



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**VICE PRESIDENT WATSON
DEPUTY PRESIDENT GOOLEY
COMMISSIONER SPENCER**

AM2015/1

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2015/1)
Family and domestic violence clause**

Melbourne

10.07 AM, TUESDAY, 15 NOVEMBER 2016

Continued from 14/11/2016

PN819

VICE PRESIDENT WATSON: Ms Burke.

PN820

MS BURKE: If the Commission pleases. The first witness that I'll call today is Dr Natasha Cortis but before Dr Cortis gets in the box, I'd just like to arrange the paperwork appropriately. There was some issues with her report. Dr Cortis filed and served a report on 26 May and that report was under embargo, and the reason it was under embargo was because it was based on research that had been completed but not yet published, and full copies of that material were provided to the employer parties and filed with the Fair Work Commission.

PN821

Since that time although not that long ago, on 6 October the embargo was lifted and the published report that underlies Dr Cortis' report and is part of her report to this Commission was provided to the employer parties. There are no changes to any of the substance of the now de-embargoed report, the changes are cosmetic formatting typographical errors.

PN822

The first thing I would like to do is just confirm that if anyone has, as I do, in their folders embargo pages you can remove those, it's safe to refer to anything in that and the second thing is to replace the material at the back of Dr Cortis' report, and her report is at NC3. The report itself is on page 27 but immediately following that is the research that was under embargo. I just want to replace that with what is now the published version. I understand there's no objection from my friends. It's frankly just easier to use. It's properly indexed and so on.

PN823

So if I can hand up that please, that's in two documents. One is this short summary document called Compass and the other is the substance of the report that was behind Dr Cortis' report to this Commission.

PN824

VICE PRESIDENT WATSON: So those two documents they don't replace anything but - - -

PN825

MS BURKE: I'm sorry I missed that Vice President.

PN826

VICE PRESIDENT WATSON: Those documents don't replace documents attached to the statement of Dr Cortis. They supplement do they?

PN827

MS BURKE: They attach documents attached to the statement of Dr Cortis. They should replace everything after page 27 of NC3.

PN828

VICE PRESIDENT WATSON: It's a different format so it's a little bit difficult to determine what is to go and what stays.

PN829

MS BURKE: The first page of the material that can be pulled out if this helps looks like this, and it just reads:

PN830

Inside cover page, logo for research organisation. Please provide a jpeg or eps version.

PN831

VICE PRESIDENT WATSON: Yes.

PN832

DEPUTY PRESIDENT GOOLEY: Is it all of them?

PN833

VICE PRESIDENT WATSON: Something that's called Title Page?

PN834

MS BURKE: Yes. All of that can go.

PN835

COMMISSIONER SPENCER: Everything behind that divider?

PN836

MS BURKE: Yes, the last page of that is marked page 98 and is appending examples of promising practice and employment services for women case studies.

PN837

DEPUTY PRESIDENT GOOLEY: What we get in its place is a document called Compass and another one called Horizons?

PN838

MS BURKE: Yes, thank you, Deputy President. That's right.

PN839

VICE PRESIDENT WATSON: Very well.

PN840

MS BURKE: Thank you. The next amendment or correction is to paragraph 6 of Dr Cortis' statement. In that paragraph she refers to work that she has published in August 2015 that is described as a state of knowledge paper, it's essentially a literature review and I would like to annex that report to her statement and mark that NC4, and I understand there's no objection to that. Again, it's publically available and has always been available since this report was provided. If I could just hand those copies up to the Bench as well.

PN841

There is one typographical error which I'll correct with Dr Cortis when she's in the witness box. There's a similar although by no means as detailed exercise to go

through with Professor Humphreys' report, who's the next witness. Perhaps in the interests of efficiency I might deal with that now, if that's convenient.

PN842

VICE PRESIDENT WATSON: Yes.

PN843

MS BURKE: So Professor Humphreys filed her report in late May along with all the others and on 17 October 2016 sought to make amendments to half of one paragraph and to have that half redacted, and the reason is because it refers to unpublished research by a PhD student of hers. Copies have been provided to my learned friends. I understand that the amended and redacted version is the one that is now publically available on the Commission's website, but I just wanted to ensure that everybody has the version that we are seeking to tender in their material. The relevant paragraph to look at will be - is paragraph 3.6.

