



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**

**10.00 AM, TUESDAY, 30 JANUARY 2024**

**Continued from 29/01/2024**

PN953

THE COMMISSIONER: Good morning, parties. Now, Mr Gome, I assume that that completes the evidential case for the applicant?

PN954

MR GOME: Yes, that's correct, Commissioner.

PN955

THE COMMISSIONER: Okay. Thank you. In that case, I will turn to you, Ms Leoncio.

PN956

MS LEONCIO: Yes.

PN957

THE COMMISSIONER: Thank you.

PN958

MS LEONCIO: Thank you, Commissioner. I will just make a brief opening.

PN959

THE COMMISSIONER: All right.

PN960

MS LEONCIO: We continue to rely on our written submissions which are in the Commission book. Now, the dispute concerns five police officers' applications to take purchase leave. In the 2023/2024 financial period. Financial year, apologies. And just as a refresher, purchase leave is an additional form of recreational leave which is conferred by clause 129 of the agreement. I won't take you to that clause for now. But just to flag that that's where it is located. The minimum entitlement to recreational leave for all full time employees other than recruits is nine weeks. And seven weeks for part time employees. And this form of purchase leave is an additional one to four weeks that can be applied for. And Victoria Police recognises that the agreement confers a benefit in terms of providing a break for the form of – a break from a 24/7 operating environment for the purpose of rest and recreation.

PN961

But at the same time there is in the agreement a discretion which has been built in to clause 129 to ensure that the respondent retains the right to reject an application for purchase leave on reasonable business grounds. Now, each of the applications that were rejected were rejected on the basis of reasonable business grounds and the question for determination is were there reasonable business grounds to do so.

PN962

I am going to take you just to one document in my opening, because I do think it may assist why you're hearing the evidence today. It's the map of ED4 which can be found in Volume 2 of the folder. It's page 1444. It should be attachment JA1 and 1444. It's a map as you will see of ED4 and you will see there's the Wangaratta PSA which is kind of the half of the division. The other half is

Wodonga, of particular relevance, Nathalia, Numurkah, Katamatite, which are part of the Moira cluster. And that is you will see, right on the front left. You then have Mount Beauty on the right side of the document, but the low, lower corner. And you will have the two major policing stations, Wangaratta and Wodonga in the middle. That's just to give you a sense of where these stations are located and the distances between them which will be relevant.

PN963

Now, the case that has been put against us by the Police Association, I just want to deal with that head on. As it was described in the opening, it was that there is a single question or a single issue to be determined which is whether or not a cumulative – the assessment of the applications for purchase leave could be rejected on a cumulative basis by the divisional leadership team. And I understand that to mean that there was a blanket ban or that's a reference to what they call the blanket ban, such that there was no consideration of the reasonable business grounds for each application.

PN964

Now, we strongly dispute that characterisation and we say that will not be borne out by the evidence. We accept that the divisional leadership team as well as the regional leadership team had legitimate concerns about the impact of purchase leave on the service delivery requirements in ED4. We say they had that concern, they held that concern because of severe resourcing challenges in Eastern Region Division 4. Particularly in respect of vacancies and long term absences.

PN965

Now, of course in any - - -

PN966

THE COMMISSIONER: Can I just interrupt you there.

PN967

MS LEONCIO: Yes.

PN968

THE COMMISSIONER: Are you saying the evidence will not show that there was a blanket ban?

PN969

MS LEONCIO: Yes, that's correct.

PN970

THE COMMISSIONER: Right. All right.

PN971

MS LEONCIO: Now, in terms of these resourcing shortfalls, we accept that in any public service there will be shortfalls. Resourcing shortfalls from time to time. And that of course, in most public service context, the more people we have, the more shifts we have. That's all desirable in terms of service delivery. We say this is different here in Eastern Region Division 4. These resourcing challenges sit above the business as usual resourcing challenges in the

public service or in the Victoria Police. And the most telling indication of that is that the Police Association itself, the middle of 2022, identified ED4 as a particular area of concern, that there were resourcing shortages which were impacting the service delivery in ED4 and the Police Association at that time, urged the Chief Commissioner of Police to take urgent steps to act aggressively. That was what the police association asked the management of ED4, Chief Commissioner of Police to do. And what we will see in the evidence is in the last couple of years, the ED4 management have been doing their absolute best to try to get more resources, to try to get back filling, to try to plug the gaps.

PN972

The reality is, unfortunately, we have vacancies across the division. We have particular problem spots where there doesn't matter how many allocations, it doesn't matter how many extra funded positions there are. If you can't get resources and candidates interested to take up those positions, to remain in those positions, you have to deal with the resources that you have and that's exactly what Victoria Police have done in the Eastern Region Division 4.

PN973

THE COMMISSIONER: Are you saying that if the – if people applied, and were recruited into those positions, then there would be sufficient resources?

PN974

MS LEONCIO: Well, that would assist the resourcing constraints.

PN975

THE COMMISSIONER: No, that's what I am asking, is that what you're saying?

PN976

MS LEONCIO: It would resolve it?

PN977

THE COMMISSIONER: Yes.

PN978

MS LEONCIO: It would go - - -

PN979

THE COMMISSIONER: What I hear you say is, 'We can't do this because we can't get enough staff'. I don't hear you to say, 'We can't get enough staff because we don't have enough budget'.

PN980

MS LEONCIO: Well, the - - -

PN981

THE COMMISSIONER: I want to be precise about this. What are you saying?

PN982

MS LEONCIO: Well, what I am saying is we are doing the best with what we have. Now, Victoria Police can't be expected to have control over the level of funded positions. That's not a decision that they can themselves control.

PN983

THE COMMISSIONER: Well, that's what I want to explore. Are you saying that there are insufficient funded positions, or are you saying we can't get enough people because it's not an attractive regional job or are you saying it's both?

PN984

MS LEONCIO: Well, it's a combination of factors and in some instances it's simply that there are the vacancies and the absences and in other instances, there would – there's a requirement for more positions that we simply do not have. And that's just because of the various challenges that we have with these ongoing absences. It means we need more than what are allocated.

PN985

THE COMMISSIONER: But if you're saying it's a matter of budgeted positions, then I am not discerning from the material that you have provided that there's evidence that this is a state wide problem which might reinforce that it's a funded issue, but instead, your evidence and submissions are particular to this division.

PN986

MS LEONCIO: Well, what I am saying is that there's a compounding impact. In ED4, there are the vacancies and the long-term absences. Now, with a long-term absence you can't allocate additional staff, so that sits there as you're underneath.

PN987

THE COMMISSIONER: Sure, I accept that. The question I am trying to discern is what is being said. Now, you're saying it's a combination of both. It's a combination of funding. It's a combination of attractiveness or attraction and retention. Now, if it's a question of attraction and retention, then I get that not much may be done about that subject. But if you're saying it's a matter of funding, then the proposition I am putting to you is I am not seeing within your evidence that this is a state-wide problem, which presumably it would be if it's a matter of funding.

PN988

MS LEONCIO: Well, I – in my submission, the issue can't be separated out in that way. So we're not saying - - -

PN989

THE COMMISSIONER: Well, watch me, I am the one who has to write the decision, now that's why I am asking these questions.

PN990

MS LEONCIO: Well, are we being – it cannot be that we are – it cannot be that the reason that these purchase leave applications – it cannot be an issue of funding. That can't be the reason why we say service delivery requirements are not being met. I am not sure if I am putting that - - -

PN991

THE COMMISSIONER: Well, ultimately, this is the proposition that I want to get to.

PN992

MS LEONCIO: Yes.

PN993

THE COMMISSIONER: Your client signed this enterprise agreement.

PN994

MS LEONCIO: Yes.

PN995

THE COMMISSIONER: It knew that what it was getting into when it signed the document.

PN996

MS LEONCIO: Yes.

PN997

THE COMMISSIONER: So downstream from the approval of the agreement.

PN998

MS LEONCIO: Yes.

PN999

THE COMMISSIONER: What has caused this problem.

PN1000

MS LEONCIO: Yes.

PN1001

THE COMMISSIONER: Now, that could be because the Chief Commissioner has decided that he doesn't like Eastern District 4 and there's insufficient positions. Or it could be – but given that they went into it - - -

PN1002

MS LEONCIO: Yes, of course, no, well - - -

PN1003

THE COMMISSIONER: - - - with knowledge of the future, I wanted to exclude that it's a matter of funding per se.

PN1004

MS LEONCIO: It is. We can exclude that it's a matter of funding.

PN1005

THE COMMISSIONER: Right. Okay. All right.

PN1006

MS LEONCIO: So what I was saying though is that because of the absences in the – across the division, that's what puts it in a separate category because as I was saying earlier, we're not saying this is a public service, we need more shifts. That's – that was the argument and I am saying that's – we're in a different category to that. So that – the Commissioner does not need to concern itself with that question.

PN1007

THE COMMISSIONER: Sure. But in simpliciter, if there – if everyone, if all the vacant positions were filled, you can approve these – these applications.

PN1008

MS LEONCIO: And there were consistent and not the issues of absenteeism that we have seen, then yes. Theoretically, that's correct. Now, we're not in that position. We're in a different position in this case because what we have seen is an impact of resourcing shortages based on the level of absenteeism and that's what was identified in the Police Association's letter in terms of the cause of the critical resourcing shortages. It was about the problems we have – the long-term absences that was the critical issue.

PN1009

THE COMMISSIONER: To take that a stage further, you opened by saying that this is purchase leave is an additional form of leave.

PN1010

MS LEONCIO: Yes.

PN1011

THE COMMISSIONER: Now, is it accepted that one should plan for people taking all of their entitled annual leave and all of their entitlement of long service leave and so therefore, the only unplanned absences are personal leave and worker's compensation. And leave without pay?

PN1012

MS LEONCIO: I am not sure I understand the question, sorry, Commissioner.

PN1013

THE COMMISSIONER: Well, if you're putting a proposition that this is all about unplanned leave, well, mathematically, one can work out how many weeks of annual leave will be required a year, how many weeks of long-service leave will be required each year.

PN1014

MS LEONCIO: Yes.

PN1015

THE COMMISSIONER: And by definition, the only unplanned absences are leave without pay, I guess parental leave to an extent, personal leave and worker's compensation.

PN1016

MS LEONCIO: I am not sure if that's the extent of it, but that would be the main – they're also vacant positions as well. So that would be factored in.

PN1017

THE COMMISSIONER: Right, okay. That's fair.

PN1018

MS LEONCIO: I am not sure if that's the exhaustive list but that would be the main categories. Yes.

PN1019

THE COMMISSIONER: Okay. I understand.

PN1020

MS LEONCIO: Now, I was coming to the part where one of the tools with which they have sought to remedy the critical resourcing challenges that they have in ED4, is to ensure and this is the direction that the superintendent gave to each of the relevant inspectors, but ensure that there was an actual assessment of service delivery requirements before approving purchase leave. And we say that such a direction is entirely consistent with the enterprise agreement. Now, an important part of the context is that the test of reasonable business grounds for purchase leave is a relatively new concept. There was a long history of purchase leave which is traversed in the Police Association's submissions but ultimately this test of reasonable business grounds which gives a cross-reference to Clause 14.10 which I will – I will address you about shortly. That was introduced in the 2019 agreement which didn't come into effect until April 2020.

PN1021

So there really have been only a few occasions, about three if you count it in the financial years, where the management have had to and the approvers of the purchase leave have had to critically consider service delivery requirements. That provides the context of why there needed to be such a clarification of please consider service delivery requirements before you approved purchase leave.

PN1022

Now, that then led to, so once that direction was given, there is an individual assessment that was undertaken by each of the inspectors so each of the individual purchase leave applications were assessed. By reference to reasonable business grounds, we say that will be borne out in the evidence.

PN1023

In terms of the reasons that were provided for the individual rejection of each of those applications, when we look at Clause 14.10 of the agreement, we are primarily concerned with subparagraphs (d) and (e) which basically require that the purchase leave, and these are non-exhaustive examples, so reasonable business grounds can rely on other matters, but for the purposes of this case, we say the purchase leave was likely to result in a significant loss in efficiency or productivity and likely to have a significant impact on customer service. Now, when considering those two example limbs of Clause 14, we say there are two things that need to happen. We need to look at what are the likely consequences of the purchase leave being taken and then there's a question of threshold in terms



of is that a significant loss in efficiency or productivity. Is that a significant negative impact on customer service.

PN1024

Now, we say when you look at the evidence that will be led about the particular units, about the impact or likely impact on each of these units, we say their likely consequence is that those positions were unlikely to be back filled during those short purchase leave absences. So the likely consequence is that there would be insufficient coverage in Wodonga Police Station, Wodonga Highway Patrol, Corryong Police Station, Family Violence and Investigation Unit, the Alpine Cluster and the Moira Cluster.

PN1025

And we accept that any absence of course, any absence of purchase leave or caused by purchase leave is going to result in a reduction of services, so the question really is a threshold question and we say the threshold for the purposes of these categories, of examples of reasonable business grounds is a question that's significant. And there are three main reasons why we say those reduction in services are significant. First, the actual services that are being provided are critical. They are at the core of Victoria Police's services in ED4, particularly around providing a highly visible and responsive police – sorry, highly visible and responsive police presence. And in particular, for Wodonga Highway Patrol, the focus on prevention of road trauma.

PN1026

Now, I want to just briefly touch on the minimum service levels. Commissioner, you would have seen references to it throughout the materials and also in the evidence yesterday. Now, I want to be clear, that service delivery requirements is not just minimum service level. The minimum service level is the bare bones, that is the adequate response, the provision of patrol units to ensure that there is an adequate response. That is by no means the measure for service delivery requirements as a whole.

PN1027

In terms of the two other reasons we say that the reduction in services are significant for some of the police stations in terms of just the mathematical proportionate reduction, it's a significant chunk of the resources. And the third reason, which is closely related to the second reason, is that in the current operating environment in ED4, the absences are exacerbating existing (indistinct) pressures, which have been experienced across the division. But you will see in each of the units, there are considerable issues with vacancies and long-term absences which means that there's a compressing of the resourcing by reason of the purchase leave. And we say that compression is significant.

PN1028

I want to just briefly touch on the issue of annual leave rosters. That is the Police Association's answer to reasonable business grounds. They say, 'If the leave can be accommodated in our annual leave roster plan, then it must be approved.' We say you should not accept that contention. Firstly, for many of the purchase leave absences, and we assume that when we're talking about the leave being accommodated, that that is being – that's a reference to the concept of the

maximum permitted. So in each annual leave roster, there is a number which indicates the maximum permitted of leave that can be taken.

PN1029

We say that's not a reliable source of truth. But in any event, for some of the purchase leave periods, they exceed the maximum permitted anyway. So it doesn't answer the question. But secondly, we say the maximum permitted number can't be relied upon because it doesn't appear to take into account a number of factors, such as vacancies, worker's compensation absences or demands that are required for example to back fill other services.

PN1030

So we say annual leave roster is not the answer. And that is why we have produced a considerable amount of material to demonstrate that the likely impact is a reduction of these services and that those reductions are significant. And we say that the evidence will demonstrate that there are reasonable grounds, reasonable business grounds for the rejection of each of those applications.

PN1031

THE COMMISSIONER: How long have those pressures been in existence?

PN1032

MS LEONCIO: Well, in the evidence, there's been an exponential increase, so there is data which is covered in Superintendent Arbuthnot's statement about in the last five years there was a very exponential increase where we're going from – I haven't got the document in front of me, but around 6,000, 7,000 to 9,000, 10,000. And we say that's very significant across the Eastern Region Division 4.

PN1033

THE COMMISSIONER: Six thousand what?

PN1034

MS LEONCIO: Shifts.

PN1035

THE COMMISSIONER: Right, okay.

PN1036

MS LEONCIO: So we say, yes, there has been an increase. So yes, there are always absences. But what we say is that in the last few years that's been a particular issue. Now, unless I can assist the Commissioner any further, they were the opening submissions of Victoria Police.

PN1037

THE COMMISSIONER: Right. The question I do have is - - -

PN1038

MS LEONCIO: Yes.

PN1039

THE COMMISSIONER: - - - the sequencing of your witnesses. Can you help me with that, please?

