

**COMMISSION TO MAKE ORDERS AS TO TERMS OF WESTERN
AUSTRALIA POLICE FORCE INDUSTRIAL AGREEMENT 2020
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

CITATION : 2021 WAIRC 00047

CORAM : PUBLIC SERVICE ARBITRATOR
SENIOR COMMISSIONER S J KENNER

HEARD : TUESDAY, 25 AUGUST 2020, FRIDAY,
4 DECEMBER 2020, MONDAY, 7 DECEMBER 2020,
TUESDAY, 8 DECEMBER 2020, WEDNESDAY,
9 DECEMBER 2020, THURSDAY, 10 DECEMBER
2020; WRITTEN SUBMISSIONS 21 DECEMBER
2020, 22 DECEMBER 2020, 18 JANUARY 2021,
16 FEBRUARY 2021 AND 24 FEBRUARY 2021

DELIVERED : FRIDAY, 26 FEBRUARY 2021

FILE NO. : P 5 OF 2020, PSAAG 8 OF 2020

BETWEEN : WESTERN AUSTRALIAN POLICE UNION OF
WORKERS
Applicant

AND

COMMISSIONER OF POLICE
Respondent

Catchwords : Industrial law (WA) - Application for registration of
industrial agreement - Application for an order as to
specified matters on which agreement has not been reached
- Additional leave - Order issued

Legislation : *Industrial Relations Act 1979* (WA), s 26, s 42G, s 42H,
s 42I, s 44
Industrial Relations (General) Regulations 1997 (WA)

Result : Order issued

Representation:

Counsel:

Applicant : Mr M Ritter SC and Mr D Stojanoski of counsel
 Respondent : Ms R Cosentino and Mr J Carroll of counsel

Solicitors:

Applicant : Slater and Gordon
 Respondent : State Solicitor's Office of Western Australia

Case(s) referred to in reasons:

Australian Securities & Investments Commission v Citofresh International Ltd (ACN 064 551 426) [2007] FCA 1873

Construction, Forestry, Mining and Energy Union v KAEFER Integrated Services Pty Ltd [2017] FWCFB 5630; 271 IR 273

Commission's Own Motion [2020] WAIRC 00361; (2020) 100 WAIG 409

Director General of the Minister for Culture and the Arts v The Civil Service Association of Western Australia Incorporated and Ors [2000] WASCA 13; 94 IR 235

Oceanic Life Ltd and Anor v Chief Commissioner of Stamp Duties [1999] NSWCA 416; (1999) 168 ALR 211

Perth, Fremantle, and Suburban Bread Carters' Industrial Union of Workers v Coastal District Master Bakers' Industrial Union of Employers (1903) WAAR 71

R v Hunt; Ex parte Sean Investments Pty Ltd (1979) 180 CLR 322

Re Broken Hill City Council Employees Case 1963 AILR 240

Re Draughtsmen and Tracers (State) Award [1946] AR 601

Re Harrison; Ex parte Hames [2015] WASC 247

Re Hospital Employees Conditions of Employment (State) Award [1976] AR 276

Re Railways Salaried Officers Award 1970 AILR 575

The Executive Director Department of Education, the Liquor, Hospitality and Miscellaneous Union (WA Branch); the Executive Director Labour Relations Division Department of Commerce; and the Liquor, Hospitality and Miscellaneous Union (WA Branch) [2010] WAIRC 00335; (2010) 90 WAIG 615

The Minister for Health in His Incorporated Capacity under s. 7 of the Hospitals and Health Services Act 1927 (WA) as the Hospitals formerly comprised in the Metropolitan Health Service Board, the Peel Health Services Board, WA Country Health Service and the Western Australian Alcohol and Drug Authority v Australian Nursing Federation, Industrial Union of Workers Perth [2014] WAIRC 818; (2014) 94 WAIG 1682

Tooheys Ltd v Commissioner of Stamp Duties NSW [1961] HCA 35; (1961) 105 CLR 602

West Australian Police Union of Workers v The Honourable Minister of Police (1986) 67 WAIG 486

Western Australian Police Union of Workers v The Hon. Minister for Police (1982) 62 WAIG 1401

Zhang v Canterbury City Council [2001] NSWCA 167; (2001) 51 NSWLR 589

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The claim and background

- 1 The present matter has some history. The existing Industrial Agreement between the parties, the *Western Australia Police Industrial Agreement 2017*, notionally expired on 30 June 2019. Prior to this, in April 2019, formal notice was given by the applicant to the respondent under the *Industrial Relations (General) Regulations 1997*, to commence bargaining for a replacement industrial agreement. Direct discussions between the parties commenced sometime prior to this, in February 2019.
- 2 Proceedings took place before the Arbitrator under s 44 of the *Industrial Relations Act 1979* (WA) over the period from July 2019 to March 2020, in an

endeavour to conclude an industrial agreement. Over the course of this period, several offers of a replacement agreement were made by the respondent to the applicant, culminating in a final offer made in November 2019. Whilst in principle agreement was reached between the parties in relation to that offer, a vote of members of the applicant did not reach the required threshold for acceptance under the applicant's rules.

- 3 As a result of the foregoing, an application was made by the applicant to declare bargaining between the parties ended under s 42H of the Act. On 29 April 2020, the Arbitrator heard and determined the application, being satisfied that the applicant had bargained in good faith and that there was no reasonable prospect of the parties reaching an agreement. Following a declaration issuing by the Arbitrator, an application was made by the applicant for an enterprise order under s 42I of the Act. Further discussions between the parties and proceedings before the Arbitrator followed, which led the parties to reach agreement except for one matter only.
- 4 The matter in respect of which the parties have not reached agreement is the applicant's claim for five days "Additional Leave". The parties have made an application to have their agreement registered, subject to an order of the Arbitrator under s 42G(2) of the Act in relation to the applicant's claim. The clause sought by the applicant for inclusion in the proposed industrial agreement is in the following terms:

31. ADDITIONAL LEAVE

- (1) In recognition of the unique working environment for police officers and the associated rigours, each Employee is granted an additional 40 hours leave on full pay for each year of service.
- (2) Additional Leave will be calculated on a calendar year basis commencing January 1 in each year. For 2020 the Additional Leave will accrue on the date of the Registration.
- (3) The Additional Leave may be taken before annual leave and long service leave in each calendar year.
- (4) Part time Employees will accrue additional leave on a pro-rata basis.
- (5) Additional Leave:
 - (a) may only be taken at a time agreed between the Employer and Employee; and
 - (b) will accrue from year to year if not used.
- (6) Where an officer on Additional Leave is required to return to duty and attend court from matters arising during the course of the officer's duty or to perform other duties the officer shall be paid or be entitled to receive for each day, or part thereof additional payment at ordinary rates for the period of the recall including travelling

time plus one shift added to his or her Additional Leave. Alternatively, the officer may elect to have two shifts added to his or her Additional Leave.

- 5 The applicant contended in its particulars of grounds in support that justification existed for its claim for five days additional leave on the basis that:
- (a) Policing can be corrosive to officer wellbeing.
 - (b) Police officers hold a unique position within the community, including increasingly difficult and stressful working conditions.
 - (c) The leave is primarily for preventative purposes, and recuperative to a lesser degree.
 - (d) The leave is to assist in the maintenance and support of police officer wellbeing and mental health.
 - (e) The existing sick leave is inadequate for these recuperative purposes.
 - (f) The existing annual leave is equal to leave for other workgroups (6 weeks annual leave vs. 4 weeks annual leave; and 10 public holidays).
 - (g) The existing annual leave is less than leave for public servants and government officers (6 weeks annual leave vs. 4 weeks annual leave; and 10 public holidays and 3 public sector days in lieu).
 - (h) Police officers have to work 3 years longer than public servants and government officers to access a long service leave break.
 - (i) The claim is reasonable, for (but not limited to) these reasons:
 - (i) It is limited to 40 hours – even though the applicant submits a greater amount would be appropriate.
 - (ii) It is proposed mutual agreement be required to access the leave.
 - (iii) Considering the economy and police budget, the agency cost of the 40 hours per officer has already been covered.
 - (iv) Accruable leave provides flexibility for the employer and employee to meet service demands in cases where operational reasons prevent taking of the leave.
 - (v) The leave is specific to policing, removing risk of flow to other employees in public sector.
 - (j) The claim is fair for (but not limited to) these reasons:
 - (i) The claim protects the taking of the leave on agreement by officers. Other forms of leave can be unilaterally forced under employer direction, which would be contrary to the objective of this leave.
 - (ii) The claim permits Officers to return from leave to attend court or other duties if required.
 - (iii) Those recall provisions mirror clauses applicable to recall from other forms of leave, providing administrative ease for the employer.
 - (iv) The leave is to be pro-rata for part time officers.

- 6 The respondent objected to and opposed the applicant's claim.
- 7 Both parties put substantial cases to the Arbitrator, supported by expert evidence from health professionals, as to the impact of policing on mental health and wellbeing and how the applicant's claim would support police officers. Additionally, a substantial body of evidence was led by both the applicant and the respondent, as to the nature of police work generally, and the operational impact and cost of the claim, if granted. Expert evidence was led as to these matters too.
- 8 The applications to register the agreement and the seeking of an order under s 42G of the Act were filed on 29 July 2020. At a directions hearing on 25 August 2020 the parties provided to the Arbitrator an agreed timetable for the filing of witness statements, including expert reports, the latest of which was by no later than 27 November 2020, which the Arbitrator accommodated. Written outlines of submissions were also filed and the matter was listed for hearing for five days, commencing on 4 December and concluding on 10 December 2020. Additional written submissions in relation to several matters arising during the hearing were filed. The parties were also given the opportunity to make written submissions in relation to the State Government's Mid-Year Financial Projections Statement 2020-21, released on 14 December 2020 and the 2020-21 Pre-Election Financial Projection Statement. These further submissions were filed on 21 and 22 December 2020, 18 January 2021, and 16 and 24 February 2021.

Preliminary matters

Objections to evidence

- 9 I should note at this stage, that the respondent took objection to aspects of the written evidence filed by the applicant. These objections were set out in written summary form at the outset of the proceedings. In addition to the specific objections to aspects of the witness statements filed by the applicant, the respondent also objected to the expert evidence of Dr Samuel being admitted at all. Whilst several bases for this objection were advanced, an overarching one was that Dr Samuel's evidence was partisan and he could be described as an advocate for the applicant's cause, rather than that of an impartial and dispassionate expert.
- 10 Having heard the arguments for and against the application that Dr Samuel's evidence be rejected by the Arbitrator, I adjourned for a short period to consider the issues. On the resumption of the proceedings, I informed the parties that having regard to the nature of the Arbitrator's jurisdiction in the present matter as

purely arbitral, noting the terms of s 26(1) of the Act, I was not persuaded that I should reject Dr Samuel's witness statement in its entirety. I noted further that Dr Samuel was available to be cross examined on his evidence, and that several of the objections taken by the respondent were ultimately matters of weight. Furthermore, that much of Dr Samuel's evidence was based on his experience as a psychiatrist in treating police officers with mental health conditions, and I therefore considered that his expertise may be of assistance to the Arbitrator in that respect.

- 11 As for the other objections to the applicant's witness statements contained in the respondent's schedule of objections, the parties agreed that ultimately these issues would be a matter for the Arbitrator to determine, as a matter of weight to be given to the evidence. However, some specific objections raised were conceded by the applicant, which led to redactions of some of the objectionable material from the relevant witness statements, prior to them being tendered in evidence.
- 12 One matter on which the respondent did seek a ruling was evidence given by police witnesses that they worked through their meal breaks. This was directed to the contention not that the respondent required it, but rather, the officers themselves did so as part of the prevailing culture of police officers to remain working when they are entitled to a break. There was also some suggestion in some of the written evidence of adverse health impacts, associated with working through meal breaks. I am not persuaded that evidence of this kind is helpful. The Industrial Agreement provides for a paid meal break of varying periods, depending on the length of a shift. If an officer works through a meal break, they are entitled to be paid an allowance. There is a myriad of circumstances that may give rise to a need to work through a break. Without knowing what those circumstances are, and the particularity of what effects such a culture may have over the long run, this evidence does not assist me in dealing with the present matter.

Onus

- 13 Another matter raised by counsel in opening was whether in s 42G proceedings, there exists an onus on the party seeking an order in the usual way. The applicant said not and the Arbitrator should approach the matter as a "blank slate" and decide for itself what should be the appropriate outcome, having regard to the limits contained in ss 42G(2), (3) and (4) of the Act, which I will come to in more detail below when dealing with another matter. On the other hand, the respondent submitted that there is an onus on the applicant to make out its claim, strictly on the evidence.

- 14 Section 42G is an unusual provision and is somewhat unique. It is a “safety valve” type of power that enables the parties, in agreement making proceedings, to specify a matter(s) upon which they have not been able to reach agreement and invite the Arbitrator to decide the matter(s). By its nature, the jurisdiction and powers of the Arbitrator arise from the consent of the parties: *Re Harrison; Ex parte Hames* [2015] WASC 247 per Beech J at [90]-[91]. A party is not able to unilaterally invoke the Arbitrator’s jurisdiction to determine such matters. It is only if parties jointly refer a matter that the Arbitrator’s powers are enlivened. I therefore think that an onus, in the traditional sense, does not arise in the usual way. Instead, the proceedings involve somewhat of a middle course. The parties put their respective cases and the Arbitrator decides the matter, in accordance with the equity and good conscience, which is my good conscience: *Perth, Fremantle, and Suburban Bread Carters’ Industrial Union of Workers v Coastal District Master Bakers’ Industrial Union of Employers* (1903) WAAR 71 per Parker J.

Contentions of the parties

- 15 In summary, the position of the parties is as follows.
- 16 The applicant contended that it relies upon its particulars of claim in support of seeking an additional 40 hours extra paid leave. The applicant also submitted that such extra leave should be separated from existing sick leave entitlements, as the evidence in the case would demonstrate a culture of resistance by police officers to taking sick leave.
- 17 The applicant submitted that the inherent rigours, corrosiveness and uniqueness of policing work supports the claim. This included reference to the need for police officers, given the nature of their sworn oath of office, to remain “on duty” 24 hours a day seven days a week in a hyper vigilant state. Reference was also made to the presence of physical and mental trauma in the work of a police officer and the negative impact this has on individual wellbeing. Over time, the applicant submitted that the exposure to the work of a police officer takes a toll on police officer’s mental health and additional time away from the job is required. The applicant submitted that expert evidence to be led in the proceedings, including that of the respondent’s expert, is consistent with the case that the demands of policing work have adverse mental health implications and contribute to the development of conditions such as Post Traumatic Stress Disorder.
- 18 The applicant also submitted that police officers cannot, as a matter of law, refuse to undertake dangerous work which by its nature, is inherently stressful. All

these unique features on the applicant's case, supported the conclusion that if its claim is granted by the Arbitrator, there is little risk of flow on to other occupations.

- 19 It was also contended by the applicant that whilst police officers under the current Industrial Agreement are entitled to six weeks of annual leave each year, this leave cannot be accrued and police officers do take their leave each year. The submission was made that accordingly, any additional leave granted, would be taken. A distinction was also drawn between the existing annual leave entitlement for a police officer, which is required to be rostered well in advance of when it is to be taken, under the Industrial Agreement. This contrasts to the claimed additional leave, which is to be taken by mutual agreement when an officer has the need to do so, for reasons of mental health and wellbeing.
- 20 In terms of medical grounds in support of the applicant's claim, the applicant submitted that its expert evidence would establish that the awareness of and knowledge about mental health, in particular, conditions such as PTSD, were not recognised in the 1980s and 1990s. Since that time, there has been considerable knowledge acquired as to the impact of accumulation of stress resulting from police work and the potential adverse health effects of it on police officers. In granting the additional leave as claimed, the submission was made that it would provide further work/life balance for police officers and enable additional periods for rest and recovery when it may be required.
- 21 It was also submitted that research evidence has established that police officers suffer high levels of psychological distress and high levels of diagnosed PTSD and other mental health conditions. In support of these contentions, the applicant also pointed to what it said was the changed environment of policing, with increases in drug induced violence, an increase in the use of weapons and, also, an increase in domestic violence. The uncertainty of situations into which police need to enter was submitted to also be greater. Evidence of the changed environment was said to be demonstrated by the respondent's recent introduction of body armour, along with body worn cameras.
- 22 In terms of comparisons with other occupational groups, the submission was made that police officers who work a 40-hour week receive six weeks paid annual leave with no entitlement to paid public holidays. A comparison was made with other groups such as public servants, and nurses, who were said to receive in total, more beneficial entitlements to leave. In terms of a comparison with other police jurisdictions within Australia, it was submitted that police in Western Australia are the only Force still working a regular 40-hour week as opposed to 38 hours per week. It was also contended that across the board, police officers in this State receive less leave when compared to their interstate colleagues.

- 23 As touched on earlier, a key theme of the applicant in its case was a contention that there is a marked reluctance by police officers to take sick leave even when they should do so. This reluctance is due to not only officers perceiving that they may be regarded as weak by colleagues, but also the taking of sick leave may mean that other officers must carry an additional workload burden. The submission was also made that despite efforts to dispel it, there still exists a significant stigma associated with mental health in a police officer's workplace and that officers are very reluctant to take sick leave for mental health reasons. The applicant submitted that this stigma and reticence, is evidence based on the experience of Dr Samuel, an expert witness, who regularly treats officers who pay for his services themselves, rather than revealing to the respondent that they may be struggling from the demands of the job.
- 24 In addition to these matters, the applicant also referred to the recent issue to police officers of Smartphones, which means that work related matters are available to police officers 24 hours a day, seven days a week, whether on duty or not.
- 25 In terms of the state of the Western Australian economy and the costs of the applicant's claim the applicant submitted that the State economy has recovered strongly from the coronavirus pandemic and the claim is well affordable. Additionally, the applicant submitted that the respondent's recruitment of 150 additional police officers to help manage the emergency response during the pandemic, means that additional recruitment to cover any absences by officers taking the additional leave will not be necessary. Furthermore, the applicant also points to the State Government's commitment to fund the recruitment of a further 800 police officers over the next four years, as contained in the respondent's budget. This was said to provide a substantial buffer to any coverage needed by reason of officers taking additional leave.
- 26 Several arguments were advanced by the respondent in opposition to the applicant's claims. In summary they were as follows. An overarching contention advanced by the respondent was that there is no evidence that by providing additional paid leave to police officers, this will improve their mental health and wellbeing. In any event, even if there is a limited benefit in such additional leave, then this is overborne by the operational and financial impact of the applicant's claim, along with a clear potential for flow-on to other occupational groups in the public sector.
- 27 In relation to the nature of police work, the respondent accepted that the work is demanding and difficult and may expose officers to traumatic events. The argument was put however, this has always been a feature of policing work and is not a recent development. It was not contested that there is a possible link between enhanced leave and improved mental health, but the evidence falls far

short of establishing such a connection. Furthermore, the respondent submitted that the negative mental health effects associated with policing work, is a more complex issue than exposure to stress or a traumatic event. The respondent contended that several factors, borne out on the research material, demonstrates that pre-trauma vulnerability, in terms of the individual's life history and post-trauma support and assistance are also relevant. In terms of workplace stressors, the respondent submitted that there are many other factors that combine to impact on workplace stress, such as excessive workloads, support mechanisms, excessive hours of work etc, which are also common to many other occupations.

- 28 In terms of the available evidence, the respondent also submitted that the remedial or beneficial effect of taking leave on mental health and wellbeing, suggests that its positive effect is relatively short lived, covering the period of the taking of leave and a short period after it. Thus, as the argument ran, whilst additional leave may be in and of itself beneficial, this does not necessarily correlate to an increased quantum of leave having a corresponding increased benefit for an individual.
- 29 In terms of assisting police officers in the workplace, the respondent referred to many measures that it has developed to promote and maintain police officer mental health and wellbeing. These include pre-employment screening processes, various psychological support services, and a recent initiative, being a 72-hour compulsory absence from work after exposure to a critical incident. The respondent has a dedicated Psychology Unit to provide critical incident stress management services to police officers, which assesses an officer's capacity to remain on duty following a critical incident. A range of other services are also provided by the Psychology Unit to promote mental health and wellbeing of officers. A Chaplaincy Service and a Peer Support Program are also in place.
- 30 In addition to these measures, the respondent submitted that it also has strategies to encourage work-life balance; ensures as far as possible that police officers take their accrued annual leave and long service leave when due and has adopted rostering practices, in conjunction with the applicant, to maximise flexibility and accommodate individual officer preferences. The respondent accepted however, that more can be done and, recognises that there still exists a stigma in relation to police officers seeking internal support and accessing available resources, in times of need. However, the respondent submitted that compared to times past, there is a greater preparedness to discuss and address mental health issues in the workplace and the respondent has been proactive in this respect. A point made by the respondent in relation to this question of stigma, is that by allowing police officers additional leave to avert mental distress, is tantamount to "sweeping the issue under the carpet" and may have the opposite effect of maintaining the level of stigma and not reducing it.

- 31 In terms of the environment in which police officers work, whilst I have indicated the respondent plainly is aware of the demands associated with police work, he submitted that the objective evidence is that rates of offending in the community have not significantly increased. Assaults on police officers have remained relatively steady over the last five years, whilst the rate of resignation of police officers has approximately halved in the decade between 2010 and 2020. Also, the respondent submitted that the usage of sick leave has remained relatively stable over the last 10 years. Other measures, such as the appointment of police auxiliary officers in 2009 and the recent recruitment of 150 police officers in response to the pandemic, have assisted in reducing the demands of the existing police officer workforce. The further 800 police officers to be recruited over the next four years, will provide further support and assistance in this regard.
- 32 In terms of the operational and cost impact, the respondent submitted that if one week of 40 hours additional leave as sought by the applicant was granted by the Arbitrator, this would result in the need for an additional 151 full-time equivalent police officers to cover the leave absences. According to the respondent, the total cost of an additional 151 officers over the four-year period 2019-20 to 2023-24, would cost \$127.7 million. This translated, according to the respondent, into the equivalent of a wage increase for officers of 2.4%. Furthermore, the respondent contended that granting an additional week of paid leave, will lead to a corresponding reduction of services to the community. According to the respondent, this will mean less police cars and officers on the road, with a reduced ability to fight crime and provide support for the existing police officers.
- 33 In terms of comparisons with other work groups, the respondent said that the applicant's comparisons were selective and did not cover the full range of conditions of service in this State. The respondent submitted that salaries for police officers in Western Australia are higher than other States and Territories except for New South Wales. As for leave entitlements, the respondent contended that Victoria was the only jurisdiction where police officers have more annual leave than six weeks per annum, but when regard is had to all their conditions of service, the additional leave is only one week. Furthermore, sick leave entitlements for Victorian police are 114 hours per year compared to police officers in this State who have 168 days per year, with the ability to take an additional 40 hours of carers leave.
- 34 As to the comparisons made by the applicant between police officers' terms of employment and other groups in the public sector in Western Australia, the respondent contended that the comparisons made failed to have regard to the history and development for the conditions of service for the public sector employees concerned. In relation to nurses, it was noted that nurses are paid for a 38-hour week but work 40 hours and take 12 days off per year as time in lieu.

The respondent noted that police officers in this State worked a similar arrangement some years ago however, these conditions were traded off for significant salary increases in an industrial agreement made in May 1996.

- 35 As to the factors to be considered by the Arbitrator under ss 26(2A) and (2B) of the Act, the respondent contended that the maintenance of the integrity of the State Government's Wages Policy was an important matter in the public interest for the Arbitrator to consider. Reference was made to the recent budget estimates concerning the overall debt burden facing the State and the impact of the pandemic on the State's revenue performance. In terms of the applicant's claim, the respondent submitted that it fell substantially outside of the Government Wages Policy Statement and moreover, despite the submissions of the applicant, there would be a significant flow-on effect if the applicant's claim is granted. The respondent contended that this would be contrary to the public interest.

