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INQUIRY INTO STATE SERVICE AMENDMENT REGULATIONS 2020 (S.R. 2020 No. 2)

Mr ROBBIE MOORE, ASSISTANT SECRETARY, HEALTH AND COMMUNITY SERVICE UNION (HACSU) WAS CALLED VIA WEBEX, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Ms Rattray) - Robbie, I welcome you to this Joint Standing Committee on Subordinate Legislation and advise you that all evidence taken at this hearing is protected by parliamentary privilege and that the comments that you make outside the hearing may not be afforded such privilege. Do you have a copy of the witness information?

Mr MOORE - Yes.

CHAIR - The evidence you present will be recorded on *Hansard* and published on the committee's website when it becomes available. If you would like to give a brief overview or share an opening statement with the committee, it would be very much appreciated.

Mr MOORE - Thank you very much for the opportunity to discuss this today. We have a lot of interest in this matter in that we represent a large number of public sector workers, right across the health sector. Basically, anyone has coverage to be a member of HACSU, apart from doctors, and we represent allied health, nurses, support staff, et cetera, orderlies, cleaners, food services, right across the whole sector.

I wanted to make some opening remarks in relation to this regulation. I will open up by saying first, as I understand it, parliament, either House, does have the ability to extend this regulation. Although a lot of the comments I am going to make are concerns about it, I am in no way wanting that to occur. I will explain my reasons for that because it would jeopardise people who have accessed this.

That being said, this was not what we were asking for. We had several meetings with the State Service Management Office in relation to this as the COVID-19 crisis evolved. Our clear request was that we do need to have a paid entitlement. It was something the community [inaudible] was broadly fighting for all workers, but, clearly, we needed to do something in relation to State Service employees. What we were advocating for was a section 55 agreement, which is the standard agreement between unions and the government in relation to this provision.

We had three meetings with State Service Management, at least two meetings in relation to this. At all of those meetings, I and our union advocated for us to negotiate a section 55 agreement, including that, on 29 March, I sent through a draft agreement. We undertook the work to actually draft a section 55 agreement and, on 30 March, I also sent through a draft employment direction that we think would have accommodated the section 55 to go into greater details of some of the issues that we may discuss today.

The key issue for us was obviously having a paid entitlement. At the time that this was going on, employees who were happy to self-isolate were still being paid but we wanted to entrench that employment in a section 55 and, ultimately, also thought employment directions would accommodate that in an appropriate forum.

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It became obvious to us that the people we were meeting with didn't really have the authority to negotiate that, or even to enter into negotiations with us in relation to it. That all became clear when they basically told us at a meeting, at which we thought we were going to negotiate because I had sent through a draft section 55 agreement, only for them to say, sorry, the regulation is going to happen in a number of weeks and this is how we are doing it. We raised concerns in relation to that. The number one thing being that we are not able to negotiate to work through issues, you don't get everything you want but at the same time that you can work through a number of the key issues that we were raising.

One was that we really needed to see an entitlement that would not see people lose income. This was a critical point that we were making: when you get a situation where an employee has to choose between losing income or, alternatively, going to work with perhaps a sore throat or a symptom, that is a really tough decision especially in that a lot of our members live pay-to-pay. Their decision to not come to work if they were going to lose money could mean that people make a decision that we would not want them to make, especially given the nature of their work in the health sector. That was a key issue. Again, we were not able to work that through and there was no real negotiation because they chose the path of doing a regulation rather than a section 55.

Another key issue was that, at the time, the Government was giving advice to parents that they should be keeping their kids at home if they could, advice which is still standing as far as I can see. The State Service Management Office actually presented to us that wasn't the case, but I still heard the Premier say that again earlier this week. So, if that is the advice, we need to see a provision for employees, ideally in the work [inaudible] to work through. If they can't do that, then having access to an entitlement that means they can keep their children at home, as per the Premier's advice, if they are able to do so.

A number of our members can't. If you are a cleaner at the hospital, you can't work from home, but there are a lot of members who can, as well. In our broad coverage, you have areas that it is important for health reasons that you want to keep some of the workforce at home. Maybe some physios are working at home because there was an outbreak at the North West Regional, they are the people who could actually replace that workforce as well. A lot of the issues were industrial, but they were also about how we would cope if the outbreak reached the point it was predicted to.

We raised all of those issues. We are obviously still concerned that regulation caps it at 20 days. That is inadequate. Self-isolation is at least 10 days. For people who come into the state, et cetera, 20 days, it is clear now, is not adequate if there is a second wave - let's hope there is not. We are really concerned that people have already had this leave, not having an entitlement, and what the risk to the community and their incomes would be.

They are probably all the problems we have with the regulation as it stands, but I will go back to my earlier point. I am not asking for it to be rescinded because it is an entitlement people have used and that would leave them in a very precarious situation. I would like to see options of either amending the regulation or, at least, Government entering into proper negotiations and completing a section 55 as per what I have sent through, and negotiating these things as well. That is where I will leave it at this point, if that is okay.

CHAIR - Thanks very much, Robbie. In regard to that section 55 agreement, the committee sought some information from the Government. We were told, we have it in writing, that the primary reason for establishing the entitlement through regulation rather than by agreement was to enable the extension of other relevant State Service groups, such as officers and people, to be

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covered by the secondment arrangement. Do you have a comment about that? Was that discussed through your negotiations, or your conversations with Government and the State Service department?

Mr MOORE - No, that was never specifically raised with us. My comment on that is that I actually considered that in drafting the section 55 - how you do so. Obviously, the police force has their own act and I believe the version that I sent through covered that issue. But even if it doesn't 100 per cent it would not have been hard to amend it because, ultimately, they still come under the Tasmanian Industrial Commission and it is state legislation that enacts the Tasmanian Industrial Commission. All of those issues would have been able to be worked through to ensure that all public service employees would have been covered. I am happy to provide the draft that I believe covered that.

Ms FORREST - This is a question we will now obviously talk to the Premier about later. The secondment arrangements, I am not sure how the treatment of the North West Private Hospital staff was dealt with. When the decision was made to take over the hospital, the staff were still employed by Health Care, the owner of the hospital, but the state was in control of the hospital. A decision was made that the state would pay those nurses, cleaners and other allied health staff who were impacted by the quarantine when both hospitals were shut down. If those staff are still considered employees of Health Care, then is that a reason why, in your view - they can be members of yours, I understand you have members at the North West Private Hospital - they would not be covered under the State Service Act? This approach was needed to cover a number of those nurses and other allied health professionals who were put into quarantine at the same time.