PN1040

MS LEONCIO: Yes. Now, the first witness will be Commander Karen Nyholm. The second witness will be Inspector Ashley Mason. The third witness will be Acting Inspector Joel Hughes although he is actually travelling down and it may just depend on how we're going. It may be that Inspector Paul Henry gives evidence first before Acting Inspector Paul Hughes. It will then be Inspector Bradley John Sprague and then Superintendent Arbuthnot.

PN1041

THE COMMISSIONER: All right.

PN1042

MS LEONCIO: I will just indicate, we had planned that the respondent's witnesses were going to start a little bit later than today. We have managed to pull everyone forward so that we should have the witnesses available from today. There is one witness who was on leave and the arrangement's as such that she won't arrive until it's the last witness, Superintendent Arbuthnot. She won't arrive until tomorrow so there may be a gap. I am hoping that there won't be, but in any event, if she is giving evidence through the morning, she will be the last witness. So I don't see any difficulties with it.

PN1043

THE COMMISSIONER: All right. Well, thank you for making those arrangements and bringing people forward.

PN1044

MS LEONCIO: Yes. Okay. Now, I will call my first witness, Commander Karen Nyholm.

PN1045

THE COMMISSIONER: Okay. Thank you.

PN1046

THE ASSOCIATE: Can I please have your full name and business address?

PN1047

MS NYHOLM: Karen Gaye Nyholm. I work at (address supplied).

**<KAREN NYHOLM, AFFIRMED** [10.30 AM]

**EXAMINATION-IN-CHIEF BY MS LEONCIO** [10.31 AM]

PN1048

THE COMMISSIONER: All right. Thank you. Please be seated?---Thank you.

PN1049

MS LEONCIO: Commander Nyholm, for the purposes of the transcript, could you please repeat your name?---Yes, Karen Gaye Nyholm.

PN1050

And just your current occupation?---Yes, so I am employed by Victoria Police. I am the rank of Commander. And I also hold the position of Commander of Eastern Region.

\*\*\* KAREN NYHOLM

XN MS LEONCIO

PN1051

And what is your professional address?---(Address supplied.)

PN1052

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

PN1053

I will just take you to the folder, it should be the second folder there, starting 1001, should be the page number?---Yes. Yes.

PN1054

If you just turn to page 1688?---Did you say 1638?

PN1055

Sorry, 88? One, six, eight, eight. Should just be on the bottom right hand corner?---Yes.

PN1056

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

PN1057

And if you turn to 1703? Just confirming that's the statement dated 15 December 2023?---Yes, that's correct.

PN1058

That runs to 16 pages and 64 paragraphs?---Yes.

PN1059

I then want to just take you and Commissioner, there is a duplication of the annexures, unfortunately. I – because of the way in which the electronic – electronic copy has been hyperlinked I am going to take the witnesses to the second set of annexures, just to be clear about that. If you can turn to page 1836?---Yes.

PN1060

Now, I will just confirm that there are – starting from that page, your 29 annexures. The last annexure is at page 1963 which should be across the back?---Yes, 1963 says K9, KN29.

PN1061

Yes. That's better. Okay. And have you had a chance to read your statement recently?---Yes.

PN1062

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

PN1063

Thank you. I tender that statement and the annexures therein.

\*\*\* KAREN NYHOLM

XN MS LEONCIO

PN1064

THE COMMISSIONER: All right. Thank you. The witness statement of Commander Nyholm with 29 attachments will be marked as Exhibit R2.

**EXHIBIT #R2 WITNESS STATEMENT OF COMMANDER  
NYHOLM WITH 29 ATTACHMENTS DATED 15/12/2023**

PN1065

MS LEONCIO: I have got no further questions. Thank you?---Shall I close the folder?

PN1066

THE COMMISSIONER: No, no. Well, Mr Gome might have some questions, so just leave it open, please?---Thanks.

**CROSS-EXAMINATION BY MR GOME**

**[10.34 AM]**

PN1067

MR GOME: Good morning, Commander?---Good morning.

PN1068

I'd like to begin with asking about your understanding of the enterprise agreement. Because purchase leave is a clause contained within the agreement, you do understand that once an agreement has been certified and approved, that it remains in effect until its replaced, either by negotiation or arbitration?---Yes.

PN1069

Yes. And the Chief Commissioner has signed on behalf of Victoria Police?---Yes.

PN1070

Clause 129 is where the purchase leave sits within the enterprise agreement. Would you agree that purchase leave is an entitlement available to employees of Victoria Police?---On the pure definition of entitlement, no. And I can explain that. I purchase the other types of leave, for example, what we have spoken about, the nine weeks' leave, parental leave, long service leave are entitlements that are absolutely enshrined that I realise as the employer that I must provide for without question. Or without any further assessment. So that would be the definition of entitlement. For purchase leave, it is leave that can be applied for. It's not an automatic entitlement. There's the – to me the assessment as provided for in the agreement that talks about the opportunity for the employee to apply for it. And then that I should provide for it, unless I have got reasonable business grants that I can't provide for it. So there's still that – I don't see that it reaches that same threshold for that definition of entitlement but if you use, I guess, a looser definition of entitlement, it's certainly something that the enterprise bargaining agreement certainly provides for the employee to apply for.

PN1071

So in the event that there's no reasonable business grounds, purchase leave applications must be approved?---That's how – that's how it certainly reads to me, yes.

PN1072

Yes. And the ability for the employer to reject a purchase leave application only arises if reasonable business grounds exist, yes?---Yes. There needs to be reasonable business grounds for us to refuse an application.

PN1073

And even when there are reasonable business grounds, that's the discretion, isn't it? Once there are reasonable business grounds, the employer may reject or the employer may still approve purchase leave. Even if reasonable business grounds exist?---Yes.

PN1074

Yes. Thank you. If I can take you to – it's a – if I can take you to paragraph 46 of your statement?---Yes.

PN1075

And I'd like to draw your particular attention to the fourth dot point?---Mm-hm.

PN1076

Now, keep your mind on that part of your statement, then if I can take you to the first folder and page 700 which is an attachment to Inspector Henry's statement which is the relevant VPM, it's the relevant (indistinct)?---Sorry, in the first folder, what page?

PN1077

Actually, it's not – I am going to take you directly to it. The document starts at page 700?---Yes, (indistinct) the statement?

PN1078

Sorry, my apologies. Can I take you 718. The first attachment?---Yes. Yes, I have got that now.

PN1079

And do you recognise that document?---Yes.

PN1080

It's the Victoria Police Manual. The VPM leave policy?---Yes.

PN1081

Yes. Can we then move to page 782 which is the section that describes purchase leave?---Yes.

PN1082

And I just want to have that there for context when we look at some of the other paragraphs in your statement. All right? So again, going back to paragraph 46 of

your statement, dot point 4, you have got the VPM is written in a manner which is suggestive that it's a laydown that purchase leave will be supported with only one part referring to the decision making.

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1083

Can you take me to that in the leave policy? Which part of the - - -?---Sorry, I am just going to stand up if that's all right (indistinct). I feel short. Okay. I will just – I will just need to find it in here. So it sort of talks all about the processes (indistinct) making sure that the members have considered (indistinct) so there's the purchasing and it's not just (indistinct) and it talks about what we need to consider. In – on page – sorry, document 7, page 785, where it says 49, line and then if you move down to dot point 4, 'Applications for purchase leave may only be rejected on reasonable business grounds'. So that's the only part that I would sort of take away from my reading of that, that provides some indication that it's not an enshrined – that it's not a golden enshrined – you will be granted it. And so from a manager approving it, that's the (indistinct) dot point in there that makes reference to – (indistinct) a consideration need to reject it.

PN1084

And you had concerns about the advice that managers were referring to in the form of this policy, given that it only had that one reference?---I think it's always really helpful when you're trying to make a decision to have really good principles and assistance in making a decision and so when you read this, for a manager that needs to make a decision, our capacity and decisions around that are really, really complex. There are so many layers to it. So you know, it would be helpful to have more guidance to our managers, when making a decision, more so than that which is quite an open question.

PN1085

So you had to inform that if there were reasonable business grounds, that they didn't have to approve purchase leave?---Well, to help them to understand what reasonable business grounds might constitute.

PN1086

So an elaboration on that. Thank you. Can I take you to – can I take you to paragraph 42 of your statement. And you have quoted from a – from an email that's attached where I don't think we need to go into the – the body of the email. If I could take you to, I think it's the – maybe the third sentence about halfway down:

PN1087

*One matter that we raised today was purchase leave. I am confirmed that our HR Commander not supporting us.*

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1088

Can you elaborate on that?---Yes. So that email excerpt relates to a meeting that I had with the leadership team. As part of that discussion purchase leave was one of the many things that we discussed in it. So my comment there relates to the

fact that they had sought – someone in that meeting had raised purchase leave and said that they sought advice from their HRC, so Human Resources Command, and that the guidance was – it didn't take into account all of the – the factors that I would like them to take into consideration, when you're talking about what's reasonable business grounds. So I was concerned they were sort of seeking advice from the right place, but it didn't necessarily give them the full context of what they needed to consider to make the decision.

PN1089

I will ask the other witnesses, but just on the odd chance that you remember, do you happen to remember who that might have been, the person that had had the contact with human resources command?---I thought it was - from the notes that were taken, I thought it was from Inspector Brad Sprague, but I also - I wasn't sure if it was from Inspector Paul Henry, as well, because it was quite a lengthy meeting about lots of different components in there. So it wasn't a meeting - it was not a side matter, but it was just a - it was a comment that had come up in there which caught - like I say, you know, it caught my attention afterwards. It hadn't meant as much to me, although it did concern me.

PN1090

Again - thank you - I will ask those witnesses directly, but again just from your recollection human resources command has a division which is the business partnering and workplace relations division?---Yes.

PN1091

Do you have any idea whether the person or persons spoke to somebody central in workplace relations?---No, I don't recall who it was.

PN1092

Yes?---Yes, my memory of that is not great because it wasn't - whilst it wasn't significant in there, it was just more it caught my attention because purchase leave was one of those - in having a look at our capacity across 12 months and the planning for the next 12 months, the word 'purchase leave' to me was one that sort of grabbed my attention at that time, so I did - and we hadn't - as a regional leadership team we would sort of wait and said, well, okay, when the purchase leave applications come through we want to make sure that we're comfortable with what we approve or don't approve because we need to understand our capacity. So we want to be quite confident with our decision-making to approve it or to not approve it. I don't know if that answers your question or not, but - I think your question was who did they speak to. I don't actually know who they spoke to.

PN1093

THE COMMISSIONER: Commander, just for my own reference the quote you have refers to an LAC. What is an LAC?---A local area command, so advising that the local area commanders - so they're the inspectors that sit over the police service areas.

PN1094

If I don't ask it now, I may not ever find out, so thank you?---I apologise for all the acronyms. They must be frustrating to use so many of them, too.



PN1095

MR GOME: Can I take you to paragraph 33 of your statement?---Thirty-three?

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1096

Thirty-three?---Yes.

PN1097

Maybe the fourth sentence, again sort of halfway down:

PN1098

*I said words to the effect that I couldn't see how the region could be approving any purchase leave when it had such significant capacity issues.*

PN1099

This is February. Was it your belief in February that reasonable business grounds to reject all purchase leave applications existed?---No. To me, in writing that, I think there is the question mark over of it can't be a lay down that people apply and it's just automatically approved, because that's what has been done in previous years. To me in raising that, that's a matter - or we've got significant capacity challenges so we need to go through a process and make sure that those that we do approve - because - yes, I've said I couldn't see how the region could be approving - the region, being obviously a big place - any purchase leave. If was of a thought that it could be, we probably would have then gone down the process of actually putting a blanket approval out there, but there are always exceptions. There is always some areas that you may be able to approve it for in small amounts, so I don't think - it's not one that you say, yes, it must - in my view there was - yes, sorry.

PN1100

THE COMMISSIONER: I would prefer the conference room door is closed and the courtroom open. Thank you.

PN1101

Sorry about that. Thank you?---That's okay. It wasn't a blanket no - you know, it wasn't a direction to the divisional superintendents, 'You cannot approve.' It was a matter of, 'Well, you will need to be able to justify that we can actually continue and serve what we need to do if you're approving that', because in previous years it had been - purchase leave had been signed off. That had really started to impact our capacity and it was only when - like, when I arrived at the region and had a look at how much had been signed off, that I didn't feel that the risk had been considered with what our business is - - -

PN1102

MR GOME: You have just mentioned this is the region, so the office in Knox; so the assistant commissioner and the commander for the region. Would you accept the characterisation of putting the superintendents on notice?---I guess you could describe it like that. It wasn't - it was, 'Make sure that you understand your business and make sure that the decisions that you're making align to what you need to do to deliver the services that we need.'

PN1103

I would like to take you to - and I'll need to find the reference - a paragraph in Inspector Mason's statement. You can find Inspector Mason's statement at page 342 of the first - - -?---Yes.

PN1104

Can I take you to paragraph 11, Monday, 12 June, and Inspector Mason's first day as acting superintendent. Again, about halfway down that particular paragraph:

PN1105

*Commander Nyholm's discussion was to the effect that purchase leave should not be approved as the region divisions could not meet baseline service requirements, including minimum station profiles and baseline minimum service levels.*

PN1106

Would you care to comment on that?---Yes. So across the region - but I'll keep it to ED4 - for certain areas that we see continual inability to meet the minimum service - sorry, minimum station profile and also baseline minimum service level. So if I can explain probably a bit more what that means, if you lived at Camberwell - and in Camberwell we have 24-hour police response, so we've got a van crew that can respond, so we would have a minimum station profile to make sure that we have that van on the road and the police station open for that 24 hours.

PN1107

When you go into the rural areas that are covered here, we don't have all our stations in Division 4 - we only have two police stations open 24 hours, with a 24-hour police response time. We then go down to 16 hours and eight hours, and for coverage for those communities depending on the location where a van crew would come out or whether we have members on availability. So the importance of meeting those minimum levels is purely a response; that is, the crime is happening or has happened or there is an inkling via a member (indistinct) that we can actually respond to that, so there are the minimum levels.

PN1108

In order for us to provide genuine community safety with the police numbers that we've got and juggling them around across the state, the Eastern Region or down into ED4, we want to maximum having them out on the road visible to prevent the crimes happening the first place. So the minimum there is the response that we need and it's one that we really cannot afford to go underneath.

PN1109

In terms of that, whilst he says words to the effect that purchase leave could not be approved, there are various areas around that and particularly those areas where we run a lot of what's called availability to be called out or a response area where we haven't got police working and we would need to bring them across from a distance to have members take more leave than - - -

PN1110

MR GOME: Commander - - -?---Sorry.

PN1111

Sorry, it's not the question that I wanted you to address?---Okay, sorry.

PN1112

I guess what I'm wanting you to address is - you've described in very sort of reasonable terms your concerns that you had and the manner in which you raised them?---Yes.

PN1113

We talked about how we would characterise what the instruction from the region to the divisional superintendents was?---Yes.

PN1114

I guess the way that that was - I put it to you that the way that that was received, whatever your intentions were - I put it to you that the way that that was received was very different to how you have described, you know, in your earlier evidence. Would you agree with that, in this particular instance?---I accepted that that's the way that he has interpreted it.

PN1115

Yes?---But it's not the way that I necessarily delivered it, other than to say I would certainly - and I don't think it's inconsistent with my evidence - I would have said that purchase leave in the areas where we can't even meet our minimum requirements, to me that stands those reasonable business grounds that we couldn't be approving further leave. So if your question is do I think it's inconsistent, that's his interpretation - - -

PN1116

No, my question wasn't do I think it's inconsistent. My question is do you accept that what you intended and how it was received is different in this particular instance?---I'm not sure I get what you're saying. I accept - I do accept that when I read this part of the statement, that he took that that in the areas where there is - - -

PN1117

Can we agree that his wording is stronger? His interpretation of what the instruction to the divisional superintendents was - - -?---Yes.

PN1118

- - - is expressed in stronger terms than the way that you have characterised it?---Yes.

PN1119

Thank you. I do just want to go back to the leave document and the purchase leave section for a moment?---Just remind me of the page - seven - yes.