PN844

VICE PRESIDENT WATSON: The copy I have has revision marks.

PN845

MS BURKE: That sounds promising.

PN846

VICE PRESIDENT WATSON: Yes.

PN847

MS BURKE: Yes, and paragraph 3.6 about half way through starts:

PN848

A recent study of possible workforce -

PN849

There are - so as I said there were both amendments to 3.6 and then a redaction was sought of that in a public sense. That's the version that I'll be seeking to tender, so if I understand - - -

PN850

MR WARD: I'm a little lost, I apologise. The version I've got is the redacted version. Is it redacted for public use - - -

PN851

MS BURKE: Yes.

PN852

MR WARD: - - - rather than you're not relying on that paragraph?

PN853

MS BURKE: Yes, it's redacted for public use but we are relying on it.

PN854

MR WARD: Sorry, we've just found the original, thank you.

PN855

MS BURKE: So I can confirm everyone has that version?

PN856

DEPUTY PRESIDENT GOOLEY: We have the redacted copy not the other copy.

PN857

MS BURKE: Redacted in the sense that - can you see the words or is it all black?

PN858

DEPUTY PRESIDENT GOOLEY: It's black.

PN859

MS BURKE: Beg your pardon. We'll hand up the non-black version. The relevant paragraph is 3.6 which starts "An area where", and about half way through the subject of this replacement, those words start, "A recent study of a hospital workforce", and it should be underlined to indicate that it is an amendment.

PN860

VICE PRESIDENT WATSON: Well, that's a different document to the revised version, 13 October, that I had which had the revision marks. The earlier version started at 3.6 with, "An area where women may be vulnerable", looks like that's become part of 3.5 now.

PN861

MS BURKE: I think that you might be looking - I think there was some formatting challenges with the redaction which was this one that was filed. Yes, I think what was filed was 3.5 and then a separate paragraph without a number starts, "An area where women may be vulnerable.

PN862

VICE PRESIDENT WATSON: Yes, well the one with revision marks wasn't marked like that but the one you've just handed up is.

PN863

MS BURKE: Right, well there's no change to the substance between those two versions.

PN864

VICE PRESIDENT WATSON: Yes, it doesn't look like it.

PN865

MS BURKE: Thank you, and I'm sorry again for the administrative inconvenience of these amendments. Unless there are no other issues.

PN866

MR WARD: No.

PN867

MS BURKE: I call - I'm sorry.

PN868

VICE PRESIDENT WATSON: No, you're calling Dr Cortis.

PN869

MS BURKE: I call Dr Cortis.

PN870

THE ASSOCIATE: Please state your full name and address.

PN871

DR CORTIS: Natasha Cortis, I'm from the University of New South Wales, Kensington Campus.

PN872

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

PN873

DR CORTIS: Affirmation.

<NATASHA CORTIS, AFFIRMED

[10.19 AM]

EXAMINATION-IN-CHIEF BY MS BURKE

[10.19 AM]

PN874

VICE PRESIDENT WATSON: Thank you, Dr Cortis?---Thank you.

PN875

Please be seated?---Thank you.

PN876

Ms Burke.

PN877

MS BURKE: Dr Cortis, can you please state your full name again?---Natasha Cortis.

PN878

Your address?---I'm from the Goodsell Building in the Social Policy Research Centre in the Goodsell Building at the University of New South Wales.

PN879

Your occupation please?---I'm a senior research fellow.

PN880

Have you prepared a report for the purposes of this proceeding?---I have.

PN881

If you could have a look there in front of you, is that a document headed "Statement of Dr Natasha Cortis"?---Yes.

*** NATASHA CORTIS

XN MS BURKE

PN882

Of 12 paragraphs and dated and signed by you 26 May 2016?---Yes.

PN883

Annexed to that statement is there an NC1, a copy of your resume?---Yes.

PN884

NC2, letter of engagement from the ACTU?---Yes.

PN885

NC3, a copy of a report by you that's 27 pages, dated 26 May 2016 and in addition to that there is the Compass document and behind that a document called Horizons Research Report, October 2016, written by you?---Yes.

PN886

I understand you wish to make a correction to your report. If you can turn to page 15 please?---Yes.

PN887

At paragraph 45, at the bottom there in bold the words:

PN888

Error reference, source not found.

PN889

Should that be - those words be deleted?---Deleted. Deleted.