Section 42G of the Act and the scope of the power

- 36 Section 42G is part of Part II Division 2B of the Act, dealing with industrial agreements. It provides the Arbitrator with the power to make an order, in circumstances where the parties to a proposed industrial agreement have not reached agreement on specified matters. It is in the following terms:

42G. Parties may agree to Commission making orders as to terms of agreement

- (1) This section applies where —
 - (a) negotiating parties have reached agreement on some, but not all, of the provisions of a proposed agreement; and
 - (b) an application is made to the Commission for registration of the agreement as an industrial agreement, the agreement to include any further provisions specified by an order referred to in subsection (2); and
 - (c) an application is made to the Commission by the negotiating parties for an order as to specified matters on which agreement has not been reached.
- (2) When registering the agreement, the Commission may order that the agreement include provisions specified by the Commission.
- (3) An order referred to in subsection (2) may only be made in relation to matters specified by the negotiating parties in an application referred to in subsection (1)(c).
- (4) In deciding the terms of an order the Commission may have regard to any matter it considers relevant.
- (5) When an order referred to in subsection (2) is made, the provisions specified by the Commission are, by force of this section, included in the agreement registered by the Commission.

(6) Despite section 49, no appeal lies from an order referred to in subsection (2).

- 37 By s 42G(3), an order that can be made under s 42G(2) is to be “in relation to” matters specified by the parties. This confers on the Arbitrator the power to make an order that is connected to the subject matter of that specified by the parties, and not necessarily confined to it: *The Executive Director Department of Education, the Liquor, Hospitality and Miscellaneous Union (WA Branch); the Executive Director Labour Relations Division Department of Commerce; and the Liquor, Hospitality and Miscellaneous Union (WA Branch)* [2010] WAIRC 00335; (2010) 90 WAIG 615 at [128] citing *Oceanic Life Ltd and Anor v Chief Commissioner of Stamp Duties* [1999] NSWCA 416; (1999) 168 ALR 211. In making an order under s 42G the Arbitrator may have regard to any matter that it considers relevant: s 42G(4) Act. This is of course, subject to the requirements of s 26 of the Act, which applies to the exercise of all aspects of the Arbitrator’s jurisdiction.
- 38 Apart from those general observations, during the last day of the hearing of the application, a question arose as to whether a proposed “respite leave” clause, provided by the respondent, which would make available one day of paid leave per calendar year, taken from a police officer’s sick leave entitlement, would be within power. As this matter arose late in the day and was an issue potentially of importance as to the outcome of these proceedings, I requested the parties to include in their further written submissions, their views as to whether such a provision would be within the power contemplated by s 42G. Both parties duly did so.
- 39 For the respondent it was submitted that the Arbitrator’s powers under s 42G(3) enable the Arbitrator to make orders “in relation to” specified matters which words are of considerable breadth: *The Executive Director Department of Education and the Liquor, Hospitality and Miscellaneous Union (WA Branch)* at [127]. This means that the Arbitrator is not limited to the parties’ claims, as long as the resulting order “concerns” the specified matters: at [129]. The respondent further submitted that under s 42G, it has been held that the Arbitrator has a “broad discretion” when making an order to settle a dispute between the parties and to reach conclusions based on the evidence before the Arbitrator: *The Minister for Health in His Incorporated Capacity under s. 7 of the Hospitals and Health Services Act 1927 (WA) as the Hospitals formerly comprised in the Metropolitan Health Service Board, the Peel Health Services Board, WA Country Health Service and the Western Australian Alcohol and Drug Authority v Australian Nursing Federation, Industrial Union of Workers Perth* [2014] WAIRC 818; (2014) 94 WAIG 1682 at [256].
- 40 The respondent referred to the words “in relation to” and the breadth of the meaning of the phrase as determined in decisions of the courts. The submission

was made that whilst this phrase is of wide import, and which generally serves as a link to two or more things in association or connection, the phrase itself does not deal with the nature or content of that association and “leaves unspecified the plane upon which the relationship is to be sought and identified”: *Tooheys Ltd v Commissioner of Stamp Duties NSW* [1961] HCA 35; (1961) 105 CLR 602 at [620]-[621]. In this regard, the respondent referred to the decision of the Federal Court in *Australian Securities & Investments Commission v Citofresh International Ltd (ACN 064 551 426)* [2007] FCA 1873 per Goldberg J at [66], and following, that the expression “in relation to” “gathers its meaning from the context in which it appears and the purpose for which it appears”: citing *Oceanic Life* at [225]. It was submitted, in reliance on *Citofresh*, that whether there is a necessity for the relationship to be direct and substantial or indirect or less than substantial, will depend upon the context.

- 41 In adopting this approach to the statutory context of s 42G of the Act, the respondent submitted there were three issues informing the meaning of “in relation to” in s 42G and they are:
- (a) That the purpose of s 42G is to resolve disputes in relation to matters about which the negotiating parties have not been able to agree;
 - (b) In reliance on the observations of Beech J in *Re Harrison*, the basis for the Arbitrator’s powers under s 42G is the consent from both parties to the dispute; and
 - (c) The Arbitrator is required to exercise its jurisdiction and powers under s 42G in accordance with s 26(1)(a) of the Act.
- 42 The upshot of this submission was, according to the respondent, that there is both an “outer field” and an “inner field” which sets the limits of any order made under s 42G. Given that s 42G enables the Arbitrator to resolve disputes not agreed by the parties, the outer field “perimeter” is the scope of the actual dispute between the parties. Any order made by the Arbitrator must be one which the Arbitrator considers deals with and resolves the dispute before it. On this basis, it was submitted that to the extent that an order went beyond effectively resolving a dispute in this way, then such an order would cease to relate to the specified matters, for the purposes of s 42G.
- 43 Thus, the respondent contended that any order of the Arbitrator so made, does not need to be limited narrowly to the specified matters, as long as the order resolves them. In terms of the “inner field” the respondent submitted that this is marked out by the parties’ consent to the arbitration process, which includes the terms of the agreement which the parties have sought to have registered. The submission was made that any order of the Arbitrator that might result or cause the relevant instrument to no longer have a consensual basis, would cease to “relate to” the

relevant specified matters. Any order which would reshape an agreement to no longer resemble what was agreed by the parties, would be beyond power: *Construction, Forestry, Mining and Energy Union v KAEFER Integrated Services Pty Ltd* [2017] FWCFB 5630; 271 IR 273.

- 44 From the foregoing the respondent contended that any order made by the Arbitrator under s 42G of the Act within this inner field and outer field, could be said to “relate to” the specified matters in the relevant sense.
- 45 Returning to the present dispute, the appropriate point to first consider is the relevant “specified matters” set out in the application at [13] and [14] as follows:
13. The parties have not been able to reach agreement on the provision of additional leave.
 14. In particular, the parties have not reached agreement on the provision of leave to any extent. The Western Australian Police Union of Workers seek “additional leave”. The Commissioner of Police’s position is that there is no basis for any additional leave to be granted.
- 46 From the specified matters and the grounds, the respondent submitted that the claim for “additional” leave refers to leave “exceeding or *enhancing*” the leave provisions otherwise contained in the proposed industrial agreement, consistent with the use of the phrase “additional leave”. The parties’ dispute is about whether, and if so the extent to which, the agreed terms about leave should be “exceeded or *enhanced*”: at [32] respondent’s supplementary written closing submissions.
- 47 Based on the above contentions, the respondent submitted that in resolving the present dispute between the parties, the Arbitrator is not limited to either acceding to or refusing the claim for “additional leave”. It was contended that given the boundaries of the “outer field” as described, it would be open to the Arbitrator to make an order in resolution of the present dispute, on terms which touch upon leave generally, or otherwise exceed or enhance those leave provisions which are agreed. Thus, as the submission went, an order for a term in the proposed industrial agreement which would expand on the circumstances around which or creates additional flexibility concerning, the taking of existing leave entitlements, would be an order which “relates to” the matter of additional leave. It was submitted that when looked at in this way, a term the subject of an order which would expand the circumstances in which one day of the 168 available days of sick leave under cl 36 of the proposed industrial agreement, that may be availed of, would not reshape the agreed terms, but would be an enhancement of an existing agreed leave entitlement. Such a term would not cease to be a term “relating to” the specified matters, simply because it impacts on the agreed terms.

- 48 Furthermore, the respondent referred to the final day of the hearing of the matter, when, during the respondent's closing submissions when proposing the "respite leave" alternative clause, the Arbitrator raised with counsel for the respondent whether the taking of one day's leave from the existing sick leave entitlement of 168 days, followed by a lengthy period of incapacity through sickness, would have the effect of reducing the agreed entitlement. The respondent submitted that on further considering the matter, there would be no reduction in the number of sick leave days available to a police officer in this circumstance. It was submitted that a police officer would always have a full 168 days of sick leave available, but by the new term, would have elected to use the flexibility provided by it to take one day of that sick leave for respite purposes. The submission was that this would not alter the fact that a police officer would always otherwise have 168 days of sick leave accessible to them, in the terms of the agreement.
- 49 On behalf of the applicant, it was contended that firstly, the Arbitrator does not have jurisdiction to make an order in the terms sought by the respondent. Secondly, the sick leave entitlement is an agreed term set out in the proposed industrial agreement and the Arbitrator has no power to alter it. As to the first contention, the applicant submitted that it is the parties that set the jurisdiction of the Arbitrator in an application under s 42G of the Act. For the Arbitrator to make orders beyond or contrary to what the parties have agreed, would be contrary to the purpose of s 42G.
- 50 As to the "specified matters" for the purposes of s 42G(3), when read with s 42G(2), the Arbitrator's orders are limited. It is only in relation to the provision of "additional leave" that the Arbitrator can make orders. Sick leave and other matters relating to it have been agreed and are set out in the proposed industrial agreement attached to the application. Not being one of the "specified matters on which agreement has not been reached", for the purposes of s 42G(1)(c) of the Act, the Arbitrator's powers are circumscribed. It was contended that the Arbitrator is limited to only making orders to either grant or not grant additional leave. The scope of the words "in relation to" whilst providing some latitude to the Arbitrator, still require that any order be within the confines of what the parties themselves have sought the Arbitrator to determine. It was submitted that the statutory scheme does not enable the Arbitrator to alter the sick leave entitlement set out in the proposed industrial agreement.
- 51 The second aspect of the applicant's submissions was to the extent that the sick leave entitlement is an agreed matter set out at cl 36 of the proposed industrial agreement, the Arbitrator cannot by an order under s 42G of the Act alter it, because it constitutes a pre-existing industrial agreement between the parties. On this basis, it was submitted by the applicant that the Arbitrator cannot, by an order under s 42G(3), reach into an industrial agreement concluded by the parties

and change it in some way, absent any further agreement by the parties to it. To do so, the applicant contended, would infringe the principle of a consensus underlying an industrial agreement. This would amount to a coercive order of the Arbitrator, bearing in whole or in part on those matters which the parties have themselves agreed.

- 52 In this respect, reference was made to the decision of the Industrial Appeal Court in *Director General of the Minister for Culture and the Arts v The Civil Service Association of Western Australia Incorporated and Ors* [2000] WASCA 13; 94 IR 235 at [10], to the effect that the Arbitrator has no power to impose an agreement on the parties. The Arbitrator’s power to vary an industrial agreement under s 43 of the Act in relation to the standing down of an employee or for giving the proposed agreement clear expression or reflecting the true intention of the parties under s 41(3), prior to an agreement being registered as an industrial agreement, are the only powers available to the Arbitrator to vary an agreement. Given these limited powers on the Arbitrator to vary an industrial agreement, then the respondent’s contentions as advanced in this respect, are beyond the powers of the Arbitrator.

Consideration

- 53 The terms of s 42G of the Act are to be considered in the context of Division 2B - Industrial Agreements read as a whole. These provisions of the Act set out the statutory requirements for the making and registration of industrial agreements. Section 41 provides that an agreement as to “any industrial matter” or for the prevention or resolution of disputes etc, may be made by an organisation of employees and an employer. If the parties apply to register the agreement as an industrial agreement, the Arbitrator “shall” register it. This is subject to the requirements for registration in s 41A of the Act. Before registering an industrial agreement, the Arbitrator may, for the purposes of giving clear expression to its terms, *require the parties* to vary it: s 41(3). This power to vary is not one conferred on the Arbitrator itself, independent of the parties.
- 54 By ss 42E and 42F, the Arbitrator may assist the parties in bargaining for an industrial agreement. In doing so, the Arbitrator may not, except as in s 42G, make an order to include any provision in an industrial agreement or to require parties to enter an agreement. Section 43 is a limited power to order the variation of an industrial agreement to include a bans clause. Thus, subject to s 42G, the Arbitrator’s powers to vary an industrial agreement are very limited.
- 55 As noted above, s 42G enables the Arbitrator to make an order on a matter specified by the negotiating parties, where they have reached agreement on some, but not all, matters in dispute. This follows the bargaining provisions in Division

2B. By s 42G(1)(a) the Arbitrator may make an order in relation to “specified matters”, (i.e. those matters specified by the parties), “on which agreement has not been reached”. I have set out those matters in this case at [45] above. The Arbitrator is empowered by s 42G(3) to make an order “in relation to” these matters. I accept, as submitted by the respondent, that this phrase is one of considerable breadth, and its scope is to be determined from the context in which it appears. I agree also, that in the present matter, possible outcomes of these proceedings do not simply involve a binary choice between granting five days’ additional leave or no additional leave at all.

- 56 However, in order to answer the question posed in this matter, also requires some consideration of what has been agreed by the parties, for the purposes of s 42G(1). In this case, given the contention is that some of the existing sick leave entitlement may be used as “respite leave”, and be included in an order under s 42G(2), consideration needs to be given to cl 36 of the proposed industrial agreement. By this provision, the parties have agreed that a police officer may be on leave of absence with pay for up to 168 days per year, where a police officer “becomes incapacitated”. The heading to the clause is “Entitlement to Leave & Allowances Through Illness or Injury”. That is, it is a condition of the agreed provision that a police officer be “incapacitated” to qualify for the entitlement.
- 57 The proposal advanced by the respondent for one day of this entitlement to be taken for respite purposes, does not require to any extent, the police officer to be incapacitated or be ill or injured. It simply seeks to enable an officer to take a day of paid leave at their request, as respite, without any specified reason. If so, then the condition of access to the provision as agreed by the parties, must therefore be altered, without the further agreement of the parties. It goes well beyond an addition or enhancement of cl 36. If a day of respite leave as proposed is taken, in my opinion, it would fundamentally alter the character of cl 36 as agreed between the parties. It is not simply about a reduction of the total number of days of sick leave from 168 to a lesser number, which in my view, remains problematic despite the respondent’s submissions. In other words, overall, in the context of this case, the proposal would purport to alter those matters agreed, as provided in s 42G(1)(c) of the Act.
- 58 In my view therefore, despite the breadth of ss 42G(2) and (3), what is proposed by the respondent, meritorious as it may well be, is beyond the Arbitrator’s power to include in the proposed industrial agreement.

Sections 26(2A) and (2B) of the Act

⁵⁹ In the present matter, the Arbitrator will be making a “public sector decision” as defined in s 26(2B) of the Act. This means that in determining the present claim, the Arbitrator must take into consideration several matters. Sections 26(2A) and (2B) provide as follows:

26. Commission to act according to equity and good conscience

...

- (2A) In making a public sector decision the Commission must take into consideration the following —
- (a) any Public Sector Wages Policy Statement that is applicable in relation to negotiations with the public sector entity;
 - (b) the financial position and fiscal strategy of the State as set out in the following —
 - (i) the most recent Government Financial Strategy Statement released under the *Government Financial Responsibility Act 2000* section 11(1) and made publicly available under section 9 of that Act;
 - (ii) the Government Financial Projections Statement;
 - (iii) any submissions made to the Commission on behalf of the public sector entity or the State government;
 - (c) the financial position of the public sector entity as set out in the following —
 - (i) the part of the most recent budget papers tabled in the Legislative Assembly that deals with the public sector entity under the title “Agency Information in Support of the Estimates” or, if the regulations prescribe another part of those budget papers, that other part;
 - (ii) any submissions made to the Commission on behalf of the public sector entity or the State government.
- (2B) In subsection (2A) —
- Government Financial Projections Statement*** means whichever is the most recent of the following —
- (a) the most recent Government Financial Projections Statement that is —
 - (i) released under the *Government Financial Responsibility Act 2000* section 12(1); and
 - (ii) made publicly available in the budget papers tabled in the Legislative Assembly under the title “Economic and Fiscal Outlook” or, if the regulations prescribe another part of the budget papers, that other part;

- (b) the most recent Government Mid-year Financial Projections Statement that is —
 - (i) released under the *Government Financial Responsibility Act 2000* section 13(1); and
 - (ii) made publicly available under section 9 of that Act;

public sector decision means any of the following —

- (a) an order made under section 42G that will be included in an agreement that will extend to and bind a public sector entity or its employing authority (as defined in the *Public Sector Management Act 1994* section 5);
- (b) an enterprise order that will extend to and bind a public sector entity or its employing authority (as defined in the *Public Sector Management Act 1994* section 5);
- (c) if the matters set out in subsection (2A)(a), (b) and (c) are relevant to the decision, any other decision that will extend to and bind a public sector entity or its employing authority (as defined in the *Public Sector Management Act 1994* section 5);

public sector entity means either of the following —

- (a) a public sector body as defined in the *Public Sector Management Act 1994* section 3(1);
- (b) an entity that is —
 - (i) mentioned in the *Public Sector Management Act 1994* Schedule 1; and
 - (ii) prescribed by regulations made by the Governor;

Public Sector Wages Policy Statement means —

- (a) the Public Sector Wages Policy Statement 2014 issued by the State government that applies to industrial agreements expiring after 1 November 2013; or
- (b) if any Public Sector Wages Policy Statement is issued in substitution for that statement, the later statement.

⁶⁰ I accept the respondent’s submission that for the purposes of s 26(2A), “to take into consideration” means in the present statutory context, to give due weight to the relevant specified matters as a fundamental element in the Arbitrator’s decision. A statutory obligation to “have regard to” or to “take into consideration” specified matters, are similar phrases and are to be construed in the same manner: *R v Hunt; Ex parte Sean Investments Pty Ltd* (1979) 180 CLR 322 per Mason J at 329 (Gibbs J agreeing); *Zhang v Canterbury City Council* [2001] NSWCA 167; (2001) 51 NSWLR 589 per Spigelman CJ at [71]-[75] (Meagher and Beazley JJA agreeing).

⁶¹ Whilst the Arbitrator must take the above matters into account in making its decision, the Arbitrator is also obliged to exercise its s 42G powers in accordance with s 26(1) of the Act and the objects of the Act in s 6, especially in this case

s 6(ae), (af), (ag) and (ca). Notably too, the Arbitrator is required to “take into consideration”, where relevant, the matters set out in s 26(1)(d): s 26(2C) Act.

Mr Jones

- 62 As to the state of the Western Australian economy and the State Government’s fiscal position, evidence was led from Mr Jones, the Executive Director Economic Business Unit of the Department of Treasury. For the purposes of these proceedings, Mr Jones prepared a report as attachment AJ1 to his witness statement, concerning the State Government’s budgetary position and the overall state of the economy. Also included in Mr Jones’ evidence was a copy of the “Public Sector Wages Policy Statement 2019”; the most recent Government Financial Strategy Statement as part of the State Budget Announcement on 8 October 2020; the 2020-21 State Budget Paper No. 3 Economic and Fiscal Outlook; and the Western Australian Police Force Budget, as contained in Budget Paper No. 2. Mr Jones’ evidence was in the main, not controversial.
- 63 Additionally, after the conclusion of the hearing on 10 December 2020, on 14 December 2020 the State Treasurer released the Government Mid-Year Financial Projections Statement 2020-21, which, by s 26(2B), I am obliged to take into consideration, instead of the 2020-21 State Budget Paper No. 3, Economic and Fiscal Outlook, as the former is the most recent. In this connection, in its supplementary written submissions, the respondent attached a summary of the Mid-Year Review. It was the respondent’s overarching submission that the Mid-Year Review has not altered to any significant extent, the effect of Mr Jones’ evidence in the proceedings.
- 64 The Arbitrator has already acknowledged the severe impact of the pandemic on the State and national economies in its most recent State Wage decision: *Commission’s Own Motion* [2020] WAIRC 00361; (2020) 100 WAIG 409. In recognition of the unprecedented impact of the pandemic, especially on those small business sectors most exposed to the restraints imposed on health grounds, the Commission deferred the 1.75% increase to the State Minimum Wage to January 2021: at [206]-[212]. In recognition of the economic uncertainty surrounding the impact of the pandemic, the State Budget was deferred to October 2020.

Economic overview

- 65 By way of overview, Mr Jones noted the pandemic severely disrupted the trajectory of the State economy prior to its outbreak, as outlined in the 2019-20

Mid-Year Review. At attachment AJ1 to his witness statement, by way of a summary, Mr Jones observed at [1]-[12] as follows:

OVERVIEW

1. The Western Australian economy has been severely impacted by the COVID-19 pandemic which has disrupted the economic momentum that was building in the State's economy prior to the outbreak. The domestic economy fell by a record 6% in the June quarter while over 103,000 jobs were lost in the three months to May.
2. The State's economy is showing signs of emerging from the depths of the crisis, due in part to the swift containment of the virus in Western Australia resulting in most pandemic-related activity restrictions being short-lived. Western Australia's economy is recovering at a faster rate than other States and the national economy. This reflects better health outcomes, strong federal and State Government assistance, an industry structure geared towards mining, and a commodity-intensive stimulus in China, which has underpinned strong export volumes and prices (particularly for iron ore).
3. The Western Australian economy is expected to grow in 2020-21 by a modest 1.25% (half the 2.5% growth rate expected at the 2019-20 Mid-year Review). Growth is expected to continue over the forecast period, but at lower rates than previously expected.
4. In line with this, labour market outcomes over the next four years are expected to be weaker than pre-pandemic projections, with the unemployment rate remaining relatively elevated over the forecast period and expected to stabilise at 6.25% in 2022-23.
5. Despite the expectation for continued economic growth, there are significant downside risks surrounding the outlook that largely stem from COVID-19. This reflects the highly unpredictable nature of how the COVID-19 pandemic will evolve (both domestically and internationally).
6. Key domestic risks include the potential for a second wave of COVID-19 in the State, which would cause a contraction in economic activity. If an imminent second wave outbreak involving a six-week lock down occurs, it is estimated that it would wipe \$5.6 billion off the domestic economy and cost 30,000 jobs. This is a conservative estimate because, as we have seen in Victoria, and other countries, potential lockdowns can be far longer than six weeks and cause a much larger economic contraction.
7. There are also risks to the State's economic recovery once the current extraordinary level of stimulus support ceases, if underlying demand is not sufficient to replace this support and drive growth. Other risks include the timing of the resumption of migration (which impacts consumer spending, housing and labour market outcomes) and the timing of prospective but highly uncertain LNG projects (many of which were further delayed due to the COVID-19 outbreak).
8. The key global economic risk is the timing of effective health solutions to COVID-19. While there are numerous vaccines under development around the world, there is considerable uncertainty regarding their effectiveness and their development timeline. Failure to develop effective medical solutions over the short-term will likely prolong the global economic downturn.

9. Elevated commodity prices along with robust export volumes, have supported very strong export income for the State throughout the period of the pandemic, but there are risks to the sector's ongoing strong performance.
 10. A key risk is the scale and speed of the current stimulus in China which appears to have brought forward construction activity and placed further strain on its financial system. Any economic implications in China would have flow through impacts to Western Australia, given the prominence of its trading relationship with the State.
 11. The materialisation of these risks could have catastrophic consequences for the State's economy, with the pace and shape of the recovery differing substantially to Treasury's projections underpinning the 2020-21 State Budget.
 12. The State's finances also face a significant challenge as a result of the State Government's response to the COVID-19 pandemic, with the Government's fiscal strategy adjusted to focus on supporting the Western Australian economy rather than paying down debt.
- 66 Mr Jones also noted the significant reduction in State revenue projections since the 2019-20 Mid-Year Review, by some \$1.7 billion resulting from the pandemic relief measures and lower taxation and GST grants. State Government expenses are expected to be substantially higher resulting from responses to the pandemic, including the WA Recovery Plan and other expenditure to support the economy generally, including support for vulnerable members of the community.
- 67 Specific to the respondent, included in the State Budget for 2020-21 is the recruitment of an additional 800 police officers over the forward estimates. This recruitment of 800 police officers is additional to the 150 police officers recruited specifically for the WA Response Plan, mentioned above. Thus, the total investment in the recruitment of 950 police officers, as reflected in the respondent's budget, is some \$330.2 million (see attachment AJ5 to Mr Jones' witness statement at pp 335-337).
- 68 At the time of the State Budget in October 2020, projections for net operating surpluses were \$6.6 billion over the forward estimates with a projected surplus for 2020-21 of \$1.2 billion, down from \$2.7 billion, as projected in the Mid-Year Review 2019-20. As noted by Mr Jones at p 21 of AJ1, a net operating surplus is not a measure of additional cash available for general government spending; the moneys have been allocated to partially fund infrastructure and other capital investment over the forward estimates. The impact of improved surpluses is to decrease borrowing costs associated with capital investment and to provide a sound base to better respond to economic shocks. This also provides a buffer against revenue fluctuations, in particular exchange rate movements which can have a substantial impact on mining and resources royalty revenue streams, for example.