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1120

Yes, that's right. I did just want to point out partly for the Commission's benefit, as well, some things while we're here and it's all conveniently in front of us. So at page 785, paragraph - part 49, the third dot point, the authorised - sorry, not the third dot point. When we go down to the second last dot point:

PN1121

*The manager of the applicant is the authorised delegate, level 3.*

PN1122

What is a level 3 delegation, commander?---I believe it's a senior sergeant or inspector.

PN1123

All right. I have something that might be helpful?---Inspector, I think it is.

PN1124

Commander Nyholm, can I ask you to identify this document that I have provided you a copy of?---Yes, so it looks to me to be a document which provides the different levels of approvals for all the different types of leave that are in the system; so somewhere in here will be purchase leave. 1.20, so on the third page, is purchase leave and so it has got the ticks up to level 3.

PN1125

If I were to say to you that level 3 is an inspector - and I'll ask the others, so no collaboration - would it make sense - sorry, maybe if we work our way down. Would you accept that level 1 is commander and assistant commissioner?---Do you know what, I think I've looked at this document before and I always need to, because it's not often you need to go back and refer to it, and I always go back and have a good look at what - well, the document sits behind the document that tells you what the different levels are, so I'm not sure why it wouldn't say the grade at the top there. I wouldn't dispute that. I'm sure if you - if that's the case, then I would agree with that.

PN1126

All right?---That would make sense.

PN1127

Thank you. I might need to ask some other witnesses that same question?---Certainly. No problem with that.

PN1128

I'll leave that for now. I would like to tender that document, Commissioner.

PN1129

THE COMMISSIONER: The delegations table of three pages will be marked as exhibit 9.

### **EXHIBIT #A9 DELEGATIONS TABLE**

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1130

MR GOME: Thank you, Commissioner.

PN1131

Would you agree that purchase leave is a form of planned leave?---Yes.

PN1132

Purchase leave will be used within the financial year for which it is applied?---Yes.

PN1133

It doesn't carry over?---No.

PN1134

If a member goes on WorkCover, the purchase leave arrangement ends, doesn't it?---I believe so. I think what would happen is it effectively would be reversed.

PN1135

Yes?---Because they've purchased it. So the money side of the house would be worked out, what they had or hadn't taken; if they had taken part of it or some of it. If they hadn't taken any of it, then the money would be reversed so then it - so they're not - they haven't paid for something that they haven't got.

PN1136

Yes?---Yes.

PN1137

Would you agree that long service leave is also a form of planned leave?---Typically, yes, in the sense that it's known - it's a known entitlement that is normally booked in in advance so people can take it at a time that hopefully suits them and works for business.

PN1138

If a member has an accrued long service leave entitlement, what financial year would a long service leave entitlement be taken?---Well, any time. I think - I mean, I don't know verbatim what the application process is, but normally there is a process of - I don't know that it would be in here - you apply for it and we have a look and say, okay, can we afford to, you know, look at - in the first instance we have a look and say, right, can we provide - and they'll ask you to take that leave at that time.

PN1139

Are we talking about the annual leave rosters in this case?---Yes.

PN1140

So long service leave is planned leave?---Mm-hm.

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1141

And it doesn't have to be taken in any particular financial year?---No, it doesn't, and that's what makes rostering - add always to the complexity, because you could have a station where you've got 10 people that have got six months' worth of long

service leave owing to them or you could have a station where no one has got long service leave entitlements owing to them. So the juggle of doing a leave roster when you've got a station where you've got 10 with six months - and at any time you would want to support them to take that - or you've got a station where they don't, so the complexities of rostering - that's one of the complexities of rostering even if it is a - fits into the planned entitled leave component of it.

PN1142

But purchase leave and recreation leave need to be acquitted in, you know, the upcoming financial year?---Recreation leave should be taken within that 12-month period, so the nine weeks' leave.

PN1143

Yes?---There is the rare occasion when it's carried over and that might be because a member is asked to or for various reasons, but typically it's taken in that 12-month period, yes.

PN1144

In a situation where there is a concern at the regional level that minimum station profiles aren't being met, that baseline service delivery is not being met and people are being discouraged - sorry, I will - superintendents are being instructed to be mindful of those circumstances and to discourage people taking purchase leave, would it make any difference to service delivery requirements whether a member was absent on purchase leave or long service leave?---Yes, it does, because - well, firstly, I couldn't use the words 'discourage them to apply'. I think - I would hope that we support people to say, 'Well, you can apply and we'll consider it', so that's the first part. In terms of - - -

PN1145

My question is about not whether the leave is different but whether the absence on purchase leave has any different effect to an absence on long service leave. I put it to you there is no difference?---Okay. Well, I would disagree and I can explain. It's my view that we have service delivery to deliver and we can work with what is planned leave, and if I put - if I said that there is buckets, there is the planned leave that must be taken in that 12-month period, which is the nine weeks, and then there is the bucket which is the unknown, so you don't know if you've got, like I said before, 10 members there that have got six months of long service leave, if you've got five members in there that decide to take parental leave which you don't know about in the planning - they have walked in and announced that they wish to take parental leave. So you've got a bucket of leave which is - it's a planned leave, it's an obligation for us to support and we want to give that to the members so they can support their family life or have a break for long service leave.

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1146

Then you've got what I would say is the third bucket, which is if on reasonable business grounds we can't support these other ones in here, that we really need to be in a position to say can we support that and still deliver the service that we need to and not just the minimum service profile. We need to be better than that

for the community and be able to deliver more than (indistinct) because that's not enough to ultimately do what we need.

PN1147

So to me you've got those buckets and when you're doing that rostering it's really important that we provide for that first bucket to be done, the unknown bucket which is still the entitled - and I would absolutely encourage members to say that your entitlements - 'You need breaks. Take your long service leave.' For parental leave, 'If it's around the birth of your baby, take that leave.' It's not to, I guess in your words, discourage people from that, but there is that balance between making sure that we provide that service to the community. It's not something that I would compromise.

PN1148

MR GOME: But my question was in conditions where there are resourcing constraints and the region is concerned, is an absence on long service leave - the effect of someone being absent on long service leave any different to them being absent on purchase leave? Just yes or no?---Do you mean the absence to the community on that specific day?

PN1149

Yes. You know, let's say, for example - and it's an example from the evidence yesterday?---Yes.

PN1150

LSC Morris initially applied for one week of purchase leave in February and that application was rejected, and she was - as some of the other applicants were - given the option of having recreation leave granted for that time. That conversation was initiated by the relevant inspectors?---Mm-hm.

PN1151

So no to purchase leave and then we say - and it will come out in the evidence later on - they are then encouraged to take recreation leave instead?---Okay. So I can answer your question. What I would say is that on that given day at that moment in time you're correct, there's no impact on that day, but we need to plan for the cumulative. If I turn around and go back to my three buckets, if I continue to approve the bucket that there is some opportunity to deliver better service and those members have also got this entitlement in the middle that just keeps growing and growing and growing because long service leave entitlements will continue to grow if people don't take them, and those - that bucket continues to get bigger.

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1152

So on that given day if the leading senior constable was on parental leave, long service leave or purchase leave on that given day you might say, well, no, it doesn't make a difference, but it's the cumulative impact of having members taking leave which on reasonable business grounds I can't justify to the community that I'm giving that extra leave when I can't deliver a service and have police arrive in a timely manner preventing road trauma, preventing crimes,

addressing youth crime problems. I need to have that cumulative number of shifts together.

PN1153

MR GOME: Thank you. I've got two things I would like to say in response to that. The first one is let's talk about what you mean by additional leave and what our submissions mean by additional leave. Correct me if I'm wrong, but my understanding is that when you refer to purchase leave as being additional leave, you mean that in at least this particular sense - and there might be some other ones, but you mean that in addition to what you refer to as the guaranteed or the accrued entitlements?---Yes.

PN1154

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

PN1155

I'm explaining to you now just so that - - -?---Yes.

PN1156

- - - we are clear on where the - there might be some overlap, but where the paths diverge. When we're talking about purchase leave as being additional leave, we're talking about it being additional leave to be acquitted in the upcoming financial year, so in addition to recreation leave, the nine weeks?---Yes.

PN1157

Yes?---Yes.

PN1158

So in that sense - and we've touched on the leave rosters include planned leave, which you've agreed includes recreation leave, purchase leave and long service leave, yes? So it's not just recreation leave that gets put into an annual leave roster?---Yes, the planning of a leave roster, the first level of it, means that if you've got 10 people you multiply that by nine weeks' leave and then you have a look and say, okay, well, how many weeks' leave can we put in, so that's the starting point - - -

PN1159

Hang on, we will get to the calculations?---Sorry, am I getting ahead of you?

PN1160

We'll get to the calculations, but just in terms of we're looking at the annual - so the financial year leave roster and we've said that that's planning that is done in advance?---Yes.

PN1161

That necessarily includes the nine weeks of recreation leave that full-time members are expected - - -?---Yes.

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1162



- - - but may not - are expected to acquit in that financial year. What I'm suggesting to you is that purchase leave is in addition to the recreation leave that is going to be factored into that roster, that leave roster, for the following financial year?---Yes, it would need to be factored in there somewhere, yes.

PN1163

Yes. It would be there and it would be in addition to the nine weeks of recreation leave?---That's right.

PN1164

What I'm suggesting to you - and this is the sense that we use 'additional leave' - we have established that long service leave doesn't have to be taken in any particular financial year, so if it were to be taken in the next financial year we call that, or we describe that, characterise that, as being in addition to the nine weeks of recreation leave. I'm not saying do you accept it, but do you understand what I'm saying?---Yes, I understand what you're saying.

PN1165

Yes?---Yes.

PN1166

I'll now ask you do you accept that characterisation?---I accept that's the way that you can look at it when you do the annual planning, yes.

PN1167

Thank you. Now, the other point that I wanted to return to was you were talking about the cumulative effect of purchase leave applications and this perhaps kind of goes back to the perception or the characterisation on some people's parts that there is a blanket ban?---Mm-hm.

PN1168

It is true that not a single uniform member in all of ED4 was approved a single week, which is the smallest amount that people could apply for, of purchase leave?---Yes, that's correct.

PN1169

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

PN1170

Not a single one?---Mm-hm.

PN1171

So we're not in a position to be able to - sorry, the employer is not in a position to be able to say, 'We could accommodate some purchase leave at some time of the year at some stations. The cumulative effect is such that we can't approve any'?---That's correct.

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1172

Yes, so I then have to ask you - and again I'll return to Leading Senior Constable Morris, only because she spent a bit of time in the witness box yesterday and her

application is fresh in my mind. She is a part-time member and her original application for purchase leave was for four weeks, and then on discussion with Senior Sergeant Martin I believe it is, the OIC at Wodonga, she re-submitted the application having discussed some dates with the divisional planning office and her application was for three weeks; the week that we've spoken about in February and two upcoming weeks in April. She works .6 FTE, so that three weeks of purchase leave equates to nine shifts?--Mm-hm.

PN1173

Is it your evidence that granting - and I'm only using this as an example - those nine shifts of purchase leave to Leading Senior Constable Morris, and bearing in mind it's only six now because three of them have passed, would cause significant adverse effects for the division?--It's my view that when we make those approvals we look at the individual circumstances, so in this case her circumstances, but the reasonable business grounds when you look at her individual circumstances, when you come back to can you accommodate it, you need to consider the entirety of what that looks like and the fairness to other members, as well. So the impact of that nine weeks' leave might then impact and push people on to - - -

PN1174

Nine shifts?--Sorry, sorry, did I say 'nine weeks'? Sorry, I did mean nine shifts. The impact of that nine shifts can push other people on to an additional nine shifts of availability and the flow-on to that. In fairness, we also need to consider what is fair to one needs to be fair to all, as well. So I go back to the - if there was a blanket ban, we wouldn't have gone through a process where there was considerations and there was ED4 random panel to actually really come down to whether or not that they could do that. If it was going to be a blanket ban it could have been an instruction right from the start saying, 'No, none is to be approved.' That didn't occur. They went through the process of considering each of those applications. The fact that no one was granted that in the uniform space, I understand you're saying, well, that's effectively a blanket ban on the uniform side - - -

PN1175

Yes?-- - - - but our reasonable business grounds led us to the conclusion that we could not afford to approve those.

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1176

Can I ask you where the idea of personal circumstances comes into assessing applications for personal leave. You won't find it in the policy?--No, no, and I guess that was me drawing reference to the fact that it doesn't give a lot of guidance. You know, I think at the end of the day you talk about fairness - you've got to talk about fairness to everyone, but there is also individual circumstances that really you need to consider. For example, you could have a member that has not got other entitlement leave that they can take, so they haven't yet accrued long service leave, they aren't in a position to take other leave, but for whatever reason, whatever pressing reason it is, that you have a look at and you think well, you know - I'm still here to look after our members as much as we can, but we have to

have that balance of making sure that we deliver the service that we need to. So in terms of that personal consideration, I would never expect our members to not be in a position to come to me and say, 'You know what, this one - there needs to be an exception for this one.'

PN1177

Are you aware that Senior Constable Jones from Mount Beauty hasn't accrued long service leave and has requested two weeks of purchase leave at a time that nobody else is on planned leave from that station, and it has been rejected as part of the uniform rejection of applications by uniform members?---Yes, I'm aware of that and it's my view that in terms of having nine weeks, which is a considerable portion of leave that a person can take, he chose to conduct himself and have that nine weeks in one batch together. If he didn't foresee at that time that he needed to break further into that, then that's something that he needs to consider in terms of planning on taking that leave. So most people take it three weeks at a time or two weeks, sometimes four weeks and five weeks, but to make sure that they get a good break over a 12-month period. So, nine weeks is a considerable time. The fact that he chose to put all of that together for a reason - which I understand what the reason was - - -

PN1178

And what was that reason?---I understand he was taking - he was married and was taking his holidays - his honeymoon, yes, so I understand putting that together. That's a considered decision of his to put that leave together at that time, so he could have then moved some of that leave at other times. Again if I come back to my sort of three buckets, that was leave that absolutely we would have looked and said can we support at that time. Some members won't have a long service leave entitlement to then use and he is one of them that doesn't. He still has those other leave - that other leave that he could take.

PN1179

Again can I take you back to - explain to me the origin of personal circumstances as part of assessing an application for purchase leave?---Yes. Well, like I say, in terms of - at the end of the day we're not - we're an organisation that genuinely want to look after our people and take care for them, so - - -

PN1180

I don't dispute that, commander?---But that's why I say that in terms of putting out a blanket ban you - if you put out a blanket ban you're not taking account of the potential that there might be that one that you kind of go, okay, like, how can this be - you know, have they got other leave; can we discuss it; what's on the table. The fact that it still exists in our EB and it still is referenced in there, it's my obligation to make sure that I consider that appropriately. In terms of the reasonable business grounds, I see that as the bigger picture. How can I make sure that I deliver that service to the community at each of those locations.

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1181

So this personal circumstances, it's a creation of the region or at least - and it has been applied in ED4. Can you tell me what threshold - what test are members

applying for purchase leave required to meet given that none were approved in any of the - none of the uniform members had any leave approved. How high was that threshold set?---Well, I mean, as you see from the documentation it wasn't - there was no set threshold on it. It simply - I guess with anything you do in any kind of decision-making, you need to consider all the factors that are out there. Like I say, it would be - we're in the business of people, we need our people to deliver our service, so we do what we can to support them. If we had a member that came and said, 'Look, I've have my nine weeks' leave. I'm really, really - I'm tired' - like, this is a - it is a mentally challenging role, it's a physically challenging role. There is other opportunities to - for example, they've got personal leave that they can take if it's a matter of 'I'm tired. I'm physically tired. I'm emotionally tired from this. I need a break.' There is - - -

PN1182

Would an absence on personal leave for an extended period have any difference in its flow-on effects to an absence on purchase leave?---Well, it sits in that bucket of entitlements that people can take - - -

PN1183

I know where it sits in the bucket?---Yes.

PN1184

What I'm asking you is if they're absent on personal leave for an extended period of time - - -?---Yes.