Mr MOORE - In terms of those employees, they are covered by the agreement, and even when the state took control of the private hospital, they were still covered by the [inaudible] agreements - there is a nurses' agreement and a non-nursing agreement - so their entitlements were still under that act. So, broadly speaking, this would not have impacted on them, as I understand it, even with a section 55. But we had written to Health Care very early on asking them for a paid entitlement in relation to that. This would not have actually resolved that issue, as far as I can see. Quite clearly, we wanted this entitlement; we fought for paid entitlements for people right across the public sector as well. Obviously, aged care, disability services, all of these areas are impacted. This specific regulation just covers the employees directly employed by the Government.

Ms FORREST - Are you saying that this regulation only covers those employed by the Government?

Mr MOORE - Yes.

Ms FORREST - How do the staff employed by the private hospital then work?

Mr MOORE - They have an agreement. For instance, in that agreement, there is not a special leave provision. What this regulation has done is extend the special leave provision that is in all of the awards for public service employees for three-day or five-day entitlements to 20 days. They have separate provisions. I will have to check this though, but a number of employers have agreed to pay the 10 days when people are forced to self-isolate. Certainly, I can say that in that situation at the private hospital they were paid to not attend work, but this provision was not the reason why they were paid that.

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Mr TUCKER - With the 20 days' pandemic leave, how many nurses have taken this and been paid under this special pandemic leave?

Mr MOORE - I don't have the specific numbers. We're not provided with that information. I am aware of a number of people who have that [inaudible], some because they self-isolated when they are returning to this state if they'd been overseas earlier on. So, if leave definitely has been paid to employees who were required to self-isolate but I can't [inaudible].

Ms FORREST - Just on that, John, if I might. Do you know how many of your members have actually taken the pandemic leave, for want of a better name?

Mr MOORE - Not specifically. We give advice but we haven't kept a tally. But, you know, I am aware that a number of our members are going to be home and have accessed it.

Ms FORREST - Have you got a breakdown of your membership, like how many members you have? How many are nurses, and how many are other allied health professionals?

Mr MOORE - Yes, we have that information available to us, but it's not the sort of information that we would release because it's obviously private information. But, having said that, the unions are under more regulation [inaudible]. We have to account for exactly how many members we've got [inaudible].

Ms STANDEN - I have a question in two parts, Robbie. One is looking backwards and one is looking forwards. So, first of all just looking backwards, obviously a number of your members would have not only work obligations but also caring obligations, either for parents or for children. I think you were hinting at perhaps a perverse incentive around members going to work if unwell when the public advice is to keep children at home. Are you aware of instances, particularly regarding the north-west outbreak, I suppose, where there have been difficulties with people accessing the leave? Do you have any anecdotes of that nature?

Mr MOORE - I guess the point I was making in relation to that was that I just didn't ask any employee to have to make a decision about, you know, should I go to work or not on the basis of losing income is [inaudible]. You know, at this point in time it is extremely low.

That being said, anyone that I have spoken to, given the situation, they are health workers, they understand the impact. Everyone that I have spoken to has said, look I'll make a decision which is best for patients and by my fellow colleagues and I won't. But, the reality is they shouldn't be losing money when they are taking a step that is helping our health system, helping our community, helping their colleagues and patients. So, no, I'm not aware of anyone who has gone to work because of that. But, you know, there are a lot of [inaudible] in different areas that people have, you know, made decisions early on, that casual worker who went to work, I think it was the Grand Chancellor, because of their particular circumstances. There will be people with no money who will potentially make bad decisions if they've got no choice. That's the point that we've made throughout this.

Ms STANDEN - In relation to that, you mentioned that you have members such as cleaners and people in food service, people who perhaps are paid at the lower end of the scale, perhaps even some people in school environments. Moving forward, we don't know how long this pandemic will impact. In your view, do these regulations provide sufficient flexibility in terms of the 20 days'

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paid leave? Just a comment about how you see us moving forward, and whether that's problematic for your members?

Mr MOORE - Our view is that this entitlement is insufficient to cope with this situation. You've got a situation where perhaps you came back from interstate and you are forced to self-isolate for 10 days, you will be worried by public health and you -

Ms STANDEN - I think it is 14 days.

Mr MOORE - Yes, exactly, it's 14 days. So, it is inadequate. You could easily have used 15 days through that process, and a number of employees have already accessed at least 10 days of that. So, if you have caring responsibilities when the schools were closed, all of that, you will already have had people in the caring situations who have accessed the leave. As you make the point in your question, if there is a second outbreak, et cetera, people could easily be left without any further entitlement to this. That is of real concern to us, especially for casuals because they have no other leave options. This is it. If you are a casual who has accessed this - and casuals, by their nature, are often on lower salaries, they are not working as many hours - you are going to be left in a precarious situation by not having this entitlement. It should be unlimited because what you are doing is, you are not going to work, potentially if you are unwell but, generally, it is probably not that you are not able to go to work, for the safety of the community, the patients and your colleagues.

Ms STANDEN - Casuals would not have access to personal or carers' leave, is that right?

Mr MOORE - That is correct. They get no accrual of that. They are paid a small loading in lieu of those entitlements. They have no accrual of personal or annual leave.

Ms FORREST - One of the matters that was raised by ANMF was the question of presumption of the need for leave if you do test positive to COVID-19. From HACSU's point of view, what were the discussions about that? It is mainly nurses I have spoken to, who did not get paid at all, some had all their sick leave taken rather than being given pandemic leave, and had to fight for workers' compensation if they contracted it in the workplace, particularly during the outbreak. That was pretty clear, every case was linked to that outbreak in the last however long.