PN890

Thank you. Together with that correction does that statement and your report attached to that statement accurately set out your opinions formed by you on the basis of your expertise?---It does.

PN891

Thank you. I seek to tender the statement and the annexures.

PN892

VICE PRESIDENT WATSON: I'll mark - - -

PN893

MS BURKE: I'm sorry, I neglected to take Dr Cortis through the addition of NC4 to paragraph 6 of her statement. I'm sorry, Dr Cortis, if you could look back again at paragraph 6 of your statement?---Yes.

PN894

Sorry, this is your witness statement, not your report?---Of my statement, thank you.

PN895

There is a reference and link there to a report titled:

*** NATASHA CORTIS

XN MS BURKE

PN896

Building effective policies and services to promote women's' economic security following domestic violence, published August 2015.

PN897

?---Hang on a second. Yes.

PN898

That report is now marked, you can take it from me it's now marked NC4 to your statement. Can you just confirm that at the back of the section there that a copy of that report which I know is titled "Landscapes" is there?---Yes.

PN899

Thank you. With that clarification, does that report accurately set out your - the whole of your report just to clarify?---It does.

PN900

Of your opinion formed by you on the basis of your expertise?---Yes.

PN901

MR WARD: I - - -

PN902

MS BURKE: I'm sorry, I only mean in the sense that it's an annexure to her statement?---Yes.

PN903

Thank you, I now tender the full statement and the annexures.

PN904

VICE PRESIDENT WATSON: Exhibit B5.

**EXHIBIT #B5 WITNESS STATEMENT OF DR NATASHA CORTIS
DATED 26/05/2016, TOGETHER WITH ANNEXURES**

PN905

MS BURKE: Thank you, Dr Cortis. Please just wait there, there'll be some questions.

PN906

VICE PRESIDENT WATSON: Mr Ferguson.

CROSS-EXAMINATION BY MR FERGUSON

[10.23 AM]

PN907

MR FERGUSON: Good morning, Dr Cortis. My name's Mr Ferguson. I represent the Australian Industry Group?---Hi.

PN908

That's the party opposed to the ACTU's application. I've just got a number of questions for you this morning?---Yes.

*** NATASHA CORTIS

XXN MR FERGUSON

PN909

I want to commence by asking you about the matters addressed in part 3 of your first report, if you could turn to that?---Part 3, is that titled, "Estimating the prevalence of economic abuse"?

PN910

It is. In that chapter you explain the difficulties of measuring the prevalence of economic abuse in Australia, don't you?---Yes.

PN911

I want to take you to paragraph 14. You say there at the start of that paragraph:

PN912

The estimates of the prevalence of financial abuse in Australia should be interpreted with a degree of caution.

PN913

?---Yes.

PN914

You say that one reason is that:

PN915

The wide range of behaviours which may be involved makes this kind of abuse difficult to define and capture in surveys and administrative data sets.

PN916

Am I right to assume that it's not possible to decisively identify all of the specific behaviours that constitute economic abuse?---They are poorly recognised in my opinion in comparison to physical - to tactics of physical and emotional abuse.

PN917

When you say they're poorly recognised, by who?---In the community and also in the service system and by police.

PN918

So the community - you mean all persons in the community?---Yes, that's right and the National Community Attitudes Towards Violence Against Women Survey showed that, and the example is at the bottom of paragraph 14 there. Denying money was recognised as domestic violence by a relatively low proportion of respondents.

PN919

I just want to understand the nature of the specific behaviours that constitute - - - ?---Economic abuse.

*** NATASHA CORTIS

XXN MR FERGUSON

PN920

Is it impossible to identify all of the precise behaviours that fall into that category?---So there are many behaviours that would involve interfering with women's access to resources and ability to provide for themselves. It may include

controlling behaviour relating to participation in work, for example interfering with participation in work, in paid work, in education, in training. It may also relate to debt and access to credit.

PN921

Without at this stage listing them, are you able to say that it's possible to identify every type of behaviour that a partner might engage in and identify that type of behaviour with precision?---It would be. Identifying behaviour isn't my area of expertise, so I probably - - -

PN922

So you're not able to identify every behaviour that would fall within that category?---I wouldn't but I'm confident that people in - domestic violence specialists working with women affected by violence would be able to.