PN1185

- - - are the effects - for the same period of time as they might otherwise be on purchase leave, are the effects the same?---Well, I go back to on that particular day, you know, as you referenced, like if it's long service leave or whatever it is on that particular individual day, perhaps not, but the accumulation of that across running a division and putting out the services we need to, yes, there is an impact.

PN1186

THE COMMISSIONER: Commander, could I maybe ask you to leave the room for a moment, please. There is just something I wish to discuss with the parties?---Sure.

<THE WITNESS WITHDREW

[11.28 AM]

PN1187

THE COMMISSIONER: Mr Gome, can I put this to you: when I read clause 129.2, it does not outline - would you accept it does not outline the grounds upon which I may approve applications for purchase leave, but it does set out the grounds on which I can reject it?

PN1188

MR GOME: Yes, I would agree with that, Commissioner.

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1189

THE COMMISSIONER: So can I then put to you that within reason they can take account of whatever they want to approve it - this person has this length of service, this person has had this level of leave this year - but they can only reject it on reasonable business grounds.

PN1190

MR GOME: Sorry, no, no, Commissioner. If I may, it goes to where I began with the commander. If there are no reasonable business grounds, the leave must be approved.

PN1191

THE COMMISSIONER: Yes, I agree with that, but they can take account of whatever they wish.

PN1192

MR GOME: I beg your pardon?

PN1193

THE COMMISSIONER: They can take account of whatever they wish to approve it.

PN1194

MR GOME: Sorry, Commissioner, they can - - -

PN1195

THE COMMISSIONER: They can approve it on whatever ground they want.

PN1196

MR GOME: Commissioner, I would put it higher than that. Unless there are reasonable business grounds, they must approve the application.

PN1197

THE COMMISSIONER: All right. The other question I wished to discuss with you - - -

PN1198

MR GOME: Yes.

PN1199

THE COMMISSIONER: I understand your point. There is no point debating it further.

PN1200

MR GOME: Yes.

PN1201

THE COMMISSIONER: The other question I wish to discuss with you both is that clause 129.2 says:

PN1202

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

PN1203

Now, the question I have got is when I go to clause 14 - it's a somewhat lengthy clause. Now, 14.9 says:

PN1204

*The employer may refuse a request only on reasonable business grounds.*

PN1205

Then 14.10 gives an elaboration of what they may be, but the other point I wanted to refer to is 14.7. It refers to a discussion that needs to occur between the employer and employee. On the basis of what you filed, I'm approaching the clause - clause 129.2 - as being a reference to clause 14.9 only. Now, I just wish to raise that with you and see what you both had to say on that subject, because if there is an agreed interpretation about the utility of clause 14, then that will help me. If there is not an agreed interpretation, then I need to understand the length and breadth of that disagreement.

PN1206

MR GOME: Commissioner, our submissions are based on the interpretation that it's only the reasonable business grounds subclauses in clause 14 - 14.9 and in particular 14.10 - that are of relevance to the dispute.

PN1207

THE COMMISSIONER: All right. So you won't be putting the argument that to get to that point there has to be the discussion set out within clause 14.7 of - - -

PN1208

MR GOME: No, we won't be traversing that, Commissioner.

PN1209

THE COMMISSIONER: Did you wish to say anything about that, Ms Leoncio?

PN1210

MS LEONCIO: We agree, yes.

PN1211

THE COMMISSIONER: All right. That's fine. Thank you. I just wanted to - yes, Mr Gome?

PN1212

MR GOME: Sorry, Commissioner, if I may, I did just want to tie up a loose end with the personal circumstances and the way - so what we're saying is that once reasonable business grounds exist, the discretion to reject or approve purchase leave applications is enlivened. They may be rejected and they may - even though reasonable business grounds exist - still be approved. The point that I'm trying to get to with the commander is her agreement that reasonable business grounds come first and then the assessment process. That's the only point at which the discretion gets enlivened.

PN1213

THE COMMISSIONER: Well, if that's the objective, put the question.

PN1214

MR GOME: Yes.

PN1215

THE COMMISSIONER: I would rather not have a long debate between the two of you as to what the clause means. Ultimately I'll tell you what the clause means.

PN1216

MR GOME: Yes.

PN1217

THE COMMISSIONER: All right?

PN1218

MR GOME: I understand that, Commissioner, and I've tried to avoid - - -

PN1219

THE COMMISSIONER: You have been going for a while and that's why I interrupted, so if you wouldn't mind targeting the questions, please.

PN1220

MR GOME: Yes. Thank you, Commissioner.

PN1221

THE COMMISSIONER: Thank you. If you can bring the witness back, please.

**<KAREN NYHOLM, RECALLED**

**[11.34 AM]**

**CROSS-EXAMINATION BY MR GOME, CONTINUING**

**[11.34 AM]**

PN1222

THE COMMISSIONER: Commander, thank you for returning. There was just a matter of interpretation about the agreement that I wanted to discuss with both parties, but we have completed that discussion. All right. Thank you. So, Mr Gome, if you would proceed.

PN1223

MR GOME: Thank you, Commissioner.

PN1224

Commander, I want to ask you whether or not you accept the proposition that the employees' individual circumstances come under consideration when they're making purchase leave application only after there are reasonable business grounds to reject that purchase leave application. Do you understand the question?---I'll try. So you're saying an employee makes an application. We determine whether there is reasonable business grounds or not.

PN1225

Yes?---If we say that there is not, then their personal circumstances are then to be considered. Is that what you're asking?

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1226

Maybe I'll rephrase it. If there are no reasonable business grounds, do you need to assess an employee's personal circumstances?---No.

PN1227

So it's only once there are reasonable business grounds that the question of personal circumstances becomes a live issue?---Yes. If there are no reasonable business grounds to knock it back, then it's approved, yes.

PN1228

Thank you. Commander, can you identify the document that I've have handed up to you?---Yes, I understand it's an information source from our HR Assist, which is an area that contains all our information. It takes off Division 4 - I'm just having a read of it. Yes, it talks to the various data sets across CD4.

PN1229

Can I ask you whether you can clarify - if you go to the second table and the far right column - - -?---Yes.

PN1230

- - - 'Other', so we've got parental leave, personal leave, WorkCover, long service leave. Do you have any idea what might be contained in the final column?---There is a broad range that it could cover, so it probably does include purchase leave. The other leaves that could be in there are military leave and then there is a lot of leaves that are not as frequently used, but things such as adoption leave which wouldn't fall under parental leave. There is other entitlements and I guess that document, the leave document, refers to all the different types. The other category would catch all those other ones that fit into that.

PN1231

If we have a look at the next sort of column along - sorry, the next row, that's specifically dealing with purchase leave, isn't it?---Where it says, '8(b) Total number of - - -'

PN1232

8(b), yes?---Yes.

PN1233

Yes?---Yes.

PN1234

Would you agree that the cumulative numbers for sworn shifts lost in the second row - so sworn shifts lost to personal and WorkCover unplanned absences - is much larger than long service leave and purchase leave combined?---Yes, yes. Well, WorkCover is 6000 shifts, personal leave is three and a half thousand. I guess if you total the other two, long service leave and other, that sits around - similar to the personal leave approval.

\*\*\* KAREN NYHOLM

XXN MR GOME

PN1235

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



PN1236

THE COMMISSIONER: Mr Gome, did you wish to tender this document you have just handed up?

PN1237

MR GOME: Yes. Thank you for reminding me, Commissioner.

PN1238

THE COMMISSIONER: Is this an extract that you prepared?

PN1239

MR GOME: No. Sorry, I should have introduced it. It's provided under the order to produce.

PN1240

THE COMMISSIONER: I see. All right. In that case the document 'Leave and purchase leave arrangements for ED4 22/23 financial year', will be marked as exhibit 10.

**EXHIBIT #10 LEAVE AND PURCHASE LEAVE ARRANGEMENTS  
FOR ED4 2022/2023 FINANCIAL YEAR**

**RE-EXAMINATION BY MS LEONCIO**

**[11.42 AM]**

PN1241

MS LEONCIO: I just want to take you to the document at - it's exhibit A9, but it's the one that had the delegated authorities?---That one?

PN1242

Yes, that's right. There is the purple and the pink pages. You were taken to 1.20?---Yes.

PN1243

What is your understanding of the level of authority for purchase leave? Do you have any awareness of the relevant delegated authority?---So anybody that has got - where the ticks are, that says that any level at that level can approve it, so - and the reason it would work like that, for example, if level 4 is senior sergeant - let's say that any sector applies for purchase leave, then clearly the delegation needs to sit senior in rank to them to make that decision, so it moves up the chain. So level 3 is the lowest level that can approve that delegation.

PN1244

So in terms of the members of ED4 who apply for purchase leave and are the subject of this dispute, what level of authority is delegated - sorry, what level is the relevant delegation of authority to?---Any sector.

\*\*\* KAREN NYHOLM

RXN MS LEONCIO

PN1245

Yes. Practically speaking, how does that work?---So there is an electronic process - which is through the HR Assist - where the members will put in their application. It goes through - so it doesn't go directly to the approver, it should go

through the process where it goes to their manager, so I believe it would go to their senior sergeant who would make comment on the application and then it would go to the inspector for a decision. That's how the process should - - -

PN1246

What involvement, if any, do the higher up levels - so above the level 3. Say, for example, the superintendent level or the commander level. What level of involvement, if any, is there in that consideration of those applications?---Well, certainly there might not be specific consideration for the individual case. How we apply what we're doing in running our business though - and you can see the commentary that I've provided for my level around how we manage our resources. I'm not involved in the individual decision-making. I would simply indicate to our superintendents, as would our assistant commissioner as with the superintendents, you know, things that need to be factored into for decision-making at that level.

PN1247

You were asked some questions about the rejection of some of the applications, indeed or including Senior Constable Jones. What role, if any, did you have in the rejection itself?---None.

PN1248

So the evidence that you gave about your understanding about the rejection of, for example, Senior Constable Jones's application, what is that based on?---Well, I guess the subsequent objection to it being rejected, so in terms of coming - making sure I was familiar with the cases when I came to court here.

PN1249

Just one last question. You were asked some questions about long service leave and you referred to a growing long service leave as being an issue?---Mm-hm.

PN1250

What is the reason why a growing long service leave is a problem?---Well, when I say a problem, it's one of the additional layers that we need to factor into. So at any given station we don't - when a person is selected for a role we don't select them knowing what entitlements they've got with them, so you can select a very senior person who may come with - I'll use the example of six months' long service leave, or select a more junior person. They are paid the same, but their entitlements can be quite different because they might be of the same rank but they will have different levels of entitlement. So when you manage a station you need to consider - to balance that leave across the time that you've got at any time and even though it fits in to the planned leave, a person could come to - let's say I'm in charge of the station. A person could come to me today and say, 'I'd like to apply for long service leave to be taken in three months' time.' They don't have to have done it 12 months out. Ideally we would like them to and many do, but they don't always do it that way because things arise, opportunities for them, and they want to exercise their right to take their long service leave. I don't know if that answers your question.

\*\*\* KAREN NYHOLM

RXN MS LEONCIO

PN1251

What is the difference from your perspective between purchase leave and long service leave in terms of the impact on the business?---Well, it's an obligation that we - the employee is owed that. It's an entitlement. It's an enshrined - you know, you're owed your nine weeks, you're owed your six-month leave, it sits there. Purchase leave is an additional one that you can apply for, so I say that it sits in that different category. It's an additional amount that is not enshrined that you must be given it.

PN1252

Is there a difference in terms of the impact on the business?---Well, it's the cumulative impact of taking more shifts available to service community safety.

PN1253

Thank you, Commissioner. They are my questions.

PN1254

THE COMMISSIONER: Thank you for giving evidence, commander. You're released and free to go, so thank you?---Thank you.

**<THE WITNESS WITHDREW**

**[11.48 AM]**

PN1255

MS LEONCIO: I was just going to call my second witness, but it looked like you were about to say something, Commissioner, so - - -

PN1256

THE COMMISSIONER: No, no, that's okay. Sorry, I was confused about everything that was going on.

PN1257

MS LEONCIO: Sorry.

PN1258

THE COMMISSIONER: Please call the second witness.

PN1259

MS LEONCIO: I call Acting Superintendent Ashley Mason.

PN1260

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

PN1261

ACTING SUPERINTENDENT MASON: Ashley John Mason, the Wangaratta police complex, 23 Handley Street in Wangaratta.

**<ASHLEY JOHN MASON, SWORN**

**[11.49 AM]**

**EXAMINATION-IN-CHIEF BY MS LEONCIO**

**[11.49 AM]**

\*\*\* ASHLEY JOHN MASON

XN MS LEONCIO

PN1262

MS LEONCIO: Could you please repeat your name for the transcript?---Ashley John Mason.

PN1263

What is your current occupation?---I'm employed as an inspector with Victoria Police in the role of the Wangaratta local area commander and I'm temporarily upgraded performing higher duties as acting superintendent, divisional area commander of the Eastern Region of Division 4.

PN1264

What is your professional address?---It's at the Wangaratta police complex, 21 - it's actually 21 to 33 Handley Street in Wangaratta.

PN1265

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

PN1266

I'll just take you to the first folder there. It should be at page 342?---Sorry, 332?

PN1267

342?---342.

PN1268

Three four two?---Yes.

PN1269

Now, is that the statement you have made in the proceeding?---Yes, Commissioner, through to page 350.

PN1270

That is dated 15 December 2023, it runs to nine pages and 33 paragraphs?---Yes.

PN1271

I will just confirm that there are 21 annexures which sit behind it. I'm going to take you to the first page, which is 425. There is a duplication of annexures, so I'll just take you to the second set. It should start at page 425?---425?

PN1272

That's correct?---Yes.

PN1273

The annexures there commence at AM1 and then the final annexure is AM21 at page 493. I will just confirm that they are the annexures?---What was the final page number, sorry?

PN1274

493. It should be AM21?---That actually looks like it goes over to page 496.

\*\*\* ASHLEY JOHN MASON

XN MS LEONCIO

PN1275

Yes, that's correct. Sorry, the starting page, yes, all the way - - -?---That's right, 497, sorry.

PN1276

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

PN1277

I just note in paragraph 1 it says you're the inspector of Victoria Police. Just to confirm, your current position is - - -?---So my current position is inspector - sorry, local area commander for the Wangaratta police service.

PN1278

You're just acting in the superintendent role currently?---Yes, I'm currently temporarily upgraded performing higher duties since, I think, around the 3rd of this month as the divisional area commander of the Eastern Region of Division 4 while Superintendent (Indistinct) is on leave.

PN1279

Have you had a chance to read your statement?---Yes.

PN1280

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

PN1281

I tender that statement and the annexures marked therein.

PN1282

THE COMMISSIONER: All right. The witness statement of Acting Superintendent Mason will be R3. I mark that with 21 attachments.

**EXHIBIT #R3 WITNESS STATEMENT OF ACTING  
SUPERINTENDENT MASON DATED 15/12/2023 PLUS 21  
ATTACHMENTS**

PN1283

MS LEONCIO: I just seek leave to ask a few questions to deal with some - - -

PN1284

THE COMMISSIONER: Yes, of course.

PN1285

MS LEONCIO: Acting Superintendent Mason, there have been some references to an annual leave roster plan. What is an annual leave roster plan?---An annual leave roster, as it's commonly referred to, is a template or spreadsheet trying to map out the annual leave entitlements as well as some other leave entitlements for employees to make sure that we acquit their annual entitlements for the period of time it's relevant for, for sworn Victoria Police members. That's based on a financial year period.

\*\*\* ASHLEY JOHN MASON

XN MS LEONCIO

PN1286

I just want to hand up a couple of documents. This is exhibit A4 and exhibit A5. Sorry, there should be a copy that was provided yesterday. It may be up there, sorry. Yes, there is one copy there. It should say 'Wangaratta cluster' up the top, I hope?---Yes.

PN1287

And then there is another one that says 'Bright uniform', as well?---(No audible reply)

PN1288

Yes. There is no issue, these are dated 1 July 2023, just to give you that context?---Yes.

PN1289

But what is your understanding that these documents are?---So this is what we would commonly refer to as our leave roster or our annual leave roster for the financial year for 2023-2024.