Mr MOORE - We wrote to the Premier outlining this situation, asking for presumptive workers' compensation. As I understand it, the New South Wales parliament is putting that through, I think this week. That is what we were asking for. It made it clear that if you are working in an environment where people have COVID-19 and you get COVID-19, straight away it should be presumptive that you go onto workers' compensation, which would obviously protect your salary. There are stand-down provisions but they are 13 weeks down the track. Hopefully, this would mean that you were paid the appropriate [inaudible]; it is totally appropriate that it is workers' compensation. By making it presumptive it would be a lot less likely that it would be contested. There is so much stress for workers on workers' compensation, that it is going to be contested and you could in fact lose and there is a huge risk liability.

We very much advocated for that and all the reasons that I referred to in my opening remarks. We raised this issue continually with the State Service Management Office. Some advice did come from WorkSafe but it still wasn't what we wanted, which was very much for all workers. This is not just the public sector but right across aged care facility services, all the areas where we could

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be working amongst people with COVID-19. Any workplace [inaudible] is bad enough that it is assumed that you got it at work.

Ms FORREST - I am not sure if you are aware, is New South Wales doing that via legislation or regulation?

Mr MOORE - I believe it is legislation. I got an email but I have not had a chance to read it. I am happy to provide that.

Ms FORREST - It would be interesting to see, if you have anything you could provide to the committee on that. This is about leave, a standalone leave provision, if you like. We will ask the Premier about it later today. Maybe it is a sperate question, as opposed to this additional leave provision. Or was your submission to the Government that it should all be part of the same? What was your view?

Mr MOORE - That is what we advocated for earlier on. We had these meetings with the State Service Management Office and it was something that we raised straight away. Whether it is a regulation or legislation, we didn't get into that detail. Parliament had stopped sitting at the time or certainly later on, but it does come back at different times. What we were asking for is that there was simpler instruction, whether it would be assumed that you have got it at work if you are working amongst people with COVID-19, but we didn't ever get that commitment.

Mr STREET - You made a comment earlier about the Premier's direction that parents should keep children at home as much as possible and that was still the direction that is in place. I just want to clarify; my understanding is that outside of school holidays the schools were still open for workers to send their children if they didn't have any other arrangements in place. Is that right?

Mr MOORE - I am commenting on what I have seen either on the news or some media in terms of the Premier's comments. Certainly, earlier on, and I still get the impression now but this is just an opinion, is that he was saying that if you can keep your kids at home, you can. I get that at the time it was talking about essential workers. People haven't been very clear on that. I think it's been a mixed message that's been confusing. What we were saying is, if you are going to send that message to the community you have to do it to your own workforce, which would mean accommodating people to stay at home with their children where they can. In some of our areas a lot of our members can't, but there are a lot of areas where you can, and that, therefore, it should be accommodated industrially to allow people to be at home with their kids if they can.

Ms STANDEN - There is also the scenario in which workers are potentially caring for kids with vulnerabilities of various kinds, whether that be disability or somehow immunocompromised. How would that be dealt with in terms of these regulations?

Mr MOORE - In terms of these regulations, basically, you can use 20 days. You can use the entitlement in those situations but, again, our concern is what you do after the 20 days. Your question was specifically about children but it is also about people who live with older people, people who might be immunocompromised themselves, et cetera, and in all those cases that demonstrates why the 20-day entitlement is insufficient.

Mr TUCKER - So I can clarify in my mind, you talked about two key issues at the start, the paid entitlement and not losing income, and that the 20 days was inadequate. We've heard previous

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evidence that they supported that we should have uncapped paid pandemic leave and also that penalties should be paid to nursing staff, as per the roster. Is that what you are pushing as well?

Mr MOORE - Yes, but we have said all along that people should be paid as if they were at work. There are a number of key reasons. One is a lot of people with padded pay and very much reliant on their full salary, including their penalties and allowances. The other key issue is that we think it is the best health approach anyway, because you do not want people having to make that decision of whether to come to work when they've got a sore throat or something like that. That has been what we've been asking for all along, from both a health and employees' rights perspective as well.

Mr TUCKER - With the pandemic leave, do you support it being uncapped?

Mr MOORE - Yes, and that is what we're advocating for. It should be uncapped for a number of the reasons that I have talked about today. Whether you are accessing it for carers' leave, for instance, or for people living with people who are immunocompromised and all of those sorts of reasons, we think it should be uncapped.

Ms STANDEN - Currently, my understanding is that it's 20 days but there is discretion at the head-of-agency level for that to be extended. The ANMF argued that that leave provision should be uncapped and it shouldn't sit at that level of discretion. Is there room for a compromise? Who should be making the decision if more leave is required?

Mr MOORE - We are always open to work through these issues. That is why we very much wanted the section as part of the agreement because that would have meant we could have negotiated all those issues. Rightfully they could have raised what would happen if employees can't come back, for, you know, there should be some cap. Obviously, we argued for our members that it shouldn't be capped

I guess we would sit down and go through all the issues, and at some point hopefully you would reach an agreement. I think you could have done that very quickly, a lot quicker; in fact, this regulation took weeks after these discussions to come through. We could have done that - we can ballot our members within 48 hours, and we could have registered a section 55 agreement well before this regulation came into place. We were keen to get to the end point, whatever time we need to implement this. The answer is that we would have been open to negotiation about it. Of course we would have been.

Ms FORREST - It seems to me that there is a bit of a matter of policy difference between the union policy and the Government's policies. We will say 20 days and if extensions are needed, they will be assessed and considered on their merits, I guess. That is a matter we can have a discussion with the Premier about later on.

My understanding was this leave was to provide paid leave for staff who had to take time off, either because they were in quarantine from their close contact, or awaiting the outcome of a test. If they were positive, the idea, as I understood it, was that if it was contracted in the workplace, you would have the argument about workers compensation, but this leave should be used in preference to sick leave. Invariably, nurses have illnesses that make it unsuitable for them to go to work when other workers may be able to continue to work because they don't have such close contact with vulnerable people, for example.

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If sick leave has been used rather than pandemic leave for those who have contracted the virus, what is your view on that? Should the pandemic leave have been used, again noting the limitations of 20 days?

Mr MOORE - Yes; again, that was something we continually raised. One is by saying that if you actually get COVID-19, you have to use sick leave. Obviously, this is why this is a big issue for casual employees because they do not have that basic leave entitlement. It was something we discussed in detail. At the time we were doing all this testing, and it was actually very difficult to get a test. I remember making a point when we were talking to a health prevention officer, that it is best just not to get tested and then you will get paid and you don't have to lose it from your sick leave, so that never made any sense to me. Again, the problem with that was that these are the sorts of issues we can work through in negotiating an agreement, but there was no negotiation. It was just based on someone coming for us and saying, this is it. We are delaying it [inaudible]. It was a frustration for us.