- 69 Net debt is expected to rise to \$42.9 billion by 30 June 2023 and then fall somewhat to \$42.8 billion by 30 June 2024.

Dr O'Brien

- 70 Dr O'Brien is an Associate Professor of Economics, Director of the Master of Business Administration programme and Director of the Centre for Human and Social Capital Research in the Faculty of Business and Law, at the University of Wollongong. Dr O'Brien has been at the University since 2002. Dr O'Brien is a labour economist and applied statistician and his research areas include older worker labour force participation, youth unemployment, workplace redundancy and employment relations and economic issues. His list of publications and research interests are set out in exhibit A17. Dr O'Brien was requested by the applicant to provide expert evidence on the financial position and fiscal strategy of the State of Western Australia and the cost estimates of the applicant's claim, provided by the respondent.
- 71 In relation to the financial position of the State, Dr O'Brien's overall opinion was that the Western Australian economy has been more resilient than other States during the pandemic. Whilst not having any issue with the overall outline provided by Mr Jones in his economic evidence on behalf of the respondent, Dr O'Brien emphasised the strength of the Western Australian economy, noting that from statistics released in late November 2020, the State economy grew by 1.4% over the 2019-20 financial year, whereas the economies in the States of New South Wales, Victoria, Queensland, and South Australia all recorded negative growth. Dr O'Brien said that this position is underscored by the recent data released in relation to the labour market and employment growth, which has shown a high level of strength and resilience. From data released in November 2020, Western Australia had a net increase of 5,300 jobs in October 2020 and this State has the lowest unemployment rate and under-employment rate of all other States. Dr O'Brien also noted the high level of job vacancies, an increase of 4.7% in October 2020, currently the highest level recorded since 2013.
- 72 In relation to the fiscal position, Dr O'Brien also said that in the October State Budget, the State Government's WA Recovery Plan, a \$5.5 billion spending commitment, was fully funded along with a projected surplus of \$1.2 billion. This contrasted to the Federal Budget position. Whilst importantly, maintaining responsible fiscal and budgetary management, Dr O'Brien also noted that the State Government budget projections across the forward estimates are consistent with the financial targets set out in the *Government Financial Responsibility Act 2000* (WA). Dr O'Brien also noted the financial commitment of \$91.2 million for recruiting 150 new police officers as a part of the pandemic response

announced in April 2020, and an additional \$314 million in spending to recruit a further 800 police officers to strengthen frontline policing and presence in the community, the latter announcement being made in early October 2020. It was Dr O'Brien's evidence that this new expenditure on 950 police recruits, will increase police numbers in total by 15%, resulting in this State likely having the highest number of police officers per capita of all Australian States.

Public sector wages policy statement

- 73 The current Public Sector Wages Policy Statement 2019 (see attachment AJ2 to Mr Jones' witness statement) applies to all new and replacement public sector industrial agreements from July 2019. The Wages Policy provides for a limit of \$1,000 per annum for wage increases for full-time employees and a pro rata amount for part-time employees. It provides for the costs of negotiated and arbitrated outcomes to be met from the budgets of relevant departments and organisations.
- 74 Given that salaries and wages represent some 39% of the total general government expenses for 2020-21 (44% when including superannuation and other oncosts) and rising to 44% and 50% respectively in 2023-24 (see attachment AJ1 p 33), whilst not binding on the Arbitrator, I accept that the Wages Policy Statement, especially in the present context of the economic impact of the pandemic, is an important factor for me to consider.

Risks to the economic outlook

- 75 The major domestic risk to the State economic outlook is the threat of a second wave of the coronavirus. Modelling undertaken by the Department of Treasury, as set out in Mr Jones' witness statement (see attachment AJ1 pp 13-14), comprising a six-week lockdown, would lead to a 1.25% fall in Gross State Product (the total economy's output including exports) in 2020-21, and a 2.75% reduction in State Final Demand (a measure of the domestic economy). There is also a projected rise in the unemployment rate to 8% with some 30,000 jobs lost.
- 76 A recent example of the impacts of such an event is the second wave in Victoria which had a severe economic effect, including the loss of some 50,000 jobs (see AJ1 p 14). The unpredictability of the virus, and the inherent risk that it poses to the State, and its economic activity, are also illustrated in the more recent lockdowns in South Australia, the partial lockdown in the Northern Beaches region of Sydney in New South Wales, and the five-day lockdown that occurred in Perth, the Peel and South West regions recently. An important part of these

effects is the response taken by other States, to restrict or prohibit entry from these regions, and the consequential economic benefits foregone.

- 77 A further risk to the outlook is any negative impact on the mining and resources sector, which has very substantially contributed to the State economy through the course of the pandemic. Any substantial compromise on production or construction activity in the resources sector was described by Mr Jones in AJ1 (at p 14) as being “catastrophic”. Volatility in iron ore prices (which are presently very high), along with the importation of coronavirus from the crews of bulk carriers arriving at Western Australian ports, is also identified as a material risk. So too, on the domestic front, is the unwinding of present income supports such as JobKeeper and JobSeeker, subject to any increase in domestic demand to offset these factors.
- 78 Constraints on population growth through reduced immigration and the impact of State border closures on housing demand are also identified as potential domestic risks. In terms of global risks, the impact of changes in economic settings in China, the State’s largest trading partner, and the possible adverse effect on the State’s mining and resources sector therefore, is a further material risk.

Government Financial Strategy Statement

- 79 A copy of the Government Financial Strategy Statement was attachment AJ3 to Mr Jones’ witness statement. This statement contains the Government’s financial targets, which have been updated for the 2020-21 Budget to take account of the impact of the pandemic on the economic and fiscal outlook of the State. This comprises four targets which are to maintain a net operating surplus for the general government sector on average over the forward estimates; to maintain disciplined general government expense management (which includes wages outcomes consistent with the Government Wages Policy and that agency spending is in line with limits in Resource Agreements); and maintaining or increasing the net worth of the total public sector.
- 80 The statement indicates that the State Government is operating consistently with meeting these targets.

The Government Mid-Year Financial Projection Statement 2020-21

- 81 For the purposes of s 26(2A) and in accordance with s 26(2B) of the Act, the Arbitrator is required to take into consideration the most recent “Government Financial Projections Statement”. In accordance with s 26(2B)(b), as it was released on 14 December 2020, this means the Mid-Year Review. As mentioned, the Mid-Year Review was the subject of supplementary written submissions from

the parties. In an attachment to the respondent's submissions, is set out a summary of the State's economic outlook, the State's budgetary position and risks to the financial projections. In terms of the economic outlook, the Mid-Year Review notes that the State economy is recovering more strongly than expected from the pandemic. The forecast economic growth for 2020-21 has been revised upwards, and additionally, the labour market recovery is stronger than previously expected.

- 82 In terms of the key budget assumptions, the rate of growth in the overall economy represented in GSP is expected to increase by 2% over 2020-21 which is an improvement from 1.25% as forecast in the Budget. The increase in domestic activity since the Budget, includes retail spending, residential construction and an improvement in business and consumer confidence. Labour market conditions have improved more strongly than expected in the Budget. This has led to an upward revision in employment growth for the year to 1% "revised from a fall of .25%" to an overall revised rate of 7%. In overall terms, about 87% of the initial loss of employment resulting from the pandemic has been recovered to October. A stronger rate of recovery has been in part-time employment with a lower rate of recovery, being 44.3%, in full-time employment. Youth unemployment remains elevated. Wage pressures remain lower and there have been no revisions to the Wages Price Index or the Consumer Price Index forecasts across the forward estimates. In other respects, the economic outlook remains subject to the same risks, both domestic and international, which remain generally unchanged from the Budget Outlook.
- 83 In terms of the key budgetary projections, reflecting the improvement in economic fortunes, the Government's operating surplus projection has been revised upwards to a total of \$3.2 billion across the forward estimates compared to Budget. For 2020-21, a surplus of \$2.2 billion is forecast instead of the Budget estimate of \$1.2 billion. This reflects improved revenue flows, including higher GST-related grants, higher taxation revenue and higher iron ore royalties. A significant feature of the Mid-Year Review is the setting aside from expected operating surpluses, of \$1.787 billion, for a new Woman and Babies' Hospital.
- 84 A consequence of the better operating outlook for the Budget is that total public sector net debt is projected to be \$1.4 billion less than anticipated as at 30 June 2024. Notably however, this net debt figure does not include the expenditure for the new hospital.
- 85 As noted above, the Mid-Year Review indicates that the general risks to the financial projections in the State's fiscal outlook are similar to those contained in the Budget from October 2020. Net debt is still anticipated to increase over the forward estimates but by a lesser amount than originally forecast. Furthermore, as set out in relation to the Government Financial Strategy and Targets,

management of recurrent spending in the general government sector remains very important to achieving forecast operating surpluses and a sustainable financial position. This includes the delivery of public sector wage outcomes in accordance with the Wages Policy Statement.

- 86 As to the Mid-Year Review, given that it was published after the final day of the hearing, the parties were given an opportunity to make submissions on it in their supplementary closing submissions. The respondent contended that the Mid-Year Review does not change in any significant or relevant way Mr Jones' evidence before the Arbitrator or the materials referred to by him in the 2020-2021 Budget. It was contended that the risks to the WA economy remain, with some additional factors identified. The level of total public sector net debt is still projected to increase over the forward estimates. While revenue estimates are projected to increase compared to the Budget, that revenue has been allocated to the new Women and Babies Hospital, and there is no change to the critical role of management of recurrent spending, so that forecast surpluses may be achieved, and the maintenance of a stable financial position for the State.
- 87 In this respect, the Public Sector Wages Policy is an important element of these objectives. Attached to the respondent's further submissions was a commentary on the State's economic outlook and the budgetary position following the 2020-21 Mid-Year Review. In terms of the economic outlook, the revised increased growth forecast is noted and reflects stronger activity in the State's domestic economy. Some improvement in the labour market is also noted. This is especially in relation to the recovery of part-time employment, lesser so for full-time employment, while youth unemployment remains a challenge. Wage pressures remain low.
- 88 The key underlying risks to the economic outlook are noted to remain, in particular, the risk of a second outbreak of COVID-19 in Western Australia. Other risks include the winding back of support measures such as JobKeeper and JobSeeker income support. International risks relate to the effectiveness of restrictions imposed by other countries to contain the COVID-19 spread and the development of vaccines. Further global risks include global public debt generated by the responses to the pandemic and geopolitical tensions, especially with China, regarding the ongoing trade disputes which may threaten the State's exports if there are further escalations.
- 89 In terms of the Budget position, the commentary notes the Mid-Year Review highlights a generally improved fiscal outlook relative to the Budget position. It includes the upward revision of the government's operating surplus projection across the forward estimates and for 2020-21. The stronger operating surplus results from in the main higher Commonwealth GST-related grants; higher

taxation revenue from stronger domestic economic growth; and higher iron ore royalties from higher iron ore prices over 2020-21.

- 90 Whilst noting that the overall operating outlook for the general Government sector has strengthened, the surpluses projected over the forward estimates are fully allocated to fund the State's infrastructure investment programme. This will not prevent the need for additional borrowing. The improved outlook has also improved the outlook for total public sector net debt, which will be less than previously forecast. It is noted however, that the better net debt position does not include the expenditure for the new Women and Babies Hospital, which will need to be accounted for in future budgeting processes.
- 91 On behalf of the applicant, it was submitted that the Mid-Year Review supports the evidence contained in the applicant's expert economic evidence, in relation to the sound position of the State Government's finances, reflecting a resilient economy. The submission was made that the Mid-Year Review shows that the Western Australian economy is even stronger than originally budgeted, including the labour market.
- 92 The applicant contended that the Mid-Year Review shows the State economy is so strong that it can absorb an additional half a billion dollars in additional spending for 2020-21. Instead of a deficit, the revised revenue growth is so strong that the surplus is expected to increase by about \$1 billion dollars. The underlying economic strength of the economy is projected over the forward estimates, with a surplus increasing in total terms by over \$3 billion, while at the same time reducing debt by \$1.4 billion. The substantial increase in revenue growth is underpinned by stronger domestic demand. The applicant submitted that whilst the increase in the surplus is particularly notable, also of note is that it is to be achieved whilst at the same time significantly increasing expenditure across the forward estimates.
- 93 The applicant contended that the Mid-Year Review also notes that whilst a major infrastructure investment programme of \$27.1 billion is committed to support the pandemic response, further infrastructure investment has been committed to and noted also is the new Womens and Babies Hospital. According to the applicant, the Police Force will also benefit from additional expenditure, with the Mid-Year Review noting the responsible spending of the respondent, which is within 0.3% of the Resource Agreement specified amount, even though targets are deemed to be met within 2% of the Resource Agreement expenditure amount.
- 94 Overall, having regard to the Mid-Year Review and the matters for the Arbitrator to presently take account of it was submitted that as to the national economy, no further matters are to be considered. In relation to the State economy, the applicant submitted that the Mid-Year Review illustrates that the Western

Australian economy is going from strength to strength. Unlike other States, Western Australia has not gone into recession and, on the contrary, the revised improvement in the economic outlook, including the labour market, means significant budget surpluses are projected, with a corresponding ability to reduce debt. In terms of capacity of the respondent to pay, this is not materially affected by the Mid-Year Review, and the applicant refers to its economic expert report in this respect. Noted is the recruitment of the additional 950 police officers, already budgeted for, which should be sufficient to cover any costs of additional leave, as claimed.

- 95 The applicant reiterated the current restrained spending of the respondent within the agreed limits of its Resource Agreement with the State Government. In relation to any effect of the Arbitrator's decision on the State and national economies, and on the level of employment and inflation, the submission was that whilst not strictly relevant for present purposes, the Mid-Year Review has projected a change from job losses of 0.25% for 2020-21, to an upwards revision of jobs growth of 1%, reflecting a strong labour market.

WA Police Force budget

- 96 The Budget for the respondent is at attachment AJ5 to Mr Jones' witness statement at pp 335-350. The pandemic has imposed substantial burdens on the respondent as the Commissioner of Police is the State Emergency Coordinator. In addition to frontline policing work, the respondent has been performing a range of other duties associated with the pandemic including border security, quarantine arrangements and compliance measures.
- 97 In terms of the budget position, the costs associated with the recruitment of the additional 150 police officers for the pandemic response and the additional 800 police officers, to be recruited over the forward estimates, are fully accounted for in the Budget Paper. No provision is made in the Budget for further police officer recruitment. In terms of its overall financial position, the respondent had an operating deficit for 2019-20 of \$17.166 million and a projected operating deficit of \$32.247 million for 2020-21.

2020-21 Pre-Election Financial Projections Statement

- 98 This Statement, published on 8 February 2021, notes that despite the increased risks associated with COVID-19, resulting from the five-day lockdown, the State's fiscal outlook has improved since the Mid-Year Review. This is due to the ongoing strength in iron ore prices and a strengthening in the domestic economy. The result is an increase in the projected operating surplus for 2020-21

from \$2.2 billion to \$3.1 billion. Additionally, operating surpluses over the forward estimates are projected to range from \$1.5 billion to \$2.2 billion. This will reduce total public net debt by \$1.2 billion, as on 30 June 2024. The Statement refers to this enhanced surplus position as an important non-debt source of funding for the State Government's \$28.9 billion Asset Investment Programme, over the next four years.

- 99 As with the Mid-Year Review, the parties were given an opportunity to make brief written submissions in relation to the Statement. The respondent submitted that overall, nothing in the Statement has altered the fact that the pandemic has had a substantial negative effect on the State economy, whilst faring better than the economies of other States. Furthermore, the risks to the State's financial position and fiscal outlook, as set out in the Mid-Year Review and the Budget, remain largely unaltered. Additional risks are identified however, and they include the need for current iron ore prices to remain at their present high levels for the rest of this financial year to meet forecasts; the possibility of further pandemic restrictions having a material effect; vaccination programmes and ongoing quarantine costs remain ongoing risks and the impact of the bushfires in February 2021, may involve additional expenditure.
- 100 In an overall sense, the respondent submitted that apart from some improvement in the labour market, the forecast for 2020-21 of modest economic growth is unchanged. Also, significant borrowings will be necessary to stimulate economic growth through the out years, reflecting an overall weaker State economy, due to the pandemic.
- 101 The applicant submitted that the Statement shows the further underlying strengthening of the Western Australian economy and the improved finances of the Government. With the upwards revision of both revenue and expenses, the applicant contended that this demonstrates further increases in economic activity in the State economy since the Mid-Year Review. Alternatively, it is evidence of greater optimism and expectations of future economic activity. The applicant described the Statement as "an overwhelming positive and improving story for both the Western Australian economy and the Government of Western Australia".
- 102 Apart from the revisions of revenue and expenses, the applicant noted the improving labour market and household sector, especially the fact that since the height of the pandemic, 99% of jobs lost over the period February to May 2020, have now been recovered. The applicant contended this improvement in the labour market and its flow-on effect into household spending, has been accompanied by low wages growth and a benign inflation environment. With boosted State and Commonwealth grants, the housing market has also experienced strong growth. Accordingly, the applicant submitted that the

Statement enhances the applicant's claim that additional leave for police officers is not only affordable, but the improvement in the underlying economic indicators for the State economy, mean that it is an opportune time for the introduction of such a measure.

Consideration

103 Taking all the above material into consideration, the most recent economic data on the performance of the State economy is encouraging. Western Australia has been fortunate to have weathered the pandemic, in economic terms, better than other States. However, despite this, the pandemic has had a severe impact on the State's economy. The Key Assumptions in both the Mid-Year Review and the Statement, show that forecasts for economic growth over the forward estimates remain modest. Additionally, average revenue growth across the forward estimates is expected to be well below the average rate of revenue growth for the decade to 2019-20, prior to the pandemic. In my view, taken overall, and having regard to the risks to the economic outlook, whilst the State's economic fortunes are improving and there is cause for optimism, the Arbitrator should still approach the present matter with some caution.

The nature of policing

104 It is not in dispute that policing work is challenging and demanding and may expose police officers to distressing and traumatic events in the course of duty. Extensive evidence has been led by both parties to the proceedings as to various aspects of policing work and the environment in which police officers go about their duties. What follows is a summary of the witness evidence.

Applicant's evidence

Sergeant Flaherty

105 Sergeant Flaherty presently is the Officer in Charge at the Toodyay Police Station. He has been in the police force for over 31 years. Many years of that service has been based in smaller remote and rural regions of the State. Sergeant Flaherty has also served in large metropolitan centres. He described the work of a police officer as a "twenty-four seven" commitment. He said that officers are always "on duty", which is of itself, an administrative term, because police officers are always expected to act and react to situations, which places them in a state of hyper vigilance, which he said rarely leaves you.

- 106 Sergeant Flaherty said that in his experience, there is an increase in the level of scrutiny and expectations placed on police officers in the community. He cited examples of being approached by community members to raise problems and issues with him, including while out socially and with his family. Sergeant Flaherty said that it is often the case that even when off duty, he is regularly required to intervene in a situation where potential harm to others may be caused or an offence committed.
- 107 In terms of working hours, Sergeant Flaherty said that whilst police officers get paid for a 40-hour working week, many more hours are worked on an unpaid basis. This includes attending early before a shift commences and after a shift finishes, to “kit up” with their accoutrements and to remove same at the end of a shift. A handover is generally required also which takes more unpaid time. All these demands in Sergeant Flaherty’s view, have increased the need for police officers to have increased “downtime” from the job, to deal with the stresses and strains of police work. With the advent of technology, and the issue to police officers of mobile/smartphones, Sergeant Flaherty said that police officers now regularly attend to work matters out of hours.
- 108 In terms of the physical and mental demands of policing, Sergeant Flaherty referred to daily duties which involve restraining violent offenders, including those suffering mental health problems; dealing with physically and sexually assaulted children and women; having to listen to victim accounts of abuse and domestic violence; wrapping and picking up decomposed bodies; taking deceased babies and children away from their distraught parents; confronting husbands, wives, children and families of people killed unexpectedly; and witnessing the grief, sadness and heartache which he described as emotionally and mentally taxing.
- 109 Sergeant Flaherty recounted a particularly harrowing and distressing experience. He referred to an event which occurred in mid-March 2020, when he was called out late at night from home to attend a motor vehicle accident that had occurred a short distance out of his town. He said that on attending the scene he was required to organise chaos and coordinate emergency services on the scene. He was required to identify the driver and any other occupants of the vehicle. Sergeant Flaherty said on doing so, he recognised the driver, who was deceased, as a good friend of his son. Sergeant Flaherty said he then went to help in removing the passenger from the vehicle and recognised that it was his youngest son in the front seat, who was also deceased. Sergeant Flaherty said that he then had to secure his son in the back of an ambulance and return home to inform his wife of their son’s passing. He said he was not aware of any other occupation which is confronted by the combination of physical, emotional and psychological demands, that are faced by police officers. In my view, for Sergeant Flaherty to

have had to maintain his professional composure in this circumstance he described in his evidence, is unimaginable.

- 110 Sergeant Flaherty said that the constant stresses, hyper vigilance and the demands of the job are only alleviated when he can take leave. For him personally, he takes leave only when he can take blocks of two weeks or more and when he is able to leave the local area. Sergeant Flaherty said that an additional week's leave would allow him to keep taking two blocks of three weeks during the year and to have a further week's leave available to cover emergencies as they may arise.
- 111 In terms of sick leave, Sergeant Flaherty said there is a real stigma in relation to police officers taking sick leave. Many officers that he knows will not take sick leave because of the perceptions of weakness or that an officer is a bludger. He said that officers generally will not take sick leave for minor ailments, especially because being away from work puts extra pressure on other officers. Sergeant Flaherty said that in his own circumstances as an officer-in-charge at a small regional station, he has seen this over many years. He has had to send officers home when they have come to work when they should not have.
- 112 In terms of the additional leave sought in these proceedings, it was Sergeant Flaherty's evidence that further leave for rest and recovery would be taken by him and he would use it as opposed to sick leave. He said that this extra leave would benefit him substantially and would enable him to have some time away from the job at a time that was suitable for his colleagues and the operation of his own station, and he would take the extra leave at times that he really needed it.

Senior Constable Frey

- 113 Senior Constable Frey has been in the police force for about 12 years. She is currently the Patrol/Enquiry Officer and Acting Detective Supervisor at the Perth Police Station.
- 114 Senior Constable Frey spoke of the unique work that police officers do. She said that she has worked across the range of policing work, including general duties, detective work and in the regions. During her duties, Senior Constable Frey said she has been assaulted many times; has been involved in high-speed police evade incidents; arrested people suspected of violent and horrific crimes including child sex offences and murder; has attended fatal traffic accidents, suicides, held grieving family members and attended other horrific crime scenes.
- 115 She also said that as a serving police officer, she is required to serve the community to a high standard, but also be subject to scrutiny by the public and senior officers. Senior Constable Frey said as a police officer there is no such

thing as a “typical day”. She must be prepared to make critical decisions instantly, which may have major impacts on her and others’ lives.