PN1290

For which area, sorry?---So the one that is titled - what I've got here is the A3 page titled 'Wangaratta cluster', that incorporates Cobram, Yarrawonga, Tungamah, Nathalia, Numurkah and Katamatite police stations, so that's - they are all located within the Moira local government area within Wangaratta police service area. Then the other document has Bright uniform, Myrtleford uniform, Mount Beauty uniform and Dederang uniform, so all of those police stations and respective response zones are located within the Alpine local government area within the Wangaratta police service area.

PN1291

If you just focus on the Mount Beauty uniform, which is on the one that you were just looking at, yes - - -?---Yes.

PN1292

- - - with the second section from the bottom, there is an orange highlighting there that says 'Maximum permitted OR'. Can you see that line?---Yes.

PN1293

What does that represent?---To me that represents - that was a determination - my understanding - I wasn't involved in the preparation of these leave rosters at the time, but certainly my understanding is that was a determination made by the divisional leadership team as to the maximum number and that says 'OR', so ORs represents other ranks, constables or senior constables, the maximum permitted on leave at one given time. Each column represents a week with the date that that week commences referenced up the top, the third row 'Week commencing'.

\*\*\* ASHLEY JOHN MASON

XN MS LEONCIO

PN1294

Just looking at this - I know you weren't involved in the preparation of it, but in your general knowledge of these roster plans and how they operate, to what extent if any can the maximum permitted number be relied upon in terms of determining impact on service delivery?---Well, this is what has been determined based on

known service demands and gazetted strength for each work unit, and the line that you're referring to - 'Maximum permitted OR' - is referencing the planned leave element as to maximum numbers that could be on leave during that given time, during that week period.

PN1295

To what extent, if any, are things like workers compensation or vacancies taken into account in that figure?---Well, Commissioner, they may not be known at the time and we have - across Eastern Region Division 4 in the Wangaratta police service area we have numerous employees that are currently off work due to WorkCover matters - approved WorkCover claims - for extended periods of time.

PN1296

I want to just take you to a different topic. In terms of the resources within Eastern Region Division 4 - - -?---Yes.

PN1297

- - - what ability is there to move the resources across the division?---It can be challenging. It's a very large geographical area which is a consideration; 26, 28 thousand square kilometres. I know the Wangaratta PSA, the service area, is about 17,000 square kilometres in size, so there is significant distance between work locations as well as each designated work unit within the division has their allocated resourcing levels and some of those, as you can see by these leave rosters - some of them are quite small work units with limited resources. So taking into consideration capacity at any one given time and the factors that impact capacity, it can be challenging - or it could limit the ability to move resources between work units. Within Eastern Region Division 4, the only two police stations that are 24-hour police stations are Wangaratta and Wodonga. All the others are either - what we refer to as non-24-hour police stations. Traditionally they were referred to as 16-hour police stations and then we have a number of one-member stations, as well.

\*\*\* ASHLEY JOHN MASON

XN MS LEONCIO

PN1298

In terms of the movement of resources across the division, what are some of the circumstances where that might occur?---So across the division it could be the case where we're reliant upon at times due to capacity impacts - reliant upon members from one work unit. It may not necessarily be relocating them to another work unit, but it could be rostering or tasking to provide coverage for another work unit. Within Eastern Region Division 4 effectively we have four portfolio areas that fall under respective inspectors, so the Wangaratta police service area, the local area commander role that I'm currently employed in, I'm responsible for the uniform general duty resources within that PSA. The Wangaratta police service area, the local area commander is Inspector Henry. He has a similar role at the Wodonga PSA. Then we have the investigation and response portfolio which includes all the investigative units, specialist areas; so crime investigation unit, sexual offence, child abuse investigation team and family violence investigation unit, as well as crime scene services. Then the tasking and coordination portfolio, that incorporates proactive policing resources, highway

patrol and our intelligence practitioners, our analysts. Sorry, did that answer the question?

PN1299

Yes, thank you. Commissioner, they are all my questions.

**CROSS-EXAMINATION BY MR GOME**

**[12.01 PM]**

PN1300

MR GOME: Good afternoon. I'm just wanting to tease out a little bit more how easy or how difficult it is in practice to move resources within ED4. So I want to ask you - you've just referred to specialist areas, so family violence investigation unit, crime scene services, analysts - how easy, or how practical is it rather, to have uniform members fill vacancies or help out in those positions?---We have - the question you asked, we have the ability to task, roster, general duties resources into those specialist areas. It doesn't work in reverse. This is the position descriptions of those respective positions. We can't use the employees in those specialist areas to go into uniform general duties.

PN1301

Thank you. Just in terms of the geography, you mentioned that ED4 covers a wide area. If we just focus on the 24-hour to begin with?---Yes.

PN1302

So Wodonga and Wangaratta?---Yes.

PN1303

How easy is it for whoever, the divisional commander or the LAC, to send general duties police resources from Wangaratta even just within the Wangaratta PSA?---So what needs to be considered there is the location of each respective work unit, but also the personal circumstances of the employees that may be referred to, that may be considered to assist with other areas. So when you talk of the geographical area, as I said, Wangaratta police service area which incorporates the Moira local government area, Wangaratta LGA, Alpine LGA as well as Alpine resorts of Mount Hotham and Falls Creek, it's around 17,000 kilometres. Wangaratta police complex or police station, with our general duties resources is the only 24-hour police facility within that PSA and time associated with travel from Wangaratta say out to the far west over into Moira LGA, the most furthest west police station would be Nathalia which is, off the top of my head, I would suggest probably an hour 30 to an hour 40 travel - direct travel - and then out to the east up into the Alpine LGA, Bright is around an hour, over to Mount Beauty would be an hour and 30 to an hour and 40 direct travel.

PN1304

Can we agree that there are significant practical difficulties?---Yes.

\*\*\* ASHLEY JOHN MASON

XXN MR GOME

PN1305

Thank you, acting superintendent. If I could take you to your statement and I guess in particular what I would like you to have a look at is the attachment AM8, which is at page 452?---Yes.



PN1306

I hope that we can agree on me characterising what you have got here in this email as being the ED4 methodology. Would you accept that as a characterisation?---That would - yes, that was a process determined by Superintendent Arbuthnot to be implemented in Eastern Region Division 4 for the assessment of purchase leave applications.

PN1307

That was for the assessment of purchase leave applications in this current financial year, wasn't it?---Yes, so - I was going to say, Commissioner, through policy and procedure the purchase leave applications have to be submitted by 31 May each year and then they should be determined around that start of June period. These were the instructions that were applied for this current financial year.

PN1308

And it's building on a similar process, I understand, that happened in the previous financial year?---That's my understanding, Commissioner. I wasn't attached to ED4 at that time. So to probably put it in context, I consider that I had a limited time period with direct involvement with these matters because I was actually employed in a position in a neighbouring division at that time, in another inspector role within Eastern Region Division 3, and I commenced a period of higher duties upgrading, backfilling Superintendent Arbuthnot's position technically from - I think it was Sunday, 11 June 2023, and it was only for a three-week period. So the lead-up and the issuing of these directions for the previous calendar year, I didn't have direct involvement in that.

PN1309

Yes, I understand that, acting superintendent. Can I ask you, you sent this email out in accordance with Superintendent Arbuthnot's instructions?---Superintendent Arbuthnot had provided me an email with what she had communicated to the inspectors within Eastern Region Division 4 at the time as to the process to be applied and what I provided here - so this is at the request of Assistant Commissioner Tony Langdon. This is what I communicated to other superintendents within Eastern Region as to the process that had been applied in Eastern Region Division 4.

PN1310

Had been applied up and to this date, Wednesday, 14 June?---Sorry, I probably should be careful with my words. This was the directions provided by Superintendent Arbuthnot for the intended process to be applied - - -

PN1311

Yes?--- - - - for assessment of the purchase leave applications.

PN1312

Yes. Thank you. I understand that your time in the chair finished on 30 June - - - ?---Yes.

\*\*\* ASHLEY JOHN MASON

XXN MR GOME

PN1313

- - - and this is just about setting it up. I do want to ask you though, you sent this email out; did Superintendent Arbuthnot at any stage provide you with any feedback about this particular characterisation of how the process would happen in this financial year?---No, Superintendent Arbuthnot was on leave at the time.

PN1314

Yes, I realise that, but when she came back there would have been a handover - - - ?---So my period of higher duties at the time officially concluded on - I think it was Saturday, 1 July. One of the attachments is an email I provided to Superintendent Arbuthnot by way of a handover. That's what I provided to her. We didn't actually have a direct face-to-face meeting or a telephone conversation. I actually then went on to a period of leave or accumulated rest days, so what was in the email was the form of the handover and I didn't get anything in reply.

PN1315

If I can just quickly take you to - I won't count the number of dot points, but if we work up from the bottom it's the third sentence from the bottom and I'm wondering if you could just elaborate on your understanding of what the members of the LAC panel were expected to do regarding assessing the ability to use other leave?---So if I read it out - so the LAC panel, the local area commander panel, which was to be each of the three inspectors within ED4:

PN1316

*All applicants individually spoken to re grounds for their application, assessment of ability to use other leave, i.e., long service leave in different time slots and decrease time requested and time period requested.*

PN1317

Would you like me - my personal interpretation, is that what you're asking of that line?

PN1318

Would you agree that that goes to asking the inspectors to have a face-to-face meeting with the applicants and to see if they could be persuaded to either reduce the quantum, the amount of purchase leave they're applying for, or if they could be accommodated in other ways, for example, by taking another form of leave?---Yes. Whether it was a face-to-face meeting or - it just says 'spoken to' individually, so that could be any form of individual communication. In relation to - that's what that line says. The -

PN1319

*assessment of ability to use other leave, i.e., long service leave in different time slots and decrease time requested and time period requested -*

\*\*\* ASHLEY JOHN MASON

XXN MR GOME

PN1320

so that's looking at trying to reduce. That was already knowing the situation or having an awareness of the situation in Eastern Region Division 4. There were

quite a number of work units right across the division that were experiencing capacity impacts and some quite significant capacity impacts, and the division as a whole only has a set number of resources to work with. So given my awareness of the capacity pressures that the division was experiencing, that's what was being communicated. As I said, this was what I've been able to take out of other communications that Superintendent Arbuthnot had forwarded to me in amongst quite a number of emails.

PN1321

Thank you. I understand. Can I take you to paragraph 26 of your statement?---Have you got a page number, sorry.

PN1322

Yes, I'll come to that. Paragraph 26 is on page 348?---Paragraph 26?

PN1323

Yes, thank you?---Yes.

PN1324

The last sentence?---'A copy of my file note from this meeting is marked AM16.'

PN1325

Sorry, the penultimate, the one before that, 'I said to words to the effect'?---Would you like me to read that out?

PN1326

No, I'm wanting to ask you it's your expectation that the LACs - that the inspectors would review the purchase leave applications - - -?---Yes.

PN1327

- - - and provide a recommendation to Superintendent Arbuthnot - - -?---Yes.

PN1328

- - - and that Superintendent Arbuthnot would be the decision-maker?---Well, as a divisional leadership team, so headed by Superintendent Arbuthnot, they would make a final determination in relation to the purchase leave applications.

PN1329

Superintendent Arbuthnot would be the senior person on - - -?---Well, she is the most senior ranking Victoria Police officer in the division.

PN1330

Yes?---So the most senior person, yes.

PN1331

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

PN1332

THE COMMISSIONER: Thank you, Mr Gome. Ms Leoncio, any re-examination?

\*\*\* ASHLEY JOHN MASON

XXN MR GOME

PN1333

MS LEONCIO: Yes, just a couple of questions.

**RE-EXAMINATION BY MS LEONCIO**

**[12.15 PM]**

PN1334

MS LEONCIO: You were taken to - I might just take you to the document; it's page 452?---Sorry, 452, yes.

PN1335

Yes. This was the email that you sent to Assistant Commissioner Tony Langdon?---Yes.

PN1336

What was your understanding of the stage of the purchase leave approval process as at that time in ED4?---In ED4. So, Commissioner, there was another email that was sent to me by Superintendent Arbuthnot late on the Sunday evening to inform me as to the status of the purchase leave applications. My understanding at that time was that there were - I'm positive it was 19 applications what was communicated to me that were still pending determination. This was based on email communications between Inspector Henry and Superintendent Arbuthnot. Inspector Henry had been tasked - allocated the responsibility by Superintendent Arbuthnot to head or chair the assessment panel and coordinate the purchase leave application process for the division, and he had communicated that there were a total of - as I said, my recollection is 19 applications that were still pending, hadn't been finalised. He made a couple of recommendations in relation to those and down the bottom there was reference to six weeks being approved for highway patrol and that was the only reference to purchase leave applications relating to employees within the investigation and response or tasking and coordination stream.

PN1337

So if I take you to page 425 of the Commission book - - -?---Yes.

PN1338

- - - you said there was an email from Superintendent Arbuthnot on the evening of 11 June. Is that the email you're referring to there?---Yes.

PN1339

And the section that you were just talking about now, you said that was at the bottom. Can you identify the - you were just talking about the other applications in tasking and coordination, I think?---Yes.

PN1340

Can you just point to me where that was in that area?---So on page 426 there is the subheading there 'Investigation response' which is in bold text and it's that next dot point 'Wodonga highway patrol acceptance, six weeks in total'.

\*\*\*

ASHLEY JOHN MASON

RXN MS LEONCIO

PN1341

All right. Now, you were also in your evidence referring to a direction in terms of the process that was given by Superintendent Arbuthnot to you?---Yes.

PN1342

Where is that in your statement?---It wasn't a direction to me. It was just information provided in amongst a number of emails that Superintendent Arbuthnot sent me most likely on that Sunday evening.

PN1343

If you just turn to 432?---432, sorry?

PN1344

Yes?---Yes.

PN1345

So this is an email. You'll see at the top Superintendent Arbuthnot to you; this is Monday, 12 June. What is that email?---That is an email that Superintendent Arbuthnot has sent to me on that date, Monday, 12 June. It says at 6.33 pm and 12 seconds. It has only got 'FYI' - 'for your information' - to me, but you can see below that is email communications between Superintendent Arbuthnot and other divisional leadership team members, so Paula Cutler, Brad Sprague, Paul Henry, Joel Hughes and Christopher Parr. So at one stage or another around that time period they had all performed - Paul Henry is the substantive inspector, but the other police officers referenced there in the address of those emails had all been upgraded as acting inspector performing the Wangaratta local area commander role around that time period and Brad Sprague was also a substantive inspector. He was the I and R TMC inspector.

PN1346

In terms of the process that is referred to there, is that what informed the email to Assistant Commissioner Tony Langdon in terms of the ED4 methodology that we were referring to?---If you look at the top - and there's quite a number of them. I haven't counted them - quite a number of attachments to that email, so contained within those attachments of that email.

PN1347

No further questions.

PN1348

THE COMMISSIONER: Thank you very much. Thank you for giving evidence. You're released and free to go?---Thank you.

<THE WITNESS WITHDREW

[12.20 PM]

PN1349

MS LEONCIO: I am just going to call Inspector Paul Henry. I had said at the outset we may be switching around those inspectors, so Inspector Paul Henry will be heard before Inspector Hughes.

\*\*\* ASHLEY JOHN MASON

RXN MS LEONCIO

PN1350

THE COMMISSIONER: Thank you.

PN1351

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

PN1352

INSPECTOR HENRY: Paul Matthew Henry, Wodonga police station,  
100 Hovell Street, Wodonga.

**<PAUL MATTHEW HENRY, SWORN [12.22 PM]**

**EXAMINATION-IN-CHIEF BY MS LEONCIO [12.22 PM]**

PN1353

MS LEONCIO: Could you just repeat your name for the purposes of the transcript?---Paul Henry.

PN1354

What is your current occupation?---Inspector of Victoria Police at Wodonga local area command.

PN1355

What is your professional address?---100 Hovell Street, Wodonga.

PN1356

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

PN1357

I'll just take you to the first folder there. It's page 700?---I'm with you.

PN1358

Sorry, I'm one step ahead. One second. Now, is that the statement that you made in the proceeding?---Yes.