Ms FORREST - We were also informed by the Australian Nursing and Midwifery Federation that a number of their members who worked at the Mersey were furloughed when there were positive patients there and quite a few staff - the first cases were staff. When they closed the Department of Emergency Medicine at the Mersey, some of those staff then went over to help at the North West Regional Hospital, and then, hello, the outbreak occurred there and they were back in quarantine again. Potentially some of those had 28 days leave straight up. I assume they were dealt with under an extension if they had already had 14 days off, then another 14. Are you aware of any of your members who were actually caught up in those two lots of quarantine?

Mr MOORE - Yes, we had members who were caught up in that. My understanding is the employees isolating still at the North West Regional Hospital outbreak did not end up using this entitlement. It was just granted to them anyway. This will come to a head if somebody hasn't had their entitlement. People who isolated early on, in your example, will have to access their leave and, should they have to self-isolate again for whatever reason, we will have to deal with this issue, whether they are granted additional leave by the discretion of the secretary. That's a concern for us.

You know, we'd never support provisions that talk about the secretary having the discretion. It should be across the board, consistent for everyone because of the stress during these situations and having to make decisions - and these decisions never happen quickly. You have to wait quite a long time usually before whoever is in authority makes the decision and it's not a time that you want people to be in that sort of stressful situation.

Ms FORREST - Did you say that when the North West Regional Hospital staff were placed into quarantine en masse, they didn't actually access this leave, they were just paid?

Mr MOORE - That was my understanding, yes.

Ms FORREST - Okay, I will clarify that, because if that's the case, it means that all those people didn't actually use any of the 20 days.

Mr MOORE - It was a decision by the Government to shut down the hospital. I understand the nature of that: they presented that employees would be paid just as if they had attended work. That is absolutely the way it should be because it wasn't their choice.

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Ms STANDEN - At the outset you stated you wouldn't like to see these regulations rescinded. Yet you said there was substantial progress on a draft section 55. So what is the way forward here? What would be your preferred outcome? Is it possible for a section 55 to sit alongside regulations, or is it one or the other?

Mr MOORE - No, there's no reason why it can't be both. The key issue we would have to deal with - and again, this is where you really need to sit down and negotiate - is what has happened for employees who have taken or accessed this special leave up until whenever the agreement comes into place. Under the Tasmanian Industrial Commission, they can retrospectively approve it, so there are potentially things we can do in that.

In my view, I wouldn't rescind the regulation. I think it should stay in place, but it could allow us to do a section 55 which - once those issues are resolved and we've agreed - could be a decision to no longer continue the regulation. Or it could sit outside it. I think all those options are fine.

Ms STANDEN - Is it an option for the regulations to sit in place, unamended, and then subsequently negotiate a section 55? Or would you need to see the regulations amended to proceed that way?

Mr MOORE - I would probably need to get advice - I'm not totally across legislation and regulations. I guess I'd be asking: why can't we just sit down and do a section 55 as long as it doesn't contradict the regulation? In other words, what we're presenting [would be apart] from that the uncapped amount and how we deal with that. Again, I can't see a reason why that wouldn't sit. I suppose I'd probably take that on notice. I'd like to get some other advice on that because I'm probably a little bit out of my depth on that one.

Ms STANDEN - Chair, I would like to place that question on notice. You've clearly said that you'd prefer to see the regulations uncapped, but I'm unclear about whether an option would be for the regulations to stay in place and then be replaced by a section 55. I'm no industrial relations expert either.

CHAIR - My supplementary question, Robbie, is: has that request been put to the State Service Management Office, or the Government?

Mr MOORE Sorry, we sent a section 55 agreement, I think on 29 March, to -

CHAIR - Back on 29 March?

Mr MOORE - Yes. There haven't been ongoing discussions. In fact, we've had ad hoc meetings with the State Service Management Office since, but I guess it was just presented to us, 'This is the regulation; this is what we're doing - see you later.'. We haven't had ongoing discussions in relation to it; it was made clear to us that there's no negotiation. The Government is doing this, and that is that.

CHAIR - Thank you. Any other questions, members?

If not, the committee very much appreciates the time you have taken to present today. We know that it's a very difficult and busy time for you, and your members are, like most Tasmanians

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Mr PETER GUTWEIN, PREMIER OF TASMANIA, WAS CALLED AND EXAMINED.

Ms JENNY GALE, SECRETARY, DEPARTMENT PREMIER AND CABINET WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - I welcome the Premier, and thank you very much for coming along to the Subordinate Legislation inquiry into State Service Amendment Regulations 2020. I see you have Jenny Gale with you, and I will ask her if she would read the statutory declaration. Obviously, there is no requirement for you to do so, Premier.

Premier, in these circumstances we always give an opportunity for an overview. I feel sure you would like to take that opportunity today in regard to this important matter.

Mr GUTWEIN - Chair, thank you very much. I am pleased we were able to have that discussion and the committee was able to invite me along. It is important that, where necessary, we make ourselves available. Jenny Gale, the Secretary of DPAC, will deal with some of the detail I am sure the committee might be interested in.

First of all, we are all experiencing unprecedented and difficult times and have needed to remain agile and able to respond to the challenges our State Service workforce is facing. It has been at the forefront of leading our response in providing essential services to our citizens. In terms of the proceedings today, I understand we will deal with the questions that are in scope today in terms of the amendment.

My Government is committed to ensuring we partner with and support our public sector workforce, its members physical safety and mental wellbeing. To this end the Government has actively ensured the following measures to support the State Service workforce in response to COVID-19. We have encouraged our employees work from home as much as possible to minimise travel and enhance physical distancing measures. We have assisted them by providing the technology and equipment required to facilitate them working from home and we have encouraged flexible working arrangements to accommodate our employees' personal needs to help them balance all their obligations.