- 116 In terms of the criteria for the job of a police officer, Senior Constable Frey said that job requirements include the need to adhere to authority, display appropriate demeanour, integrity, perseverance, resilience, and both verbal and written communication. Officers are required to be physically fit and of sound mind. Police officers are required to undergo extensive training and retraining in critical skills regularly.
- 117 Senior Constable Frey described as an example of the work that she must do as police officer, her participation in Operation Night Safe in the entertainment area in Northbridge. Since the reopening of the Northbridge precinct and working night shifts in the area, Senior Constable Frey said that she had been threatened with weapons and verbally abused; and has stood amongst a large group of people fighting and suffered punches to her shoulders and arms, in attempts to subdue the aggressors in the incident. She recounted having to carry a lifeless woman from a nightclub who had had her drink spiked and administer first aid until the ambulance arrived and in the meantime, the young woman vomited all over her. Senior Constable Frey also recounted an incident involving a young 17-year-old male who attempted self-harm by stabbing himself in the eye with an uncapped needle. She said that these are only examples of many incidents she must deal with as a police officer.
- 118 In terms of the impact of the demands of a police officer on her, Senior Constable Frey described policing as corrosive to her wellbeing. She said that since becoming an officer from a young age, she has had to contend with difficulties in her health and wellbeing. She has had relationship breakdowns due to the shift work and the uncertainty of her working hours, especially when she was working as a detective.
- 119 Senior Constable Frey also spoke of the stigma associated with taking sick leave, which has stopped her from seeking help on occasions. She said that this stigma stops her from talking to others about her stress or mental health in the workplace. This stigma, according to Senior Constable Frey, creates obstacles for officers who need help. Senior Constable Frey said that the taking of sick leave is often talked about at work and it plays on her mind. She said she often questions whether she is sick enough to warrant a day off and, if she does, she feels guilty at letting her team down and would not forgive herself if, because she was away from work, one of her fellow officers was injured or killed.
- 120 According to Senior Constable Frey, extra leave will enable her to take time away from the job to look after herself. She thinks that 40 extra hours would be sufficient to help her do this. She understands that in the current circumstances

of responding to the pandemic there is an expectation that officers be available at short notice. Senior Constable Frey said that as a police officer there is no getting away from the job. There is an expectation on her to react to a situation that requires her intervention at any time. She described herself as always being in “flight or fight mode”. If extra leave were granted arising from this case, she said it would enable her to get away from the State and away from the demands of being an officer and to recharge her batteries.

- 121 She said that if she had extra leave, she would use the time at a point during a year, when she needs to completely get away from policing work and to relax. Senior Constable Frey said that this was not the same as annual leave as it would not be planned as annual leave is required to be. She said that “every officer should be entitled to put up their hand and say, ‘I need a break’”.

Sergeant Honey

- 122 Sergeant Honey has been a police officer for nearly 31 years. He is presently the Officer in Charge at the Norseman Police Station. Over his 30 years of being a police officer, Sergeant Honey described the incidents he has been involved in and things he has seen, including terrible car accidents; family violence abuse; suicide; homicide; SIDS deaths; dealing with abused and neglected children; sexual assault and abuse. He said that being exposed to these incidents imposes enormous physical and emotional challenges.
- 123 Based at the Norseman Police Station, Sergeant Honey outlined as a recent example, dealing with the threat of bushfires which surrounded the town and cut off the community from the outside. He said that at this time the level of community anxiety was high and this had to be managed, as well as responding to the emergency. Only weeks after the fire threat, Sergeant Honey said that he and his colleagues at Norseman had to deal with the pandemic. Norseman is a designated self-isolation centre which required ensuring compliance by those directed to isolate, whilst also managing infection risk amongst the officers. There was only a period of a few weeks between the fire emergency and the outbreak of the pandemic, over which time officers have faced long hours of work, recalls to duty to cover staff vacancies, and working many days straight to meet policing demands.
- 124 Sergeant Honey described the demands and challenges of being a police officer. He said these are both physical and emotional. He described having to deal with a battered wife, victims of violent assaults, sexual abuse and always maintaining a professional demeanour in the face of trauma, all the while knowing that their performance is subject to review and critiques. Sergeant Honey said that police

officers are often required to work for lengthy periods under duress, often without appropriate backup resources, particularly in remote and regional areas.

- 125 In terms of the need for additional leave, Sergeant Honey said that police officers, given their hours of work, regularly work mixed shifts and often night shifts, which disturb sleeping patterns. He said he often experienced sleep debt and sometimes needs medication to help get some rest. As to the uniqueness of police work, Sergeant Honey said that police officers faced the risk of physical harm and injury, including death, every day and they never know if they may need to confront a person intent on doing them harm.
- 126 From his own experience, Sergeant Honey has knowledge of police officers who have suffered mental health conditions including PTSD. Sergeant Honey acknowledges the efforts taken to mitigate work and personal stress and referred to the respondent's recent introduction of mandatory post-critical incident leave of three days for police officers who are involved in defined critical incidents. Sergeant Honey also said that policing work can be corrosive to officers' wellbeing. The constant pressure of work and the environment in which policing is undertaken, and the scrutiny and accountability that police officers face, imposes significant levels of stress that individual officers must contend with.
- 127 Sergeant Honey also referred to the general reluctance by police officers to take sick leave even if feeling unwell. He said he himself often does not take sick leave when he should do. He said that he often must tell his own police staff to either leave work or go and see a doctor when they are unwell. Given that sick leave is unplanned leave, and places pressure on other officers, this is very different to leave sought in the present matter. A police officer would be able to plan the taking of some leave for a break, without compromising police operations.
- 128 Whilst Sergeant Honey accepted that additional leave may not address his sleep debt problems from time to time, it could do so. He reiterated that as the Officer in Charge, his telephone often rings in the middle of the night and he gets calls after hours which he must respond to. Sergeant Honey said that having additional leave would enable him to travel away within the State or, once the coronavirus restrictions are eased, overseas, to help him refresh and reset by being away from work.

Sergeant Gale

- 129 Sergeant Gale has been a police officer for 32 and a half years and has been for several years, in the State Traffic Operations area. Sergeant Gale outlined many of the challenges of working as a police officer and that whilst working on shift, officers cannot take breaks as they are required to be available constantly.

Sergeant Gale spoke of the rigours of continuous shift work, working afternoons and nights with minimal weekends off work to spend with family and friends to “recharge the batteries”. He said that shift work alone is taxing and interferes with sleep patterns. He said that one shift flows into the next. Given police numbers, Sergeant Gale said there is generally only one vehicle with two officers policing an entire area with little or no relief. The officers travel from incident to incident and when they return to the police station, they are required to complete a large amount of paperwork, which must be done before finishing their shift, due to the scrutiny of senior management and the media.

- 130 Sergeant Gale also referred to policing in regional locations where he said policing numbers are very thin on the ground. In many cases, in a regional location, given the distances between towns, backup support is often not available and officers are required to continuously deal with every issue or incident before finishing their shift for the day.
- 131 Sergeant Gale referred to his experience in the early 2000s when working in the Perth District Support Group, involved in policing the Northbridge entertainment precinct. At the time, there were 28 officers, including 24 constables and four supervisors. Generally, no more than 12 to 16 officers would cover Friday and Saturday nights, the heaviest nights in terms of workload. This involved working large numbers of afternoon shifts rather than day shifts, to provide coverage. While an arrest back in those earlier years would be processed quickly, Sergeant Gale said that now, given the amount of red tape involved, it may take a team off the road for most of a shift. He said that the number of officers policing the same precinct, which now covers both the Perth CBD and Burswood areas, are not significantly higher, however the population is. The level of violence and types of crime are more serious, including a prevalent drug culture, which leads to higher levels of violence and officers getting injured on the job.
- 132 Sergeant Gale also noted that over the course of his career, not only has policing become more complicated, but there is less respect for police officers and the work that they do. Both in his role as a manager of officers and as a Director of the applicant, Sergeant Gale spoke of his awareness of officers becoming burnt out performing frontline duties earlier and looking to perform other less arduous work such as office-based roles or leaving the job entirely, for less stressful employment.
- 133 Given the service ethic of police officers in the community, Sergeant Gale also said that there is a mentality where each officer wants to look out for the other. This leads to a reluctance to take sick leave when an officer is sick. Sergeant Gale said from his own experience, when working in locations where there may be only two officers, if one is away ill, effectively there is no policing until another officer can replace the absence. Interaction with members of the public

and exposure to all forms of illness contribute to police officers themselves getting sick, and not taking sick leave when they should. The importance of the leave sought in the present application in Sergeant Gale's view, is that it is leave that could be scheduled by him for rest and respite, to achieve more work life balance.

- 134 This is particularly so as Sergeant Gale said the scrutiny of police officers is greater than ever and officers are always expected to be able to respond to any incident at any time. High levels of scrutiny exist, both by the public and by the senior management of the police force. He said that the effect of this is that he rarely switches off from his job, until he takes scheduled annual leave or long service leave. The additional leave sought in this matter, according to Sergeant Gale, would enable him to take a break from work at a mutually agreeable time, to get away from the pressures of working as a police officer and to support his mental health and wellbeing.

Sergeant Russell

- 135 Sergeant Russell, for the last seven years, has performed general duties as a frontline supervisor in Mandurah. He has over 41 years of service in the Police Force. This has included about 30 years working in general duties in the city and regional locations. Sergeant Russell also spent about 10 years working as a plainclothes officer in various squads including consorting, fraud, vice, the gold stealing detection unit and the commercial agents' squad, amongst other things.
- 136 Given his length of service as a police officer, Sergeant Russell said that when he started his policing career in 1979, general duties police officers were not permitted to carry firearms unless exceptional circumstances existed. He said that after 1983, general duties officers did carry firearms, largely in response to a significant increase in armed offenders in the community, in particular committing robberies of banks. In addition to a firearm, Sergeant Russell noted that officers also carry pepper spray, a taser and wear stab proof vests and body cameras. Sergeant Russell particularly made mention that as with all police officers, he is required to use force when necessary. Circumstances arise for a police officer where not to do so is simply not an option, and may place himself, other officers, or members of the community, at significant risk of harm.
- 137 Sergeant Russell put the matter quite succinctly when he said that whilst other organisations can run away from danger and call the police, a police officer's responsibility is to run towards it. He mentioned matters within his own knowledge in relation to the ambulance service, where ambulance officers have an alert system containing certain names and addresses, where an ambulance will

only attend after police have attended first. Sergeant Russell said that as police officers they have no “safety net” to call upon to assist them.

- 138 In terms of the nature of changes that Sergeant Russell has seen on the job, he said that over the past decade there has been a marked increase in domestic violence complaints and the proliferation of illegal drug use throughout the State. He said that combined with alcohol-fuelled behaviour, and those with mental health problems, this presents a great risk to officers going about their work. He said that in his capacity as a frontline officer, he often sees officers attending jobs where offenders are carrying knives. As an illustration of this point, and a tragic one, Sergeant Russell referred to an incident which occurred in May 2018. Sergeant Russell said that he, along with another officer, attended a job where a male, who was carrying a knife, had phoned the triple zero emergency number to say that he had a knife and he wished the police to attend. Sergeant Russell said that the outcome of this incident was that the male concerned was shot and killed by police. It was not until July 2020 that the coronial inquest into the incident was completed. The finding was of justifiable force used by the police officers. Sergeant Russell described this incident as very traumatic, both for him and the officer who was his partner on the night in question. He also said that the two-year coronial inquest was long and stressful. Sergeant Russell said that this incident would remain with him for the remainder of his life.
- 139 Over his length of time as a police officer, Sergeant Russell said that one thing he has noted is that police officers are not treated with the same level of respect as they used to be. The level of scrutiny and accountability of police officers is high. One thing that Sergeant Russell said has not changed, is that when he started as a police officer in 1979, he was entitled to six weeks’ annual leave, and he is still entitled to six weeks’ annual leave in 2020.
- 140 In terms of the extra leave sought by the applicant, it was Sergeant Russell’s evidence that there is undoubtedly a culture within the police force against the taking of sick leave. He said that officers who took sick leave were frowned upon and were regarded as weak. Unless sick leave was taken for an obvious and serious injury such as a broken bone, Sergeant Russell said that officers are often seen as “malingerers” and a “problem” for human resources to manage. Sergeant Russell said that he was aware from his own experience that many younger officers fear that taking sick leave may be used against them when they seek promotion.
- 141 If he had access to additional leave, Sergeant Russell said he would take it to support his own health and wellbeing. This leave would be taken without the need to explain why an officer was sick and had to be away from duty. He said the extra leave would give officers a break from the relentless pressures of policing work. As was said by other officers who gave evidence in these

proceedings, being a police officer means that mentally, you are always on duty, even though you may not be in uniform. This often means that Sergeant Russell does not let people know that he is a police officer, so he will not be required to get involved in situations. He said that this would be very difficult for officers in a small country town.

- 142 In terms of the need to respond, Sergeant Russell said the respondent's present policy is that even whilst officers are on a break, a Priority 2 job must be responded to immediately. This regularly occurs for frontline officers. This need to respond is emphasised by the senior management's expectations in relation to "Grades of Service", which are prescribed time limits for police officers to respond to various jobs, according to their priority level.

Superintendent Travers

- 143 Superintendent Travers is presently Divisional Superintendent - Standards, Practices and Evaluation Division. Superintendent Travers has been in the Police Force for nearly 31 years. In her current position, Superintendent Travers is responsible for investigative practices, operational standards, the response to the Disability Royal Commission and overseeing the Strategic Operational Development Unit. Superintendent Travers has held a wide range of positions across the Police Force organisation.

- 144 As to the job of policing, Superintendent Travers said in her evidence-in-chief that:

Police officers have a duty to serve the community of Western Australia, our oath of office is a commitment to serve without fear or favour. The expectation of the community is that all police officers will uphold the law, prevent crime, and protect the community. This expectation extends to availability of police to respond every hour of every day of the year, and we do.

- 145 Superintendent Travers, given her length of service in the Force, also commented on the environment in which police officers must perform their duties. She said that the environment has changed, and there has been an increase in violence induced by drugs, weapons are increasingly used and a large increase in family violence has occurred. Superintendent Travers said that this leads to a greater level of anxiety in police officers, having to deal with unpredictable situations very often. Superintendent Travers also said in her evidence that work volumes and the amount of administration has continued to increase, in conjunction with the introduction of technology and various online services, which directly connect police with the community. As was said by others, there also is a higher level of scrutiny and accountability and managerial oversight, as part and parcel of the work of police officers each day. She said that given the burdens of

policing, officers have no real opportunity for breaks away from work unless on scheduled annual leave or long service leave, to recover from the demands of a high stress environment.

- ¹⁴⁶ According to Superintendent Travers, the commitment made by police officers is to serve 24 hours a day. Officers have a high level of responsibility for the safety and wellbeing of the community, which is paramount. Given the need to be always available, whether rostered on or off duty, Superintendent Travers referred to the inherent risks of policing and the physical and mental hazards associated with a police officer's duties, in particular the unpredictable nature of policing work.
- ¹⁴⁷ In terms of working hours, Superintendent Travers' evidence was that police have no issue with the hours required to get the work done to serve the community. She said, however, that as police work must be performed every day of the year without public holidays, compared to other occupations, there is little opportunity to spend time with family as when the job calls, officers must respond. She said that sometimes police officers just need a break, which she referred to in other professions or occupations as being called a "mental health day", which she described as a taboo reference to use in the police force. It was Superintendent Travers' evidence that in her experience, any suggestion or reference to mental health or stress by police officers in the workplace, has been associated with weakness, leading to questions over fitness and "letting down your mates". She said that whether this is right or wrong, officers will generally steer away from raising their hands when the pressure builds or a break is needed, if it is in any way associated with health.
- ¹⁴⁸ In the course of her duties, Superintendent Travers said that she has had occasion to investigate several complaints against police officers. She said that on many occasions the incidents concerned had their beginnings in an event or events which had been unresolved at an earlier time. They also can come from the pent-up frustration by the officer with the behaviour of the individuals that they must deal with day in, day out, and some police officers "just snap". In connection with this, Superintendent Travers also said that in her experience, there are many officers who have retired from the Police Force with very negative feelings towards their former work. She also said that there are too many examples of police officers who, through accumulation of stress, have taken long periods of stress-related sick leave, but without taking time off from the job at an earlier stage, to prevent a deterioration in their health.
- ¹⁴⁹ In terms of the extra leave sought in these proceedings, Superintendent Travers testified that taking sick leave for respite purposes is very much seen as letting your fellow officers down. The taking of leave for mental health reasons was described by Superintendent Travers as a situation that "historically sent alarm

bells...”. It was her view as a senior manager of police officers over several decades, that it may well take a generation of officers, to have sufficient confidence to openly speak about mental health in their workplace. Superintendent Travers has been extensively involved in the respondent’s Mental Health Co-Response Policy and Operating Guidelines, and she speaks extensively to officers about mental health in the workplace. Superintendent Travers also referred to the effort invested by the respondent in communicating and establishing services to support officers with mental health difficulties, about which Ms Roberts gave evidence on behalf of the respondent. However, it was the Superintendent’s evidence that the inherent culture of policing is such that there remains a lack of trust in confidentiality and a resistance to seeking treatment for mental health issues, despite the measures implemented by the respondent. She said that the perceived detriment to a police officer’s career in making mental health disclosures, remained very real in the minds of many officers.

- 150 Whilst Superintendent Travers acknowledged the introduction of the critical incident 72-hour rest period, she described the leave sought in the present application as “time out leave”, as a sports man or woman would do to obtain rest and recovery before they get back on the field. She described the opportunity to take such leave as being when the pressure builds to a point where a police officer needs time out to regroup. Continuing the sporting analogy, Superintendent Travers said that such an ability to take time out and to nominate to the “coach” accordingly, would be different in its application and context to sick leave and would be acceptable in the psychology of policing work.
- 151 Superintendent Travers said the notion of “respite” had an air of negativity about it, requiring the self-disclosure of a potential problem, when you just need to take a break from the job. Superintendent Travers said that in her view, such an opportunity for a short break would promote a healthier workforce, and the ability to take single days of leave would be a good thing. She said that she would take such leave and it would recognise the inherently stressful nature of police work, whilst maintaining the dignity of police officers who simply need a break from policing duties. Such additional leave would also, in Superintendent Travers’ view, leave the existing annual leave entitlement intact, to be taken in the ordinary course. She also said that being taken by mutual agreement is a good thing, in that a police officer and his or her supervisor can discuss the leave request and enable any workload impact to be managed.

Mr Bentley

- 152 Mr Bentley is a retired Sergeant and was in the police force for just over 35 years. Mr Bentley has had a wide range of experience, from general duties, traffic, internal investigations and the last position he held was Traffic Operations Manager and Supervisor, in the Central Metropolitan Traffic Division. From 2016 to 2018 Mr Bentley was a mental health first aid trainer providing mental health first aid training to police and other emergency services staff. From 2013 to 2019 Mr Bentley was the President and was a founding member of the Medically Retired WA Police Officers Association. The Association engages in a range of activities in support of medically retired police officers. Amongst several activities, Mr Bentley said that the Association proposed, and was successful, in obtaining from the respondent and the State Government, the introduction of the WA Police Star Medal, recognising police officers and civilians who, in the line of duty, were either killed or who suffered an injury or illness requiring their forced retirement from the Police Force. Other measures have included the introduction of an honourable discharge process for medically retired police officers and a redress scheme.
- 153 Mr Bentley joined the Police Force as a cadet in 1973. He had to retire in January 2009 because of a serious work-related mental health illness. Mr Bentley referred to the unique nature of policing and the requirement by their oath of office, for police officers to protect life and property, which obligation extends 24 hours a day, seven days a week, 365 days a year, whether officially on duty or not. After his retirement on medical grounds, Mr Bentley became a qualified mental health trainer and peer support officer providing support to WA police officers. He also gave evidence to the WA Parliamentary Community Development and Justice Standing Committee in its 2012 investigation “The Toll of Trauma on Western Australian Emergency Staff and Volunteers”. Mr Bentley said that he has also been involved in research and making submissions to various State and federal Parliamentary inquiries into the mental health and wellbeing of first responders, emergency service employees and volunteers.
- 154 Mr Bentley spoke about the unique aspects of policing. He testified that the nature of work performed by police officers is completely different to others in the State. By their oath, officers are required by law to undertake some of the most challenging, dangerous and unpredictable life-threatening work in the community. As sworn officers they cannot refuse to undertake dangerous duties that may lead to serious injury or death, as a refusal to obey orders constitutes a disciplinary offence. Furthermore, apart from this, police officers by the nature of their work, as evidence gatherers and investigators, are required to commit to memory large amounts of information about the commission of offences and may

be required to give evidence about them, in some cases well after the incidents concerned. This often requires reliving traumatic and horrific incidents that are later raked over in detail. Mr Bentley also referred to the high level of trust between police officers, given the dangerous nature of their work and the inherent distrust of unsworn officers.

- 155 In relation to leave entitlements, Mr Bentley believes that police officers should receive additional leave. The present six weeks' annual leave compares to the general community standard of four weeks' leave and 12 public holidays per year. He said that when he started in the Force, he was told that the additional two weeks' leave per year were compensation for working on a public holiday. Mr Bentley compared the leave entitlements of police officers with those he received as a shift worker working for the City of Perth, where he received six weeks' annual leave plus payment for public holidays. Mr Bentley also noted that with developments in technology, police officers are now contactable 24 hours a day, seven days a week, and there is an expectation that officers should be able to be reached at any time of day or night.
- 156 In terms of the emotional impact of police work, Mr Bentley said that by nature of their training, and the work they perform, police officers are taught throughout their careers to repress their normal emotional and physical responses to traumatic events. He said this is also reinforced by the stoic police culture, where the expression of fear or psychological illness is seen as a weakness. Mr Bentley testified that based on his own personal experience, and in his post-retirement position as the President of the Association, and as a mental health first aid trainer, the longer an officer remains in the police force, the more likely it is that their true emotional state and feelings will be masked, which can lead to permanent psychological damage. He spoke of his own experience which led to his medical retirement with chronic PTSD.
- 157 Mr Bentley said that he witnessed other officers suffering the same fate. In this connection, attachment DSB1 to his witness statement, was a Parliamentary Hansard record referring to 291 police officers medically retired between 2001 and 2012. Of that number, 203 or 70% of them, had suffered from a mental impairment, depression, post-traumatic stress disorder or other psychological impairment. Mr Bentley also referred to his work as President of the Association, in contributing to a study commissioned by the applicant "Project Recompense" which, amongst other things, included firsthand accounts from police officers of their own mental health difficulties arising from policing work, which led to their medical retirement. A copy of the Report was attachment DSB2 to Mr Bentley's witness statement. I have read this report. A part of it is quite distressing.
- 158 As police officers are required to be highly trained and perform at peak physical and mental levels, there is a need in his view for an adequate work life balance.

Given the exacting nature of policing, Mr Bentley considers that having further rest and recreation leave will provide a buffer for those officers needing a break from the rigours of police work. As with other witnesses called by the applicant, Mr Bentley said that he experienced firsthand in his career, and from his own observations, including as President of the Association, the general reluctance of officers to take sick leave. In his own experience, he was reluctant because he was aware to be away on sick leave would place additional burdens and pressures on his officer colleagues. The culture of “pushing through” is very apparent.

- 159 From his own experience, Mr Bentley said that being on duty 24 hours a day, seven days a week, 365 days a year had a major negative impact on his health. Having to retire medically at 53 years of age with clinically diagnosed PTSD was clear evidence of the impact that the job had on him. He said that had he known earlier what he now knows, he would have taken any additional leave available to him, to assist in developing healthy work patterns to successfully complete his working career. Any additional leave, in Mr Bentley’s opinion, should be at the sole request of the individual officer and not by mutual agreement. He said that it is the officer who knows best when they need of a break and this should not be denied.

Mr Arnott

- 160 Mr Arnott is the President of the applicant which is a fulltime position. Mr Arnott is presently on secondment from the respondent. He is a sworn police officer and most recently was the Sergeant and Officer in Charge of the Manjimup and Pemberton Police Stations between 2012 and 2018. Mr Arnott has been a regional police officer for most of his career with the Police Force, which commenced in 1992.
- 161 Over the time that he has been a police officer, Mr Arnott testified he had seen some significant changes. One is what Mr Arnott described as the “scourge of crystal meth”. He said that in his earlier policing days, heroin was the most prevalently used serious drug, which tended to make those affected sleepy and docile. In contrast, he said that methamphetamine causes people to be aggressive and difficult for police officers to handle. This adds to unpredictability when dealing with offenders. Mr Arnott also referred to the different perceptions of police by the community. A decade or two ago he said that members of the community generally were appreciative of a police presence. Now, he said that often when police arrive at an incident, officers are filmed on mobile phones and not made to feel welcome. As an example, Mr Arnott referred to attendance at a crash scene and the different receptions given to paramedics and nurses being more benevolent than that given to police officers.