PN923

So experts would be able to identify all of the behaviour but you are not?---So my expertise relates to women's workforce participation and the impact of domestic violence on women's experiences of financial hardship, yes.

PN924

I want to take you to paragraph 6(a). In paragraph 6 you refer to the report that you co-authored with other parties?---Sorry, which paragraph are we on?

PN925

Paragraph 6?---Paragraph 6, so back.

PN926

Then we're in that subparagraph (a) specifically. Page 5?---Yes.

PN927

You'll see there within paragraph 6(a) you give examples of behaviours?---Yes.

PN928

I take it that's not an exhaustive list is it?---There may be others, that list is based on material we reviewed in the Landscapes report and we also looked at the way family violence legislation had defined economic and financial abuse.

PN929

I understand from your evidence that limiting a partner's access to financial resources could be economic abuse?---That's right.

PN930

Would all instances where a partner limits another partner's access to funds or financial resources be abuse - be economic abuse?---If it is - where it is in the context of exerting control and generating costs for women, yes, it would be considered economic abuse.

*** NATASHA CORTIS

XXN MR FERGUSON

PN931

Can you explain what you mean by exerting control?---Exerting control would be generating costs for women, it could - it would involve a very wide range of tactics around interfering with women's acquisition and use of resources, denying them financial autonomy, denying them access to resources that people require to have choice and control over their own lives.

PN932

Can economic abuse arise after separation?---It can and it often does.

PN933

So would contesting child support payments or a property settlement in the course of litigation in divorce proceedings constitute economic abuse?---It could. For example deliberately prolonging the time taken for property settlement is a common form of economic abuse. The child support system may also be used as a site for economic abuse, for example, misreporting one's income.

PN934

Coming back to the first point, am I right to say that contesting child support payments or property settlement wouldn't always be economic abuse?---It depends.

PN935

Does it depend on the motivations?---It depends on the motivations and the tactics and the faith, whether the party has entered into the proceedings in good faith.

PN936

So in order to understand whether someone is subject to economic abuse, in that context, you'd need to understand the underlying motivations behind a partner's position in litigation?---You'd also need to understand the experience of the woman affected. If they felt that they were subject to - I suppose I'm saying there's a subjective experience of women that would need to be taken into account and if they - yes. If they - if they felt that the - court proceedings for example were being unduly prolonged as a way to - so that, for example, the man could spend money in the interim then it would be, yes. It would be considered economic abuse.

PN937

So it's abuse, so to work out whether or not it's abuse you have to know the motivations of the partner - - -?---And the experience.

PN938

- - - and the feelings of the potential victim?---Yes, yes.

PN939

You can't objectively assess whether a course of conduct is abuse then?---Well, I think it's defined in family violence legislation in some states.

*** NATASHA CORTIS

XXN MR FERGUSON

PN940

You can't, based on the evidence you've given, do you accept that you can't objectively determine whether a particular course of action will be economic

abuse in all circumstances?---I accept that there's many sides to it that need to be taken into account and - - -

PN941

That's not what I'm asking. Do you accept that you can't objectively determine whether or not a particular course of action is economic abuse?---I couldn't personally, so it's not my job to assess whether economic abuse has occurred or not.

PN942

But you've given a statement talking about the difficulties of measuring economic abuse - - -?---Economic abuse, as a researcher.

PN943

- - - I'm trying to understand what is economic abuse for the purposes of your statement?---Yes, yes.

PN944

I won't take it further. I asked you questions about whether limiting access to resources might constitute economic abuse in your understanding. Do you need to know the full financial circumstances of a potential victim in order to determine whether or not limiting access to other funds constitutes economic abuse?---Sorry, could you repeat that?

PN945

I'll rephrase it?---Yes.

PN946

Actually I'll withdraw that. Would limiting a partner's access - a partner that has a serious gambling addiction access to financial resources constitute economic abuse?---So the partner - - -

PN947

So if one partner limits another partner's access to financial resources in some way because that partner has a serious gambling addiction, would that constitute financial abuse?---I'm not an expert on gambling.

PN948

I'm not asking you about gambling?---Depends on the dynamic of control in the relationship.

PN949

What do you mean by that?---So I would leave that to a domestic violence specialist to assess. There would be a wide range of circumstances around as to -
- -

*** NATASHA CORTIS

XXN MR FERGUSON

PN950

Would you need to understand all of the circumstances in order to identify whether or not there is economic abuse?---I think that I would expect domestic

violence support workers to take into account a whole range of circumstances and history in assessing that.

