal with this issue that has been raised by the applicant in terms of long-service leave. In terms of the reasonable business grounds on which Victoria Police rely, there has not been a serious challenge to the actual reasons or the actual reasonable business grounds on which Victoria Police has relied, other than to make reference to an offer of long service leave.

PN1857

In terms of the actual vacancies, in terms of the actual impact on the services, in my submission that has not been the basis of a serious challenge. The quick response that I will provide in respect of long-service leave is it appears that the inference that the applicant is seeking to draw from the offer of long service leave being taken at a particular point in time, or the approval of long service leave is that that – the Commission should draw the inference that there is no significant adverse impact on the service. In my submission, you should not draw – the Commission ought not draw that inference because there are a number of evidence that there is – quite a volume of evidence that establishes what we say are the significant – the likely significant adverse impacts, which have not been the subject of challenge.

PN1858

Whether or not long service leave was approved or rejected does not indicate what level of impact that had on the service. We understand that there is an inference that they're seeking to draw. We say that's a long bow to draw. Ultimately there may be a myriad of other reasons why - - -

PN1859

THE COMMISSIONER: But at its most simplest, as I understand it, the argument is, well, you couldn't see your way to approve purchased leave but you could see your way to approve long-service leave and a day is a day and an absent day is an absent day, so why are you doing that?

PN1860

MS LEONCIO: And it doesn't change, it doesn't derogate – in my submission it doesn't change the nature of the evidence which has been put before the Commission as to the - - -

PN1861

THE COMMISSIONER: It may not but it raises a question.

PN1862

MS LEONCIO: It raises the question - - -

PN1863

THE COMMISSIONER: There may not be an inference but it's a hair's breadth for the inference.

PN1864

MS LEONCIO: Yes, and there's evidence of Commander Nyholm which I'll refer to in a moment, but there is a difference between long service leave and purchased leave and of course, the major difference is that there is an accumulated entitlement that continues to accrue which then results in a continuing and growing accumulated accrued long service leave balance. There is a benefit in drawing down that long service leave entitlement because in the words of Commander Nyholm, otherwise you have this risk that those shifts would be – that that entitlement will be sought to accessed at some later point in time. So it's different to purchased leave, where's an ability to reject those shifts, reject that leave. Here we're talking about an entitlement that will continue to accrue and so there's a continuing risk that that – those shifts that would be the subject of the leave will be lost at some later point in time. It's more of a shifting around as opposed to an additional absence, which is what purchased leave would involve.

PN1865

Now, I do want to take the Commission through the enterprise agreement. There is no real dispute about the way in which it operates but I do think it is worth just going through the relevant provisions. There isn't a copy, as I understand it, of the enterprise agreement in the Commission book.

PN1866

THE COMMISSIONER: I have a copy here.

PN1867

MS LEONCIO: You have a copy there, good – and I wanted to take you first to part 15, which is clause 124 and you'll see there that's the part that deals with recreational leave and we have, on the one hand, clause 124.1 that deals with the guaranteed entitlement of recreational leave, which is for all the employees, excluding recruits. Full-time employees are entitled to nine weeks and part-time employees are entitled to seven weeks and I wanted to draw your attention to clause 127.1, which there is the reference to the annual leave entitlement or that recreational leave entitlement needing to be exhausted within the financial year.

PN1868

So that forms the basis of the annual planning roster which occurs or you've seen various iterations of that roster. But that is the – what we say is the primary basis of that annual leave roster, is to acquit this guaranteed entitlement across that financial year. Now, that's to be contrasted with clause 129, which has – which is the subject of the dispute but this of course includes the discretion, that it may only be rejected on reasonable business grounds as described in clause 14. And I just note at clause 129.1 that it's a period of between one and four weeks leave per year. So again, we're looking at it on a per-year basis.

PN1869

Then it explains why we are making the assessment around the time of the beginning of the financial year. And in terms of reasonable business grounds, we have established between the parties that there is no dispute that that is a reference to clause 14.10 – well, clause 14.9 and clause 14.10, which sets out a non-exhaustive list of examples of reasonable business grounds and the focus is on subparagraphs D and E.

PN1870

THE COMMISSIONER: I'm sorry, which clause was that?

PN1871

MS LEONCIO: Clause 14.10.

PN1872

THE COMMISSIONER: Okay. Thank you.

PN1873

MS LEONCIO: And the focus, as I said, is primarily on subparagraphs D and E and we really shorten the definition in terms of – there doesn't seem to be a big dispute between the parties that a significant negative impact on service delivery we say would fit either of those limbs. One of the points to note about this, the subclauses, is that they are referring to what 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. So it's a prediction and because of the way in which the annual leave and the purchased leave is considered, it's a forecasting. We're looking into the future, trying to determine what are the likely impacts based on what we know, based on the information that we have available at the time.

PN1874

THE COMMISSIONER: And you place no reliance on A, B or C?

PN1875

MS LEONCIO: There is in respect of the Wangaratta PSA, there is a focus by one of the inspectors on the impact on availability in terms of other members needing to be available for shifts – sorry, needing to be rostered for availability. That could fall within subparagraph C but it would be impractical to change the working arrangements of other employees or recruit new employees to accommodate new working arrangements requested by the employee. But the focus is really about D and E, in my submission.

PN1876

Now, in terms of the word, 'significant', it has to be seen within the context of purchased leave which is only ever going to be maximum four weeks. So it's a small number of shifts in terms of the total number. If you're a full-time employee four weeks would be 20 shifts and it can't simply be an answer that 20 shifts is a small amount. That's never going to have a significant impact. In my submission there needs to be a practical right in terms of the discretion to reject an application and so it's not purely looking at the numbers. Of course that's going to form part of the decision making but we've got to keep in mind that the total number of purchased leave that can be approved for any financial year will be at a maximum 20 shifts.

PN1877

But we do accept that any loss or any absence on purchased leave is going to result in a reduction in service delivery and we acknowledge that it needs to be over and above what would ordinarily be involved. Sorry – the loss or impact that would ordinarily be involved. Now, Commissioner, I won't take you to the decisions but we do – in our submission there is a difference between the assessment of reasonable business grounds in this context, dealing with purchased leave, and the way in which it is determined in the request for flexible work arrangements context.

PN1878

But we agree that there are some principles that apply and in particular, we have referred to this in the submissions, but at tab 10 of our folder – I won't take you to it – but it's one of the cases of the Police Federation of Australia v Victoria Police. This is the 2021 decision of Commissioner Bissett and we say there are some helpful principles there - - -

PN1879

THE COMMISSIONER: Sorry, which tab?

PN1880

MS LEONCIO: Tab 10.

PN1881

THE COMMISSIONER: Thank you.

PN1882

MS LEONCIO: I might just take you to that, actually. Now, again, this concerned an application where the dispute was about a request for flexible working arrangements, so not on all fours. But at paragraph 79 – sorry, just bear

with me – there are some helpful observations in terms of the way in which reasonable business grounds should be determined and there doesn't seem to be a dispute between the parties but it's a question of whether it was objectively reasonable. So you'll see there paragraph 79, if the business grounds relied upon were objectively reasonable.