- 162 Generally, Mr Arnott noted that in the course of their work police officers often encounter people at a low point in their lives having been a victim of crime, a relative of a deceased person or have been involved in some distressing event which requires police involvement. He said some of the more positive interpersonal aspects of policing work, such as the issuance of motor vehicle and firearms licenses and providing stock weigh bills, are no longer performed by the police. This deprives police officers of opportunities for more positive interactions with members of the community.
- 163 As with other serving and former officers, Mr Arnott spoke of the constant state of hyper vigilance that police officers are in, whether in uniform or not. Mr Arnott described his own personal experience of being out and about in the community whether taking his children to the shops or attending his children's school. He always has an awareness of where they are or what they are doing, because it is known in the local community that he is a police officer. In this connection, Mr Arnott gave evidence that he has received death threats from members of his community, which has required him to install security at his home. The threats included members of his family.
- 164 In terms of the uniqueness of the job of a police officer, Mr Arnott said that when shorts are fired while others run away from them, police officers are required to run towards them. They cannot refuse to perform dangerous work.
- 165 Mr Arnott also spoke of his own personal experiences of attending fatal traffic accidents involving not only someone that he knew in the local community, but also an accident involving two young schoolgirls who were deceased. He said that the memory of the accident remains vivid with him some 20 years or so later. Domestic violence is another big issue. Mr Arnott referred to his work as officer in charge at the Harvey Police Station and said over the year and a half to two years at that location, he was regularly dealing with a death of some kind. He testified that this ultimately led to him applying to leave that post because of the constant fatalities that he had to deal with.
- 166 He said that if he did have the chance of taking additional leave for time away, it was probable he would have not had to have left Harvey. Further if additional leave was available which he would take, he said it may have meant not being at work and having to attend some of the fatalities which he did. Mr Arnott also testified that whilst working in Geraldton, he found the work involved very stressful and was required to attend to four murders over the two-year period he was at that location. He also referred to other traumatic events that he has dealt with.
- 167 Another factor Mr Arnott referred to of more recent times in policing, is the level of scrutiny and management that police officers are subject to when both rostered

on and off duty. He also referred to the Deployment Policy (or tenure), which requires a police officer to be at a particular location for a minimum of two years and a maximum of four years. This policy, which Mr Arnott understands to be unique for police officers, means that especially in regional locations, officers need to move their children from one location to another. He also referred to the National Terrorism Threat Advisory System which ranks the present threat of a terrorist act as being probable. Given the role that police officers play in relation to terrorism incidents, Mr Arnott said that this is a further example of the changed environment in which officers work.

- 168 A large increase in domestic violence incidents was referred to by Mr Arnott. He recalled a situation whilst he was in Manjimup, where he had to try and find a 10 year-old girl accommodation, which took him until the early hours of the morning. He then started work at his normal time as Officer in Charge, which could not be claimed as overtime. On that issue, Mr Arnott referred to both himself and other officers he supervised, regularly working overtime to complete jobs arising from incidents occurring shortly before the end of their rostered shifts, which must be properly attended to. Whilst payment for such overtime is made, it is the unpredictability of the work which is the issue. Mr Arnott referred to mental stress related workplace injuries and crime statistics over the period 2010-11 to 2019-20 in exhibit A15, across various types of offending. This material was broken down by police district, total metropolitan and regional WA, and total State figures. As to the mental stress injuries, taken from the respondent's occupational safety and health reports, as actual figures, they show an increasing trend from 27 in 2015-16 to 40 in 2019-20. However, they include all employees of the respondent, and not just sworn officers.
- 169 The crime figures from the reported offence statistics, show, by region and population data, the rates of increase or decrease in offending for various types of offences. For offences against the person, whilst there is some variation by district, with eight showing some increase and nine a decrease, the overall figure for the State is a fall of 2.2%. In terms of breach of violence restraining orders, which generally fall into the family and domestic violence category, there has been, consistent with other evidence, a significant increase in this type of offending, both State-wide and by district. In terms of assaults against police officers, whilst there has been some small increase over the period, the State-wide rates appear to be relatively constant. I also note that the rate per 100 officers over the ten-year period has also been relatively constant. The figure for injuries per assault of a police officer, increased between 2010-11 to 2012-13, but have remained relatively constant since.
- 170 In his role as President of the applicant, Mr Arnott said that he speaks to most resigning officers as to why they are leaving the Police Force. His evidence was

that many tell him that they find it too difficult to cope with the mental stress of being a police officer. On the question of mental illness, it was Mr Arnott's evidence that an officer who has a psychological condition is seen as an "organisational risk"; they have their firearms taken off them; their access to the armory is suspended and they may even be stood down or moved to an alternative work location. It was his experience that many police officers do not feel they can trust the respondent enough to reveal they are struggling mentally, because of the negative consequences for their careers. Mr Arnott also referred to several suicides of police officers that he was aware of and said that at times, police officers simply need an extra break from the job.

- 171 As an indicator of the changing environment in which police officers work, Mr Arnott referred to the recent issuing to police officers of ballistic stab proof vests, body worn cameras and mobile devices. He said that these initiatives demonstrate the inherent dangers of modern policing work. In this connection, Mr Arnott noted, as did others, that under the State's occupational health and safety legislation, a police officer cannot refuse to perform dangerous work, which makes police officers unique in the State. This is dealt with in a specific Guidance Note published by the Commission for Occupational Safety and Health, a copy of which was attachment HA23 to Mr Arnott's witness statement.
- 172 In terms of the additional leave sought in these proceedings, it was Mr Arnott's evidence that if additional leave was available, he would take it and he believed all other officers would too. He referred to the difference between additional leave and "respite leave", with the latter having the connotation of an officer suffering a condition or impairment. Additional leave would give police officers an opportunity to have time away from the rigors of policing work and to "recharge". He said that given the resistance to taking sick leave that he is aware of, in his experience, any leave taken from the existing sick leave entitlement in the Industrial Agreement and being repurposed as respite leave, would not be taken by police officers, for the same reasons.
- 173 Mr Arnott referred to the recent introduction of the Post Critical Incident Rest Period for officers involved in a critical incident, which is a mandatory 72-hour rest period. Whilst welcome, and a recognition by the respondent of the difficult work police do, it is only available if an officer experiences a critical incident as defined under the guidelines. Mr Arnott referred to the ongoing corrosive effect of policing work generally, which may not necessarily involve a critical incident, which is justification for the union's claim for additional leave to be taken at a time of the police officer's choosing.

Respondent's evidence

Commander Panaia

- 174 Commander Panaia has been a sworn police officer since 1986. He is presently the Commander of State Crime Services and was appointed to the rank of Commander in 2013. Commander Panaia gave evidence as to the overall WA Police structure and the various operational and administrative portfolios set out in an organisation chart annexed to his witness statement. There are two overall operational streams headed by Deputy Commissioners. The third corporate stream is led by an Executive Director as an unsworn officer. Within each of the two operational streams, there are five portfolios, each containing several Divisions. Each Division is generally led by a Commander or in some cases, a Superintendent.
- 175 In terms of frontline operations, the Metropolitan Region portfolio is divided into eight policing districts. Each district is headed by a Superintendent and is regarded the “first responder” for those areas. In terms of regional Western Australia, the portfolio is similarly broken down into districts. There is a dedicated “Operation Tide” headed by an Assistant Commissioner, being responsible for the Police Force COVID-19 response. This includes quarantine checking and border security.
- 176 Attached to Commander Panaia’s witness statement was attachment LP2, being the current respondent’s headcount, as at 30 June 2020. This was supplemented by Commander Panaia, with the approved sworn officer headcount per calendar year which, as at October 2020, stood at 6,540. This compared to a sworn officer headcount in 2000 at 4,698. Commander Panaia accepted that the sworn officer headcounts for the 2020 year does not include the additional 150 police officers recruited as a part of the pandemic response or the additional 800 officers to be recruited over the next four years. He said that no decision has been made in relation to the deployment of the additional 150 officers recruited for the COVID-19 response or the additional 800 officers to be recruited over the forward estimates.
- 177 Commander Panaia, for the purposes of these proceedings, compiled various tables and graphs from the respondent’s Computer Aided Dispatch System and the Incident Management System. The CAD is a system which records the attendance of police officers at a particular job and the type of job that it is. This information is put into the system by operators who take calls from the public at the respondent’s call centre. Once the data is in the system, officers are then dispatched to the incident via the CAD system. Alternatively, at a police station, the same data can be input directly when officers are dispatched to an incident.

The IMS is a database compiled from incident reports completed by police officers once they have attended an incident. Officers are required to fill out an IMS report for every incident they attend. I note that the applicant also tendered a document as exhibit A21, which shows a steady increase in “000” calls over the period 2010-11 to 2019-20. However, I do accept that whilst this increase is apparent, not all these calls translate into allocated jobs to officers and some calls are also steamed to other areas, that may not be an emergency, requiring an officer response. Accordingly, I consider that allocated jobs in the CAD system is a better measure of frontline policing activity.

- 178 Commander Panaia prepared several reports in relation to crime rates over a five-year period 2015-20, from the data contained in the CAD and the IMS systems. Firstly, attached as LP3 to his witness statement, is a table and graph indicating the rate of offences against the person per 100,000 persons over this five-year period. Commander Panaia said that the incident rate of 100,000 persons is an international standard for crime rate reporting and comparisons. For the purposes of LP3, “offences against the person” includes offences such as assaults, robberies, and murder. Not included are domestic violence offences, which is a separately reported category. Over the five-year period 2015-16 to 2020-21 the 12-month rate per 100,000 people in 2015-16 was 838.9 and the rate in 2020-21 (based on 12 months to September 2020 and not the full financial year) was 828.2. For the full year 2019-20 the offence rate was 821.6. Commander Panaia said that this five-year period shows an insignificant (statistically) decrease in offending of this kind.
- 179 Attachment LP4 is a graph and table showing rates of offences against property (excluding family violence related incidents) on the same basis over the same period. The graph and table show a steady decline in this kind of offending over the last five-year period, although as Commander Panaia pointed out, the rate of offending dropped very substantially at the time of the declaration of a State of Emergency for the pandemic, impacting on the trend line for the data. In the 2015-16 financial year the offending rate was 6,704.5 per 100,000 people, compared to the offending rate in 2019-20 for a full year, of 5,166.8. The rate of offending for the incomplete 2020-21 year was 4,501.3.
- 180 Commander Panaia referred to attachment LP5, which is a table and graph setting out the number of tasks attended in the metropolitan region, taken from the CAD system. This data excludes regional police officer attendances. According to attachment LP5, over the same five-year period there has been a slight increase in CAD job attendances. In 2015-16, the total tasks attended was 364,290 and for 2019-20, the total tasks attended was 401,076. The total number for the incomplete 2020-21 financial year was 110,170. Commander Panaia said that it is evident from the figures that a substantial increase in the tasks attended was

caused by the COVID-19 State of Emergency Declaration. This is borne out by table four on attachment LP5, which sets out the types of tasks for the last three financial years, with COVID-19 quarantine and isolation checks, and judicial process tasking, featuring significantly.

- 181 Rates of assaults against police officers were set out in graph and table form in attachment LP6. The data set out in this attachment indicate that over the reporting period there has been an insignificant increase in assaults against police officers from about 7.2 to 8.8 per 1,000 officers per year between 2015-16 to 17 September 2020. Commander Panaia accepted in cross-examination that the data in LP6 does not show the level of severity of assaults and the reference to “insignificant” is a statistical measure, albeit there has been some increase. I note that over the five-year period, there has been some variation in the rates of assaults with an increase in 2016-17, a decrease in 2017-18, and an increase again in 2018-19. However, from graph 5, the overall trend line over the reporting period is relatively constant.
- 182 Commander Panaia also gave some evidence in relation to family violence, which has been referred to by other witnesses. Attachment LP7 is a table and graph indicating offence rates which relate to family violence reports over the same five-year reporting period. Commander Panaia referred to legislative change in 2017, which led to a greater willingness by the Police Force to act on breaches of violence restraining orders. The data in the graph and table in attachment LP7, again on Commander Panaia’s evidence, demonstrates a statistically insignificant increase in offending over the reporting period. He accepted however, that the offending rates do not show the level of severity of domestic violence and whether drugs may have been involved. The level of offending per 100,000 people in the 2015-16 financial year was 1,799.7 and the level of offending for the full 2019-20 year was 1,855.3. There was a decline in 2017-18 to 1,689.6 with marginal increases since that year.
- 183 In a similar vein, Commander Panaia referred to information taken from the CAD system showing the number of jobs attended by police officers in the metropolitan region, related to a family violence incident. This information was set out at attachment LP8. This data shows over the reporting period an increase in the total tasks attended related to family violence incidents. Commander Panaia added however, that given the changes to legislation in 2017, which extended the definition of family relationship for reporting purposes, at least some increase in the reported CAD tasks would be linked to this change. Commander Panaia accepted again however, that the data does not show the degree of seriousness of an incident.
- 184 Additionally, also dealt with by Commander Panaia in his evidence, was the respondent’s “Deployment Policy”. A copy of the Policy was attachment LP9 to

Commander Panaia's witness statement. The Policy sets out its key principles one of which is to minimise risk to police officers and to the Police Force. Others include operational requirements of the Force and maintenance of capacity and availability; supporting deployment principles including opportunities for officers to experience different locations and positions; and for professional development and the exchange of new ideas and skills. I note that whilst generally the minimum tenure for deployment is two years and the maximum is four years within a particular district or division, there are numerous exceptions outlined in the Policy. These particularly relate to regional Western Australia locations. Those locations with no maximum tenure are set out at pp 29-30 of Commander Panaia's witness statement. Continuance beyond the minimum tenure of two years is at the discretion of the relevant District Heads and is based on both organisational needs and the police officer's own professional development needs.

Superintendent Haime

- 185 Superintendent Haime has been a sworn police officer for 27 years. Whilst Superintendent Haime is normally the Superintendent of the State Custody Coordination Division, he is presently seconded to Operation Tide in dealing with the COVID-19 response. Superintendent Haime has previously been the Officer in Charge at three police stations in regional Western Australia. Apart from evidence given in relation to his experience with police rostering, hours of work and the impact of the applicant's claim in these areas, Superintendent Haime also gave evidence about some other matters.
- 186 On the question of taking of sick leave and what is said to be the culture against it, Superintendent Haime testified that this was the case historically. He said that sick leave was not viewed in a positive light by police officers. However, Superintendent Haime's evidence was that from his own experience and observations, there has been a change in this culture, and there is no longer the stigma attached that there used to be. Furthermore, Superintendent Haime also noted that police officers may now take up to five individual days of sick leave without the need to provide a medical certificate, which was previously required. It was also his evidence that compared to 10 or 20 years ago, the issue of mental health in the workplace and respite, is now topical, given the nature of policing work. It was his view that the Police Force culture has changed quite significantly over this time. In the past mental health issues were not generally well regarded or supported. However now, these matters are discussed reasonably openly. Officers are encouraged to provide support to colleagues who may be in need.

Consideration

- 187 I accept the evidence of the police officers who have testified in this case, that the work that police officers perform is demanding, stressful and may be corrosive to officer wellbeing. Police officers may be exposed to potential and actual, traumatic events in the course of their work. No one could seriously cavil with these contentions. It is the case that police officers do, as was put by several witnesses, run towards danger to protect members of the community, who generally run from it. However, it is not just police officers being placed in harm's way by defending the community against violent offenders, whether armed or not. Police officers working in a range of areas, such as sexual assault, child abuse, forensics and others, may also be exposed to trauma in the course of their duties, which cumulatively, may have a negative impact on their health and wellbeing.
- 188 I also accept the police officers' evidence as to the hyper vigilance that accompanies being a police officer, especially in remote and regional locations. The expectations on a police officer extend to whether they are in or out of their uniform. However, the respondent submitted that this has always been a characteristic of police work and I accept this to be so. I accept too, that many aspects of policing work are unique and are not in common with other occupations. Police have very wide powers under the Police Act, not possessed by any others. They exercise those powers over members of the community. They also carry various use of force options, including firearms, and may use lethal force if necessary. These are unique characteristics of the work of police officers. Given those factors however, it is only appropriate that members of the Police Force be held to a high standard, in terms of their conduct and performance in the community.
- 189 I also accept the evidence of police officers that the use of technology has increased the level of intrusion of work-related matters into an officer's personal time. With the issuance of the "OneForce" mobile technology, (see exhibit R15 pp 38-39) police officers can access information and respond, out of working hours. The new system also has many positive benefits, in terms of officer safety and effectiveness on the job. I accept that this may mean some officers take work home with them, even though the respondent's policy provides that there is no expectation of this. To an extent, however, this change is consistent with changes that have occurred in many types of employment and occupations, where technology has made it easier for work to intrude into an employee's private time. Police officers are not unique in this respect.
- 190 The issue by the respondent of protective equipment, such as body armour and body worn cameras, (see exhibit R15 pp 36-37) is a new development. The "kit"

is not just body armour, but also contains other features to enhance the effectiveness of policing, as well as providing greater protection to officers from armed offenders. Whilst the issuance of body armour may be some evidence of changes in types of threats to police officers, the evidence is not entirely clear on this. From an occupational safety and health perspective however, such measures for police officers can only be a very positive step to provide increased protection, as a part of the respondent's duty of care.

- 191 Part of the applicant's case is the changing nature of policing work, with an increase in drug-related violence, greater use of weapons and an increase in domestic violence. The applicant submitted that this adds to the stress of the job and the need for greater time away from work. On the other hand, the respondent contended that policing work has always been stressful and demanding. He argued there has been no change in this regard. As to the contention by the applicant of an increase in types of crime and that police work is more dangerous, the respondent submitted that the objective evidence establishes that the rates and types of offending, with one exception, have not materially changed over the last five years. It was accepted that there has been an increase in domestic violence matters but this, at least in part, has resulted from legislative change and an increase in focus by the respondent on these types of offences.
- 192 From both Mr Arnott's and Commander Panaia's evidence, except for domestic violence, which I will come to, there has been no appreciable increase in rates of offending against property or persons over the respective periods they referred to. In the case of property offences, there has been an appreciable decline in the number of offences over this period. In relation to assaults against police officers, the numbers have been generally constant. I accept however, that injury rates as a result of assaults against officers have increased. Whilst total police tasks over the period 2020-21 were higher than previous years, the pandemic response is a major factor contributing to this difference.
- 193 Although there is some variation between policing districts, leaving aside domestic violence matters, I am not able to conclude overall that there has been any significant increase of offending rates in the State over the last five-year period and, in some areas, there has been a decline. In relation to domestic violence incidents however, whilst not translating into higher rates of offending necessarily, it certainly is the case that the rate of attendances by police officers at domestic violence incidents has significantly increased. Police officers attending domestic violence incidents also often contend with unpredictable and potentially volatile situations. I accept that this is a development of more recent years and adds to the stresses of the job.
- 194 In terms of rates of mental stress injuries, referred to by Mr Arnott, this issue was answered by the respondent in exhibit R11. This material, tendered through

Ms Roberts referred to below, in table form, provides a breakdown of work-related mental stress injuries for police officers and workers' compensation claims for all other staff, over the same period, including 2020-21. It shows that given sworn officers make up about 72% of the respondent's workforce, the number of police officer injuries, as a proportion of the total claims and injuries, is about the same. Thus, this information demonstrates that there is no real difference between sworn officers and other staff, as to such claims and injuries.

195 Methamphetamine use in the community is a matter that was the subject of some evidence. Mr Arnott referred to it as an aggravating factor in the day-to-day work of police officers, in terms of handling drug-affected offenders. He suggested that this drug leads to more violent offenders, and thus a greater risk to police. This was contentious, in view of the evidence from Commander Panaia, in referring to exhibit R18, a research report from the Australian Institute of Criminology in 2012, entitled "*Amphetamine users and crime in Western Australia, 1999-2009*". This research measured amphetamine use in the Perth Watchhouse over the research period. After considering the results of the research, the authors stated at p 6 that:

...amphetamine users were no more likely to commit violence offences than amphetamine non-users, even when considering the frequency of amphetamine use. This supports and extends the findings of Smith and Rodwell (2009) who found no association between amphetamine use and violent crime. This provides further evidence against a relationship between amphetamine use and violence.

196 In response, the applicant provided two further research papers from the AIC, they being exhibits A22 and A23. The first, entitled "*Methamphetamine in Perth: Perspectives from DUMA Police Detainees*", December 2015, referred to a steady increase in methamphetamine use amongst Perth police detainees since 2009. As of 2015, 43% of detainees in the Perth Watchhouse tested positive for methamphetamine use. The authors noted on p 1, that frontline police were increasingly required to engage with methamphetamine users. Behavioural and psychological responses associated with methamphetamine use, including aggression, is associated with the risk of harm for police officers and members of the community. Notably, however, figure 1 on p 2 shows that the overall trend line for positive methamphetamine tests between 2001 and 2015 to be broadly consistent, despite a sharp fall in 2009.

197 The second paper by the AIC, "*Drug use monitoring in Australia: Drug use among police detainees, 2019*", a national study, showed a somewhat higher positive test result for methamphetamine of 51% overall, with a rate for Perth detainees of 59%: p 4. This is extremely high. In terms of drug-crime attribution, the study indicated that methamphetamine use was associated mainly with drug offences (39%) and property offences (37%). As to violent offences,

some 23% were attributable to methamphetamine users, being significantly higher than cannabis and other drug users. However, when looking at a breakdown of figures between national and separate State jurisdictions, alcohol was responsible for 21% and 20% of violent offending nationally and in WA, respectively. Methamphetamine was associated with 23% of violent offences nationally, with no specific identified result for methamphetamine and violent offending in Perth.

- 198 What this evidence indicates is that methamphetamine use has been significant in the Perth detainee community since 2000. It continues to be a major problem in the community generally. It is to be accepted that methamphetamine also can lead to an increase in behaviours, such as aggression, that may place police officers at some risk. I accept that this presents a challenge for officers in dealing with methamphetamine affected individuals. However, in terms of violent offending rates, there does not appear to have been an appreciable increase in rates of offending, resulting from methamphetamine use, when compared to alcohol and other illicit drugs.

The impact of leave on mental health and wellbeing

- 199 A key issue in this case is the relationship between mental health and wellbeing of police officers and the availability of additional leave. This is the foundation of the applicant's claim. As already mentioned, no issue was taken with the contention that policing work is stressful and demanding, and that police officers can be exposed to traumatic situations in the line of duty. The work performed can be corrosive to wellbeing. Policing is also now undertaken in a more complex environment than that which existed 20 or 30 years ago.
- 200 Intuitively one can say that more time off will lead to a decrease in stress levels and result in an improvement in mental health and wellbeing. However, given the cases put by the parties and in particular the expert evidence led, as will be outlined below, the research evidence available on this question is not definitive. No clear link is established between more leave and an improvement in mental health and wellbeing. Additionally, neither the Beyond Blue "*Answering the Call*" Report, nor the Beyond Blue "*Heads Up - Good Practice Framework for Mental Health and Wellbeing in First Responder Organisations*" specifically identified additional leave, *as opposed to ensuring existing accrued leave is taken*, as a measure to better manage mental health. However, having said that, most of the research papers in evidence relate to overseas countries; in the main deal with occupations other than policing; are not generally derived from longitudinal studies; many of the conclusions are qualified or subject to various caveats; and none of it deals with the critical issue for present purposes, that

being the impact of additional leave for first responders in an Australian context. In many respects, this case enters previously uncharted waters.

- 201 Three expert witnesses were called by the parties in this connection. As noted, a substantial body of academic research literature was attached to their respective witness statements. Whilst I may not identify each of them, I have read all this material for the purposes of determining this matter. I summarize that evidence as follows.