PN951

Do you accept you'd need to take into account all of those matters in order to determine whether or not a particular tactic was economic abuse?---I think so, yes.

PN952

If one partner, say a man, seeks to exert a level of control over a woman partner through limiting access to financial resources, is that - would that be economic abuse regardless of how many resources the woman would have independently?

PN953

MS BURKE: I object to the question. Could I ask the witness be excused while we deal with this objection?

PN954

VICE PRESIDENT WATSON: Yes. Dr Cortis, would you mind remaining outside for a short time?---Sure.

<THE WITNESS WITHDREW

[10.37 AM]

PN955

MS BURKE: The objection goes to relevance. I assume that the direction of this line of cross-examination is related to challenges for an employer working out what is economic abuse. In my submission, that's not relevant to this application because the ACTU's application doesn't require an employer to decide whether a person who seeks leave is being abused per se. We accept that that is a high burden. What the ACTU's application seeks is a grant of leave for the purposes of attending to particular circumstances that arise out of domestic violence - family and domestic violence. The evidentiary aspect of the proposed clause entitles an employer to ask an employee for evidence that would satisfy a reasonable person that the leave is for the purposes as set out in the clause. So for example, seeing a financial counsellor. Now, in that circumstance - - -

PN956

VICE PRESIDENT WATSON: Could be a statutory declaration.

PN957

MS BURKE: I beg your pardon?

PN958

VICE PRESIDENT WATSON: Could be a statutory declaration by the employee.

PN959

MS BURKE: Yes, yes.

*** NATASHA CORTIS

XXN MR FERGUSON

PN960

VICE PRESIDENT WATSON: Saying I need the leave for the purposes of - related to family and domestic violence leave.

PN961

MS BURKE: Yes, that's right. It could be a statutory declaration as well. But in any event, what the employer is required to do is decide whether or not they believe the employee and it doesn't require the employer in those circumstances to undertake their own investigation into the nature of the abuse, and in particular to form their own judgments about whether withholding money from a rich woman means that abuse is not occurring. Just as with personal leave - - -

PN962

VICE PRESIDENT WATSON: If a statutory declaration is provided to the employer then there's a right to take leave is there not?

PN963

MS BURKE: That's right. If the statutory declaration is accepted by the employer.

PN964

VICE PRESIDENT WATSON: Where does it have to be accepted by the employer?

PN965

MS BURKE: If the - if it's required by the employer the employee must provide evidence that would satisfy a reasonable person, so that's where that goes into it.

PN966

VICE PRESIDENT WATSON: That the leave is for the purpose.

PN967

MS BURKE: Yes.

PN968

VICE PRESIDENT WATSON: The statutory declaration says I need the leave for the purpose of family and domestic violence leave.

PN969

MS BURKE: I need the leave for the purposes of, for example, seeing a financial counsellor arising out of family and domestic violence.

PN970

VICE PRESIDENT WATSON: Is the employer able to say can you make an appointment with a financial adviser out of work hours or tomorrow when you're not rostered to work?

PN971

MS BURKE: I imagine that the clause would operate in the same way that personal leave operates in those circumstances, where the employer can make those requests.

PN972

VICE PRESIDENT WATSON: Well, that's not what the clause said though, is it?

PN973

MS BURKE: It doesn't prohibit that arrangement from - - -

PN974

VICE PRESIDENT WATSON: Well, it creates a right to leave.

PN975

MS BURKE: It does create a right to leave and it creates a right for the employer to ask for evidence that would satisfy the employer acting reasonably that the leave is being taken for the purpose for which it is designed. So just as personal leave does not require an employer to determine whether or not an employee is actually sick, they just need to be satisfied that the person for example went to the doctor that day. Then once that satisfaction is reached the inquiry is over. If the employer has got doubts based on - and those doubts are reasonable about the validity of that excuse, then they're entitled to take steps within the normal employment relationship to investigate that.

PN976

VICE PRESIDENT WATSON: Well, none of the example I gave you, if the - and these are arguments perhaps for later rather than now but the clause says:

PN977

Satisfy a reasonable person that the leave is for the purpose set out in the clause.

PN978

I wish to have an appointment with a financial adviser. The employer can't say why can't you see the financial adviser tomorrow when you're not rostered to work.