PN1883

And then if you turn to paragraph 86, Commissioner Bissett refers to – this was in the context of considering a flexible work arrangement which had already been granted and then was later – when there was an amendment that they wished to make was later refused and what Commissioner Bissett is referring to here is saying it is not a comparative assessment. So if at some earlier point in time he had that flexible working arrangement granted, that does not mean that a later rejection does not have reasonable business grounds. The assessment to be made is not a comparative assessment but whether the grounds stand the test as the circumstances were at the time of the decision to refuse the 2021 request was made.

PN1884

So we're not comparing, we're just looking at – for this year – where there are reasonable business grounds. We don't worry about whether in 2022 or 2021 that person took purchased leave. The final paragraph that I just wanted to take you to is paragraph 123, where as a reference to:

PN1885

I should observe that it would be easy to say that none of the business reasons given by Victoria Police for refusing the request dissipate because one shift per week is available by the refusal of the 4 by 10 roster. But that is not the assessment to be made. It is whether there are reasonable business grounds to refuse the 2021 request.

PN1886

That's just about looking at the reasonable business grounds, not whether or not if we say we can reject this application, have additional shifts on the roster, that that suddenly resolves our resourcing issues. That's not the question to be answered. Now, in terms of the first issue that I wanted to turn is about the question of the genuine consideration of the applications. In my opening I said that there was no blanket ban, that there was not by the divisional leadership team or the regional leadership team a direction to reject all applications.

PN1887

Rather, it was to ensure that the service delivery requirements were assessed carefully prior to the rejection or approval of any leave – of any purchased leave. And I do think it is worth taking to you the correspondence that I did refer to in my opening submissions, which is at 1865 of the Commission book. This was the correspondence that was sent from the Police Association to the Chief Commissioner in May 2022 and it's significant because it demonstrates that the concerns that were held by the regional leadership team and the divisional leadership team about the resourcing challenges, that they're not arbitrary, they are genuine concerns, and that really reinforces – we say this correspondence

reinforces the actions that were taken in 2023 and also in 2022 in terms of having a level of oversight as to applications for purchased leave.

PN1888

You'll see here that the subject heading is, 'Resourcing in Eastern Region, Division 4'. And it refers in the first sentence about:

PN1889

Our members in the Eastern Region Division 4 have been significantly under-resourced now for many months owing a combination of long-term absences, sick leave and suspensions.

PN1890

So, Commissioner, in terms of the absences and the absenteeism, in my submission this demonstrates the nature of these long-term absences. It's not an exaggeration to say that was having significant impacts on Eastern Region Division 4 and in particular, Wodonga police station. In that second sentence there's a reference to members at the Wodonga police station having complained about their inability to have a second back up unit rostered to support them in an environment where they are distant from back up and challenged by the complexities of border policing.

PN1891

I just want you to keep note of that, because when we look at the service levels for Wodonga police station we say the minimum response is actually more than what's prescribed by the Chief Commissioner's instruction. The minimum service, based on what members themselves say, includes a second unit. There is further – I won't go through all of the correspondence but it's quite clear from this letter that the shortages are critical and that it's impeding service delivery and base line service levels. You'll see that in the first paragraph of the next page.

PN1892

In my opening, Commissioner, you did ask me about the level of resourcing challenges and in particular these levels of absenteeism. I'll just note that it's at paragraph 102 of Superintendent Arbuthnot's statement, which is page 1188. I won't take you to that now. But that's where the data is that says that there has been quite an exponential increase in WorkCover and unplanned leave in the last couple of years. So the issue of resourcing and the impact of absenteeism on the ability to provide policing services in ED4 was a key concern of management of ED4 and that's not to say that there was a blanket ban on purchased leave but rather that the management expected service delivery to be considered before approving any purchased leaves.

PN1893

Now, the evidence will establish – and we've set this out in our submissions and also in the chronology – that each of the individual applications were considered and the reasonable business grounds of each of those individual applications were considered. In terms of Superintendent Arbuthnot's involvement, we say that she has the ultimate accountability in terms of service delivery and there is in terms of the delegated authority and where the authority sits, in terms of the inspectors holding the authority to approve or reject purchased leave application by the

policy, there is nothing invalid or incorrect about the Superintendent Arbuthnot providing guidance as to what service delivery requirements in terms of the process that was adopted but also to ensure that service delivery was taken into account.

PN1894

An example of this and the way in which we say it's clear from the evidence that there was an individual assessment as opposed to some broad rejection or accumulative assessment is what happened in Wodonga highway patrol. Now, we accept – and the evidence that was given by Inspector Sprague, you'll see in his statement, is quite candid in terms of what he understood to be the impact on service delivery.

PN1895

You may recall that he initially provisionally approved the applications for the two other ranks in the Wodonga highway patrol and provides in his statement his views that he considered if there were two other ranks left in the Wodonga highway patrol, that that would meet the service delivery requirements. And you'll see, if I can take you - - -

PN1896

THE COMMISSIONER: Before you move on, what do I make of the delegations table that was tendered in evidence? If I understand that table correctly, the delegation for approval was at Inspector Sprague's level.

PN1897

MS LEONCIO: Yes, it's the minimum. So you'll see that there are ticks - - -

PN1898

THE COMMISSIONER: Yes, I know what delegation totals are.

PN1899

MS LEONCIO: Yes.

PN1900

THE COMMISSIONER: But the question is, he approved it.

PN1901

MS LEONCIO: He did and then there was a review.

PN1902

THE COMMISSIONER: Why doesn't that stand?

PN1903

MS LEONCIO: Because there's nothing in the enterprise agreement that prevents the review of that approval and ultimately once the service delivery requirements were properly considered, there was – there is objectively a basis to reject the applications and I want to take you through - - -

PN1904

THE COMMISSIONER: That isn't – aren't principles of the ostensible authority essentially that it's been approved?

PN1905

MS LEONCIO: Well, it was and as I said, there's nothing in the enterprise agreement which indicates that that approval cannot be reviewed.

PN1906

THE COMMISSIONER: Sure, that's why I put the question about ostensible authority. Wouldn't you say that's more about the finality to the decision?

PN1907

MS LEONCIO: Well, ultimately he does reject the application so there is – I might just take you through that because it demonstrates what we say is not this cumulative but there is still an individual assessment. There is still an assessment about the individual applications.

PN1908

THE COMMISSIONER: My concern with that proposition is that in having it reviewed, I mean, I know you advocate that's to be taken as an individual assessment but the fact it was reviewed, leans me, I would have thought, to being less of an individual and more of a corporate assessment.

PN1909

MS LEONCIO: Well, that's what I want to take you through now, to show that that's not what occurred.

PN1910

THE COMMISSIONER: Okay.

PN1911

MS LEONCIO: And I want to start first with a document at 1522. Sorry, the first page of that is 1520. But you'll see here that Superintendent Arbuthnot – sorry, Inspector Sprague – has sent an email to Superintendent Arbuthnot which is titled EDHWP - which is highway patrol – resource pressure. This is 25 April 2023. You'll see at the start of that email it says: 'Current highway patrol resource situation as requested for period 23 April to 20 May'. If you go across to 1522, you'll see Wodonga highway patrol – that's EDWHWP. That's what that stands for. The gazetted strength is one sergeant to nine other ranks.