Applicant's evidence

Dr Samuel

- 202 Dr Samuel is a Fellow of the Royal Australian and New Zealand College of Psychiatrists. Dr Samuel has been treating police officers for the past six years. Dr Samuel treats officers for a range of conditions including PTSD, alcohol use disorder, major depression, eating disorders and suicidal ideation. Dr Samuel treats both current and retired police officers and those current serving officers, range in experience from less than five years of service to more than 30 years of service with the Police Force. These include officers from rural and remote locations in the State as well as throughout the metropolitan area. Dr Samuel said that on occasions, he has had to admit police officers to hospital in crisis situations, and to assist officers in day therapy.
- 203 Dr Samuel has a particular interest in PTSD in military personnel and first responders, which include police officers. He testified that he sees about 100 police officers per year. Some officers pay their own fees and others are paid by the respondent. Dr Samuel is involved in running two programmes at the Hollywood Clinic for first responders. The first is a 10 week Trauma and Recovery Programme for the Australian Defence Force. The second is a first responders' Trauma Recovery and Growth Programme, which is of four weeks' duration. This is the programme that police officers complete. Dr Samuel testified that many officers who come to see him ask whether they will lose their job when coming forward and disclosing a mental health problem. Dr Samuel testified that this demonstrates significant stigma associated with mental health and disclosing it. Dr Samuel referred to the "macho" image of police officers and admitting to a mental health problem being at odds with this image. Dr Samuel's evidence also was that the "completed" (or successful) suicide rate amongst police officers is generally high, given that they have access to firearms.
- 204 Dr Samuel also expressed his opinion in relation to the uniqueness of the duties of a police officer within the community. He spoke of the increasingly difficult and stressful working conditions that officers are subjected to and referred to

academic research in relation to the inherently stressful nature of policing work, which can often lead to both physical and psychological injury. In this respect, Dr Samuel spoke of the regular exposure of police officers to confrontation, violence, and potential harm. He testified that this exposure to potentially traumatic incidents over time “sets the stage” for mental health difficulties including PTSD. Other risk factors for PTSD include prior trauma history, negative life events and routine work and organisational environment stress.

- 205 It was Dr Samuel’s opinion that additional time away from the workplace will reduce exposure to such events, but he did not say that it would improve the longevity of a police officer’s career in the Police Force. Dr Samuel’s opinion was that given the short and long term psychological and psychiatric effects of policing work, extra time away from the job reduced the incidence of cumulative trauma and therefore, reduced the cumulative risk of an officer suffering PTSD.
- 206 Dr Samuel referred to the research debate in relation to those variables most closely associated with PTSD symptoms in first responders, including police officers. He referred to critical incidents as being a significant source of mental health symptoms amongst police officers. Such incidents include a component of life threat, where an officer may be threatened for example with a knife or a gun, to some other form of direct exposure to a critical incident and/or an injury. Whilst Dr Samuel expressed the opinion that individual officers react differently to critical incidents, the evidence is clear that they play an important part in the development of PTSD in police officers and other first responders. Other factors referred to by Dr Samuel included police officers working in a complex work environment, which is a contributor to both daily and ongoing stressors.
- 207 In terms of the general rigours and the adverse mental health consequences of policing work, Dr Samuel referred to policing work being multidimensional. The impacts can be personal, familial, psychological and physical. Dr Samuel said that based on his professional experience in dealing with these cases, this can take a toll on friendships, hobbies, interests, and a general passion for life. Dr Samuel testified that in his clinical experience, he regularly sees police officers after many years of frontline policing. He regards regular time away from work as important to the wellbeing of police officers. This is especially so in the rural and remote regions of the State, and the challenges that this presents.
- 208 Whilst Dr Samuel referred to the increased risk of mental health problems developing in police officers, to date there are no established, reliable estimates of psychological difficulties. He referred to one systemic literature review and meta-analysis undertaken by independent researchers of articles published between January 1980 and October 2019, which each involved at least 100 serving police officers. In total, of over 60 cross-sectional and seven longitudinal studies, covering more than 272,000 police officers over 24 countries, they

showed a significant increased prevalence of depression, PTSD, generalised anxiety disorder, suicidal ideation, alcohol dependence, and hazardous drinking. The studies suggested that the extent of mental health problems with police officers were more than twice previously reported in earlier studies and were often associated with other factors such as social support, occupational stress and maladaptive coping strategies. It was Dr Samuel's opinion that it is the cumulative effect of trauma that leads to developing mental health issues. However, overall, he agreed with Professor Creamer, the respondent's expert, that there is insufficient evidence to draw any clear link between an increase in leave and better mental health, and that the available research is inconclusive. He also agreed with the "fade out effect", with the benefit from leave being relatively short term.

- 209 Dr Samuel said he is aware of the culture and stigma associated with taking sick leave and admitting an illness amongst police officers. However, he stressed the importance of police officers taking sick leave if they are experiencing mental health difficulties, so that physical and psychological symptoms can be addressed. A failure to do so, in Dr Samuel's opinion, can ultimately lead to major health crisis episodes and premature retirement from the Police Force.
- 210 On Dr Samuel's evidence, there is a distinction between sick leave and what he referred to as "rest and recovery" leave. He said that the latter will be taken by police officers as it will not have the stigma associated with sick leave and will not require the production of a medical certificate. It will also be subject to less scrutiny by the respondent. In his opinion, leave for rest and recovery is preventative in nature and an investment in police officers presently, will avoid longer term problems. Dr Samuel referred to the fact that police officers are effectively on duty 24 hours a day, seven days a week, regardless of whether they have their uniform on or not. Such a situation can lead to stressors and have a detrimental mental effect on officers in later years. Dr Samuel summarised his approach to the additional leave sought in this application by referring to the World Health Organisation approach that "prevention is better than cure". His opinion is that additional leave for police officers will help in maintaining and supporting a police officer's mental health and wellbeing.

Mr Brewer

- 211 Mr Brewer is a clinical psychologist with extensive experience in trauma recovery and general psychiatric disorders. He is presently employed by the Hollywood Private Hospital as the Senior Psychologist and Clinical Coordinator of the Trauma Recovery Programmes that are run at the Hollywood Clinic, and which were referred to by Dr Samuel. In addition to his work at the hospital,

Mr Brewer also conducts a private practice. Mr Brewer has had over 20 years of experience working with police officers and other first responders in trauma recovery. Mr Brewer has also been involved in several Government inquiries in relation to the mental health of first responders and related topics.

- 212 In terms of police officers specifically, Mr Brewer testified that he first commenced working with officers in 1999 when treating Vietnam veterans, many of them having joined the WA Police Force after leaving the military. These officers were presenting with PTSD. In addition to this work, since 2006 Mr Brewer has been treating police officers and other first responders for general mental health related conditions, including those in his private practice.
- 213 Mr Brewer spoke from his experience in treating police officers, of their need to contain their emotions at a particular incident scene and then return to their normal roles of a spouse, parent or friend, when they go off duty. Whilst accepting that many police officers do not have adverse mental health difficulties, he testified that in those that do, a point is reached where the stresses of the job spill over. This may occur either early in a career or cause a slow deterioration in health and relationships over time. He said from his work with officers, including those of very long-standing experience, the work-related stress takes a toll on their physical and mental health, and their relationships and social life within the community. Mr Brewer said that this particularly applies to police officers working in remote locations, as there is a greater likelihood that the officer may know a suspect, victim or deceased person, which escalates their mental risk.
- 214 As part of the preventative suite of measures, whilst some of the applicant's witnesses criticised it, Mr Brewer was generally supportive of the respondent's Deployment Policy, as being a means to rotate officers out of high-risk areas and others, such as country locations.
- 215 Furthermore, in his opinion, compared to other first responders such as paramedics and firefighters, who are generally seen as life savers, police officers tell Mr Brewer that they often do not feel valued by the community they serve, because they are enforcing the law and apprehending law breakers. This is a perception that police officers have, as to how they are seen in the community. There is also the hyper vigilance, referred to by other witnesses called by the applicant, which in Mr Brewer's opinion, is a unique expectation placed on police officers, that they will always be ready, willing and able, to act when the situation demands it.
- 216 In terms of the incidence of PTSD, Mr Brewer referred to academic research, annexed to his witness statement, to the effect that rates of PTSD and depression amongst police officers are reported to be over twice that experienced by the

general population. Additionally, those suffering PTSD, are more likely to suffer physical illnesses and chronic disease and this is borne out by the academic research as well. In referring to an academic study, Mr Brewer noted that the work of police officers has been identified as one experiencing the most stressful circumstances, but also accepted when it was put to him, that the same study indicated that job satisfaction for police officers was also quite high. He noted the uniqueness of a police officer's role and responsibilities, in carrying firearms and having to respond to violent situations. He also accepted too, that despite the challenges and rigours of the job, many police officers do not develop adverse mental health problems.

- 217 It was Mr Brewer's opinion that having additional leave would enable police officers to obtain more work life balance and to "switch off" from their work, thereby increasing their resilience and to mitigate against other workplace stressors. In particular, he referred to short breaks, such as a long weekend at Easter for example, as an opportunity for work stress levels to be reduced.
- 218 In terms of the nature of policing work generally, Mr Brewer noted the exposure to confrontation, violence and potential harm as traumatic incidents, which can contribute to mental health complications including PTSD. He also said that other factors, including prior trauma history, negative life events and general work environment stresses can also contribute to the risk of PTSD. The understanding of this mental health condition has become clearer over the last 20 years or so, and there is now a greater appreciation of the impact of the rigours of police work on adverse mental and physical health outcomes. Mr Brewer also noted that knowledge of mental health issues amongst police officers is also a generational issue. Younger officers are more informed, have higher expectations of support and are more aware of their own needs, such as taking leave when it is due.
- 219 In terms of the extra leave sought in these proceedings, it was Mr Brewer's evidence that this will help to deal with the "toxic effect" of the rigours of policing work. He said that an approach based on prevention rather than treatment is far better. He referred to his experience in treating police officers and his knowledge that they are generally reluctant to take sick leave for their mental health, rather, only for physical illnesses. Mr Brewer noted that by the time sick leave is taken, it is often too late and the damage is done. He agreed that whilst it is not only about more leave, taking leave earlier in an officer's career has an enhancing effect later in life. This is because stress and PTSD accumulate. Mr Brewer's opinion was that an extra 40 hours leave per year would significantly improve the mental health of police officers. He accepted however, that there was no clear research as to the increased benefit of taking one week's extra leave, that being seven weeks per year as opposed to six weeks

leave per year. However, Mr Brewer remained of the view that additional leave would be for preventative purposes and recuperative purposes to a lesser degree. It will help in maintaining and supporting police officers' mental health and wellbeing.

Respondent's evidence

Professor Creamer

- 220 Professor Creamer is Professorial Fellow at the Department of Psychiatry at the University of Melbourne. He is also an independent clinical and consulting psychologist. Prior to his current position, between 2001 and 2011, Professor Creamer was the Director at the Australian Centre for Post Traumatic Mental Health and a Professor in the Department of Psychiatry at the University of Melbourne. Professor Creamer, from his curriculum vitae, is an acknowledged national and international expert in the field of post traumatic mental health. A list of Professor Creamer's appointments, publications, including journal articles, books, reports and other publications, are set out in exhibit R5. Professor Creamer's Expert Report was dated 28 October 2020. In addition to his Expert Report, Professor Creamer annexed to his Report research articles in connection with the subject matter of his opinion. It was Professor Creamer's overarching observation that in relation to the broad area of the impact of taking leave on mental health and wellbeing, there is a dearth of good quality research. He said that this makes it difficult for definitive recommendations to be made.
- 221 By way of context, Professor Creamer entirely accepted two bases advanced by the applicant in support of its claim, they being that policing work can be corrosive to officer wellbeing and that police officers hold a unique position within the community, including increasingly difficult and stressful working conditions. It was Professor Creamer's overarching opinion that accordingly, a police force such as the respondent (and police forces generally), as with military and other emergency services operations, have a duty of care to ensure that comprehensive psychological support programmes are provided to officers, to protect as far as possible their wellbeing. From the materials provided to him in his brief, Professor Creamer said that the respondent operates a wide range of such programmes.
- 222 Professor Creamer's Expert Report was responsive to several specific questions posed by the respondent's solicitors in their brief. The first issue on which Professor Creamer's opinion was sought was whether given the Beyond Blue "*Answering the Call*" Report and other research material, police officers have a greater risk of suffering mental health difficulties compared to the general adult

population. Secondly, and if so, the nature of that risk, its quantification and factors which contribute to it. As to these, Professor Creamer opined that it is a reasonable assumption, given the nature of their work, that police officers are at a greater risk of developing mental health problems than the general adult population. This is caused by the greater likelihood that police officers will experience what he called “potentially traumatic events” as a part of their duties.

- 223 Professor Creamer also noted that whilst the focus is often on the development of PTSD by police officers, other mental health conditions including anxiety, depression and various substance abuse disorders are also commonly associated with prolonged and repeated traumatic event exposure. Professor Creamer also referred to three key factors which contribute to whether a person may develop mental health difficulties following exposure to a PTE. The first is pre-trauma, which includes early childhood experiences, genetic vulnerability, prior trauma, and any previous tendencies towards mental health problems. The second is peri-trauma, which is the actual traumatic event and the degree of physical threat or threat to life to both the individual and others. He said that on this factor, there is what he referred to as a “dose response”, meaning the greater level of exposure the greater the risk of the development of mental health problems later.
- 224 The third factor is the post-trauma, which includes social support and other life stressors. Professor Creamer said that generally, police forces provide sound social support through colleagues and team structure. He noted however some pockets of some police forces, where stigma still exists in relation to mental health problems. However, most police forces in Australia, in Professor Creamer’s opinion, do a good job in providing both formal and informal support alternatives and in this respect, police officers’ work environments would be more beneficial than the adult population generally.
- 225 As to the broader issue of mental health problems in police forces generally, Professor Creamer noted that most of the research data is of poor quality and caution is required in interpreting it. He referred to the “*Answering the Call*” Report provided to him in his brief and noted that it was based on a survey methodology and although the total number of respondents was quite high, this represented only some 22% of the first responder workforces involved. Despite the representative nature of the findings, he noted that the Report referred to a high percentage, being 40% of police officers, reporting a diagnosis of a mental health problem at some point; 23% reporting anxiety; 16% with depression and 10% with PTSD. This was consistent with international research literature which also found relatively high rates of mental health difficulties for police officers. From this material, Professor Creamer said it was a reasonable conclusion to reach that although the research has many methodological and interpretative

difficulties, the findings are consistent with a higher rate of mental health difficulties for police officers, than the adult population generally.

- 226 The next issue Professor Creamer addressed was the strategies available to reduce the risk of police officers suffering mental health problems due to their work and their effectiveness. In this respect, Professor Creamer noted that there are a broad range of strategies that may be introduced to minimise the risk of policing work causing mental health problems for police officers. As with his evidence above, Professor Creamer added the caveat that the empirical research demonstrating a reliable impact on mental health of such strategies is wanting. Screening and assessment is a tool to try to determine the risk or presence of the risk of either established or emerging mental health problems. This can include during the recruitment process or during a police officer's career, especially after exposure to a critical incident. However, Professor Creamer said that the reliability of such screening is open to question, given the self-reporting nature of it and the need for honesty and participation in responses, which calls into question the usefulness of such techniques.
- 227 Despite this however, it was Professor Creamer's opinion that use of such approaches, such as "low key" annual psychological screening, should be adopted in high-risk organisations such as police forces. He said that it does provide a means for those who wish to make disclosures to do so, to at least identify those officers who might be most at risk. He said such measures may also go some way to destigmatising mental health in the workplace and encouraging greater mental health literacy.
- 228 Another factor identified by Professor Creamer was the importance of high-quality operational training in managing the risk of developing mental health problems. Ensuring that officers are well trained to meet the challenges of the job, promotes confidence and control when officers may be exposed to high stress situations. Another is resilience training or stress management training generally, which has been the subject of some research, especially in the military and emergency services, globally. Whilst Professor Creamer said that this research evidence did not point to any significant benefit from such training, it was his opinion that these are good initiatives, as some personnel in high-risk occupations may gain a benefit from them, some of the time. If available in sufficient amounts they can be beneficial, in his opinion.
- 229 Physical health is also important. Professor Creamer noted the fundamental link between physical health, especially regular exercise, and psychological wellbeing. Research supports this both for emergency services personnel and the general population. Another factor identified by Professor Creamer is strong leadership and collegiate support, especially after exposure to critical incidents. Available research evidence points to the importance of senior leadership support

of first responders, in protecting officers against post traumatic mental health difficulties.

- 230 Also referred to by Professor Creamer are strategies to minimise exposure to PTEs. Whilst acknowledging that exposure to PTEs is an inherent part of policing, adopting strategies to mitigate the risk is important. This can include accurate record keeping of exposure to incidents to aid appropriate follow-up and wellness checks, and rotation away from frontline duties for respite periods. In this respect, Professor Creamer noted the initiatives undertaken by the respondent, as set out in the evidence of Ms Roberts, referred to below, which he said are to be commended. He also said that there may be difficulties implementing some of these strategies, as by their nature, police officers are strongly committed to their roles, and those who may have specialist skills and expertise may consider that they would be wasted if they were rotated to different positions.
- 231 Professor Creamer referred to the respondent's broad range of psychological support services, as set out in Ms Roberts' evidence. These include the Chaplaincy Service, Peer Support Networks, mental health training and Employee Assistance programme. Professor Creamer said that whilst there is some empirical evidence to support the benefits of such programmes for first responders exposed to PTEs, the positive link is not particularly strong. Despite this, it was Professor Creamer's evidence that he strongly supports the availability of such services, as the more available they are, the more likely it is that officers in need will find them. However, Professor Creamer did not underestimate the difficulty for individual officers to acknowledge that they may be developing difficulties, and to call for help.
- 232 An area specifically identified by Professor Creamer is that of critical incident support. This means an intervention immediately following the occurrence of a PTE. In this respect, Professor Creamer said that more recent research evidence suggests that critical incident debriefing is not effective in guarding against the development of subsequent mental health problems and should not be used. Available research evidence does not support the routine delivery of interventions for all of those who are exposed to trauma. However, it was Professor Creamer's opinion that it is appropriate to offer psychological support to officers who are exposed to a PTE. These could include wellness checks, offers of support services and follow-up. Professor Creamer said that this will not guarantee the prevention of mental health problems but may well identify emerging issues in order that remedial action can be taken. It was his opinion that the respondent's measures presently in place addressing these issues, were appropriate.
- 233 A key component identified by Professor Creamer, in managing mental health for emergency services personnel effectively, was early access to specialist mental

health care. Unlike the preventative measures discussed above, Professor Creamer said that a substantial body of evidence supports early interventions for individuals who develop a diagnosable mental health condition. He referred to the Australian National Health and Medical Research Council guidelines in treating PTSD and acute stress disorder, and recommendations made from them. These include clinical services and recommended trauma focus treatments provided by a specialist. Of importance, Professor Creamer noted the need for a clear and accessible pathway for treatment for those officers starting to display symptoms. Importantly, is the need for a culture of support for officers to acknowledge difficulties, seek help and participate in treatment.

- 234 Overall, it was Professor Creamer's opinion that based upon the materials provided to him in his brief, that the respondent has done a good job in addressing these issues and implementing appropriate initiatives. He added the caveat however, that the available research providing a definite link between such initiatives and improved mental health is not clearly established. Despite this, he said that there is every reason to assume that the implementation of these measures, in addition to more general steps to reduce occupational stress, such as addressing unreasonable work demands, communication, change management and control over an officer's work, should assist.
- 235 The next issue, and a key one for present purposes, was the existence of evidence supporting the contention that extra leave positively reduces the risk of developing mental health conditions.
- 236 As noted at the outset of Professor Creamer's evidence, the available research evidence in relation to the impact of taking paid leave on mental health is lacking. Professor Creamer said that this is perhaps not surprising, as it may be very difficult to construct an empirical research study comparing the effects of seven weeks of annual leave in one group and, say, five weeks in another and then assess the impact over the long term. In any event, it was Professor Creamer's view that the impact on mental health of any such difference is unlikely to be large. Regardless of this, Professor Creamer made some comments on the existing research base, noting that whilst methodologically not strong, conclusions in relation to this subject will largely be a matter of opinion. In the absence of any empirical research dealing with police forces specifically, Professor Creamer referred to the more general research in relation to the impact of annual leave on mental health and wellbeing. Professor Creamer accepted the plausibility of a link between annual leave and mental health. He said that to help break the cycle of work-related stressors, difficulties detaching from a job and impaired psychological wellbeing, time away from work may assist. He agreed that the taking of leave and natural breaks from the job were important for work/life balance.

- 237 However, in terms of the available research material, Professor Creamer said that in terms of establishing such a link, the results are less clear. One matter he noted is that there is a small beneficial effect of annual leave on mental health and wellbeing, based on self-reports during and immediately following the taking of leave. The available research evidence, according to Professor Creamer, suggests that the improvements in wellbeing are relatively short lived and he referred to the “fade out” effect, as discussed in the literature. This refers to the reported positive effect of being away on leave, rapidly dissipating within a relatively short time of the employee returning to work. In one study referred to by Professor Creamer, around two-thirds of the respondents reported the disappearance of any beneficial effect within a few days of returning to work.
- 238 Accordingly, Professor Creamer was of the view that there is little research evidence suggesting that additional leave will reduce the development of work-related mental health difficulties. This is not to say that such results may not be established from properly conducted research, involving occupations such as policing. However, Professor Creamer’s opinion was that it is most likely that any beneficial effect would be demonstrated at low levels of leave taking, for example comparing no leave and say three weeks of leave, rather than comparing longer periods of leave. Whilst accepting that granting an additional period of leave by say, one week, may have an effect by reducing levels of exposure to potentially traumatic events for high-risk occupations such as police, Professor Creamer said that there are more suitable ways of achieving that objective. These include measures such as formal rotation policies away from high-risk roles, additional training, and other measures. Professor Creamer testified that it would be unlikely that one extra week of leave would significantly reduce the number of potentially traumatic events that an officer may be exposed to in any given year.
- 239 In addressing the question of whether a particular amount of leave is more or less effective in risk prevention, Professor Creamer noted that research evidence suggests relatively short breaks, for example four to five days, may have a recuperative effect similar to lengthy periods of leave. Studies suggest that wellbeing improves rapidly at the beginning of a holiday break. However, consistent with the research discussed above, any improvement in health and wellbeing falls to baseline levels fairly quickly after a return to work. An exception to this overall view, was a study of German middle-managers by C Blank and others (exhibit A12). This study, whilst as with many, qualified its conclusions, did indicate some longer-term benefit of a relatively short leave break of four days as a long weekend. Professor Creamer said that this study was some cause for optimism in the research.
- 240 Importantly, Professor Creamer concluded from the research material he reviewed and based upon his expertise, that it would be difficult to argue that

more leave is necessarily better for mental health. However, the consistent finding on the research evidence, that short breaks are probably as effective as long breaks, may have implications for the way in which leave is taken. Professor Creamer suggested that the “saving up” of annual leave to, for example, take an overseas trip, may not be in the best interests of mental health. Rather, Professor Creamer testified that short, but regular breaks from work, may have a better long-term impact on mental health and wellbeing of police officers. He emphasized that in his opinion, it is not so much extra leave, but how existing leave is taken, that is important. Professor Creamer said that he did not think that an additional weeks’ leave would necessarily make that much difference in terms of mental health outcomes. He said that there would be no apparent reason why taking shorter breaks could not be done from accumulated leave, as opposed to additional leave.

- 241 A factor that he agreed with in this regard, however, is the ability of an officer to have some control over when leave was taken, to meet their needs. Whilst he was initially unaware of how the annual leave clause operated in the Industrial Agreement, to the effect that leave had to be rostered in advance, he was now aware of this and the difference between the existing entitlement and that sought by the applicant. Having said that, when it was put to him that under the Industrial Agreement, an officer could programme leave in periods of a week or two in advance, Professor Creamer agreed that from clinical experience and the research, spreading leave out over the year is better for mental health.
- 242 Professor Creamer was also asked whether in his opinion providing additional annual leave would be more or less effective than other strategies to minimise the risk of mental health problems for police officers. In response to this issue, Professor Creamer expressed the opinion that no one initiative can be expected to have any demonstrable effect on improving mental health and wellbeing for police officers. Rather, it is an approach that combines several strategies and techniques which is likely to be more effective. On this basis, Professor Creamer expressed the view that it was highly unlikely that the provision of an extra week of annual leave would significantly improve the mental health and wellbeing of police officers, above and beyond the various initiatives already dealt with in his Expert Report and discussed above.
- 243 Professor Creamer was also asked in his brief to address questions assuming that an officer has developed a mental health problem. It was Professor Creamer’s overarching view that where a police officer has already developed a mental health problem, then the issue should be reframed as an issue relating to sick leave or a return to work under a rehabilitation programme, which is operated by the respondent. The first issue posed was whether Professor Creamer was aware of any research, or from his experience, that may prevent police officers

accessing leave for recuperative purposes. In response, Professor Creamer indicated that a common issue in many countries including Australia, is the failure by employees to take full leave entitlements that are due to them. He referred to several Australian studies suggesting that about 60% of full-time employees do not take their full leave entitlement. Whilst not aware of the situation applying to police officers in the WA Police Force, he said this is an important factor.