PN979

MS BURKE: In my submission the reasonableness of the employer would allow them to do that.

PN980

VICE PRESIDENT WATSON: Well, that's not what it says though.

PN981

MS BURKE: Well, my submission is that there's nothing that would prevent - there's nothing that would prevent the employer in this - there's nothing in this clause that would prevent the employer from asking that.

PN982

VICE PRESIDENT WATSON: The employee could say all I need to satisfy you of in accordance with the clause is that the leave is for the purpose and it's a financial advice because there's economic abuse, and I'm taking the leave.

PN983

MS BURKE: That's right. They could also - - -

PN984

VICE PRESIDENT WATSON: So in other words exercising the right. These are all arguments for later perhaps but why can't there be cross-examination about the sort of circumstances that might give rise to a claim.

PN985

MS BURKE: Well, because the difference - whether or not economic abuse has occurred is properly, as this witness has explained, a matter for example a domestic violence support worker whose specialist - who has specialised skills and is trained in identifying these areas. Now if somebody, for example, a financial counsellor, provides a letter to the employer confirming that that - as far as the counsellor's concerned the leave was taken for an appropriate purpose, that should be the end of the matter.

PN986

It would not be appropriate, in my submission, for an employer who may be completely unfamiliar with the aspects of economic abuse in particular which I accept has some complexity to it, to go off and decide based on no evidence and no experience that in my friend's example a wealthy woman will not be subject to economic abuse, because she can afford to have some money withheld.

PN987

VICE PRESIDENT WATSON: Well, isn't this whole debate relevant in the sense that it relates to the operation of the clause?

PN988

MS BURKE: It's a point perhaps for, as you've said Vice President, for closing submissions rather than evidence and the employers have put no evidence on about this aspect. There's no representation being put to Dr Cortis. It's really an hypothesis.

PN989

VICE PRESIDENT WATSON: There may be limited value in the cross-examination because these are matters that could be subject to argument but I'm having difficulty understanding why you say it's not relevant.

PN990

MS BURKE: I understand. Perhaps the last point would be simply that the witness has already said it's not her job to identify specific circumstances where domestic violence can occur and so asking her questions about whether, for example, the income of the woman would be relevant to an assessment of whether or not that woman is subject to economic abuse. She's said that she can't answer that, she's not an expert in identifying abuse.

PN991

VICE PRESIDENT WATSON: Yes, but the witness can say she's not able to answer.

PN992

MS BURKE: And she has.

PN993

VICE PRESIDENT WATSON: Yes.

PN994

MS BURKE: My friend asks the question again in a different way.

PN995

VICE PRESIDENT WATSON: Yes. We don't propose to prevent this line of cross-examination but we do accept that these matters may well be better addressed through submissions. We're not sure the value of the cross-examination of this witness in relation to those matters, so perhaps you could have regard to that, Mr Ferguson. I'm not too sure how this is assisting us but we'll allow the line of questioning to that limited extent.

PN996

MR FERGUSON: It was my final question.

PN997

MS BURKE: If the Commission pleases.

PN998

VICE PRESIDENT WATSON: I'll ask the witness to return.

<NATASHA CORTIS, RECALLED

[10.46 AM]

CROSS-EXAMINATION BY MR FERGUSON, CONTINUING [10.46 AM]

PN999

VICE PRESIDENT WATSON: Dr Cortis, please return to the box. If at any time you believe that you are unable to answer a question, feel free to say so?---Yes, thank you.

PN1000

Mr Ferguson.

PN1001

MR FERGUSON: Thank you, your Honour. If a partner withholds access to financial resources from another partner?---Yes.

PN1002

Is that economic abuse in your understanding?---It is.

PN1003

Regardless of whether or not - regardless of the level of wealth of the partner who has been refrained from having access to the resources?---Yes.

PN1004

With respect to the second report, the Horizons Report. Do you have a copy of that there?---Which one is that?

*** NATASHA CORTIS

XXN MR FERGUSON

PN1005

The Horizons Research Report?---Yes.

PN1006

Part of that report relates to the Journeys Home Survey doesn't it?---It does.

PN1007

You weren't directly involved in the conduct of that survey were you?---No, I analysed the data once it was made available for research purposes.