PN1912

You'll see for the week starting 23 April, there were three other ranks out of the nine who were on operational shifts. There was no sergeant but there was a sergeant from – another acronym – EWOUNI, which is Wodonga uniform, so Wodonga police station. They were rostered for one shift. So there's evidence about the backfilling of that role from Wodonga uniform. That's one shift that's being able to be provided by Wodonga police station and then you'll see the three other ranks. Again, 30 April, three other ranks, 15 operational shifts. Week starting 7 May, three operational ranks, 14 May it's two operational ranks.

PN1913

Now, Superintendent Arbuthnot's evidence is that's a really reduced capacity, going from nine other ranks to two or three other ranks and that is an issue that was of key concern for her as early as 25 April. I then want to take you to

1644. You'll see there this is an email dated Sunday 21 May 2023 from Superintendent Arbuthnot to inspectors Parr, Henry and Sprague and also the divisional planning office and she says here:

PN1914

I realise we are juggling lots of demands. To avoid any confusion, once rostering achieves MSL then alpine, any spare resources including those at (indistinct) 24 by agreement OMS are to be rostered to Wodonga highway patrol, for our leading road trauma fatalities and this is a critical risk.

PN1915

So there is a genuine concern about the highway patrol and that we need additional resources to the highway patrol. I then want to take you to the exchange which - - -

PN1916

THE COMMISSIONER: One of the things which I think concerns me about some of this material is I've never met a manager who's said, 'I'm over-resourced'.

PN1917

MS LEONCIO: Yes.

PN1918

THE COMMISSIONER: Now, it's what managers do. They say, 'I don't have enough resources', and that's what they say to their manager and, 'You need to provide more'.

PN1919

MS LEONCIO: Yes.

PN1920

THE COMMISSIONER: Now, at what point does one put aside mere managerial advocacy and say, 'Well, they're reasonable business grounds for actually requiring more resources'.

PN1921

MS LEONCIO: Well, the evidence that's been put that's been challenged is in ED4 there was a particular concern about road trauma. So the Wodonga highway patrol is dedicated unit to – which is there to drive reductions in terms of road trauma. One of the principle parts of providing a policing service is that it's highly visible. Now, in terms of a reduction from nine other ranks to two other ranks – two or three other ranks depending which week we're looking at – in my submission objectively speaking that is a significant reduction, particularly in circumstances where there is such a high risk when it comes to road trauma and it is entirely legitimate that Victoria police would want more than one car on the road when it comes to the Wodonga highway patrol.

PN1922

I understand, Commissioner, that of course there are instances where managers will say they want additional resources but objectively speaking that is a significant reduction to a critical service where there is a high risk.

PN1923

THE COMMISSIONER: I'm concerned about the statement that objectively speaking there is evidence of these matters. I'm not seeking more evidence but the evidence I do have is largely from the line managers.

PN1924

MS LEONCIO: Well, perhaps I can take you to the evidence that's in (indistinct) and Arbuthnot's statement, which attaches data. It attaches police business records in terms of the nature of the risk. If that's the area of concern that you have, Commissioner – I'm not entirely sure which part of that part doesn't demonstrate – is not from your perspective objective. But the evidence that's been given is based on data. I'm not sure if that can really be subjective.

PN1925

THE COMMISSIONER: Well, I don't think you're engaging with my proposition, which is that managers advocate for more resources.

PN1926

MS LEONCIO: Yes.

PN1927

THE COMMISSIONER: Now, I'm sure the Chief Commissioner advocates for more resources. Ultimately though the treasurer and premier have said, 'Well, these are the resources you have'.

PN1928

MS LEONCIO: Yes.

PN1929

THE COMMISSIONER: That then cascades down through the line of command and Eastern District 4, you have this many people. Now, that's not – the proposition I'm trying to get to is that the material I've seen appears to paint a business-as-usual situation, which is that there are pressures which are being faced by the managers every day of the week. There are pressures from the community and the higher command to get better results. But we're not necessarily giving you more resources and I'm finding difficulty in moving from a business-as-usual model to one which says that there is a calamity of such making that we must call these as not reasonable – sorry: 'We must say there are reasonable business grounds for refusing these leave applications'.

PN1930

I mean, yes, I would love to have 10 highway patrols coming out of Wodonga. But in its infinite wisdom Victoria Police has decided there's something less than that.

PN1931

MS LEONCIO: Well, the best that we can do, Commissioner, is demonstrate what has been – what is the core funded FTE for this area and that is one sergeant and nine other ranks. That is what is the normal level. Now if that gets reduced down – so this is not looking at what Superintendent Arbuthnot says about this or otherwise. I'm just looking simply at the numbers. If that comes down then to

two or three other ranks, that is – I just want to be clear about the concern. Is it that one other – that the one unit on the road is – your concern is that that is potentially business as usual? Is that the - - -

PN1932

THE COMMISSIONER: I wish to choose my words very carefully. I do not run Victoria Police and have no wish to. However, you're putting a proposition to me that there are reasonable business grounds to refuse these applications.

PN1933

MS LEONCIO: Yes.

PN1934

THE COMMISSIONER: And you're choosing to then use the illustration of one particular but very emotive part of policing, which is the Wodonga highway patrol and you're choosing to put forward a submission that in granting one of these people paid purchased leave, it will mean we cannot fix or provide more resources into the highway patrol. Now, that's an emotive argument. What I'm suggesting to you is that I'm not seeing within the material an argument that the balance will be tipped and that's ultimately where I need to go in surrogate terms for reasonable business grounds, which is that if we grant these applications, the consequences will be so severe we cannot live with them.

PN1935

Now, that might be in the evidence but what I'm seeing from the material so far is business as usual. We have an enterprise agreement with nine weeks' leave for each officer and we have people going on workers' compensation all over the place, we have long service leave which has been there since the late 30s. We have all sorts of things that we've got to balance and guess what, the number of people that we have available on a particular day is less than the total head count. Now, the proposition I'm putting to you is that's business as usual. That's what every manager in the country deals with.

PN1936

MS LEONCIO: There may be a level where it's business as usual. The reason it's not business as usual is a few things: (1) we say nine down to two, the proportion that it goes down is not business as usual. I can understand in a public service of course, there are shortages but that (indistinct) completely diminished. I don't see how - - -

PN1937

THE COMMISSIONER: There's infinite demands and limited resources. That's the reality of the public service.

PN1938

MS LEONCIO: But in terms of the comparative between what is assigned to Wodonga highway patrol and what would be – what is operating and without looking at purchased leave, down to two or three resources – perhaps I'm not engaging in the concern. But there is not an exaggeration here about that being a significant reduction. I can't see how proportionately speaking that could be anything other than significant.

PN1939

THE COMMISSIONER: Well, one of the problems I face is I don't have the totality of the resources in front of me. And I don't have an insight particularly into the decision making that leads in these directions, that – I'm struggling to put it into words but the proposition which was put by Superintendent Arbuthnot this morning, 'We've got four people in the divisional planning office' – well, that's a discretionary decision, to put those people there. It may be a very good decision, it may be a very bad one. I don't know.

PN1940

But when you take the whole division someone is making those decisions every day of the week and ultimately if your argument is coming down to a point of saying, well, we're only looking at this one narrow part of the organisation, Wodonga highway patrol, and granting leave to some officer over here means we can't do anything over there. I'm contesting that aspect.