- 244 Another issue raised by Professor Creamer in this respect, was the culture of taking leave and the possibility that some officers may be reluctant to take leave, given the additional burden it will place on colleagues. Furthermore, in the case where a police officer has developed a mental health problem, there may be a reluctance to reveal this because of a possible hostile reaction. He also observed that from his experience, emergency services employees are often reluctant to take leave as they rely upon the routine, structure, and general camaraderie of the workplace to sustain their psychological wellbeing. Professor Creamer expressed the view that such an approach is an unhealthy one. It is important that leave allocations be taken when they fall due, and that a failure to do so should prompt appropriate checks and balances within the officer's workplace from, for example, superiors, peer support officers, and ideally, police psychologists.
- 245 When asked whether the grant of additional leave may be taken by a police officer in the same or similar circumstances, Professor Creamer referred to his earlier comments regarding the various influences on an individual's decision to take leave and organisational culture and other both work and non-work related stressors. Even if such additional leave is taken for this purpose, Professor Creamer referred to the established research that any beneficial effect upon mental health and wellbeing is likely to be short lived.
- 246 In a similar vein, when asked whether there is any evidence to suggest that additional leave would be more or less effective to assist a police officer recovering from mental illness, Professor Creamer expressed the view that additional annual leave would not be an appropriate strategy to assist recovery of the minority of police officers who do develop mental problems. He referred to the earlier parts of his Report recommending a suite of initiatives taken in combination, being considerably more effective in the long term, to help a police officer recover from mental illness. In Professor Creamer's opinion, an additional week's annual leave would be unlikely to make any material difference in the recovery of a police officer with a mental health diagnosis, in addition to these other initiatives, as set out above.
- 247 Notwithstanding his responses to the specific questions posed to him in his brief, Professor Creamer expressed the opinion that he is generally supportive of additional leave from a mental health and wellbeing perspective. He said that

leave, even the taking of short breaks, can have a positive impact on mental health and wellbeing. Based on the available research material, Professor Creamer said it would be difficult to conclude however, that an increase in annual leave from six to seven weeks per annum would have any significant preventative benefit for the mental health and wellbeing of police officers. Even less so, would be the benefit for police officers who are already suffering a diagnosable mental health condition, such as PTSD or depression.

248 In an overall sense, Professor Creamer's opinion was that increasing the annual leave entitlements from six to seven weeks would be unlikely to have a demonstrable impact on longer term mental health and wellbeing for WA police officers. It would also not have any positive impact on other related factors such as the taking of sick leave, staff turnover and absenteeism.

Consideration

249 As noted earlier in these reasons, the respondent challenged the evidence of Dr Samuel and Mr Brewer, on the basis that they were partisan and advocates for the applicant's cause. However, I accept that both Dr Samuel and Mr Brewer's evidence is based on their clinical experience of treating police officers for mental health problems over many years. This is evidence that informs the Arbitrator in relation to matters that I am required to consider and evaluate. They were both obviously in favour of more opportunities for time away from work for police officers, as a preventative and a recuperative response to the rigours of police work. But I do not consider that in and of itself, disqualifies their evidence.

250 It is also the case, and no one could seriously dispute the fact, that whilst the incidence of the conditions may not be that much higher, the degree of knowledge about mental health issues such as PTSD and others, amongst first responders, and means of treatment and prevention, is now far greater than it was several decades ago. Research such as the "Beyond Blue" published material in evidence, has highlighted the challenges facing first responders generally, in terms of the exposure to PTEs and how best this can be managed, both from the individual officer's point of view and from the view of the organisation that employs them. It is also the case, as has been referred to in the expert evidence, that whilst this level of knowledge is increasing, the younger generation of police officers may well be more aware of these issues. They may have higher expectations of an appropriate employer response, along with the ability to better manage their own mental health and wellbeing, for example, by taking leave when it is due and seeking help when it is needed.

- 251 From the expert evidence, there was no real dispute that exposure of police officers to PTEs may have a cumulative effect. However, a range of other factors impact on whether a police officer may ultimately suffer mental health problems, including PTSD. This includes pre-trauma experiences, including childhood and a predisposition to mental health problems. In addition, there are organisational and environmental factors, not necessarily unique to policing, and the level of organisational support in the post-traumatic event period. The impact of the work environment is referred to in two articles as attachments MS3 and MS12 to Dr Samuel's witness statement. Both articles refer to the importance of work organisational factors, and not just trauma events, and prior life experience, as contributing to PTSD development. Similar conclusions were drawn in a research article annexed to Dr O'Brien's witness statement, at attachment MO25, to the effect that organization stressors may be more significant than job related stressors for police officers. On balance however, it is the case that the incidence of mental health disorders such as PTSD and others, is considerably higher amongst police officers, than the population generally.
- 252 The difficulty is, and as was raised by the Arbitrator with both counsel in their closing submissions, the answer to the question of what causes mental health problems for police officers is a complex issue. As I have just noted, one important factor is a supportive work environment, with an organisation operating at an optimum level, which comprises "many moving parts". Many of the initiatives in place at the respondent, whilst perhaps not able to be strongly empirically supported by research evidence, were certainly supported by the experts in this case as worthwhile. I regard the respondent's recent introduction of its Post Critical Care Procedures, especially the compulsory 72 hour rest period, as important. I also consider the ability of an officer to access sick leave, outside of the criteria for the 72 hour rest period, as important too. On Ms Roberts' evidence, this is available based on an officer's own assessment of how a particular incident may have affected them.
- 253 A major issue I am confronted with in this case is the absence of a definite research link between more leave and better mental health and wellbeing. It is not just a case of more is better. However, the available research evidence is only one factor I must consider. I must weigh up and evaluate all the evidence, taken collectively. The expert witnesses called by both parties, to a greater or lesser degree, acknowledged the importance of time away from the job for police officers, in combatting the potentially corrosive effects of their work. In addition to this, from the evidence of Professor Creamer in particular, I consider there are two significant learnings that arise from this case. First, I am satisfied on the evidence that *how* leave for rest and recreation is taken is important. The evidence points to more regular, but shorter, breaks as being beneficial for mental

health and wellbeing. This was the clear view of Professor Creamer and Mr Brewer too. Dr Samuel was in general agreement with Professor Creamer's opinion. Second, and as important, is the need for some *control* by a police officer over when leave is taken. That is, leave being taken at a time when an officer considers that they most need a short break.

Comparisons with other police jurisdictions

- 254 An issue raised in this case is the comparative position of police officers in Western Australia, relative to other States and Territories. This was principally dealt with in the evidence of Mr Arnott. The applicant maintained that such a comparison shows police officers' terms and conditions in Western Australia to be inferior to interstate police officers. Attachment HA10 to Mr Arnott's witness statement, was a comparative schedule setting out key terms and conditions of employment in police force jurisdictions across the country. A similar comparison was done by the respondent, as an annexure to its initial outline of submissions. Mr Arnott noted that apart from the Northern Territory, Western Australia was the only jurisdiction still working a 40 hour week. All other jurisdictions have 38 hours per week as their ordinary working hours. I note however, that police in this jurisdiction did work 38 hours per week under the Police Award 1965 from 1 January 1987: *West Australian Police Union of Workers v The Honourable Minister of Police* (1986) 67 WAIG 486. This was implemented by accrued days off being taken in conjunction with annual leave.
- 255 In terms of annual leave, all police jurisdictions, except Victoria, have an entitlement to annual leave of six weeks per annum. In Victoria, the entitlement to annual leave is nine weeks per annum, however, two weeks of this is 10 accrued days off, reflecting the fact that while on a 38 hour week, police officers in Victoria work 40 hours and take the accrued days off with annual leave. Thus, the "standard" annual leave entitlement in that jurisdiction is seven weeks. The 38 hour week that Western Australian police officers enjoyed up until May 1996 was traded off in enterprise bargaining negotiations and 12 accrued days off were "bought back" by the respondent, along with other matters, in return for significant salary increases. At the time this was estimated to deliver a benefit to the respondent, in terms of available working hours, equivalent to about 255 trained police officers being back on the front line: see exhibit R19.
- 256 In New South Wales, police officers have six weeks annual leave but may accrue additional leave days if they work on public holidays and Sundays. In Queensland, the entitlement to annual leave is six weeks. However, annual leave is exclusive of any public holidays for Labour Day, Easter Saturday and the Annual Show Day. In the case of the Australian Federal Police, whilst they are

entitled to six weeks' annual leave per annum, officers with less than five years' service have two "Commissioner's Holidays" in addition to their annual leave. For those officers with more than five years' service, they are entitled to an additional one week's annual leave but are not entitled to the "Commissioner's Holidays".

- 257 Additionally, I note that in the federal jurisdiction, under cl 40 of the *Australian Federal Police Enterprise Agreement 2017-2020*, officers are entitled to four "Mandatory Rest Days" over each year, from the period 1 March to the last day in February the following year. These Mandatory Rest Days are to be taken in accordance with arrangements made between the officer and their supervisor. An obligation is imposed on supervisors to ensure that officers are given reasonable opportunities to utilize these days within each six-month period commencing 1 March and 1 September. Two days are credited at the beginning of each of these periods. These days may be taken consecutively where operational requirements permit, but they will not accrue beyond each six-month period.
- 258 There is some variation between jurisdictions as to payment for public holidays. In the case of Queensland, the Northern Territory, and Tasmania, as in Western Australia (see (1990) 70 WAIG 2187), payment for public holidays is included in an officer's annualised salary. Different arrangements apply in Victoria, New South Wales, South Australia and for the Australian Federal Police.

Consideration

- 259 There are limitations upon the Arbitrator having regard to material contained in agreements reached in other States, as I do not know the basis upon which such arrangements were negotiated. This does not mean, however, that the Arbitrator cannot be generally cognisant of other arrangements in other policing jurisdictions, as a factor to consider. Apart from Victoria, which has always had an additional week's leave, and the opportunity for an additional three days leave in New South Wales, in the main, as to annual leave entitlements at least, Western Australian police officers are not out of step with their peers in the Eastern States.

Comparisons with other occupational groups

- 260 I refer to the evidence of Mr Arnott and the written and oral submissions in relation to this issue. As with comparisons with other police jurisdictions, comparisons with terms and conditions in the public sector generally in Western Australia, especially in nursing, is sought to be relied upon by the applicant.

Consideration

- 261 However, once again, those terms and conditions, in the main, are based upon consent arrangements reached in those other sectors, having regard to the history and circumstances prevailing in those areas. There are limitations in seeking to draw comparisons between arrangements and those to be determined in these proceedings.
- 262 Furthermore, there was no suggestion in these proceedings that there has been any nexus with such occupations in the past. Moreover, I consider that there is something to be said for the respondent's submissions, to the effect that the applicant, in seeking to draw comparisons with public sector terms and conditions, including for nurses, is somewhat at odds with its principal argument that policing work is unique and should be regarded as different to other occupational groups.

Current initiatives to promote mental health and wellbeing

Ms Roberts

- 263 This issue was canvassed in the evidence of Ms Roberts, the respondent's Director Human Resources. As head of the human resources function, Ms Roberts is responsible for three divisions; Employee Relations, Personnel Services and Health, Welfare and Safety. It is the latter division which is most relevant for present purposes. This is broadly responsible for providing programmes and services to promote the health, wellbeing, and welfare of all personnel of the respondent, including police officers. It provides a range of services to support the health and wellbeing of police officers.
- 264 A Psychology Unit provides psychology services to police officers and other police personnel. This includes specialist and often complex psychological assessments and interventions and support in relation to critical incident management. The Unit also provides help to senior management and supervisors regarding the welfare of police officers. The Unit has clinical psychologists who are assigned work to policing areas which are categorised as high risk for exposure to PTEs. Psychologists engage in several activities including scheduled wellness reviews for police officers in these areas; responding to critical incidents and undertaking an assessment of an officer's ability to remain on duty; providing counselling support and guidance for those appearing in major trials and before coronial inquests; and providing information including workshops and

general support in the broad area of wellness, mindfulness, awareness and importantly, destigmatisation.

- 265 Another service provided is the Employee Assistance Program through which police officers and their family members may access confidential psychological services conducted externally to the respondent. An officer can contact the EAP directly, and the respondent is not aware of when this occurs. In addition, Ms Roberts referred to the Psychology Unit also managing what is called the “preferred providers’ network”. This is a network of external clinical psychologists, which can be accessed by officers at the respondent’s expense. Both work and non-work related issues can be the subject of such a referral.
- 266 In terms of regional police officers, in September 2020, Ms Roberts testified that the respondent initiated the Regional WA Visiting Psychologist Pilot Program, to provide over an initial six-month period, scheduled access to a psychologist for regional police officers and their families. The pilot scheme operates in Kununurra, Karratha, Katanning and Albany.
- 267 Other services include the Chaplaincy Service which provides officers with spiritual health and wellbeing services when needed. A Peer Support Programme is also in place, whereby selected WA police officers are given appropriate training to assist other officers. The concept is shared experiences between fellow colleagues and to provide relevant support, information, and referral services. Presently, there are about 250 registered and trained police peer supporters in place. However, Ms Roberts said that about 150 of them are presently active.
- 268 The Injury Coordination and Support Service is another function involving six police officers who contact officers who may be at risk of injury through exposure to critical incidents. Ms Roberts said that the initial contact is by telephone and the purpose is to assess the wellbeing of an officer. A follow up contact is then made. Additionally, sick leave reports for officers are reviewed and for those officers who have been ill for more than 10 days there is contact made with them and the offer of support if that is necessary. The respondent runs a corporate health programme, including fitness and physical health initiatives. It also involves itself in mental health awareness, and Ms Roberts referred to activity undertaken in this programme during Mental Health Week 2020, and the campaigns run under this banner.
- 269 A recent initiative referred to by Ms Roberts is the newly introduced Post Critical Incident Care Procedures put in place in August 2020, mentioned earlier in these reasons. The purpose of these procedures is to provide support for police officers who are involved in traumatic incidents. The definition of a critical incident under the policy is broad, and generally encompasses any work situation which

may cause a strong emotional response. In the case of critical incidents which involve death or serious injury, including the discharge of a firearm resulting in same, a compulsory 72 hour rest period applies whereby a police officer remains on full pay for this period, without the need to attend to normal duties. The purpose of this rest period is to enable a police officer involved in such an incident to process the critical incident and access support services as may be needed, prior to their return to frontline duties.

- 270 Ms Roberts said that this is a different approach to the past, where police officers involved in such an incident were stood aside or stood down, while an assessment was undertaken. Ms Roberts accepted that this 72 hour rest period resulted from lobbying from the applicant, which started about two years ago. Additionally, any police officer involved in an incident which they find distressing, but which falls outside of the 72 hour critical incident rest criteria, is still able to access sick leave entitlements which would be treated as a work related illness or injury.
- 271 In terms of how these programmes and services are made available, Ms Roberts testified that the relevant policies and procedures are on the respondent's intranet. Additionally, literature is available in police stations and is promoted generally through health and safety representative networks, union delegates, organisers, the respondent's corporate newsletter and through the normal senior management chain of command.
- 272 From this evidence, the respondent has a suite of programmes and services available to police officers to assist in promoting and supporting mental health and wellbeing. As noted above, they are supported by Professor Creamer when in his evidence he said that police jurisdictions in Australia generally do a good job in making these services available. Such measures were also referred to in the "*Answering the Call*" Report in Chapter 8. At pp 98-100, the Report deals with those first responders who reported seeking support. Of those seeking access to support programmes of the kind in place at the respondent, there were quite high levels of usefulness reported, as either "quite or extremely useful". Additionally, participation in some of these programmes is identified in the Report as supporting resilience amongst employees: pp 106-107.
- 273 I note also that a key issue identified in the Report was the need for police and other emergency services personnel "to have the time and opportunity to take stock after particularly traumatic or intense events occur": p 118. The recently introduced mandatory 72 hour Critical Incident rest period, would appear to meet this identified need. Taken as a part of a collective suite of measures, including managing time off, they can have a positive effect, despite, unfortunately, there being little empirical evidence to confirm their contribution to mental health in the workplace.

Police operations and the impact of the claim

Respondent's evidence

Superintendent Haime

- 274 Superintendent Haime has considerable expertise in police operations rostering practices. In his evidence he referred to a report he prepared when he was the Assistant District Officer at the Midland District Office, for the Metro Operations Command, entitled "Metropolitan Roster Review". This investigation and report examined police rostering practices and made recommendations in relation to enhancement of same. Being well versed in such matters, Superintendent Haime described various roster types available in policing, and the overall objective being to match demand for policing services with the supply of police officers at any point in time. Superintendent Haime said that in his experience, police officers generally prefer a predictable roster pattern and a four 10 hour shift as opposed to a five, eight hour shift roster pattern, is generally favoured. In terms of roster types, Superintendent Haime said that whilst extended settlement period and flexible rosters had more consistent roster patterns, and are preferred by many officers, they are less flexible in terms of enabling officers to take additional days off.
- 275 Superintendent Haime also gave evidence in relation to the management of annual leave and the impact of the applicant's claim for an additional week's leave. The respondent has leave management policies in place. As a general proposition, annual leave in accordance with the Policy and in compliance with the Industrial Agreement is required to be rostered well in advance, commencing generally in September of a year, for leave to be taken in the following calendar year. To prepare leave rosters, Superintendent Haime said that business areas had approved methodologies to ensure that community service obligations are met, which will vary depending upon the size of the relevant area. He testified that in some areas, only two officers may be on leave at any one given time.
- 276 Given that there are established methodologies, requests for additional days off outside of these methodologies are generally not approved, unless exceptional circumstances exist. Furthermore, whilst police officers may make such requests, operational requirements will be the primary consideration. In terms of rostering leave in advance, Superintendent Haime said that officers are requested to nominate their preferred leave periods in the following calendar year. In the case where too many officers seek to take annual leave over the same periods, Superintendent Haime testified that this leads to a process of negotiation between the relevant supervisors and the officers concerned, to reach a fair outcome.

- 277 As to the impact of the applicant's claim for additional leave, Superintendent Haime said that existing roster arrangements are designed to ensure that business areas can operate with a 70% full time equivalent staffing level for short periods. This builds in a 30% deficiency to take account of annual leave, secondments, court commitments, training and unplanned events including absences for illness or injury.
- 278 Given these parameters, Superintendent Haime said that if police officers had an additional week's leave, this would make rostering difficult to maintain as it would significantly compound the variables which the roster design accounts for. Whilst he accepted that these difficulties would not be insoluble, it would be problematic. Superintendent Haime cited an example at Midland Police Station, which regularly has eight officers on the road covering some 24 suburbs during their shifts. He said that this establishment involves a Sergeant and two officers at the station and six police officers in three vehicles on duty. If one officer was not available because he was on leave, only two vehicles could be on the road as, given existing policy, a single officer cannot be on patrol alone. This necessarily reduces the availability to the community by one third, according to Superintendent Haime. He accepted that issues such as this may be overcome by additional staffing arrangements, such as the recruitment of the further 800 officers. However, there is presently no indication as to where those officers may be deployed.
- 279 In terms of how leave is taken, Superintendent Haime said that in his experience, police officers will generally take blocks of leave of at least five days rather than single day absences. Also, given the popularity of leave being taken over school holidays and the Christmas period, leave conflicts are inevitable. These are resolved individually through negotiation, and not everyone ends up with what they want. A minimum capacity for delivering policing services must always be maintained. Accordingly, it was Superintendent Haime's view that if there was additional leave taken by police officers, this would have a negative impact on public safety.

Mr Boyd

- 280 Evidence as to annual leave and long service leave utilisation was given by Mr Boyd. Mr Boyd is a Workforce Reporting Officer within the Personnel Services Department of the respondent. Mr Boyd regularly compiles reports using human resources and workforce data for internal and external purposes. Mr Boyd said he was asked for the purposes of these proceedings, to prepare several reports from the respondent's Human Resources Management Information System. This system captures data in relation to leave accruals,

overtime taken, and separation information, amongst others. The first report, Attachment RB1, sets out the number of police officers at all ranks, from Commander to Senior Aboriginal Police Liaison Officer, who had in excess of three weeks or 120 hours of accrued annual leave as at 31 December 2019. This data set included 47.6% of Sergeants; 37.3% of Senior Constables; 40.6% of First Class Constables; and 42% of Constable ranks. The same information for the year as at 31 December 2020 set out in Attachment RB2, revealed that 70.8% of Sergeants, 59.8% of Senior Constables, 63.8% of First Class Constables and 68.1% of Constables fell into this category.

281 Mr Boyd produced a further report, which was Attachment RB3, which set out police officers with more than 240 hours of accrued annual leave available to them as at 31 December 2020. In accordance with the respondent's Leave Management Policy and Annual Leave Policy, this is "excess leave", as it is leave outside of the respondent's leave clearance limit. As at 31 December 2020, 23.6% of Sergeants, 16.4% of Senior Constables, 15.3% of First Class Constables and 14% of Constables, fell into this category. The final report in relation to leave prepared by Mr Boyd, was set out at Attachment RB 4. This contains a table of the number of police officers with more than 260 hours of untaken long service leave as at 30 June 2020. Whilst the respondent's clearance policy for long service leave defines "excess leave" as being more than one entitlement of 522 hours, 56.7% of Sergeants, 43.6% of Senior Constables, 8.6% of First Class Constables and 2% of Constables, had more than 260 hours of accrued long service leave as at the date the report was prepared.

282 Mr Boyd accepted in his evidence, that the reason for the leave accruals was not referred to in the data that he produced. Furthermore, he also accepted that police officers have up to six years to take their long service leave entitlements. Despite these qualifications, Mr Boyd's evidence would suggest that annual leave is not being taken by a significant percentage of police officers, at the rate at which the leave accrues. To some degree, the figures for 2020 may be skewed by the fact that on Superintendent Haime's evidence, less leave was applied for due to the pandemic. It may well also be, as some officers suggested in their evidence, that periods of leave are "saved up" so an officer can travel interstate or overseas on a longer holiday. Whilst that is readily understandable and may be so, it does not alter the fact of the relatively high percentage of officers with substantial accrued annual leave, set out in Attachments RB2 and RB3, to Mr Boyd's witness statement. In addition, put to Mr Boyd were figures compiled by the respondent in relation to police officers taking time off in lieu when working overtime. This material, in exhibit A20, shows that over the period 2015-16 to 2019-2020 there has been a steady increase in TOIL taken from 6.7 hours per FTE to 10.2 hours per FTE over this period.

283 In terms of officers medically retired, Attachment RB5 to Mr Boyd's witness statement indicated that after 2014, the number of police officers leaving the Force for this reason has fallen significantly. Attachment RB5 compares generally to the evidence through Mr Bentley at Attachment DBS1, which, with some variations, shows the numbers up to 2011-12 are broadly aligned. However, when it was put to him that over the last four years there have been two tranches of redundancies of police officers, Mr Boyd was not able to rule out the possibility that those accepting redundancies may have had otherwise medically retired.

Mr Caneloro

284 As I have mentioned above, the cost impact of the applicant's claim is contentious. For the respondent, evidence was led from Mr Caneloro, the respondent's Assistant Director Financial Planning and Evaluation. Mr Caneloro has extensive experience in the public sector, working in financial and management accounting positions. Mr Caneloro referred to the costing model used for the final offer to replace the existing Industrial Agreement which was prepared by PricewaterhouseCoopers consulting in February 2019. The costing model is based upon a measure of operational hours, being the number of actual hours police officers are engaged in police operations, this includes normal working hours, but excludes leave taken including annual leave, long service leave and personal leave, but includes overtime.

285 By increasing annual leave by one week per police officer, this will result in a reduction of operational hours across the State. Mr Caneloro said the estimate, based on an authorized strength of 6,374 full time equivalent officers, for five days per officer, leads to around 6,374 weeks or 31,870 policing days. On the assumptions of employment of officers over 52.166 weeks per year, less unavailability for 10 weeks per year on average, being 6 weeks annual leave, 1.3 weeks long service leave, 2 weeks personal leave and training of .7 weeks, leads to the need to recruit a further 151 police officers, to make up the reduction in operational hours.