PN1359

You confirm that it is dated 15 December 2023?---Yes.

PN1360

It runs to 73 paragraphs and 17 pages?---Yes.

PN1361

I just want to take you to page 886?---Yes, I'm there.

PN1362

Just confirm that what follows from there are your annexures marked PH1 to PH26?---Yes.

PN1363

PH26 does, I think, go into the second folder which is - - -?---Okay.

\*\*\* PAUL MATTHEW HENRY

XN MS LEONCIO

PN1364

I think that's correct based on - yes, so you'll find it stops at page 1000. The second lot of annexures - or the rest of the annexures are in the second folder?---Yes, PH10 is the end of the first folder.

PN1365

Yes, that's correct. 1053 I think is the last annexure?---Sorry, what page was it in the second folder?

PN1366

1053?---Thank you. I went too far.

PN1367

That should be the last annexure, PH26?---Yes, that's right, 1053.

PN1368

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

PN1369

I understand you wish to make a few minor amendments. I'll just take you to paragraph 25. Could you just talk through the amendment that you wish to make to the paragraph? I'll just wait until you've got it open to 25?---Yes, you're right. So at paragraph 25 it refers to 10.8 for full-time equivalent members for 32 weeks of purchase leave and adding to approximately 160 shifts. That was what I believed to be accurate at the time, but I believe there is updated data that other witnesses will provide evidence of now.

PN1370

So just in terms of the amendment that you wish to make to paragraph 25, the beginning of that sentence, what words should be inserted?---That relates to Wodonga police service area.

PN1371

At that time, the - - -?---At the time that I assessed the purchase leave applications.

PN1372

Okay, so at the time that you assessed the PL - purchase leave, sorry, applications?---Correct.

PN1373

And then it follows across ED4?---Yes, across ED4.

PN1374

Sorry, 'I was aware that - across ED4.' Is that - - -?---ED4, sorry, yes, I was mistaken. It's across ED4, that was at the time that I assessed the applications.

PN1375

I see?---Yes.

\*\*\* PAUL MATTHEW HENRY

XN MS LEONCIO

PN1376

All right. I will then take you to paragraph 38?---Yes.

PN1377

I understand you wish to make an amendment to the last sentence in paragraph 38. What was the amendment that you wished to make?---In my statement I state that:

PN1378

*I had the ultimate authority to approve or reject purchase leave applications.*

PN1379

That should read in relation to management of the HR Assist system, but there were directions and influences from the divisional leadership team that impacted those approvals or rejections.

PN1380

So just in terms of the amendment that you wish to make to paragraph 38, can you just talk through the words to be inserted at the end?---'I had the ultimate authority to approve or reject applications in the HR Assist system.'

PN1381

I will then just take you to paragraph 47 and you will see 47 - the second half of that paragraph starts at page 710 and I understand you wish to change the word that appears on the first line 'personal' to 'purchase'; is that correct?---Yes, that's right. It should be purchase leave, not personal leave.

PN1382

Yes. Were there any other amendments that you wish to make?---Nothing.

PN1383

Now, with those amendments are the contents of that statement true and correct?---Yes.

PN1384

I tender that statement and the annexures marked PH1 to PH26.

PN1385

THE COMMISSIONER: Very well. The witness statement of Inspector Paul Henry with 26 attachments will be marked as exhibit R4.

**EXHIBIT #R4 WITNESS STATEMENT OF INSPECTOR PAUL HENRY DATED 15/12/2023 PLUS 26 ATTACHMENTS**

PN1386

MS LEONCIO: Commissioner, I will just ask a few questions if I can.

PN1387

THE COMMISSIONER: All right. Thank you.

\*\*\* PAUL MATTHEW HENRY

XN MS LEONCIO

PN1388



MS LEONCIO: I wanted to ask you some questions about an annual leave roster plan. What is your understanding of that document?---An annual planned leave roster is a roster of all the leave. It's a planning document, as the name suggests, for the forthcoming financial year. It would be completed for every work unit. In my case Wodonga PSA, so about nine police stations that run 24-hour stations, and would be a guideline for how leave would be expended throughout the course of the financial year while also meeting service delivery implications throughout the course of that year.

PN1389

I'll just take you to a document which I'm hoping is in front of you. It's exhibit R1. I'm not sure if it's actually - it probably isn't labelled, but just bear with me. It's a spreadsheet which should have at the top 'Wodonga PSA' and some blue colouring on it. I think there should be - - -

PN1390

MR GOME: I can hand that up.

PN1391

MS LEONCIO: I think he might just have it there.

PN1392

THE WITNESS: That one, is it?

PN1393

MS LEONCIO: Yes, does it say 'Wodonga PSA - - -'?---Yes, 'Wodonga PSA, July 2022 to June 2022'.

PN1394

Yes, and it has got some blue highlighting on it, as well?---It does, yes.

PN1395

What is that document? How can you describe that document?---I would describe that document as the planned leave roster that I referred to for Wodonga police service area. It includes all the police stations on it - I'll just verify that. Yes, it does, and it would include predominantly recreational leave but it would also include other forms of known leave such as military leave, maternity leave and the like.

PN1396

You will see that there is an orange shaded section. There is one for the - I understand they're the sergeants at the top there and then there's another at the bottom for the other ranks?---I see it.

\*\*\* PAUL MATTHEW HENRY

XN MS LEONCIO

PN1397

What is your understanding of what that maximum permitted number represents?---So this is not a document that I'm familiar with on a daily basis or a regular basis even. However, I'm familiar with these types of rosters in the past. To me that indicates - for example, the orange along - it says 'Sergeants on

long service leave'. It indicates no persons on long service leave during the course of - well, the entire year based on this document.

PN1398

Maybe I've got the different colouring. I was looking at an orange row. If you go all the way - so we're looking in the other ranks section?---Okay, I'll go there.

PN1399

And if you go to the second page there's a row then that says 'Maximum permitted'. Do you see that there?---Yes, I see - if I can maybe just comment that there's one row that says 'ORs on purchase leave' which has four zeros throughout the course of the financial year and that's in blue. It has 'ORs on long service leave' which is in orange and then it has a green one 'ORs on recreational leave', and their total at the bottom line.

PN1400

I just want to make sure I'm looking at the same document. There is a 'Maximum permitted - - -'

PN1401

THE COMMISSIONER: You're welcome to approach the witness if you need.

PN1402

MS LEONCIO: Yes. Sorry, Commissioner, I just want to make sure - they look like the same - yes, okay. That's fine. I think I've got the wrong version out. That's okay.

PN1403

In terms of the concept of 'Maximum permitted', are you aware of that concept?---Yes, I am.

PN1404

What do you understand that concept to represent?---In the case of the document before me it accumulates the three main types of leave, being recreational leave which there's a number for each corresponding member - corresponding leave. There are ORs on purchase leave and there's a number for each corresponding week. There's an ORs on long service leave for each corresponding week and they're all added up.

PN1405

In terms of the purpose of the annual leave roster plan, what would you describe as the primary purpose of the document?---It has two purposes. One purpose is to ensure that we acquit all planned leave by the end of the financial year in a staggered and consistent rate. The second is it would be utilised to identify and make sure that we can meet all our service delivery requirements across the entire financial year.

PN1406

Thank you, Commissioner. They are all my questions.

\*\*\* PAUL MATTHEW HENRY

XN MS LEONCIO

PN1407

MR GOME: Good afternoon, inspector. If we can keep having a look at the document in front of you there. You just said that the purpose of the annual leave roster is to acquit all planned leave in a financial year?---Yes.

PN1408

But long service leave isn't acquitted in a financial year, is it?---Correct, correct. Long service leave is not received by every member during the course of the financial year and so that would be placed within this roster as people apply for it, and it is approved by a level 4 delegate, which is myself.

PN1409

I was going to ask you about the delegation levels, but I'll leave that for now. Are there any members on this roster whose applications for purchase leave were rejected and who were subsequently granted long service leave at those identical times?---Quite possibly. I wouldn't be able to say it's - I haven't been through them, but I certainly know that Leading Senior Constable Julie Morris did apply subsequent for long service leave and was granted three days of long service leave.

PN1410

Can I ask you in particular about Sergeant Narelle Peterson and the four weeks in April - sorry, May and June. They appear on this iteration of the roster as being requested purchase leave?---If I may refer back to her because I don't recall her application coming through.

PN1411

We're in the 'Sergeant' column and about halfway down the Sergeant column 'Sergeant Narelle Peterson', and if we go across to 19 May - the week commencing 19 May, that block of four?---I see it there. On the one that I've got in front of me it's in blue and it has got 'RPL'.

PN1412

Yes?---I actually don't know what 'RPL' - requested purchase leave.

PN1413

Requested purchase leave?---Yes.

PN1414

So this is a later iteration of the annual leave roster for Wodonga police station and if I can just take you to Sergeant Peterson, and the dates again beginning 19 May?---Yes, I'm with you.

PN1415

Can you see - I know it's difficult - what now appears in the version from January?---Yes, so from 19 May it now has four one-week blocks of LSL; long service leave.

\*\*\* PAUL MATTHEW HENRY

XXN MR GOME

PN1416

Long service leave. Thank you. I also wanted to ask you - it looks like you need to update your CV here. At paragraph 2 of your statement, when did you arrive in your current position?---October 2022.

PN1417

Yes, it still has you at Northwest Metro. Can you explain the role of the divisional planning office in drawing up the annual leave rosters?---So the divisional planning office, there are two managers; one that covers Wangaratta PSA and one that covers Wodonga police service area, my service area. They would communicate with the various work unit managers of the 24-hour police station and the 16-hour police stations, and they would populate a leave roster such as this one - a planned leave roster such as this one. They would no doubt take negotiations from work unit managers if there was too many people on recreational leave at the same time and then they would try and negotiate to distribute that evenly across the financial year. No doubt there would be peak periods of planned leave and that may be escalated to a work unit manager for determination or if that was unable to be resolved, then me, myself would be arbiter. I would ultimately look at these planned leave rosters when they're ready for approval, but they should be fairly well distributed over the course of the entire year before they get to me.

PN1418

Could I just clarify. So it's at a point where a particular leave period is heavily subscribed and perhaps it's over-subscribed, if you like. Those are the periods, you know, that you would be called on as an arbiter?---Yes, hopefully that's all resolved by work unit managers, but occasionally it does come to me for the umpire's decision, so to speak.

PN1419

Thank you. Could I take you to paragraph 42 of your statement and can you just explain the threshold that you applied when reviewing purchase leave applications?---Yes. So on 1 June we had a purchase leave panel; myself, Acting Inspector Chris Parr who was representing the Wangaratta police service area, and a leading senior constable attached to the divisional planning office. We understood from the Wodonga police service area perspective that we had some pressures in relation to supporting Wodonga Highway Patrol, Corryong, and the Wodonga Family Violence Investigation Unit with staff and that these had not been considered when planning recreational leave also. We did then review personal circumstances relating to all the applications. I had a good understanding of the personal circumstances of those attached to Wodonga, but not Wangaratta, and we identified five people that I recommended for purchase leave based on personal circumstances and those extenuating circumstances. Subsequently that was not supported by the divisional leadership team and then at a later stage I was asked to review my discussions with each of the applicants to ensure that I had their personal circumstances and my assessment of the extenuating circumstances accurate.

\*\*\* PAUL MATTHEW HENRY

XXN MR GOME

PN1420

Can I ask you to go into a bit more detail about the instruction that you were given at the point that your initial recommendations were not supported at the divisional level?---So the initial instructions was with Superintendent Joy Arbuthnot that occurred on or about 2 June, shortly after the purchase leave panel, and my superintendent asked me to guarantee that I would be able to meet baseline minimum service delivery and support the various areas that I had spoke about, the Wodonga Highway Patrol, Corryong and Wodonga Family Violence Investigation Unit, and I was then able to make that guarantee. I guess the purpose - sorry, the purpose of 19 June, my take on it, was to go back, reassess the personal circumstances of those people that I had approved or rejected and ensure that I was accurate in my assessment of their personal circumstances.

PN1421

Can I ask you which police stations within the Wodonga LAC did you understand to be covered by the instruction that you needed to guarantee BMSL?---It wasn't specifically stated, but I took it to mean all of them, because all of them provide a community service.

PN1422

But isn't it true that baseline minimum service levels strictly speaking only are applicable to 24 hour stations, which would be Wodonga in this case?---You are quite right. Yes, you are right.

PN1423

So was the instruction, or did you understand the instruction to mean every single police station?---I didn't consider the question that deeply. I understand your point about BMSL only applying to 24 hour police stations, but of course from a local area command role that's one consideration, but I had to provide a community service to all of the locations.

PN1424

I do understand that, but there's a significant difference in considering baseline minimum service levels for all of the non 24 hour stations rather than the one 24 hour station?---Yes. Yes, I agree with you.

PN1425

Can I take you to paragraph 44 of your statement, and we're looking at, I think it's about - it's in the middle, I think it's about the third sentence, 'I describe that function as administrative', being the authority to approve or reject applications. Can you explain who has the authority to authorise purchased leave applications?---It depends on the perspective. If it's in relation to an administrative function on our HR Assist I have the ability to approve or reject purchased leave applications for people who come under my line control. That is the Wodonga PSA. I can't even see on HRA the applications from other police services areas or (indistinct), but in relation to the real practicalities of how it's applied I would never approve or reject a purchased leave application, particularly in the current environment, without seeking consultation from the divisional leadership team. Administratively I do, but in terms of consultation I'd have to engage the entire divisional leadership team.

\*\*\* PAUL MATTHEW HENRY

XXN MR GOME

PN1426

The superintendent is the senior member of the divisional leadership team?---Yes, she is.

PN1427

THE COMMISSIONER: While Mr Gome is searching for something can I just take you back to paragraph 32 of your statement, and you say there that:

PN1428

*Superintendent Arbuthnot advised me that no purchased leave would be approved if ED4 could not meet baseline minimum service levels and backfill the Wodonga HWP and Family Violence Investigation unit.*

PN1429

Am I take it that you're saying both those things had to be met before you could approve purchased leave?---Yes.

PN1430

And in what circumstances would there be a call to backfill the Wodonga HWP and Family Violence Investigation Unit?---Wodonga Highway Patrol was our particular problem. That's staffed by one sergeant and nine other ranks. Due to a WorkCover at the particular time that I was making these decisions there was no sergeant, although that position was likely to be freed up soon, and they were operating at 50 per cent capacity. So I knew that we had to supply one member to Highway Patrol for about 217 shifts, but more likely I was aiming for 430, two members to be supplied, particularly given the road toll at that particular stage road trauma was up 33 per cent in our division. So we saw that as a critical community safety risk.

PN1431

And the Family Violence Investigation Unit?---Yes. That has been supplied an OR from time to time throughout the course of the year when we can meet BMSL elsewhere and support Wodonga Highway Patrol, but they were also suffering service delivery pressures, albeit to a lesser extent than the Highway Patrol. I guess it was second in priority in their consideration.

PN1432

So if those things were met, baseline minimum service levels were met, and you could do that backfilling in that circumstance, then you could approve the purchased leave?---Yes.

PN1433

All right, thank you, Mr Gome.

PN1434

MR GOME: Inspector Henry, as the LAC of Wodonga PSA you would be aware that the Wodonga police station is at its full gazetted strength, wouldn't you?---Yes, it is.

\*\*\* PAUL MATTHEW HENRY

XXN MR GOME

PN1435

And are there additional members as well on top of the core funded positions?---Yes, there are an additional seven members who were supplied in the staffing allocation model. That was provided historically due to some pressures in the Wodonga police service area prior to my time. And in addition we do have two members on maternity leave backfill, which is a well received relief.

PN1436

So the maternity leave positions are backfilled?---Yes.

PN1437

So how many people do you have as ORs on the roster?---At Wodonga Police Station we have 55 people. I'm not exactly sure of the FTE, but it's around about 55, slightly less. We have 16 sergeants, two senior sergeants.

PN1438

So you've got more numbers than your full capacity, and you'd be able to use that fact to backfill at your discretion as the local area commander, wouldn't you?---Yes. My word, yes, and we are doing so.

PN1439

Yes.