PN1941

MS LEONCIO: Well, Commissioner, in terms of reasonable business grounds, and the business to be looked at, it's Victoria Police's business and it's entirely legitimate for Victoria Police to run a Wodonga highway patrol unit, particularly in a circumstance where there is highway trauma in that division. So that is the business that we are looking at. That's the reason why we have to look at it in the way that we have, in terms of looking at the unit and the impact that has in the division. But also that's the reference point in terms of understanding what is going to be a significant impact on this business. Well, what is this business? The business is the provision of a highway patrol unit.

PN1942

Now, we don't need to go into whether or not that is a justifiable decision or a valid decision in terms of the Victoria Police wanting to have a unit. That is the business and so the submissions that I'm putting to you is that the business that it wishes to run – which is to have highly visible police presence, particularly in highway patrol – that is the business that it would like to run. It currently has a significantly diminished capacity already to run that with two or three ranks, because we're looking at one car on the road as compared with five cars on the road, which is what it's normally assigned to. So - -

PN1943

THE COMMISSIONER: Yes, I accept that. I would hope in nothing I've said – and for the purposes of clarity I say this – that I'm not suggesting that the highway patrol should not be there. Now, what I am pointing out though is that the argument is somewhat emotive in the sense that it focuses on the highway patrol. Now, I understand the argument that if we grant one of the people who's involved in the highway patrol this purchased leave it means we have fewer people in the particular team. I understand that. But I don't know if you have managerial experience but it's of course the case that any manager will be looking at the totality of their resources and maybe switch people into the highway patrol.

PN1944

MS LEONCIO: Well, that's exactly what - - -

PN1945

THE COMMISSIONER: There's a choice. There's a choice taken in this respect.

PN1946

MS LEONCIO: Well, Commissioner, and that choice they have made is it prioritise this and I say that's a legitimate – or Victoria Police say that's a legitimate decision to make, to prioritise Wodonga highway patrol and the resourcing of it and there is many references in the evidence, this being an example, this particular email that we're looking at, that there is a diversion of those resources where possible. So any other resources around Wodonga, any spare resources across the whole ED4, is being diverted to this particular unit. That's what this email is seeking to do.

PN1947

And even with that – so in terms of what you're saying about the total picture, at least in the division 4 it is seeking to draw people from all parts of that division and it's not able, based on the evidence, to add more resources there.

PN1948

THE COMMISSIONER: All right, thank you.

PN1949

MS LEONCIO: I just want to deal with the question about or suggestion, Commissioner, about the emotive nature of this. I'm choosing to look at Wodonga highway patrol for the moment because I want to demonstrate the nature of the – or respond to the suggestion that it's a cumulative assessment, that we just looked at total figures. What this demonstrates is for the individual applications we looked at the unit, we looked at what was the capacity of that unit, what was the impact of the purchase leave on this unit. That's the direction, that's where I'm seeking to take you with this material. So I wanted then to turn to page 1664. This is an exchange that when you read through the document it will become apparent that Superintendent Sprague had recommended to – sorry, Inspector Sprague had recommended to Superintendent Arbuthnot that certain members in the highway patrol be granted purchase leave. This is on 6 July.

PN1950

The response that is given by Superintendent Arbuthnot initially is – you'll see the reference there in the middle of page HWP:

PN1951

I can't see how we can approve one member's purchased leave when we have no other staff there. Have asked for regional support and have GD backfilling.

PN1952

GD is general duties. I note the comments about how there's some references in the reasons for which the application (indistinct) haven't even made, which includes things about health. But I'm drawing this to your attention for the purposes of demonstrating that there is a consideration of the individual members' application and the impact that that application will have. If you turn then next to page 1670, you'll see there is a further exchange between Superintendent

Arbuthnot – this is at the bottom – so you'll see 7 July 3 o'clock pm, to Inspector Sprague. It says:

PN1953

Hi, Brad. I will need a response on this ASAP please. (This is about the purchased leave application) I understand what the members have told you as outlined in your document but the document does not address how the additional leave would be covered and how we will manage the division's community safety response. I'm happy to chat with you about it but this part needs to be supplied.

PN1954

Then there's a reference there to the key concerns, including a dot point there which says:

PN1955

Resourcing of highway patrol, service delivery capacity. How will the division cover this and how can we justify approving a highway patrol CSS (This is crime scene investigation I understand CSS refers to) members to have more leave in addition to current entitlements when we can't cover the shifts.

PN1956

So the purpose of this is just to demonstrate that there is an engagement with the impact that each of these applications will have and I've used Wodonga Highway Patrol here as an example. But you will find in respect of each of the applications there is in the statements of the inspectors references to the consideration of the reasonable business grounds, and of course the ultimate reasons that are produced which demonstrates that there are particular capacity constraints, the impact of the applications on service delivery are genuinely considered.

PN1957

You will see basically what happens is the next email is Inspector Sprague says that in essence at the end of the paragraph that 'we won't support any purchased leave.' So that's the exchange that leads to the ultimate rejection of the purchased leave for the Wodonga Highway Patrol.

PN1958

I want to then just take you to the question that is particularly relevant to Wodonga Police Station, but also is relevant in respect of the other parts of the division as well, which is in respect of the service delivery requirements and how we define that. Now, Commissioner, you may already have familiarity with the minimum service levels, but would it assist for me to take you through the documents in terms of the way in which service delivery requirements are defined by the relevant instruction and the minimum station profile, because there have been multiple references to that, and I can take you through those documents if that would assist. But I am conscious that you may already be familiar with - - -

PN1959

THE COMMISSIONER: To a degree I would be interested in that. I am probably also more interested in - I don't think it's clear to me the number of resources in each particular station.

PN1960

MS LEONCIO: Okay. Yes, this will - - -

PN1961

THE COMMISSIONER: And there's a bit of a confounding difference between the allocated resources and the actual resources.

PN1962

MS LEONCIO: Yes. I will make that clear when I take you through these documents. So the starting point is 1480. Now, this is the Chief Commissioner's instruction in relation to the general duties rostering, and I will come to the numbers in a moment, but this is just to explain some of those numbers in the table that I will take you to in a moment. But you will see at section 8 there's a reference there or a heading there to service delivery requirements, and you will see that it says:

PN1963

There are several inputs to rosters that must be considered to meet all service delivery requirements. These inputs include the minimum station profile.

PN1964

And there's a cross reference there to a different instruction which I will take you to in a moment. There is then service demand forecasting, and then there's then upper operational resourcing requirements. So there are three components of service delivery, the minimum station profile only forming one component of the entire service delivery.

PN1965

I then wanted to take you through to the Chief Commissioner's instructions on the minimum station profile at 1486. Now, 1486 you will see at the top there, the second sentence:

PN1966

There is a requirement that police stations be allocated sufficient resources to provide an adequate police response to calls for assistance across the state.

PN1967

And you will see the next paragraph:

PN1968

Each Victoria police station has a minimum station profile which is part of the staff allocation model framework. MSPs - - -

PN1969

Which is the minimum station profile.