286 Mr Caneloro said that based upon this estimate, the costing model then calculated the salary and oncosts and associated operational costs such as housing and other costs. The total estimated cost being \$127.7 million over the four-year period 2019-20 to 2023-24. The Industrial Agreement costings, setting out the costs of five additional days leave was at Attachment JC1 to Mr Caneloro's witness statement. The financial costings for a sworn police officer, based on total salaries and salary oncosts, plus total operating costs, were set out in exhibit R4.

287 These estimates were prepared prior to the recruitment of an additional 150 police officers to respond to the pandemic. They also did not consider the effect of the recruitment of an extra 800 police officers recently announced, over the next four years. Mr Candeloro also accepted that if, as outlined in Dr O'Brien's evidence, which will be referred to below, there is some "substitution effect", that being a reduction in sick leave taken due to a healthier workforce, this may have an impact on his loss of operational hours figures.

Applicant's evidence

Dr O'Brien

288 Dr O'Brien as a part of his Expert Report also analysed the cost of the additional leave as set out in Mr Candeloro's evidence. Whilst not caviling with the methodology adopted by Mr Candeloro, Dr O'Brien referred to the various assumptions underpinning Mr Candeloro's and the PricewaterhouseCoopers approach to the modelling of the cost of additional leave. It was Dr O'Brien's overarching opinion that the cost estimate provided by the respondent represented a significant overestimate. In his opinion, based on alternative assumptions, it is plausible to say that the costs of the introduction of a further five days of leave for police officers, is not only significantly lower than the respondent's estimate, but also is compatible with the respondent's existing budget parameters and the State Government's financial targets and Wages Policy.

289 The first point made by Dr O'Brien was that Mr Candeloro's assumption of the impact of five days' leave resulting in a loss of \$6,374 weeks of operational time, did not consider any substitution effects, in that additional leave may lead to a reduction in other forms of absenteeism such as sick leave etc. In referring to academic research, Dr O'Brien stated that the combined beneficial effect of a reduction in stress and traumatic events, by more time away from the job, could reduce the cumulative effect of workplace stress and hence, a reduction in absences caused thereby. Thus, according to this assumption, the first step in Mr Candeloro's estimate is open to question.

290 As to the second step, involving a conversion in the loss of operational time into the number of new recruits to fill the gap, again this involves assumptions as to the availability of policing time in terms of annual leave, long service leave, sick leave and training. Dr O'Brien took no issue with the assumption of six weeks' annual leave, which is prescribed in the Industrial Agreement. He said however that the assumption of 1.3 weeks' long service leave per annum is more difficult, given that under the Industrial Agreement, the first entitlement to long service leave cannot be taken until 10 years' continuous service has been provided.

Officers not serving at least 10 continuous years will not qualify for the first entitlement. Furthermore, the second and subsequent entitlement to long service leave accrue after seven years of service and not 10. Thus, Dr O'Brien suggested that it would be difficult to confirm the assumption of 1.3 weeks of long service leave, which may in fact be an overestimate as well as an underestimate.

- 291 As to the training estimate of 0.7 weeks per year, Dr O'Brien suggested that as this is not prescribed in the Industrial Agreement, he considers that this is more likely an assumption of convenience for the purposes of calculation, to arrive at a total period of non-operational policing of 10 weeks per year. As Dr O'Brien did not have access to the data underpinning the assumptions made by Mr Candeloro, he was unable to provide any alternative assumption to 42.166 weeks per year of operational policing.
- 292 However, Dr O'Brien did say that the connection between that calculation and the conclusion of an additional 151 police officers being required to backfill for absences, was disputed. This was because, as he endeavoured to set out in his written opinion, the loss of 6,374 days of operational policing was contested as an overestimate. Logically therefore, the number of replacements required would be less than 151 additional police officers. This would be affected by the "substitution effect" posited by Dr O'Brien in his opinion. Furthermore, Dr O'Brien was of the view that the need for an additional 151 police officers to make up lost operational hours can also be challenged, given the recruitment of the 150 officers for the pandemic response, and the projected 800 new officers over the forward estimates, recently announced.
- 293 Dr O'Brien said that this will provide the respondent at the conclusion of the recruitment, with 15% more police officers fully funded on an ongoing basis. With the diminution of pandemic related work overtime, there should be sufficient new police officer resources to make up for any shortfall from additional leave. Dr O'Brien said it was a reasonable assumption to make that with the decline in the pandemic related response duties of the 150 officers recruited for that purpose, they would be redeployed to frontline operational duties and hence, be available to cover any loss in operational time associated with additional leave.
- 294 Finally, Dr O'Brien took issue with the cost estimate of \$127.7 million for the recruitment of an additional 151 police officers. He said that there are discrepancies between this figure and those available from other public resources, including the respondent's annual report and attachment AJ5 to Mr Jones' witness statement. Given the figures in attachment JC1, read with exhibit R4, on average per new recruit, total costs of \$169,139 per annum would be incurred. However, when compared to the salaries prescribed in the Industrial Agreement for a new recruit, a Constable first year and Constable fifth year, then the

projected employment on costs would exceed the salary costs based on Mr Candeloro's estimate. Furthermore, when compared to the respondent's annual report and the reference to the cost of recruiting 150 police officers for the pandemic response at \$73.4 million over four years and compared to attachment AJ5 setting out a cost of \$73.37 million for these recruits over the forward estimates, an average per annum cost equates to \$122,283. Dr O'Brien said it is therefore difficult to confirm or otherwise, the accuracy of the estimates provided by Mr Candeloro.

Consideration

- 295 As to the evidence concerning the taking of sick leave and annual leave, I accept that especially in the past, there may have been stigma associated with taking sick leave, and a prevailing culture of not wanting to let down other officers. However, this must be balanced against other evidence before the Arbitrator as to the amounts of sick leave taken by police officers. Attachment RB8 to Mr Boyd's witness statement indicates that for the period 2010-11 to 2019-20, police officers took over 80 hours of sick leave each year, and at a somewhat higher level than for police staff generally. The amount of sick leave taken by police officers is about the amount available as the community standard of two weeks per annum. It is accepted that this evidence did not draw any distinction between sick leave for work or non-work-related purposes.
- 296 In addition, as to the taking of sick leave as single day absences by police officers permitted by the Industrial Agreement, exhibit R21 was a document prepared by the respondent at the Arbitrator's request. It comprises two tables in relation to the number of police officers who have taken one, two, three, four or five or no single day sick leave absences without a medical certificate, over the period 2003 to 2019. On the face of it, exhibit R21 shows that police officers do access the Industrial Agreement entitlement to this benefit. Based on the total number of officers, the average number of days of sick leave taken without a medical certificate has increased from 0.8 days in 2003 to 1.9 days in 2019. Notably too, as a percentage of the FTEs of police officers, in 2019, 22% of officers took three to four days of sick leave without a medical certificate and 58% of officers took one to two days' sick leave without a medical certificate.
- 297 The applicant submitted in supplementary written submissions that this exhibit may not be reliable, because of the last line in the second table referring to "days" of sick leave per total FTE, when compared to Attachment RB8 to Mr Boyd's witness statement. The respondent contended however that this is a typographical error, and the reference should be read as "hours". The applicant also submitted that exhibit R21 should be treated with some caution, because the

information contained in it does not indicate whether the sick leave taken was for carers leave or personal leave; whether it may have been “de facto critical incident leave”, of the kind recently introduced by the respondent; and the exhibit does not demonstrate on how many occasions such short single day absences may have occurred in any one year.

- 298 On the other hand, the respondent submitted that taking the 2019 year for example, exhibit R21 shows that only about 17% of police officers did not take any short sick leave without a medical certificate. The respondent submitted that this evidence demonstrates that this entitlement is in fact used by police officers, contrary to some of the oral testimony. As to the applicant’s submission that there is a lack of clarity in exhibit R21, the respondent contended that the submission as to critical incident leave was unfounded, as the sick leave entitlement is only available to a police officer who is “incapacitated”. Thus, if an officer was involved in a critical incident and was incapacitated, they would be entitled to sick leave, regardless of the entitlement to critical incident absence. Further, the entitlement to carers leave for police officers is a separate entitlement under cl 35(4) of the Industrial Agreement, requiring evidence to be produced to access it. Thus, the respondent suggested that there was no reason not to take the material in exhibit R21 at face value and treat it with any caution.
- 299 As to the evidence regarding sick leave generally, whilst I understand the views expressed by police officers in their evidence of a culture of resistance to sick leave, this culture may be slowly changing. Given the evidence, police officers do appear to be taking sick leave, including short periods without a medical certificate, as provided for in the Industrial Agreement. Furthermore, sick leave is an entitlement available to police officers and in this State, given the absence of a workers’ compensation scheme to date, although a commitment has been made by the Government to a scheme, it is a substantial entitlement. If a police officer is ill, such that they are incapacitated, then they should take sick leave to which they are entitled. A police officer does neither themselves nor the community a service by remaining at work when they should not be. The respondent should ensure, through the chain of command, that this occurs. To do so is consistent with the respondent’s duty of care towards police officers. This was also the strong evidence of Dr Samuel. He testified that if a police officer is unwell, and has mental health problems, they should be on sick leave and get appropriate treatment. Dr Samuel said that annual leave should not be used in such a situation and mental health should not be “swept under the carpet”. I agree.
- 300 As I have already noted in considering Mr Boyd’s evidence above, a significant percentage of police officers have substantial accrued annual leave balances. I have already referred to the qualifications to Mr Boyd’s evidence, which he

himself accepted. As I have said, it is readily understandable why this may be so, given that many police officers prefer to take larger blocks of leave for the purpose, for example, of travelling overseas or interstate on an extended holiday. However, given the existence of quite substantial accruals of annual leave, this leads into consideration of the next point.

- 301 Again, at my request, the respondent produced, as exhibit R20, data as to access by police officers of annual leave as a single day, two consecutive days or part of a day, over the period 2015 to 2020. Based on the FTEs over those years, the material suggested that about 80% of police officers accessed single day, two consecutive day or part of the day's annual leave at least once per annum. The information provided also indicated the time taken for such leave requests to be approved. On average, over the five-year period this was 17.57 days. Additionally, however, the data also showed that from the applications for leave, 28% of the time the annual leave was approved the day before, on the day of leave, or the day after leave was taken.
- 302 The applicant submitted that limited weight should be given to this material as, similar to exhibit R21, no information is available as to how many occasions police officers accessed such leave. Additionally, the submission was made that the reason for the taking of such leave is also not disclosed as to whether, for example, it was genuinely for recreation or rest purposes or alternatively because the police officer did not wish to take sick leave, or it was "de facto critical incident leave". Regardless of this, the applicant submitted that in any event, this evidence does show, consistent with its case, a demand for at least short term leave by police officers.
- 303 On the other hand, the respondent submitted that exhibit R20 supports its contention that contrary to some of the oral evidence on behalf of the applicant, annual leave is available and is taken by police officers at very short notice, and this is not out of the ordinary. The respondent submitted that the evidence shows that these requests can be accommodated when consistent with operational requirements. Also, exhibit R20 shows that over 80% of police officers are availing themselves of an ability to take short periods of annual leave. The respondent submitted that if there is a demand, then there is no suggestion, from this material, that it is not being met.
- 304 As to the criticisms of the applicant, the respondent contended that they have no substance. On this basis, it was submitted that exhibit R20 establishes that there is no need to make the order sought by the applicant, as the existing agreed terms in the proposed Industrial Agreement are adequate.
- 305 As to the question of no reasons being disclosed for the taking of annual leave in this evidence, the respondent submitted that this is irrelevant. It is irrelevant

because annual leave is an entitlement to which a condition of access is not express. That is, a police officer may take annual leave for any reason that they wish. Furthermore, the criticism of non-disclosure of the reason, and whether it may be disguised sick leave or critical incident leave, is irrelevant because that is not the basis for the applicant's claim for additional leave. In any event, even if this was the basis for the applicant's claim, the respondent submitted that the existence of the recent introduction of critical incident leave and the ability to take single day sick leave absences without a medical certificate, undermines the applicant's criticism.

- 306 For present purposes this evidence, and the issues identified from it, must be assessed given the parties' rights and entitlements under cl 29 of the Industrial Agreement which, for reasons I have set out earlier, I am unable to alter by an order arising from these proceedings. First, there is no entitlement to annual leave being taken in more than one period, which periods may be single days or part thereof. It must be with the consent of the employer in cl 29(1)(b). This will undoubtedly, consistent with the evidence of Superintendent Haime, be subject to the operational requirements of the respondent. Second, the entitlement to six weeks' leave is to be rostered well in advance, as provided in cl 29(3)(a). It is readily understood why this must be so, in order that the respondent can ensure that his operational needs to provide community safety are met.
- 307 Third, annual leave may not be accumulated without the permission of the respondent, as in cl 29(4). I should observe that accumulation of annual leave is not consistent with the evidence of Professor Creamer. He plainly was of the view that annual leave should be taken as it falls due, and not be accumulated or "saved up" for later. He acknowledged, however, that this may not be popular with police officers who enjoy good health and may wish to go on a long trip, for example. In this regard, I note, as discussed above, the substantial number of police officers who have accumulated annual leave, in a significant percentage of cases, very substantially so. This situation is no doubt not unique to police officers in this State, as pointed out by Professor Creamer, when he mentioned Australian studies concluding that about 60% of full-time employees do not take their full annual leave entitlement.
- 308 I also note cl 29(5) that enables the respondent to grant an officer extra leave (which is not annual leave), on either a paid or unpaid basis. It does not appear, however, that this is availed of often, given the need for "special circumstances" to exist, in the opinion of the respondent. Additionally, there is cl 29(13), enabling the cashing out of annual leave. Given the case as put by the applicant, as to the need for taking leave for mental health and wellbeing, and given the expert evidence in this case, except in the case of financial need, the existence of this provision now seems questionable. I say more about it below.

- 309 Thus, there are restrictions in relation to taking annual leave in the existing Industrial Agreement. There is no capacity in cl 29 for the short breaks identified on the expert evidence, that are conducive to improved mental health and wellbeing, as an *entitlement* for a police officer. Such an entitlement would be entirely consistent with the expert evidence in this case. However, how that is to be achieved is another matter.
- 310 I have referred to the respondent's policies for annual leave and its management, which was set out in the evidence of Superintendent Haime. At p 93 of his witness statement is reference to annual leave or long service leave requests at short notice, being "subject to approval by the employer, taking into consideration operational requirements and conditions of the applicable industrial award and/or agreement". I also note Superintendent Haime's evidence that police officers may make a request for individual leave days, but the request may not be granted. The Superintendent said that where a particular day off using leave is requested, that is outside of the normal approval methodology, then such requests are not normally approved, unless exceptional circumstances exist.
- 311 As to the cost of the applicant's claim, the parties have adopted diametrically opposed positions on this issue. On the one hand, the applicant contends that the claim made by it is effectively cost neutral, because of the existing 150 officers recruited as part of the pandemic response, supplemented by the additional 800 officers, to be recruited over the next four years. On the other, adopting the methodology set out above, the respondent maintained that the total cost of the implementation of the applicant's claim is in the order of \$127.7 million over four years. It is difficult for me to reconcile these two competing contentions.
- 312 It is not suggested that the methodology adopted by Mr Candeloro in his evidence is unsound. It is accepted that his approach is based upon assumptions, giving rise to an estimated notional cost to the respondent, of an additional five days' leave for police officers. Also, the costings were done prior to the recruitment of the additional 150 police officers for the pandemic response and do not include the impact of the recruitment of an additional 800 police officers over the next four years. I accept however, that there may be some level of overestimate in these figures, when compared to the published costings for the recruitment of the additional 150 police officers for the pandemic response, as pointed out by Dr O'Brien in his evidence.
- 313 There will always be conjecture over such matters, given the assumptions that are made and the different approaches that may be adopted. As to the impact of the recruitment of the 150 police officers for the pandemic, it is difficult to assess to what extent this would impact on the claim, because no decisions have yet been made as to the deployment of these officers once the full effect of the pandemic has subsided. Similarly, so too for the recruitment of an additional 800 police

officers over the next four years. These deployment decisions will be made by the respondent, having regard to his assessment of operational needs and other requirements he may need to consider. I note that the public announcement of the additional 800 officers, refers to the current and projected demand for frontline policing over the next four years. Combined with the evidence from the applicant of a need for 1,000 new police officers over this period to meet demand, I have some reservations as to the “buffer stock” contentions put by the applicant, as it is incapable of being established with any certainty at this stage.

- 314 Whilst appreciating the logic of the argument that an additional 950 police officers over the next four years would likely lead to a decline in staff shortfall pressures, I do not think I can put it higher than that. Of note too, are the substitution effects referred to by Dr O’Brien. As with Mr Candeloro’s calculation methodology, this approach carries with assumptions, which may or may not transpire. All in all, I consider that the cost of the applicant’s claim, if granted in full, is likely to be substantial, although probably less than the stated estimate.

Conclusions

- 315 An entitlement to six weeks’ annual leave for police officers, which is over the community standard of annual leave of four weeks, which has not changed since the early 1970s, is in recognition of the fact that police officers work on public holidays and regularly work shift work: *Western Australian Police Union of Workers v The Hon. Minister for Police* (1982) 62 WAIG 1401; *Re Hospital Employees Conditions of Employment (State) Award* [1976] AR 276. I should note however, that it is common ground in this matter that many police officers do not work shift work but are entitled to the same leave as officers who do. Generally, too, in cases where employees work in remote locations, additional annual leave is granted to compensate for factors of isolation and longer travel distances: *Re Broken Hill City Council Employees* case 1963 AILR 240. This applies under the Industrial Agreement. Apart from these, the general principle is that additional leave will only be granted where “real and substantial” grounds exist and it is the most appropriate outcome to compensate for specific disabilities or detriments: *Re Draughtsmen and Tracers (State) Award* [1946] AR 601; *Re Railways Salaried Officers Award* 1970 AILR 575.
- 316 For the reasons I have already referred to, police officers are susceptible to mental health conditions of a variety of forms, due to the nature of their work. As with other first responders, they must deal with potential and actual traumatic events. In addition, whilst attending an incident, police officers must also maintain law and order, whilst exhibiting professionalism and discipline. This

added dimension to policing, along with the other factors discussed on the evidence above, with great respect to the work of other first responders, sets police officers apart from others, and contributes to the uniqueness of their work.

- 317 Whilst the link between an increase in annual leave and improved mental health and wellbeing is not established on the research material as discussed in the evidence in this case, all the experts who gave evidence before me emphasised the importance of police officers accessing regular breaks from duties to prevent a build-up of stress which, over time, can lead to health problems and burnout. I am particularly persuaded by the evidence as to the importance of shorter but regular breaks from work, as being helpful in promoting improved health and wellbeing. Of note in this respect, as I have mentioned already, is the importance of a police officer having some control over the timing of such breaks. After all, it is the individual officer who is best placed to determine whether a short break from work is needed.
- 318 Having regard to the evidence in this case, I am not persuaded that an additional week's leave, in terms of the applicant's claim, should be granted. However, in recognition of the unique nature of policing work, and my findings, especially those relating to the expert testimony concerning the corrosive impact of policing work over time, I am of the view that a different outcome will assist in promoting mental health and wellbeing for police officers, along with the measures already put in place by the respondent.
- 319 Accordingly, I intend to make an order that the Industrial Agreement contain a new clause providing for two Rest Days per annum, on full pay, for each police officer. It is not intended to be a supplement to rostered annual leave. It is intended to be available to a police officer, at their election and at a time nominated by them, in order that they can have a short break from the rigours of policing work, when necessary. A Rest Day could be taken for example, in conjunction with a rostered weekend off duty, as contemplated under cl 12(11) of the Industrial Agreement. This would mean an officer could have the possibility of a three-day long weekend, as referred to in Mr Brewer's evidence, in times when it is most needed. Alternatively, a Rest Day(s) could be taken on its own, where it is needed.
- 320 I consider that this outcome is consistent with the Arbitrator's jurisdiction and powers under s 42G(3) of the Act. It is consistent with the broad nature of leave, being for the purpose of a break from work for rest and recuperation. It recognizes the unique nature of policing work not associated with other occupations and it is expressly, by these reasons, so limited and will not be, and could not be seen to be, relevant or adaptable to other occupations or industries.

- 321 Whilst I am cognisant that this new provision will come at a significant cost to the respondent, it should be far less than that estimated on the evidence in relation to the applicant's claim. Also, as noted above, to an extent, the degree to which I simply cannot quantify at the present time, the recruitment of the additional 800 officers over time, and the redeployment of the 150 recruited for the pandemic response, when this can occur, may hopefully provide additional flexibility, and reduce staffing pressures. In addition, this additional entitlement can be viewed as an investment in the health and wellbeing of the State's police officers.
- 322 There will be conditions attached to this new entitlement. The two days will be available on a calendar basis on 31 March each year. Second, given the evidence as to the importance of taking and not accruing annual leave, the Rest Days will only be available to police officers who have no more than six weeks or 240 hours of accumulated annual leave, as at 31 December 2020, and as at each 31 December thereafter. This will encourage officers to reduce their accumulated leave balances and to take their leave as it falls due, consistent with the evidence of Professor Creamer. The respondent's leave management policy defines "excess leave" as over one accrued benefit, (i.e. six weeks leave), from the previous calendar year. Officers with excess leave are to have a "leave clearance plan", requiring the excess leave to be cleared within the next calendar year. Given this situation, and that such officers are required to have the benefit of significant periods away from policing work to clear their leave, it is only fair and reasonable that they not be entitled to Rest Days until the excess leave is cleared, as required.
- 323 Third, the two Rest Days per annum are to be non-cumulative. Again, consistent with the expert evidence, the time away from the job should be taken, and not accumulated. Fourth, as I have noted above, I do not intend this additional time be simply a part of annual leave, to be taken in the ordinary course. Whilst I do not characterise the benefit as "respite" as such, it is for rest and recuperation. Finally, the Rest Days are not to be paid out on termination of employment. They are not intended to provide a cash benefit in the alternative.
- 324 I am mindful that because of the course of these proceedings, and the bargaining dispute that preceded them, the nominal expiry date provided for in the new industrial agreement is 30 June 2021. No doubt the parties will be shortly renegotiating its terms. In view of this, and the evidence and learnings from this case, I make the following suggestions as to the operation of the proposed industrial agreement:
- (a) As to cl 12(1) Hours of Duty at par (f), in relation to work-life balance and other matters, the parties might consider elevating this objective to par (c) or (d). This would recognise the importance of work-life balance, as demonstrated in these proceedings.

- (b) Clause 30(4) makes it clear that the intention is that annual leave entitlements are not to accumulate unless the respondent provides written permission to do so. In my view, this should be construed as a presumption against accumulation. This is also consistent with the tenor of the expert evidence in this case, particularly from Professor Creamer, who said that annual leave should be taken as it falls due and not accumulate. Mr Brewer also emphasised the importance of police officers taking their leave, especially in the early years of their career. He said that this helps prevent an accumulation of stress from potentially traumatic events, which can ultimately cause problems if not addressed over time. I think this is crucial for first responders such as police officers. Accordingly, the respondent may wish to consider revisiting its annual leave management policy to ensure, as far as practicable, annual leave is taken as it falls due, and to reduce the amount of accrued annual leave police officers may carry over from the prior year.
- (c) As to the taking of annual leave generally, consistent with the expert evidence in this case, can the terms of cl 30 be structured in such a way to provide some greater degree of flexibility as to how leave is taken, giving due regard to the importance of operational requirements? For example, whilst appreciating the difficulties of rostering required levels of officer coverage, the parties may consider the possibility of quarantining a portion of the existing entitlement to enable short, but more frequent breaks from duty, if needed.
- (d) That as to cl 30(12) in relation to cashing out of annual leave, the parties may wish to consider varying it to limit the entitlement to circumstances of financial hardship of a police officer. The existing provision is at odds with the tenor of the applicant's case, that its claim is about time away from work to refresh and recuperate, and not additional money. This is also consistent with the expert evidence led by both parties.
- (e) Further and alternatively, as to cl 36, the parties may wish to reconsider, once again, whether some of the existing sick leave entitlement could be quarantined for respite purposes. Given the learnings from this case, there is no sound basis to view such a measure in a negative light.