Where it has been necessary for employees to attend their workplaces, we have supported employees to practice personal hygiene measures and provided them with personal protective equipment. We have also ensured the employment security for our casual employees during these very difficult times and supported them through a commitment to continued employment and engagement for the period COVID-19 affects their ongoing term of employment and regular hours of work. This includes our casual sessional, seasonal and relief employees even where their usual place of work is closed, for example, the frontline tourism services at TMAG or Port Arthur.

Through an expression of interest process, we have also invited casual employees who have experienced workplace disruption to work in other areas of the State Service to ensure they remain engaged in meaningful work during the state of emergency. At this point, and Jenny might correct me if I am wrong, I note that we have had employees from our libraries who have been assisting us in the call centre. I want to thank them for taking that opportunity in terms of the interoperability.

We created a new form of paid leave on account of COVID-19, to provide additional support above and beyond existing entitlements to employees during the COVID-19 outbreak in the form of paid leave available across specific COVID-19-related circumstances. Further, leave on account

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of COVID-19 is a standalone paid leave entitlement available for up to 20 days pro rata. Heads of agency have discretion to extend this entitlement beyond 20 days should they consider it necessary.

A State Service regulation was identified as the preferred mechanism for establishing this leave; special leave is already provided for by State Service regulation 25 and it was envisaged that this entitlement be an extension of that existing form of leave.

The regulation enabled us to ensure that all relevant parties were covered, including employees, officers and people covered by secondment arrangements, as well as representing an efficient process that would enable the creation of the entitlement in a timely manner. This mechanism also allows us to enable heads of agencies to extend the entitlement beyond 20 days, where this is required to support employees. This discretion is not generally possible under an industrial agreement.

Further, it is noted that no other jurisdiction has created a new COVID-19-related leave entitlement through an industrial or enterprise agreement.

While existing entitlements, such as personal, sick and carers' leave, remain available to employees during this time, together with some extra workplace flexibility, and provide great avenues of support, the Government considered it important to provide additional leave coverage to employees with respect to some of the more unique challenges people are facing throughout this pandemic.

To this end, the leave was essentially designed to cover gaps identified within the existing employment industrial framework with regard to the exceptional circumstances preventing employees from being able to attend work at this time.

Another primary aim in establishing this leave was to ensure that employees did not need to use their existing accrued leave entitlements, such as recreation or long service leave, to cover circumstances arising that were out of their control, such as the requirement to self-isolate or where there was as a COVID-19-related school closure and they were required to remain home with their child.

Our COVID-19 specific leave entitlement aligns closely with and, in some instances, is more generous than most other jurisdictions' entitlements. From a national perspective, it was important to attempt a greater level of consistency with other jurisdictions and to support our State Service workforce at this time.

CHAIR - Thank you very much. Jenny, is there anything that you wanted to add in the overview?

Ms GALE - No, Chair.

Ms FORREST - Thanks, Premier. It was interesting that the comments you made around the point that this additional leave was brought in - and it is welcome; there is no two ways about that. It means that State Service employees do not need to use accrued leave.

I am aware particularly that some of the nursing staff in the north-west and the thousands of people who were put into quarantine in the one hit - some of whom ended up COVID-19 positive and some who didn't - ended up having to utilise their sick leave in that period, and that others did

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not get paid at all for a period. These things when they happen quickly can take a bit of rolling out, but the Premier mentioned that people did not need to use accrued leave. I assume that meant sick leave as well, not just personal and carers' leave?

Can we address that point first, where nurses, particularly - and there may be others - but particularly nurses in this case, have had their sick leave used for this period where they were in quarantine, particularly in some cases where they actually became positive, but it was obviously connected to their workplace. Can we talk about that first: why sick leave was used and not what we will call it 'pandemic leave' for the ease of it?

Mr GUTWEIN - I will hand over to the secretary.

As a starting point, and I think this is right - correct me if I am not correct - that in terms of all the staff we put into quarantine, there was no requirement to use leave as they went into quarantine. I think we continued to pay them. For the staff who went into quarantine, it was not a matter of, 'You're all on special leave at this time', but there may be individual circumstances that the secretary wants to outline.

Ms GALE - Premier, there is a bit of a nuance here which I will explain. First, sick leave is personal leave so personal leave encompasses sick and carers' leave, and others. If people who were State Service workers were put in quarantine or were ill with COVID-19 and were required to take personal leave, I do not believe that would be correct, and so I would be very interested in looking at that and making sure we clarify that with the agency concerned.

There are two differences. If, in the case of the north-west, for example, somebody had COVID-19 and then was a close contact and was made to quarantine, COVID-19 leave would apply, and they would use that COVID-19 leave. If, though, the circumstances when the decision was made to close the hospitals and to suggest that public servants work from home, or that they did not go to work, they were paid as normal and weren't required to take any leave.

If the instance was, and I cannot confirm that or otherwise, I would have to check the agency concerned, but if the situation was that somebody, say, was a close contact and was required to quarantine, they would have been applying for COVID-19 leave.

Ms FORREST - There have been a number of problems with this rolling out and people being paid appropriately. In determining whether someone was entitled to this leave, perhaps if they are a new member of staff who may have only started work in the last two weeks - when we opened all the testing clinics a lot of those people were new staff coming in but some of the staff who were working in Burnie had to be quarantined and we were unable to look back for a record of an average fortnightly earning because it was only projected, except for perhaps a few days, a week or two - how were those staff treated?

Ms GALE - They would have been eligible for leave irrespective of when they joined because the leave applies to all employees. I would have to have the detailed information about the individuals in relation to that. Generally speaking, if they hadn't had a work pattern it would be averaged over, my notes say, the last fortnight. If they hadn't been there for a fortnight then it would just be a matter of -

Ms FORREST - Would it be their rostered shifts that they weren't able to work because they were quarantined?

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Ms GALE - Yes. Generally speaking, we have been applying what the employee would have done if it hadn't been for COVID. So, if they'd been rostered on for, let's say, an average of 16 hours over the past two weeks, it could be any number, then that's what they would have been paid the leave for, pro rata.

Ms FORREST - To clarify, the intention was to cover everyone who was required to quarantine or became unwell and was quarantined during this period. They would automatically receive this leave.

Ms GALE - Yes.