PN1970

- - - are intended to ensure the availability of police resources at all police stations by prescribing the minimum level staffing required for that station to ensure baseline service delivery.

PN1971

So when we talk about the minimum station profile just a reminder that that is one component, that is the baseline. So it's really talking about just that very bare response of having coverage to respond to calls for assistance.

PN1972

Now, for a 24 hour station, if you go across to 1487, baseline minimum service level is defined under the definition section, and that says:

PN1973

The minimum service level numbers as agreed within the BPC for 24 hour police stations.

PN1974

Which Wodonga Police Station is 24 hour, as is Wangaratta Police Station. So this baseline minimum service level only applies to those 24 hour stations.

PN1975

It includes the primary response patrol function available 24 hours seven days of the week, and that's to be performed two-up.

PN1976

So that's to ensure that there is a unit throughout the day. There is evidence that that's three shifts a day, that's morning, afternoon, evening, to provide that 24 hour policing response.

PN1977

Then there is to be an open and accessible to the public 24 hours a day the reception, or the watch house. They again will be performed two-up. Then there's a patrol supervisor who will be rostered to include a driver, and Superintendent Arbuthnot just referred to that at the end of her evidence about the role of the patrol supervisor, but all three of those are dealing with just minimum response.

PN1978

Now, if you go across to the station resource framework on page 1488 you will see a reference there, it says there's a table, and it says:

PN1979

The table below outlines how MSPs are determined and sit within station resourcing arrangements.

PN1980

And then:

PN1981

The gazetted strength and MSPs for each station will be published on the intranet.

PN1982

And I will take you to that in a moment. But you will see here there's the core funded positions. So that's the total of all gazetted general duties police resources at a police station to enable the delivery of policing services, and this includes

resources that can be used for discretionary policing activity and to cater for leave entitlements. I just want to pause there.

PN1983

So that's talking about all of the policing services, including what we would need for the baseline minimum service levels, the difference between what the MSPs, which I will come to in a moment, but you might recall that there is that difference in the table between the MSP and the FTE, or the core funded positions. Those people are still doing policing services, but they are at the discretion of the superintendent.

PN1984

So you will see there is a reference - just bear with me for one moment - so you will see, sorry, if you go back to number 1 on 1487:

PN1985

Divisional commanders, local area commanders and officers-in-charge are to ensure their stations have sufficient available resources required across a fortnight to meet their MSP and the minimum rostering requirements.

PN1986

And then in planning for resourcing needs, just across the page:

PN1987

Divisional commanders, local area commanders and station O-I-Cs will ensure that there's effective roster planning.

PN1988

And you will see at the dot point there, the last one:

PN1989

Any available police resources above MSP may be tasked at the discretion of local management.

PN1990

So when this was talking about discretionary policing activity in the table that's not discretionary in the sense of optional, it's discretionary in the sense of it being directed by the local management.

PN1991

So then you come to the MSPs about the minimum number of available full-time equivalent general duties police resources required at a police station across each fortnight to ensure baseline service delivery. I note that the MSP, you will see here it says it's informed by a number of things, including recreational leave in the second dot point, accrued time off, long service leave, purchased leave. So the MSP is intended to include enough people to ensure that certain leave can be taken, but what we've seen in the materials is that we are continually falling below that minimum station profile in terms of the availability of staff.

PN1992

So if we then turn to JA8, which is 1493, this is the table that I was making some reference to. It sets out the minimum station profiles for the eastern region. And if you turn to the next page, 1494, you will see there this is as at 30 November 2022, and for Wodonga Police Station, which is right at the bottom there in the second last section which deals with ED4, it says, 'Uni Wodonga 24 hours with cells.' You will see the total FTE, so that's 62, and then the other ranks is 45, sergeants 15, senior sergeant 2 - sorry, I'm rounding. But you will see there that that's what we were talking about in terms of the core positions. So that's what's gazetted to Wodonga Police Station as at 30 November 2022.

PN1993

Then when you go across to the next column that says 'MSP'. So this is the minimum number of FTEs required to roster shifts to meet MSP. So that's about the minimum station profile, that's about baseline minimum service levels. That's just the bare bones just to get the service running effectively.

PN1994

So you will see there that there is a difference between the other ranks, here 40.062 compared with 45.158. I just want to be clear that that additional five aren't just spare resources, they are still required to perform policing activities. It's just that they are in addition to what you would need to perform the minimum station profile - sorry, the baseline minimum service level.

PN1995

A complicating factor is that you've heard evidence about an additional allocation of resources to ED4, and in particular Wodonga Police Station. You might recall it was Inspector Henry who had referred to seven additional allocations. What occurred as a result, or at the same time as the letter that I had just taken you to from the Police Association in May 2022, there was an additional deployment of resources to Wodonga Police Station and also to Wangaratta Police Station. The number that Superintendent Arbuthnot gives is eight. Whether it's seven or eight, it doesn't appear to make much difference in terms of whether it's seven or eight.

PN1996

THE COMMISSIONER: I thought she mentioned 13 in her oral evidence this morning.

PN1997

MS LEONCIO: Yes. So there are 13 in total. That includes five that were assigned to Wangaratta Police Station. So there were 13 in total. Eight went to Wodonga Police Station and five went to Wangaratta Police Station. Now, in terms of those deployments they were temporary, initially temporary deployments. That's why they don't feature here. So this number 45 does not include those eight that were sent to Wodonga Police Station. But what we say about those eight is that they were there to deal with additional demand which was recognised.

PN1998

In the evidence you will see that what occurred was they wanted a backup unit. You might recall when I was referring to the letter I asked you to hold the fact in mind that the letter had asked for, or the members had asked for an

additional backup unit for some of the time. These additional units primarily - sorry, these deployments primarily were to ensure that they could have that backup unit.

PN1999

Ultimately what has occurred is there was a temporary deployment of these resources, and you might recall the table that dealt with minimum station profile this morning. I can take you to that in a moment, but there was the columns that said in terms of the breaches of minimum service level for 2023. There was reported breaches, mitigated breaches and then actual breaches. Despite these eight coming across there continued to be breaches of the minimum service level, and that's just talking about what's prescribed here, the BMSL. So even though we have these additional resources we're still continuing to fall below the minimum service level.

PN2000

Now, you will see also while we're here for ED4 there are also non 24 hour stations. So in terms of understanding the number of FTEs this will assist to determine. For Mount Beauty for example there are five total FTEs, for Nathalia there are six total FTEs. This is across the eastern region. So in each of those divisions you will see the total number allocated for each of those police stations.

PN2001

I will just note that there is for 16 hour stations they've got targets in terms of - if you go to the third left column - sorry, the column that is third from the left, there's the GD response unit shifts. That's talking about the number of patrol shifts that they aim to have on the roster per fortnight. That's how they determine the minimum service level. They don't have the same baseline minimum service level formula that I took you to in the other document.

PN2002

So I hope, Commissioner, that that has set out the way in which the numbers work under the policy, and then also in terms of how that applies to Wodonga Police Station.

PN2003

THE COMMISSIONER: In essence your argument then is with the number of allocated staff we didn't meet the standard requirements. We were allocated further staff and still didn't meet those standards.

PN2004

MS LEONCIO: That's correct, and it's primarily - I'm sorry, Commissioner, I thought you - I will let you finish.