PN1440

THE COMMISSIONER: Can I just check in, please. I just want to make sure that the nomenclature is being used correctly. When you say that you've got 55 people is that actually 55 attending for work, or is it 55 less a few people on long term leave?---We have, we do have people on long term leave, but we also have a number of part-time members who don't work the full complement of the 40 hours per week.

PN1441

And I think a question was put to you that you've got your gazetted strength?---Yes.

PN1442

But I am still a bit confused. Do you actually have access to 55 people or whatever the number is?---No, because roughly about 20 per cent are on recreational or other forms of planned leave at any time. Some members are on WorkCover, although in Wodonga PSA fortunately that is not significantly high. And we also are as stated backfilling other areas, particularly Wodonga Highway Patrol.

PN1443

All right. Thank you. Thank you, Mr Gome.

\*\*\* PAUL MATTHEW HENRY

XXN MR GOME

PN1444

MR GOME: Thank you, Commissioner. I am not expecting you to know, but on the odd chance do you know what the core full-time equivalent position numbers are for Wodonga Police Station?---Core I don't know, so I can't help you. I'm not trying to be difficult, I don't know.

PN1445

No, that's fine. I have found the document I would like to refer you to. If you could find the second folder, and it's a document that's marked JA8, and it begins on page 1493. Have you seen this document before?---Yes, I have.

PN1446

If I could ask you to turn to the second page and to find Wodonga PSA in the second column. And then in the third column move along to Uni Wodonga, being Wodonga Police Station. Would you agree that the second shaded column represents the core full-time equivalent positions for the respective stations?---Yes, I do.

PN1447

Okay. Would you then agree that the full strength from a gazetted perspective for Wodonga Police Station would be 45 members on the roster?---Yes.

PN1448

And not necessarily working, but on the roster?---Yes.

PN1449

And 15.6 sergeants?---Yes, I agree with you.

PN1450

And if we can move just across to - if we move across from the sergeant core position, and move three lines further along, and we've moved into the MSP, the minimum station profile. Would you agree that the number there that appears 40 in the OR column, 40 is the number of people that Wodonga Police Station would need to have as ORs on the roster in order to meet baseline minimum service levels?---Yes, that's what it means.

PN1451

Thank you. Thank you, Commissioner, no further questions.

PN1452

THE COMMISSIONER: All right, thank you very much. Ms Leoncio, any re-examination?

PN1453

MS LEONCIO: Yes.

**RE-EXAMINATION BY MS LEONCIO**

**[12.56 PM]**

PN1454

While we've got that document there you were asked some questions about additional allocations. I think you said something around an additional seven allocations. Do you recall when that occurred?---I don't know, other than the fact I'm aware that it occurred prior to me commencing at Wodonga in relation to some industrial action proposed at Wodonga in relation to their resourcing numbers.

\*\*\* PAUL MATTHEW HENRY

RXN MS LEONCIO



PN1455

And what basis were they allocated on, do you know how the engagement, what the nature of their engagement was?---This is all information that has not been directly communicated to me. I've simply heard it through my senior sergeant, was that there was unrest in relation to a lack of backup in Wodonga response zone given that it's so far from Melbourne and Wangaratta and there's only one divisional van. So it was designed to support an additional divisional van in the Wodonga response zone, thereby providing member safety improvements.

PN1456

In terms of those seven, you say it's seven, in terms of those numbers do you know how they were assigned in terms of what was the basis, like what was the nature of that allocation?---The nature of that allocation to my knowledge - once again not communicated directly to me, it occurred before my time - was in relation to supporting a second Wodonga divisional van to provide member safety, and therefore not to be moved out of Wodonga.

PN1457

Are you able to confirm whether it was on a temporary or a permanent basis?---My understanding was that it was an interim measure pending the new staffing allocation model being released, which subsequently occurred in about November, October/November last year, and we've been supplied an additional seven to Wodonga Police Station. So therefore in reality in effect no additional numbers. You've got the numbers that you've already got during that industrial pressure.

PN1458

Following those additional allocations, so let's say - sorry, you said it was before your time. Just remind me again when did you commence in ED4?---October 2022.

PN1459

Okay. So some time prior to that is your understanding?---Yes.

PN1460

Now, since the additional allocations what is your understanding of Wodonga Police Station's ability to meet the minimum service levels?---Since that particular time since I've started we had backfilled one or two members at Wodonga Highway Patrol, dependent upon our ability to meet BMSL at the police station, and on average we are able to put out a roster without breaching BMSL. However, with unplanned leave that sometimes drops us under the numbers, but we are putting out rosters without purchased - sorry, without BMSL.

PN1461

And are you aware of how frequently that's occurring when you're putting out the roster and then there's a breach due to unplanned leave?---Yes. We have our divisional planning office track that, and the number they provided to me at the last hearing, so it's not (indistinct), but it's only two months old, was that we were breaching that 15 times per month on average.

\*\*\* PAUL MATTHEW HENRY

RXN MS LEONCIO

PN1462

When you say 15 on average that's a roster, so that's a fortnight; is that right?---No, it was 15 times per month.

PN1463

I see.

PN1464

THE COMMISSIONER: So by inference the other 15 times you were meeting it?---We were meeting it when the roster was put (indistinct) about, yes.

PN1465

Yes, but I just want to understand what you say. On average there were 15 times a month where you were not meeting the BMSL?---Yes.

PN1466

Do I take it that the other 15 days of the month you were meeting it?---Yes.

PN1467

Thank you.

PN1468

MS LEONCIO: Thank you, Commissioner, they're all my questions.

PN1469

THE COMMISSIONER: Thank you, Ms Leoncio. So thank you very much, Inspector Henry, you're released and free to go as a witness. So thank you.

**<THE WITNESS WITHDREW**

**[1.01 PM]**

PN1470

All right, parties, it might be an appropriate time to take a lunch adjournment until 2 o'clock. Thank you.

**LUNCHEON ADJOURNMENT**

**[1.01 PM]**

**RESUMED**

**[2.04 PM]**

PN1471

THE COMMISSIONER: Good afternoon, parties. Who do we have now, Ms Leoncio?

PN1472

MS LEONCIO: So it's Acting Inspector Joel Hughes.

PN1473

THE COMMISSIONER: All right, thank you.

PN1474

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

\*\*\* PAUL MATTHEW HENRY

RXN MS LEONCIO

PN1475

MR HUGHES: Joel Stewart Hughes, 100 Hovell Street, Wodonga.

**<JOEL STEWART HUGHES, SWORN [2.05 PM]**

**EXAMINATION-IN-CHIEF BY MS LEONCIO [2.05 PM]**

PN1476

THE COMMISSIONER: Thank you very much, if you please be seated.

PN1477

MS LEONCIO: For the purposes of the transcript could you just repeat your name, please?---Acting Inspector Joel Stewart Hughes.

PN1478

What is your current occupation?---I'm an Acting Inspector of Police currently performing duties in the Eastern Region Division 4, investigation response portfolio.

PN1479

And what is your professional address?---100 Hovell Street, Wodonga.

PN1480

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

PN1481

I will just take you to a folder that has the number 1001 at the front. I'm not quite sure which one is open there. If you just go to the front. If you go to page 1054. Is that the statement that you have made in this proceeding?---Yes, that's correct.

PN1482

Is it dated 15 December 2023 on the final page?---Yes, that's correct.

PN1483

And does it run to 18 pages and 82 paragraphs?---Yes, that's correct, Commissioner.

PN1484

If you turn to the next page, 1072, are they the annexures to your statement, annexures marked JH1 to JH24, behind it?---Yes, that's correct.

PN1485

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

PN1486

And I understand you want to make one amendment; is that correct?---Yes, that's correct.

\*\*\* JOEL STEWART HUGHES

XN MS LEONCIO

PN1487

Just turn to paragraph 72. I will just confirm the amendment that you wish to make is to change the word 'out' to 'hour', as in o-u-r; is that correct?---Yes, that's correct.

PN1488

Thank you. Now, with that amendment are the contents of that statement true and correct?---Yes, they are.

PN1489

I tender that statement and the annexures marked JH1 to JH24.

PN1490

THE COMMISSIONER: Thank you.

**EXHIBIT #R5 WITNESS STATEMENT OF ACTING INSPECTOR  
JOEL HUGHES DATED 15/12/2023 WITH 24 ATTACHMENTS**

PN1491

MS LEONCIO: Thank you, Commissioner. I will just ask a couple of questions in evidence-in-chief. Acting Inspector Hughes, could you tell me what an annual leave planning roster is?---So an annual leave planning roster takes into account the work unit and work units right across the policing division, and outlines the leave allocations for the financial year, with the financial year obviously being 1 July to 30 June. Generally our staff or our sworn police members they're all allocated, if they're full-time members an allocation of nine weeks 45 days recreation leave. If they're part-time members it's seven weeks 35 days.

PN1492

And when is it usually prepared?---It's usually commenced after this new financial - or, sorry, for the next financial year. We've commenced the planning already, and we're in January. But in an ideal situation, Commissioner, we'd like to have our annual leave rosters approved by 31 March in every given year, but that sometimes doesn't occur due to a number of factors.

PN1493

And who is normally responsible for preparing the annual leave roster plan?---In my police division the divisional planning office has responsibility for completing the roster plan. That's through a process where they get requests sent through to them from individual members, and they plot the requested weeks, and ultimately the approval for the leave roster sits at inspector level. So currently there's four inspector portfolios in Eastern Region Division 4. At the time of the previous leave roster approval there was only three inspector positions. The investigation response and tasking and coordination portfolios were combined under the one inspector, but as of November 2023 there's been an additional inspector position created for Eastern Region Division 4, and as a result there's now the separated portfolios for investigation response and tasking and coordination.

\*\*\* JOEL STEWART HUGHES

XN MS LEONCIO

PN1494

And what would you say is the primary purpose of these roster plans?---It's so that we can map out what our members leave requests are, and then there are a number

of factors we have to take into account before they're approved. Each station obviously has different numbers of staff allocated to them, and there's a formula the divisional planning office puts in place on those planners in terms of numbers of different ranks, how many of each should be on leave at any given time.

PN1495

I might just ask you to turn to two documents, which I'm hoping you have in front of you. There's an A4 document that has - this is exhibit A4 - it's got the word 'Bright uniform' written at the top?---It doesn't have A4 written on it, but it is a roster.

PN1496

Sorry, yes, yours won't have a copy. I was referring to the size of the page, that it's A4. And that says 'Bright uniform' at the top; is that correct?---Yes, that's correct.

PN1497

All right. We will just pause for that one for the moment. And you will see for Mount Beauty uniform there's an orange row that's highlighted with the word 'Maximum permitted.' What does that represent?---That represents the maximum number of permitted other ranks, so senior constable and constables allowed on leave at any one time. But usually historically that's not always adhered to 100 per cent, and there is some flexibility where the inspectors may approve leave rosters where there are more than one member on leave at any given time. But ideally, Commissioner, for a work unit the size of Mount Beauty we'd like to have that minimum number of weeks of leave where there's two - sorry, minimum number of weeks where there's two members on leave at any one time, and have that leave sort of spread out evenly across the 52 weeks to have the best sort of service delivery and capacity we can across the whole financial year.

PN1498

And to what extent are absences caused by vacancies or workers compensation taken into account in that maximum permitted number?---In my experience, Commissioner, they're generally not, because that could change on a week by week, day by day basis. It is a consideration for inspectors if they know their work areas and they do know that they may have a member that might be on long term absence for a significant period, but traditionally the divisional planning office just focuses on what their full-time employment gazetted strength is.

PN1499

To what extent is that maximum permitted number, to what extent is that a reliable figure in terms of the impact on service delivery requirements?---It is - it is a reliable figure. However, I do acknowledge that there is always going to be periods where more than one member will be on leave. As I said we try to minimise that as much as we can. But, yes, there are periods where for example if members have booked an overseas holiday for example at the same time where another member has a significant personal commitment, then the inspector has a discretion to still approve the leave roster in that format.

\*\*\* JOEL STEWART HUGHES

XN MS LEONCIO

PN1500

And in those instances what impact would there be to the service delivery requirements?---At a station the size of Mount Beauty obviously if there's - if there's multiple periods where two are on leave it impacts the ability, Commissioner, for the station to roster a suitable number of patrol shifts during any given period.

PN1501

I want to take you then to a different topic. You just mentioned patrol shifts. If I can take you to page 1152, that's 1152, and this is an attachment to your statement. It's the operational duties and responsibilities part of the Victoria Police manual. If you turn to page - sorry, you're on 1152 now, is that correct?---Yes, that's correct.

PN1502

You will see there a reference to patrol responsibilities, and 3.2 says 'Minimum member requirements'?---Yes.

PN1503

What's your understanding as to how these minimum member requirements apply to for example Mount Beauty station?---So as per the Victoria Police manual this section, it obviously outlines that Mount Beauty being a non 24 hour police station they may perform primary or secondary response duties alone, provided that they were in a cluster arrangement as per the Victoria Police manual relating to one member stations. And it speaks also about obviously members and supervisors can draw on their local knowledge to support their risk assessment to determine how to respond to the operational responsibilities or duties. In respect to Mount Beauty, so I've had a discussion with the divisional planning office in relation to how the rostering at Mount Beauty and other stations in alpine local government area is taking place and I've reviewed those rosters myself yesterday in relation to some of the roster patterns, and primarily they are rostered two-up in recent weeks and recent months with another Mount Beauty member. But there are also some occasions where on their roster they're shown as what's called cluster response where they might be the only Mount Beauty member on duty in that particular shift, but they pair up with a member from Bright. That doesn't necessarily mean that they are in the same vehicle because of the travel distances involved between Bright and Mount Beauty, which I believe is approximately - sorry, Commissioner, I forget the exact distance, but I know it's approximately 20 to 25 minutes travel time. So they can still conduct a risk assessment, and the supervisor or the sergeant on duty, the divisional patrol supervisor, would have awareness that they're actually one-up. But if there's any sort of high risk incidents, Commissioner, the supervisor would be responsible to ensure they - for example they might be going to an incident where they nominate a rendezvous point where they meet up and travel to the job together rather than going one-up or going to a job and waiting for backup to arrive.

\*\*\* JOEL STEWART HUGHES

XN MS LEONCIO

PN1504

And from those discussions how frequent are one-up patrols rosters?---I don't have the exact figures in front of me at the moment, but they'd be occurring multiple times per fortnight roster period.

PN1505

And what kinds of incidents would those units be responding to?---So obviously, Commissioner, they respond to all sorts of incidents in the community; vehicle collisions, family violence incidents, mental health, persons suffering from mental health, reports of crime, and they would have to be risk assessed. If they're performing duties one-up they'd have to be risk assessed and the supervisor be satisfied for them to attend one-up. There are some instances, just like for example just off the top of my head if they were reporting to a petrol theft from a service station and the offender - the offender or the suspects had already left the scene, that would probably be deemed low risk and they'd be able to attend that sort of incident one-up. An example where myself as a supervisor I would not be comfortable in attending one-up would be for example a family violence incident where the perpetrator was still present, because there's a potential obviously for violence or confrontation.

PN1506

Are you able to comment on - in terms of the ratio of patrol units that are one-up versus two-up are you able to comment on what you would expect most of the incidents require? So is it more than - you would say more incidents require two-up than one-up, or more incidents require one-up than two-up?---Commissioner, it would difficult for me to accurately answer that question, but just for monitoring the radio as a supervisor as I said there's some - there's some instances where in the initial stages that may be deemed low risk, but then some things as routine, Commissioner, as a routine vehicle intercept one-up can be risky, depending on how many occupants are on board, if they've got any weapons, et cetera. So in an ideal situation when I'm performing patrol supervision shifts when I'm in my substantive role as a senior sergeant, if I hear an incident which I deem high risk over the radio and I hear that a unit is going to it one-up I'll actually intervene over the radio and direct the sergeant who's under my supervision to arrange for a unit to back them up. But I'm - I couldn't - Commissioner, I couldn't accurately state what percentage or proportion those jobs are.

PN1507

Yes. Thank you, Acting Inspector, they're all my questions.

PN1508

THE COMMISSIONER: Thank you very much. Mr Gome?

PN1509

MR GOME: Thank you, Commissioner.