Ms FORREST - Yes, and for those who were positive with COVID, should they be considered workers' compensation cases? We've heard from the union that there was a request, if you like, to give consideration to presumption for workers' compensation. Some have had their sick leave used and it was said that it should be workers' compensation. What I'm hearing you say is it should have been this pandemic leave.

Ms GALE - They would be entitled to pandemic leave. If an employee thought that they should apply for workers' compensation, they should apply and that would be dealt with on a case-by-case basis, as is the case with all workers.

Ms FORREST - Shouldn't they have been paid pandemic leave from the outset?

Ms GALE - Yes, they should have been able to apply for the leave. Yes, they were entitled to the leave.

Mr GUTWEIN - Do you have some examples that you can provide with some details? I would be interested to follow those.

Ms FORREST - I can, yes. I wanted to put the intention on the record. They are particularly nursing staff I'm talking about, from the north-west. It was a very rapid change, so it's not a criticism of the decision made, it is very welcome, but in such rapid change some people fall through the gaps. It's better for them to have clarity about what they are entitled to, to enable them to say that this was not how they were treated.

Ms GALE - That's right. I think that even though it was a rapid change, because we wanted to get it in place as quickly as we could, there was consultation in relation to it. There were also guidelines developed by the State Service Management Office that went out at the time that the leave was applied, so that agencies were aware - should have been aware - of how the leave was to be applied. So, it's really important that we get individual information if that hasn't happened, or it's believed that hasn't happened, so we can take that.

Ms FORREST - Could you provide the committee with a copy of those guidelines?

Ms GALE - Yes, I don't see why not. Premier, with your agreement?

Mr GUTWEIN - Absolutely.

Ms FORREST - It will help us to understand what was being suggested.

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Mr TUCKER - Premier, you mentioned in your opening statement that a lot of people were experiencing difficult times through this period, and I totally agree with you. You also mentioned at the end of your speech that we are being more generous than other jurisdictions. One of the things that's been put to us as evidence so far is that they believe they are being put to a financial disadvantage with a flat rate and not having penalties paid, as per their roster. Can you expand on why you've gone with the flat rate instead of with penalties, in regard to your first two comments?

Ms GALE - Thank you, Premier. The decision was made to apply the same leave arrangements that apply for any other leave. So, if a person that has those rostered arrangements or overtime arrangements applies for personal leave, COVID leave is applied in exactly the same way. The decision was made not to change the way that leave normally applies.

Mr TUCKER - How many have had access to the pandemic leave entitlements so far?

Ms GALE - That is 176 state servants, as at the end of April, I believe, but I will find the date for you in a moment. There are also nine sworn police officers, who we do not normally count in our State Service figures, who have also applied for it.

Ms FORREST - Is it possible to break that down into the areas, for example, nursing staff, allied health staff, cleaning and others?

Mr GUTWEIN - I am sure we could provide that.

Ms GALE - Yes, Premier, but not easily. We can do it by agency and we can do it by frontline staff as a job lot. In Education, we can break it down by those who are in schools and those who are not. In Health, I think we have those figures as well, just confirming that we can break it down into frontline and non-frontline staff and we can provide those.

Ms FORREST - That would be good, thank you.

CHAIR - If they are available before we conclude today that would be excellent. If not, we are happy to have them taken on notice, thank you.

Ms STANDEN - Premier, we've heard evidence from AMNF and HACSU on behalf of their members that they would have preferred to have negotiated a section 55 agreement rather than have this leave entitlement via regulation. They have both welcomed the move to introduce special leave provisions, so there is no two ways about that. In your view, would it be possible to negotiate a section 55 agreement that would sit alongside the regulations, whether the regulations were intact or amended? What I mean by amended is that both those unions have flagged that they would have preferred that the leave entitlement be uncapped and that it be paid according to rosters with relevant penalties.

Mr GUTWEIN - My understanding was that the reason we went down this pathway was because it was the most efficient and effective way and it ensured a consistent approach across the State Service groups, including officers and people covered by secondment arrangements as well. With regard to practical operation of the leave and access of employees to leave, my advice is that regardless of whether it was created under a regulation or a section 55 agreement, it is the same. I am not sure why they would be arguing to go down a section 55 route but the secretary might have further that she can provide.

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Ms GALE - Not really, Premier, except to highlight the point that you made, that by doing it this way under the regulations it includes more officers. It includes prescribed offices and those on secondment. If we had done it under the agreements that would not have been the case, so there is an equity and fairness issue. In relation to overtime, we have applied the same principles that are applied for all other leave. There would have to be a strong argument put as to why we might want to do that differently when it is the same as what happens now.

Ms STANDEN - The second part of my question was whether it is possible to negotiate a section 55 agreement that would sit alongside regulations.

Mr GUTWEIN - I am not sure why that would be required.

Ms STANDEN - The unions that have provided evidence have stated their position that they would have preferred a section 55 and they think it would have covered the same provisions. It is not a tricky question. I am trying to understand industrially whether it is possible to have both instruments being complementary.

Ms GALE - I am not sure about industrial; I would have to take that on notice. Generally speaking, we would not duplicate provisions so they would be available in one place or another. The other thing to remember in relation to the way we have done this through regulation is that it does enable us to extend it beyond the 20 days, whereas I have been advised that extension would not be possible if it was done through a section 55 agreement. So, in fact, we've taken probably the most generous approach to putting this in place that we could, really. Certainly more than many other jurisdictions have provided for. Some jurisdictions cap the amount of leave. Some are uncapped, but the uncapped elements have strict provisions around them. So, I think our view was that if we are able to give four weeks, which is quite generous in the circumstances, and extend that with a possible other four weeks at the discretion of the heads of agency that that ought to cater for just about every contingency.

Ms STANDEN - Well, the ANMF, through you again, Chair, argued that because of the circumstances of the north-west outbreak, there were some members who self-isolated and then were furloughed, these terms get a bit confused. Anyway, their final position was that they thought that it was inadequate for some of their members already.

I am just concerned about the potential, because none of us know how long this pandemic will last and the conditions, and whether there will be further outbreaks, and so on. Of course, we have to think about circumstances outside of the acute care setting - it could be schools, aged care facilities, childcare settings, or what have you. I'm interested in understanding the flexibility of those provisions moving forward?