PN2005

THE COMMISSIONER: I understand those points obviously. But then the question is, is that a forever scenario or is it a temporary thing?

PN2006

MS LEONCIO: The primary issue is unplanned leave. That's the evidence that's been given by - Superintendent Arbuthnot this morning confirmed that for the

rosters in Wodonga PSA it's the unplanned leave that is having particular impact. So it's unclear how long that will last for in terms of the absences. If you have a look back at that attachment - perhaps it will assist if I take you to it, but that has changed. In those minimum service levels there appears to be some months where they are able to meet it.

PN2007

That doesn't really assist the Commission, because of course the assessment is at the time that we rejected the application, but what we say is in terms of the ability to meet the minimum service level at that current in point in time, and when I say current I mean of course at the time that the applications were considered, that there was a persistent falling underneath the minimum service level.

PN2008

And it's important to understand that, yes, when we talk about breaches of the MSL it's not just the baseline minimum service level that we're not able to meet, but it's also the backup unit we're not able to meet because we've fallen in below the prescribed minimum. And then we're also not able to allocate resources for the discretionary policing services.

PN2009

THE COMMISSIONER: In 2022 I think it was the union complained about the number of resources and said they were inadequate in this division, in this region. What do they say now, is that in the evidence before me?

PN2010

MS LEONCIO: Well, this is the interesting part of this. The Police Association have not in this case stated that they have challenged any of those resourcing constraints that we have led in our evidence to indicate that there continue to be issues. I don't know if I can answer that, Commissioner. There isn't any evidence to indicate that they consider if that has remedied the issue or not.

PN2011

THE COMMISSIONER: All right. Thank you.

PN2012

MS LEONCIO: I just want to briefly touch on the two-up nature of the patrols. There's evidence about that being for safety reasons.

PN2013

THE COMMISSIONER: You don't need to go through that. I am familiar with those things.

PN2014

MS LEONCIO: Thank you, Commissioner. Now, I want to touch just briefly on the annual leave rosters. It's become apparent that when the Police Association refer to the purchased leave being accommodated by the annual leave roster that's not by reference - I don't understand that to be a reference to the guideline, which is at the bottom of each of those rosters, about maximum permitted. The submissions that have been put this afternoon and also the propositions that were put to the witnesses is that that's just a guideline, and that doesn't seem to

necessarily indicate whether or not that is meeting service delivery requirements or not.

PN2015

My understanding is that they focus more on that in terms of looking at - well, it seems that it's focused more actually on the long service leave point, that if long service leave can be accommodated in that roster, then that should be the answer or the end of the question. I don't see that the Police Association are necessarily relying on that maximum permitted being the source of the truth as to whether or not leave can be accommodated or not.

PN2016

That tool is a planning tool. It's done in a particular point in time, around March of April, and it's primarily designed to acquit the nine weeks or the seven weeks entitlement. The other issue with that is looking at the total number of recreational leave or long service leave, or purchased leave, but it doesn't look at vacancies, it doesn't look at workers compensation, it doesn't look at suspensions. So in terms of the impact on service delivery the total number that's approved doesn't seem to take into account that there would already be a significant reduction in the number of people that are available.

PN2017

In my submission it is reasonable to take those matters into account, because we've seen in the evidence that these are persistent issues for 2023, and particularly the vacancies there can be no certainty when those positions will be filled, particularly in stations like Nathalia and Numurkah where there is a precedent that when vacancies do occur they are very difficult to fill. They become special category, they're re-advertised time and time again, and so it is, in my submission, entirely legitimate for the inspectors to consider the current vacancies in terms of predicting what the likely impact of any particular purchased leave absence would have.

PN2018

As I said the maximum permitted doesn't seem to be the relevant limit, but I just note that for example in exhibit A5 if you're looking at Nathalia the purchased leave that is being sought does exceed the maximum permitted for a week in the request for purchased leave period. The other limitation to the annual leave roster is it doesn't take into account other backfilling requirements. So if there are for example in Wodonga Police Station - there's evidence Inspector Henry has given around the need to backfill other units such as Wodonga Highway Patrol, Family Violence Investigation Unit, Corryong Police Station. They are not matters which have been able to be identified at the time that the annual leave roster was being prepared, but are not indicated in the roster.

PN2019

To the extent that it's put against us that the purchased leave absences that are being sought apply to periods that are many, many months in advance, say for example in May or June, it is of course difficult to understand the likely impacts that purchased leave will have many, many months from now. But it cannot be the answer that because it's very far in advance that that would mean we have to approve it, because we wouldn't know the likely impacts.

PN2020

That would remove the practical right to reject the application which is conferred by the enterprise agreement, and ultimately what we have to do is make an assessment about what's likely to happen based on the information that we have. We can't be concrete about that. We can only make a prediction, and that's the way in which the structure is set up and the way in which we have to deal with it because it's a per year entitlement.

PN2021

Commissioner, I note the time. There are in our submissions as I say reasons that have been provided as the reasonable business grounds for the rejection of the applications of each of the members that relate to Wangaratta PSA, that relate to Wodonga Police Station. As I said that evidence hasn't been significantly challenged, and in my submission unless I can be of any further assistance I would otherwise just rely on the written submissions which indicate the reasons why we say those reductions would be significant.

PN2022

And I note that there doesn't seem to be any challenge to the evidence that there would be a reduction to the pool of other ranks. That was not the basis of cross-examination of each of the individual inspectors if the absence was approved, because we say that those positions would not be backfilled. That doesn't appear to be the subject of challenge. So I just note that, what we say are the likely impacts we say haven't been the subject of serious challenge in cross-examination, and I continue to rely on our submissions as to the reasons why we say those reductions are significant, unless I can be of any further assistance, Commissioner.

PN2023

THE COMMISSIONER: No, I think that's all I need at the moment. Would you accept that - I am not suggesting this occurred, but would you accept that if an employer contrived the number of resources so that purchased leave could not be taken because the service standards tank, would you accept that that would not be reasonable business ground?

PN2024

MS LEONCIO: I would accept that. There is no evidence to that indication.

PN2025

THE COMMISSIONER: No, and I am not suggesting there is, but I just wanted to - - -

PN2026

MS LEONCIO: But as I said the business grounds on which they have relied upon have not been challenged. What is really being advanced by the applicant is merely inferences to be drawn from the fact that long service leave was approved or considered. There's no suggestion that these have been completely contrived, other than of course they say that there was a cumulative assessment. But in terms of the actual evidence that's been led about these being the reasonable business grounds there has not been any serious challenge to those being genuine reasons.

PN2027

THE COMMISSIONER: And you have said that several times, I have heard you. It would be a mistake though for me to simply accept that submission and not analyse the matter in my decision. So that's why I am raising the issue. It's not merely because I haven't heard you or that I disagree with you, it's merely that I need to be engaged with the subject.

PN2028

MS LEONCIO: Yes. Can I just raise one point, that in terms of the evidence that's been given in my submission the witnesses have been honest, truthful, reliable in terms of the reasons that have been given, and in my submission there's no reason to question the evidence being given about the resourcing constraints are genuine or not.