PN1008

Yes. Can I take you to page 14 of that report. You see there at the top of the page on the left-hand side you make some observations regarding the sample of respondents to the Journeys Home Survey. As mentioned above, the Journeys Home was designed to focus - it states:

PN1009

As mentioned above, the Journeys Home was designed to focus on housing risks and was specifically designed as a study of domestic violence. The sample of respondents was drawn from the Centrelink database in 2011 and includes men and women flagged by Centrelink staff as being homeless, and others identified as sharing similar characteristics with that population, who were at risk or vulnerable for homelessness.

PN1010

Just to be clear, this was a survey of respondents who either were homeless or in the views of Centrelink staff were at risk of becoming homeless?---That's right.

PN1011

I'll hand you a document if I may?---Thanks.

PN1012

This document's titled "Journeys Home Research Report No. 1, wave 1 findings", and it's a research report published by the Department of Families, Housing, Community Services and Indigenous Affairs regarding findings for the first wave of the Journeys Home Survey data. Can I take you to page 10 which deals with the demographic characteristics of the survey sample. See at the bottom of the table on page 10 it sets out the percentage of survey respondents that were employed, unemployed and not in the labour force?---Yes.

PN1013

Do you agree that it indicates that 50 per cent of the respondents were not in the labour force, that is they were not employed or looking for employment?---In wave 1, yes.

PN1014

You would agree that the portion of persons not in the labour force in the Australian population generally is smaller, at 34 per cent?---Yes.

*** NATASHA CORTIS

XXN MR FERGUSON

PN1015

Do you agree that almost 30 per cent of the respondents were unemployed?---Yes.

PN1016

You would agree that this is a significantly large proportion of respondents in the proportion of the Australian population that is unemployed? That being 3.4 per cent?---Mm-hm.

PN1017

As indicated in the report?---(No audible reply)

PN1018

MS BURKE: Sorry, I don't mean to interrupt but Dr Cortis, could you not nod but say yes or no?---Okay, yes.

PN1019

MR FERGUSON: No, no, thank you. Only 20 per cent of the respondents to the survey were employed at the time?---That's right. Many of those though would have gained employment after wave 1.

PN1020

I'm just wanting to confirm what the report follows?---In wave 1, that's right, yes.

PN1021

So you'd agree that your analysis of the Journeys Home data is based on a sample that is made up primarily of persons that are unemployed or not in the labour force?---So that's right, they were - around a fifth were employed, many of them gained employment following. So our analysis used two approaches; one was a pathways approach which looked at what happened to them up to wave 6 - - -

PN1022

Just putting aside the approach you took, you'd agree with that proposition?---That's right.

PN1023

You would also agree that the makeup of the sample in terms of labour force status is not reflective of the proportions found in the Australian population generally?---No, it's reflective of a disadvantaged cohort.

PN1024

Sorry?---A disadvantaged - a - - -

PN1025

It's reflective of a disadvantaged group?---Of a disadvantaged group.

PN1026

Yes, rather than reflective of the general population, yes?---That's right.

*** NATASHA CORTIS

XXN MR FERGUSON

PN1027

Do you see directly above that data at page 10, regarding labour force status there's another table and provides a breakdown of the proportion of respondents by reference to highest education and qualification?---Yes.

PN1028

If you look at that group you'd agree with me that a large proportion of respondents were those that had completed Year 10 or 11 or equivalent as their highest qualification?---Yes.

PN1029

That's almost 40 per cent of the respondents?---Yes.

PN1030

But you'd agree that the table indicates that only 21.4 per cent of the Australian population fall into this category?---That's right.

PN1031

I seek to have that report marked.

PN1032

VICE PRESIDENT WATSON: Exhibit F2.

EXHIBIT #F2 JOURNEYS HOME RESEARCH REPORT

PN1033

Can I take you to page 47?---Of the Horizons Report?

PN1034

No, sorry, of the - yes, sorry, the Horizons Report. Now from that page onwards you deal with the qualitative research that was undertaken by way of interviews with 32 informants?---Yes.

PN1035

The report doesn't identify the informants by name though does it?---No.

PN1036

Nor does it identify the interviewers does it?---The interviewers?

PN1037

The interviewers, it doesn't identify who they are?---No.

PN1038

The transcript of the interviews aren't publically available?---No.

PN1039

Are you aware of how many employer representatives were interviewed for the purpose of this research?---I believe one, maybe two.