**CROSS-EXAMINATION BY MR GOME**

**[2.20 PM]**

\*\*\* JOEL STEWART HUGHES

XXN MR GOME

PN1510

I'm wondering if I could ask you again to consider the roster that you've got there in front of you. I would like you to clarify what you meant by the figure that appeared in the orange shaded line as being a reliable figure, it's reliable in what sense?---Commissioner, with - mathematically there's a formula where depending on how many members there are at a station, and taking into account the leave allocations - for example if there's five other ranks at a station five times nine is 45, 52 weeks in the year, Commissioner. We would like to see in an ideal situation that there's no weeks where there's two on leave, but as I mentioned earlier, Commissioner, there are - there is discretion for the inspector who approves the leave rostered to allow more than one member to be on leave. But at a station the size of Mount Beauty I wouldn't - I would not approve any periods where there would be three on leave, because that would be - that would have a significant impact.

PN1511

It's a guideline, it's an indication?---That's correct, it's just a guideline, Commissioner. I'm not aware of it being specifically in our policy, official. It's a guideline that our divisional planning office has used.

PN1512

And it's also true, isn't it, that there are seasons where there's higher demand, and in the alpine area we're talking would be the snow season?---Yes, that's correct, Commissioner.

PN1513

And so you wouldn't want the average number of people taking leave to include that period, would you?---Yes, that's correct, Commissioner.

PN1514

So it means if you've got less people taking leave during the snow period it follows that there's going to be more people taking leave at other times in the year, doesn't it?---Yes, that's correct, Commissioner.

PN1515

You also mentioned that the annual leave roster is ideally, and I know that there's some variation approved by 31 March; do you remember that?---Yes. Yes, Commissioner.

PN1516

Now, purchased leave applications are submitted after that date, aren't they?---Yes, that's correct, Commissioner. My understanding is they open on 1 April.

PN1517

Assuming that an annual leave roster is approved on 31 March it literally is the recreation leave roster and there will be other things added before the end of the financial year?---Yes, that's correct, Commissioner. That will include things such as any approved long service leave which may or may not have been approved before 31 March, and would include any approved purchased leave as well.

\*\*\* JOEL STEWART HUGHES

XXN MR GOME



PN1518

Thank you. Can I ask you to turn to paragraphs 24 and 25 of your statement, and I am just wondering if you could give me - I will wait until you get there. So it's referring to Leading Senior Constable Rappell and Senior Constable Jones, and it happens to be talking about whether or not they have an accrued long service leave entitlement?---Apologies, I'm still - sorry, what page number is that?

PN1519

1059, Acting Inspector?---Thank you. Yes.

PN1520

So, yes, I am wondering if you could tell me when that was occurring; where does this inspection of Leading Senior Constable Rappell and Senior Constable Jones's personnel records, where does that fit in the timeline that follows below?---Obviously I'm aware that they're full-time members, so I was aware that they both had nine weeks recreation leave (indistinct) for them, but I don't recall the exact date when I would have reviewed how much long service leave they had, and it's possible I didn't review that until after - after being aware that a dispute had been, or concerns had been raised with the Police Association.

PN1521

About purchased leave applications?---Yes.

PN1522

Thank you. I think I put up one further question for you. I don't know where this particular member was stationed, but I understand that a uniform member within the Wangaratta PSA, Senior Constable Natalie German applied for purchased leave, had the application rejected, and was subsequently granted long service leave in lieu for the identical dates. Can you confirm that?---Yes, that's correct, Commissioner. I can't confirm if the dates were identical to the purchased leave, I'd have to review that, but I know that there was multiple long service leave applications for short periods. If I recall correctly it was because she had a wedding and her honeymoon planned, sort of approximately November and December, and she wanted those dates to assist with her other personal commitments, because her recreation leave was in long blocks because of the marriage - sorry, the wedding and honeymoon.

PN1523

Thank you, Acting Inspector. I have no further questions, Commissioner.

PN1524

THE COMMISSIONER: Thank you, Mr Gome. Ms Leoncio, any re-examination?

PN1525

MS LEONCIO: No questions in re-examination. Thank you, Commissioner.

\*\*\* JOEL STEWART HUGHES

XXN MR GOME

PN1526

THE COMMISSIONER: All right, thank you very much, Acting Inspector Hughes?---Thank you, Commissioner.

PN1527

You're released and free to go. Thank you.

<THE WITNESS WITHDREW

[2.28 PM]

PN1528

MS LEONCIO: I call Inspector Bradley John Sprague.

PN1529

THE COMMISSIONER: All right, thank you.

PN1530

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

PN1531

MR SPRAGUE: Yes. Bradley John Sprague, Victoria Police, Sydney Road in Hadfield.

<BRADLEY JOHN SPRAGUE, SWORN

[2.29 PM]

EXAMINATION-IN-CHIEF BY MS LEONCIO

[2.29 PM]

PN1532

THE COMMISSIONER: Thank you, Inspector, Sprague, please be seated.

PN1533

MS LEONCIO: Could you just repeat your name for the purposes of the transcript?---Yes. Bradley John Sprague.

PN1534

What is your current occupation?---Inspector of police at Northwest Metro Division 4 which is located in Fawkner.

PN1535

And what is your professional address?---The postal address?

PN1536

Professional. Apologies, professional address?---Yes, it's in Sydney Road in Hadfield.

PN1537

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

PN1538

And I will just ask you to turn to page 498. It should be in a folder. If you look at the front page it says 0-1000 I think. So if you've got that in front of you. It might be in the other one?---Yes.

PN1539

So if you turn to 498?---Yes.

\*\*\* BRADLEY JOHN SPRAGUE

XN MS LEONCIO

PN1540

You've got that in front of you now, do you?---I do, yes.

PN1541

Is that the statement that you made for this proceeding?---Yes.

PN1542

And I will just confirm that it is dated 14 December 2023?---Yes, that's correct.

PN1543

And it runs to 11 pages and 52 paragraphs?---Yes.

PN1544

And confirm that there are 30 annexures marked BS1 to BS30 behind it?---What page number have you got that in?

PN1545

Yes, I will just - 691. I'm sorry, 699. It should be the last page of the set of annexures?---Yes.

PN1546

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

PN1547

And I understand you wish to make a couple of amendments?---Yes. There's a paragraph just where there's - I think it's number 42 - paragraph 42. It was in relation to Leading Senior Constable Tinsley. Half way through there's two references there that are meant to refer to Tinsley, but make reference to a Leading Senior Constable Allerdice. So it's line 4 in paragraph 42. Those two references to Allerdice should read Tinsley.

PN1548

Yes. Were they all the amendments that you wish to make?---Yes.

PN1549

With that amendment or those amendments are the contents of your statement true and correct?---Yes.

PN1550

I tender that statement and the annexures marked BJS1 to BJS30.

PN1551

THE COMMISSIONER: All right, thank you.

**EXHIBIT #R6 WITNESS STATEMENT OF INSPECTOR BRADLEY SPRAGUE DATED 14/12/2023 WITH 30 ATTACHMENTS**

\*\*\* BRADLEY JOHN SPRAGUE

XN MS LEONCIO

PN1552

MS LEONCIO: Just a few brief questions again in evidence-in-chief. Inspector Sprague, I just ask you to describe what an annual leave roster plan is for the

purposes of the Wodonga Highway Patrol?---Yes. So the annual leave roster plan is a document that is prepared on an annual basis to give our members planned leave for the financial year period, for the following financial year period. We generally aim to have that completed by the May of the financial year commencing in the following June. So it's an annual process that we go through.

PN1553

There is a copy in your statement, which I will just turn to in a minute - page 613?---Yes.

PN1554

And that's the annual leave roster plan document you were just referring to?---Yes.

PN1555

And you will see there the number that says maximum permitted?---Yes.

PN1556

It might be difficult to read that, but what's your understanding of the number that is in that row?---It's depicting a number 2, and that's essentially borne out of what we, you know, forecast is the - you know, for us to achieve service delivery requirements within a work unit we need to work out what's the minimum maximum sort of members we can operate with, or minimum numbers for members we can operate with.

PN1557

To what extent does that number 2 take into account any absences by reason of vacancies or long term absences like WorkCover?---Look, it can only have minimal - you know, our references to people on WorkCover, you know, we take consideration - we can take into consideration, but it certainly doesn't dictate what that number is, because we find, you know, it's a fluid situation about who's going to be on WorkCover or time away from work at any given period. So you can't forecast that far ahead generally. You know, there are some - there are some unique situations where you can see that, you know, it's likely that you're going to be without a certain member for a long period of time. However, you need to balance, you know, those members that are remaining at the workplace, their welfare, their needs, and also the ability to acquit their nine weeks of leave each year. Hopefully what that depicts is when I'm doing a leave roster, or looking at approving a leave roster I try to get what I refer to a flat leave roster, something that, you know, just achieves everyone acquitting their leave and without going through big periods where we've got a lot of people on leave.

PN1558

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

PN1559

THE COMMISSIONER: Thank you very much. Mr Gome?

\*\*\* BRADLEY JOHN SPRAGUE

XN MS LEONCIO

PN1560

MR GOME: Thank you, Commissioner.

PN1561

Inspector Sprague, if I can take you to paragraphs 16 and 17 of your statement?---Yes.

PN1562

There were a number of reviews of LSC Allerdice and LSC Tinsley's purchased leave applications. Do you have an idea of where in the timeline you were reviewing their long service leave balances?---I guess - so part of a routine sort of checking that I do. Part of our timesheets that are every fortnight I can go in and look at what people's long service leave balances are. As to - it's something I do quite sort of regularly I guess. I keep - you know, it will - our system will show us long service leave balance, rest day balances, those sort of things. So I can't pinpoint for you exactly when. It's just something I'm aware of, you know, what members have got sort of in store, you know, that's available to them as far as leave goes.

PN1563

Why did you decide to include it in your statement?---Look, I guess it was certainly part of considerations and it could have been part of our discussions at the time when we're talking about the purchased leave, and that, you know, members considering, you know, have they considered the option of utilising long service leave. I think whilst at the risk of getting off topic a little bit I think the organisation, historically our members, we try and hold on to our long service leave thinking it's something that we use at the end. Whereas I think as we mature we sort of see that the pressures of this job is that it's probably a more healthy thing to actually utilise your long service leave throughout your career rather than waiting to the end. So it's - we're probably trying - as a management group we're probably trying to change mindsets around what that long service leave is actually there for.

PN1564

Do you recall having a discussion with LSC Allerdice about the possibility of him taking long service leave?---Yes, I'd imagine I would have. I'm probably - I'm having those discussions more and more with members these days.

PN1565

So I guess we're going to expect a similar answer for LSC Tinsley?---Yes, that's correct.

PN1566

If you can now turn to paragraph 27 of your statement?---Yes.

PN1567

And I am just wondering if you could outline what process you applied when you say here that you considered the applications for purchased leave, and concluded that they could be approved?---Yes.

\*\*\* BRADLEY JOHN SPRAGUE

XXN MR GOME

PN1568

How did you reach that conclusion?---Look, I guess it - you know, we looked earlier at the annual leave roster, the draft leave load roster as that was being composed. So, you know, that's really - we see what the work unit is operating at or what it can operate at, and I'm balancing up what I know about these members as far as personal circumstances, and what the work unit needs to operate. Whether it's in this paragraph, certainly it is, so the event resourcing matrix. That is something that we developed the previous - as a result of some things we'd come across the previous year in considering purchased leave applications. That resource matrix sort of, it gave us a visual on what events are likely to be occurring in that - in our response zones at any given time. And some events sort of require more highway patrol input than others. So it's not the be-all end-all, but it's another piece of information that I can assess in trying to consider these applications.

PN1569

So these are kind of known events or known - - -?---Annual events, yes.

PN1570

- - - known annual events that may or may not require particular highway patrol resourcing?---Yes, and I guess some context around that is we have - our road policing command have annual road operations, you know, over Easter and over certain, you know, high sort of road trauma periods. So to have that mapped out and to have that accessible to me assists me to inform where - what level of members want and need in that highway patrol at that (indistinct) time.

PN1571

And as you've mentioned before things like WorkCover and personal leave they're unplanned events, aren't they?---Well, they are largely, yes. Yes, it's something you can't really predict.

PN1572

If we can turn now to 7 July last year, and that's at paragraph 41?---Yes.

PN1573

I won't need to take you to it, but I will just say to you that in Superintendent Arbuthnot's statement at paragraph 151 she says that when she spoke to you on 7 July she told you that Assistant Commissioner Langdon agreed there were reasonable business grounds that applied in relation to the three members purchased leave applications that you had initially approved. Do you remember her invoking the Assistant Commissioner's name in that conversation?---Would likely have done that, yes.

\*\*\* BRADLEY JOHN SPRAGUE

XXN MR GOME

PN1574

Did you have a reaction to that?---Look, I guess - I think within my statement I make reference to some level of questioning that I had that on two occasions within the emails our Assistant Commissioner had made the point that he didn't require ED4's leave to be reviewed, purchased leave to be reviewed. So I guess that statement about that he agreed that there's business grounds, is that business grounds - I don't know whether it was conclusive about whether to agree or

disagree, to support or not support these applications. Yes, I thought it was an open - it was quite open.

PN1575

Thank you. If I can just take you to the final paragraph in your statement. You say in the third paragraph your personal views haven't changed, but that the purchased leave that you had initially approved for LSC Tinsley and Allerdice was rescinded by the divisional leadership team. Have I got that right?---Well, you do, yes.

PN1576

Thank you, Commissioner, I have no further questions.

PN1577

THE COMMISSIONER: Thank you, Mr Gome. Ms Leoncio, any re-examination?

PN1578

MS LEONCIO: No further questions, thank you.

PN1579

THE COMMISSIONER: All right. Thank you very much, Inspector Sprague. Thank you for attending and you're released and free to go?---Thank you.

<THE WITNESS WITHDREW

[2.44 PM]

PN1580

MS LEONCIO: Commissioner, we have unfortunately reached a time in the schedule where we unfortunately do not have the next witness available, and that's because the earliest that she was able to come - our last witness is Superintendent Arbuthnot, and we had sought to make changes to bring her in earlier. We understand she has some caring responsibilities, which means the earliest that she could get to us was 11 o'clock tomorrow morning. So I apologise that we're not able to call the next witness, but I have had some discussions with Mr Gome and it seems to us that it would be possible for Superintendent Arbuthnot to arrive at 11 o'clock tomorrow, give her evidence, and then for us to have our closing submissions tomorrow afternoon. So we hope this delay won't ultimately impact the listing that you have set aside for the hearing, and we will finish earlier than we had originally anticipated. It does mean that, yes, unfortunately I don't have a further way to progress for this afternoon in terms of our case, and I would be seeking your indulgence to commence at 11 tomorrow.

PN1581

THE COMMISSIONER: There's no need to apologise, I accept that explanation quite well and the timetable you outline I think works for me. It works for you as well, Mr Gome?

PN1582

MR GOME: Yes, it does, thank you, Commissioner.

\*\*\* BRADLEY JOHN SPRAGUE

XXN MR GOME

PN1583

THE COMMISSIONER: All right. So if I gather what you're saying we will adjourn until 11 o'clock tomorrow.

PN1584

MS LEONCIO: That's correct, yes.

PN1585

THE COMMISSIONER: Let me just check one thing. All right, we will adjourn on that basis.

**ADJOURNED UNTIL WEDNESDAY, 31 JANUARY 2024**

**[2.46 PM]**



**LIST OF WITNESSES, EXHIBITS AND MFIs**

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<b>BRADLEY JOHN SPRAGUE, SWORN.....</b>	<b>PN1531</b>
<b>EXAMINATION-IN-CHIEF BY MS LEONCIO .....</b>	<b>PN1531</b>
<b>EXHIBIT #R6 WITNESS STATEMENT OF INSPECTOR BRADLEY SPRAGUE DATED 14/12/2023 WITH 30 ATTACHMENTS .....</b>	<b>PN1551</b>
<b>CROSS-EXAMINATION BY MR GOME .....</b>	<b>PN1560</b>
<b>THE WITNESS WITHDREW .....</b>	<b>PN1579</b>