PN2029

THE COMMISSIONER: I accept what you have to say about the witnesses and their endeavour to be truthful, and thereby I should accept that they are reasonable grounds, I am afraid that's something I can't leap to. I obviously need to analyse the material. That's what I will do. Now, coming back to my question. It was always going to be thus, the way that the applicant and yourself have mounted the case. It was always going to be the case that I was looking into a very small snapshot of Victoria Police and being called upon to make decisions about whether or not there were reasonable business grounds.

PN2030

Now, the problem I face, and I am quite open about this, is that the argument is being put, if I understand it correctly, that the resources have been allocated, and not withstanding those resources the minimum service levels cannot be met, and thereby purchased leave should be refused. That is most simple. The problem with that is that I have to accept that the resources are adequate.

PN2031

MS LEONCIO: Well, that doesn't take into account the absenteeism. So, yes.

PN2032

THE COMMISSIONER: And I have no knowledge as to whether the absenteeism is different in division 3 or different in metropolitan region 2, or whatever it happens to be.

PN2033

MS LEONCIO: Commissioner, it may depend on the way in which we define the business, because as Commissioner Bissett said in her decision it's not a comparative assessment, and I'm sorry if I'm heading in the wrong direction here, but what I understand you to say is that you need to have an understanding of Victoria Police's operations beyond ED4 to understand whether or not these resourcing - - -

PN2034

THE COMMISSIONER: No, I'm not saying that.

PN2035

MS LEONCIO: No. Okay, I apologise.

PN2036

THE COMMISSIONER: And I'm not saying that I would automatically disagree with Commissioner Bissett or that I would agree with her. What I'm saying to you is that the point from which you start is that the resourcing is adequate, and we can't meet our service standards, and thereby that's the business reason which causes us not to permit the purchased leave applications. Now, I will make my decision on the basis of the evidence that's before me, but that's an issue I will have to confront.

PN2037

MS LEONCIO: It is an issue that you will have to confront. The question of resourcing, in my submission we look at the resources that are available in ED4, and that includes the allocated resources.

PN2038

THE COMMISSIONER: Sure. Of course.

PN2039

MS LEONCIO: And we accept that if we had availability across those resources then we would be in a position, or we would more likely be in a position, depending on the circumstances, but we would be in a more better position to grant purchased leave. So the issue has been historically an exponential increase in absenteeism, which is being addressed slowly, but is being addressed firstly by the deployment of the additional eight.

PN2040

THE COMMISSIONER: And I recall evidence by way of your witnesses to that effect. I can't recall who.

PN2041

MS LEONCIO: The Chief Commissioner of Police has a bulletin that is provided in an attachment to Superintendent Arbuthnot which sets out the allocations, the additional allocations which includes the allocations for Wodonga Police Station, the additional eight, and that there is additional allocations to recognise increase in demand. So to the extent that you need to be looking at the extent to which there are additional allocations to be made to Wodonga Police Station, that it just demonstrates that there may be a lag sometimes in terms of when those allocations will be made, but to the extent that there is an increase in demand they will make allocations from time to time.

PN2042

THE COMMISSIONER: You're uncomfortable in what I have had to say about the issue that I'm concerned about. You say to me that the analysis on the basis of Commissioner Bissett's findings in the earlier case in 2021 need to be confined in the business of eastern district 4. That's plausible, but what you overlook is that you are then saying notwithstanding the resources are within eastern district 4 and that's the business, you're then overlooking that the business is being required to operate in accordance with state-wide service levels. Now, you put the two together and that's the issue I confront.

PN2043

MS LEONCIO: Yes. I am not sure if it does assist, Commissioner, and I don't want to - - -

PN2044

THE COMMISSIONER: How would I know if they are reasonable business standards for eastern district 4?

PN2045

MS LEONCIO: I'm sorry, I didn't quite - - -

PN2046

THE COMMISSIONER: The service requirements, how would I know that they are reasonable for eastern district 4?

PN2047

MS LEONCIO: Well, we know that we need additional services.

PN2048

THE COMMISSIONER: That's not the question. The question is how would I know that they are reasonable for eastern district 4?

PN2049

MS LEONCIO: I'm struggling to understand.

PN2050

THE COMMISSIONER: You're saying the business is eastern district 4.

PN2051

MS LEONCIO: Yes.

PN2052

THE COMMISSIONER: And, Commissioner, you should not look beyond the confines of eastern district 4. And I'm saying to you, well, okay, if that's what you want me to do, and the difficulty I have with that, and I put it no higher than that, is that this district is being required to operate in accordance with service standards which operate state-wide.

PN2053

MS LEONCIO: Yes.

PN2054

THE COMMISSIONER: How do I know they are reasonable for eastern district 4?

PN2055

MS LEONCIO: Well, it's the minimum response. It's 24 hours. If you want to operate a 24 hour service you need to have a patrol unit that operates 24 hours.

PN2056

THE COMMISSIONER: You're not getting me.

PN2057

MS LEONCIO: I'm not quite sure I understand.

PN2058

THE COMMISSIONER: Look, I won't pursue the issue. It's just simply you're saying don't look beyond the business, which is eastern district 4, and I'm saying, well, you, the advocate for Victoria Police requiring me to, because you are saying that the service standards set by the Chief Commissioner are the service standards for eastern district 4.

PN2059

MS LEONCIO: So that's the baseline minimum service level. The minimum station profile will change depending on each police station. So that's a state-wide policy, but the way in which it is interpreted for each eastern region or division is determined through the document which I just took you to which sets out for the eastern region for each of the divisions these are the numbers that are allocated to meet that baseline minimum service level.

PN2060

THE COMMISSIONER: Which brings me back to the question I started off with, how do I know the resources are accurate?

PN2061

MS LEONCIO: Because it's a 24 hour police station and this is what's required to keep the station open and the patrol unit on the road.

PN2062

THE COMMISSIONER: I don't think I can take this further. I will need to consider the material and make my decision obviously.

PN2063

MS LEONCIO: Before we finish up I do just want to give you a few other references in terms of determining the business. I won't take you through to it, but I say in terms of the division being the relevant business to consider we say that that is because of the resourcing across the division, that that's the way there's an allocation, and then there's decisions made about the resourcing from a divisional perspective.

PN2064

And I say that's entirely consistent both with Commissioner Bissett's decision, but also consistent with Deputy President Bell's decision which is at tab 14. You will see there's a reference there to transit south which is the equivalent in terms of the level, which is equivalent to the eastern region division 4, and Commissioner Bissett's decision was about northwest metro division 4. So I just provide those authorities for previous consideration of the relevant business unit when you're considering reasonable business grounds. Thank you, Commissioner.

PN2065

THE COMMISSIONER: All right, thank you, Ms Leoncio. Mr Gome, any response?

PN2066

MR GOME: Thank you, Commissioner, just very quickly. Superintendent Arbuthnot, the very last question that I asked her was about the cooperative model, which was essentially working with employees to understand their reasons for requesting purchased leave with a view to delaying that purchased leave. The reference to cooperative model actually appears on the expression of interest form, and so you can find an example of that at 189-000. It's an attachment to LSC Morris's expression of interest.