Mr GUTWEIN - Just coming back to flexibility, I think the secretary just touched on the reason why we had taken the steps that we had was so that there was inbuilt flexibility for a secretary to be able to provide more than the 20 days' leave if necessary. I'm not sure if I understand your question in terms of aged care because we would not have people employed there.

Ms STANDEN - No, but there would be some of your state service employees who would also work in aged care facilities, for example.

Mr GUTWEIN - In terms of having multiple positions?

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Ms STANDEN - In terms of risk and so on. These regs cover state service employees in state service employment.

Mr GUTWEIN - They do. I'm just trying to understand the question, Alison, that's all.

Ms STANDEN - Okay. It's a question about the adequacy of these provisions moving forward, and the ANMF has stated that already there would be some employees for whom the 20 days was inadequate - even now. They argued that the regs ought to have provided for uncapped leave, and for more discretion below head of agency level.

Moving forward, do you think -

Mr GUTWEIN - What sort of circumstance, though? Are we still talking about somebody who is working part-time in the public sector, and part-time in an aged care facility?

Ms STANDEN - For the purposes of this discussion, let's just think about people. People wear various hats, don't they, Premier? Say, I'm a nurse working in an aged care setting as well as in a public hospital. I might also be a parent of a child and have dependant parents also. So, I'm a carer for dependant children as well as for my parents. I'm also an employee in multiple settings. So, for the purposes of protecting that person with multiple risk exposures, I suppose, do you think that the 20 days is sufficient and flexible enough moving forward?

Mr GUTWEIN - I think first of all, if they had a number of jobs then they would be entitled on a pro-rata basis because their hours wouldn't be full-time in the public sector.

Can I come back to that point that the secretary made. If we'd gone down the section 55 route, then there would be no flexibility whereas by taking the steps that we have taken, we have actually built into it - the secretary of the department has a flexibility built in to actually extend and provide more leave if circumstances were to warrant it.

I think we are in a position where we have actually met the needs or aims the unions have been seeking.

Ms GALE - If I might add, the discretionary leave isn't capped. So, they could apply for another 20 days, they could apply for another 30, but it would depend at the discretion, again, of the head of agency.

CHAIR - Can I just clarify, we were informed this morning, in a previous hearing, that HACSU provided their preferred agreement to the State Service Management Office on 29 March with some additional information on 30 March. Can you just give me some idea of what feedback they would have received when it went to the regulation process rather than amending section 55. Just for my information, whether they were well informed about the basis for that?

Ms GALE - That's a very detailed question, Chair, and I would have to take that on notice and come back. It's my understanding that we consulted with unions. They had a preferred way of working. We took advice and looked at what we thought was the best way to go and decided that we would go down the regulation, as I said, because it was a fairness and equity question right across the State Service, not just for individual occupation groups. It involved more people who would be eligible, prescribed officers, people on secondment, and so on. That was the decision that

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was made. In terms of correspondence and what the feedback was, I would have to take that on notice.

CHAIR - That would be appreciated. Just something about how that was relayed to the union, given that they provided that particular preferred agreement on and around the end of March. I understand the time pressures that everyone's working under here.

Ms GALE - I think the most important thing is that each union works for their cohort of workers. What the State Service Management Office, and I as head of the State Service, has to take account is the whole of the service and what's fair and equitable.

Ms WEBB - This is just a short one following up on Alison Standen's question earlier. In terms of the 176 who have already accessed the leave by the end of April, are there any instances in which extensions have already been granted past the 20 days?

Ms GALE - Again, we don't have that information. We have not been advised if that's the case, and we would have to take that on notice.

Ms WEBB - Thank you, that would be good.

Ms FORREST - Following on from Meg's first question, we are aware that there are some nursing staff particularly who were furloughed or placed into quarantine. They worked at the Mersey and then when the DEM closed there a lot of the DEM staff who went to help at the North West Regional Hospital, which then was placed into quarantine. There are some staff that I'm aware of who have had to have two periods of quarantine. There is a chance that some of those people would have used more than 20 days of that leave if they were full-time workers particularly.

I'm interested in those who may have been required to seek an extension on the basis they have been in quarantine twice in a relatively short space of time. Some had only a matter of days between almost.

Ms GALE - I think if that were the case, if there were only days between, the quarantine period would be the original 14 days, plus however many days were in-between. So, it's a total of 14. It wouldn't be 14 plus 14, I wouldn't imagine. But, again we would need to have the detail in relation to that and we will get the figures about the extensions that have been provided.

Ms FORREST - That would be good. You made the comment, and it's also in the Premier's response to the questions we sent and I think Ms Gale referred to the people who need to be covered by secondment arrangements. Can you talk about who these people are who are subject to secondment arrangements? I'm interested in what positions these people fill?

Ms GALE - It could be anything. It could be any position in the State Service. It might be somebody, for example, who is on secondment from the University of Tasmania, or from a Commonwealth agency into the Government. It's where we enter into a secondment agreement with another organisation to have somebody who is employed -

Ms FORREST - So external to the public service?

Ms GALE - Yes.

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Ms FORREST - And they are brought in?

Ms GALE - Yes.

Ms FORREST - In terms of the pay that was provided to the North West Private Hospital nurses and midwives who were quarantined at the same time as the North West Regional Hospital ones, how do they fit into this? Premier, you told me yourself that they were going to be paid, which is very much appreciated by all of them and their families, I can assure you. How do they fit into this not being State Service employees?

Mr GUTWEIN - In terms of the - ?

Ms FORREST - The pandemic payment.

Mr GUTWEIN - We assumed management control of that hospital. Therefore, when we furloughed them my understanding is that we continued to pay them, but then we have a national partnership agreement in place with the federal government whereby at the end of this there will be a reckoning. I understand that 50 per cent of the state's costs associated with COVID-19 related activities outside of the public sector will be met by the Commonwealth. That will be a matter for working through at the time. I am happy to provide further details in terms of those private staff and the arrangements.

Ms FORREST - I'm just interested in who actually pays. I know that it was all a very sudden approach. One day the hospital was taken over and they were shut down almost the next, for all the right reasons.

Mr GUTWEIN - I am happy to get some further advice on that.