PN2067

So on the one hand we have four legitimate reasons; the superintendent saying we want you to delay taking planned leave in this financial year because of the concerns that we have about resourcing and vacancies, and at the same time we have Commander Nyholm for different reasons saying it's really good to acquit long service leave now rather than delay it into the future. And I just point that out as an inconsistency. We submit that it's an inconsistency. Like either there are extraordinary circumstances that don't warrant the granting of leave above and beyond the nine stipulated recreation leave weeks.

PN2068

THE COMMISSIONER: Isn't that plausible? Long service leave accrues usually at 1.3 weeks a year. So isn't the reasoning it's better that you take 1.3 weeks this year, then we have to find 2.6 for you next year, and 3.9 the year after?

PN2069

MR GOME: Yes, that's an understandable decision on the basis that the entitlement accrues, and we also heard Inspector Sprague saying there are good reasons to have people take leave for their wellbeing. What I'm suggesting is it's inconsistent with the proposition that if somebody were to take purchased leave at that time it would be likely to cause significant adverse effects.

PN2070

THE COMMISSIONER: Yes, but that's the same point. If I understand the argument being put by Victoria Police is that it's a prediction into the future. The future is not finite, and the proposition I'm putting is I can understand the logic to the effect that, well we've got to give them long service leave sometime, this year will be the year. It's better this year than 2.9 weeks next year.

PN2071

MR GOME: Yes, there is a logic to it. What I'm suggesting is it's in conflict, or there's a tension between asking people to delay leave because of perceived - or not perceived - look, Commissioner, I should say too, the reason why we haven't challenged the evidence about, you know, how difficult things are out there in ED4 and other places is it is, it's really tough, and we share that as a common challenge.

PN2072

That said the dispute is about whether or not granting these applications is likely to cause significant adverse effects, and what we're saying is, and your neat encapsulation, Commissioner, which I think is an accurate representation, is business as usual. It's not correct to say that the normal level at Wodonga

Highway Patrol is one of nine. That's the core funded level. The normal level, and we heard from both of the members who gave evidence, the normal level if you want to say what it's actually been over the last seven years is it's been that it's less than half strength for seven years, and so there's the difference between what the funded level is and what the reality is.

PN2073

THE COMMISSIONER: Will I find that in the evidence?

PN2074

MR GOME: Yes, you will, in the transcript, Commissioner, which you will have the benefit of. I would also like to take you to, or I draw your attention to anyway the Chief Commissioner's reply to the Police Association letter that Ms Leoncio, my colleague, took you to which was at 1865. The Chief Commissioner's response is at 1868, and the second paragraph of that, and bearing in mind this is May of 2021:

PN2075

Wangaratta and Wodonga police stations are resourced and staffed to the levels agreed under the minimum baseline service delivery models. However, due to unplanned absences such as WorkCover and sick leave this has meant decreased numbers at this time.

PN2076

So again what we say is there are resources for the most part for baseline minimum service levels which only apply to 24 hour police stations to be rostered, and that table from the divisional planning office, which we went through with Superintendent Arbuthnot, that's about unplanned absences. So the resources are there on the roster, but the future is unknown and it's the unplanned absences, it's the unknowns that are causing the significant effect.

PN2077

THE COMMISSIONER: Isn't that almost an argument for rejection of the applications?

PN2078

MR GOME: That the future is uncertain?

PN2079

THE COMMISSIONER: No, no, where you said the unknowns are causing the uncertainty.

PN2080

MR GOME: No, sorry, if I did say that. The unknowns are causing the breaches of baseline minimum service levels in that table from the divisional planning office. Those are where the rosters have been published with enough people, but it hasn't eventuated.

PN2081

THE COMMISSIONER: I see.

PN2082

MR GOME: And I did just have one other - - -

PN2083

THE COMMISSIONER: So you're saying about that point that the annual leave rosters might look clear, but the leave applications are being rejected on the basis of what might occur?

PN2084

MR GOME: That's right.

PN2085

THE COMMISSIONER: Then it does not actually occur.

PN2086

MR GOME: The unknowable, and again that goes to the respondent needing to satisfy you that it's likely that there will be significant adverse impacts. So, yes, that's the significance that we see in that.

PN2087

THE COMMISSIONER: All right.

PN2088

MR GOME: I think I just had one final thing. You were taken to a document at page 1670, which is an email that Superintendent Arbuthnot sent to Inspector Sprague on 7 July. Yes, just the second paragraph there:

PN2089

Members should be advised to access other relevant leave entitlements rather than we approve additional leave plus those entitlements. Happy for you to get advice from GT. Probably helpful to know that this might be tested at Fair Work.

PN2090

THE COMMISSIONER: And here we are.

PN2091

MR GOME: Yes, here we are. Other relevant leave entitlements - I just wanted to point out that. That's consistent with what I would suspect. I would just like to acknowledge the collegiate way in which we have tried to present the material and we shared the documentations. You're more experienced and better resourced than we are, and it has been of great assistance to us in attempting to present the case as best we can to you, Commissioner.

PN2092

THE COMMISSIONER: All right, thank you. We are about to adjourn, unless there is anything further from either one of you. No?

PN2093

MR GOME: No. Thank you, Commissioner.

PN2094

THE COMMISSIONER: I too join thanking you both for moving the pace along and also for your submissions and endeavouring to answer the questions I have. Please don't read anything into the questions. That's only me just trying to understand the case and the length and breadth of the issues. This will be a difficult case to provide reasons for decision. I think realistically being the end of January I would find difficulty in having a decision to you before the end of March, but I will do my best obviously to try and do that earlier if I can.

PN2095

It's not just eastern district 4, the Commission is quite busy at the moment, so there's call on our time all over the place, but I will try and get the decision as quickly as I can. If you particularly, Mr Gome, can communicate that back to your members who have given evidence that would be appreciated.

PN2096

MR GOME: Thank you, Commissioner, and I'm sure they would appreciate to hear that indication from you.

PN2097

THE COMMISSIONER: We'll see. All right. Look, on that basis we will now adjourn. Thank you.

ADJOURNED INDEFINITELY

[3.51 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

JOY ELIZABETH ARBUTHNOT, SWORN	PN1590
EXAMINATION-IN-CHIEF BY MS LEONCIO	PN1590
EXHIBIT #R7 WITNESS STATEMENT OF SUPERINTENDENT JOY ELIZABETH ARBUTHNOT WITH 44 ATTACHMENTS	PN1606
CROSS-EXAMINATION BY MR GOME	PN1622
EXHIBIT #A11 SUMMARY OF PURCHASE LEAVE APPLICATIONS...	PN1713
EXHIBIT #A12 EXTRACT FROM VICTORIA POLICE MANUAL ON WORKPLACE FLEXIBILITY.....	PN1776
RE-EXAMINATION BY MS LEONCIO	PN1777
EXHIBIT #R8 ANNUAL LEAVE ROSTER FOR WANGARATTA FOR JANUARY 2024	PN1798
THE WITNESS WITHDREW	PN1805
EXHIBIT #A13 APPLICANT'S OUTLINE OF SUBMISSION FILED ON 17/11/2023	PN1844
EXHIBIT #R9 RESPONDENT'S AMENDED OUTLINE OF SUBMISSIONS	PN1847
EXHIBIT #R10 RESPONDENT'S CHRONOLOGY OF EVENTS	PN1855