Ms FORREST - I am interested in how they fit into all of this in terms of who ultimately pays and if there are some provisions. If staff who are required to take, particularly government-mandated, quarantine or have contracted COVID-19 as a result of their exposure in the workplace and if they have utilised sick leave or other leave during that period - and you said they remain entitled to this pandemic leave - will that leave be reinstated to them? There are nurses working in areas where the risk continues with exposure to other illnesses, not just COVID-19, and the need for sick leave remains. Can you explain how that will work and what they would need to do to have that leave reinstated?

Mr GUTWEIN - I will ask the secretary. To be clear, we are talking about the case of somebody being either furloughed or quarantined for whatever reason and, not choosing to take special COVID-19 leave, they have utilised their sick leave.

Ms FORREST - I do not think some of them had a choice; it was the way it was handled.

Mr GUTWEIN - If we have some further detail, we are happy to follow that up.

Ms FORREST - And to reinstate any leave that was utilised that wasn't pandemic leave?

Mr GUTWEIN - I would need to ensure we understood the circumstances fully, but I think I can give a commitment that we would ensure that the right leave arrangements were what we have paid.

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Ms GALE - Yes, Premier, we wouldn't want to see anybody disadvantaged. If we can look into the bona fides of individual cases and find that it has been incorrectly allocated, we would work with the agency to make sure that was righted.

Ms STANDEN - Premier, you've stated a commitment to continue employment levels in the public service. Regarding casual employees, you said that you were speaking with DPAC to look at extending personal leave conditions so that they would be paid if they need to self-isolate. In terms of understanding the scope of these regulations - discussed a couple of months ago in parliament - are you able to comment whether they do include permanent, casual and fixed-term contract positions? Would the scope include employees in GBEs and state-owned companies?

Mr GUTWEIN - The leave arrangements for state-owned companies and GBEs are a matter for them. It applies to employees employed on a casual, sessional, seasonal or relief basis can access the leave for any purpose provided for by the regulations, so the commitment that I gave covers them.

Ms STANDEN - Not GBEs and SOCs, though.

Mr GUTWEIN - No.

Ms STANDEN - In terms of the broader commitment to the public service workforce, I imagine a number of contracts may come to an end at the end of financial year. Are you able to update the committee as to whether you are able to extend or reaffirm that commitment of maintaining the public service?

Mr GUTWEIN - In terms of contracts that are finishing, we would need to understand the reason they were being completed in the first instance. If it were a contract for a project that has been completed then I do not believe there would be any obligation on me or the state to continue that employment if the work had been finished. For obvious reasons, where we have had casual employees who have been stood down because they haven't had work as a result of COVID-19, then we have continued to pay. I am not going to provide a blanket commitment across the entirety of the public service without understanding individual contractual arrangements and the reasons they were employed in the first place.

My intention, and I would be clear on this right from day one, was to ensure that we kept as many people employed as we possibly could through these difficult circumstances. Largely on the basis that we were going to see a significant shift in private sector employment, it was important to have as many jobs in our economy as possible.

Ms STANDEN - You made the point that the State Service may be, and certainly is already, one of the major employers in the state.

Mr GUTWEIN - Right through this, there will be many discussions. I think I have PAC later this week in terms of the state's balance sheet. It was important that the state government, and local government for that matter, exercised its balance sheet and its resources to ensure we kept as many people employed because of the difficult circumstances we were in.

Ms STANDEN - I'm interested in unpacking how these regulations would apply in the case of school closures and how you would define school closures. Touch wood, we haven't had outbreaks

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in a school environment but there are a range of scenarios where, under public health directions, people have been encouraged to work from home, et cetera, if they have been able to. There may come a point when parents, State Service employees, have to make a decision about staying at home with their dependent children, for example, if they are vulnerable for any reason.

When you talk about school closure in your response to the questions provided on notice, are you talking about formal closure in the event of an outbreak, or are you talking about the flexibility that might apply to State Service employees who are choosing to keep their children at home?

Mr GUTWEIN - I think there is a clear distinction. If our schools are open and a State Service employee chooses to keep their children at home, that's a completely different set of circumstances to there being a school closure. The leave arrangements would be dealt with in terms of what best suited those arrangements. I don't have it in front of me at the moment, but I thought I'd made that reasonably clear in the letter.

Ms STANDEN - It sounds to me that your definition of school closure is when there is an outbreak and the school is physically closed as opposed to, at the moment, minimal attendance -

Mr GUTWEIN - Well, schools are open at the moment. I think that is clear. Our position before Easter didn't change after Easter: our schools would remain open. Children whose parents needed to work could attend school. Parents could keep their children at home. Importantly, if they weren't able to support them, either because of a lack of resources or other reasons, their children could attend school. Our schools do remain open at the moment.

Ms STANDEN - Could you acknowledge that it would be a difficult choice, say, if I were a nurse and unable to work from home, or a cleaner or food service attendant, I can't undertake my work from home. If I had a child who was vulnerable, say, immunocompromised, I would have to make a decision about whether I stayed home. If I had a partner I might be able to negotiate that. Do you think these provisions are flexible enough to support employees in that scenario?

Mr GUTWEIN - Absolutely I do, and the secretary might explain some of the detail.

Ms GALE - Thank you, Premier. If a parent or carer who is a state servant has a child who is vulnerable, for example, they would be covered by COVID leave.

Ms FORREST - One of the challenges is with nursing staff or others who are on a part-time contract and generally work significantly more hours in extra shifts, being called in to cover gaps and things like that. When determining the rate of pay for that period of leave, how was that assessed? These people would have a history because they have been working under a part-time contract, but they might only been rostered for two days a week and end up working four every week. How was their pay assessed? Was it against their contract or against their worked hours?

Ms GALE - I may have to take that on notice because I know that was an issue that we were working through with agencies, as to whether it would be averaged or if it would be over the last two weeks. I will see if that has been finalised yet. I will take that on notice but we do recognise that is an issue and we are working through that.

CHAIR - Premier and Jenny, we sincerely thank you for your attendance today, particularly during this challenging and exceptionally busy time for yourself, Premier, and all the people who

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support you. We will take the opportunity to speak with you again, should we need to clarification of the notices that have been presented to the committee. Thank you.

Mr GUTWEIN - Chair, thanks for having me. I thank all of the members as well for the work they are doing in their communities at the moment in terms of supporting people. Thank you.

THE WITNESS WITHDREW