PN1040

Who were they?---I can't say, no, and I don't know.

*** NATASHA CORTIS

XXN MR FERGUSON

PN1041

I assume the interviewees weren't all interviewed by the same person, were they?---No, the interviews were done by myself and Jane Bullen, the two authors of the report.

PN1042

Thank you. No further questions.

PN1043

VICE PRESIDENT WATSON: Mr Ward.

CROSS-EXAMINATION BY MR WARD

[10.55 AM]

PN1044

MR WARD: Dr Cortis, my name is Nigel Ward, I appear in these proceedings for the Australian Chamber of Commerce and Industry and other employer interests. Good morning. Can I just start and I don't intend to cover any territory my friend has. Can I just start, can you just explain for me a little better what a research fellow actually does?---A research fellow?

PN1045

Yes?---So I conduct research, I design research studies, I apply for grant funding to fund those studies and I conduct qualitative and quantitative research on social policy and economic topics.

PN1046

So it's very much a research role not a teaching role?---I don't teach.

PN1047

Can I put a couple of propositions to you. I've read your material with some care and I'm just trying to get a clear picture. I'm going to put a couple of propositions to you and see if you agree with me. What I take from your material is that a woman whose subject to domestic violence, if they are independently employed, preferably in full-time or part-time employment, if they have independent control over their financial resources and if they have independent control over their assets, they are likely to be in a better position to cope with the domestic violence situation because of that?---That's right. So our analysis of Journeys Home showed that domestic violence has a profound economic effect on women's situations. We used measures of financial hardship that are accepted poverty measures, and found that domestic violence contributes to much higher rates of financial hardship. For example, going without food due to shortage of money, having difficulty paying electricity bills. In our regression models though - - -

PN1048

Sorry, does that mean your answer to my question is yes?---Yes. That's right. So
- - -

*** NATASHA CORTIS

XXN MR WARD

PN1049

Can I now put another question to you?---I just wanted to make the point though that in our analysis whereas domestic violence contributed to much higher rates of financial hardship, employment had the opposite effect.

PN1050

I'll put the other proposition then, that a woman who is subject to domestic violence who's unemployed has no control over financial resources and no control over assets is in a worse situation?---That's right, because employment gives people an independent source of income, as well as a source of social support in the workplace, depending on the nature of that workplace.

PN1051

Am I right in saying that when people form a relationship, you would agree with me that they rationally decide how they're going to manage their finances, manage their assets?

PN1052

MS BURKE: I object to the question. I'm not sure that's anywhere near any of the material in Dr Cortis' report or her area of expertise.

PN1053

VICE PRESIDENT WATSON: The witness can say if she has difficulty answering a question?---I'd prefer not to answer that question.

PN1054

MR WARD: Is that because you can't?---(No audible reply)

PN1055

You don't feel competent to answer - - -?---I don't feel confident - - -

PN1056

No, that's fine, I won't ask that?--- - - - in answering a question about the nature of decision making in relationship formation.

PN1057

That's fine. I take it that having children in a relationship complicates the question of employment, financial resources, and asset control?---It would, yes.

PN1058

Have you got a copy of your statement in front of you?---I'll just turn to it.

PN1059

Thank you. I'm going to take you to paragraph 6. Not for the same reason Mr Ferguson did. For different reasons.

PN1060

VICE PRESIDENT WATSON: The statement or the report?

PN1061

MR WARD: The statement. Sorry, your Honour. The report?---The report.

*** NATASHA CORTIS

XXN MR WARD

PN1062

Is that right? Yes. Okay. Do you have that in front of you?---I do.

PN1063

You say in paragraph 6, "Domestic violence exacerbates gendered patterns of disadvantage and raises the risk of poverty and extreme financial stress. Your use of the term there "poverty", you're talking about living under the Australian poverty line, the accepted poverty line?---And - yes, that's right, and experiencing extreme financial stress, including the measures in our analysis of Journeys Home, which were going without food due to shortage of money, having difficulty paying electricity and other utilities bills, and the other measures there, accepted measures of - subjective measures of poverty.

PN1064

I'm not sure if I understood your answer. I asked you if you were accepting the Australian standard of the poverty line. You've got a different version, have you?---That's right, because in Journeys Home they used measures of - they used a different way of looking at measures of poverty, which were around going without food, having difficulty paying utilities bills, being unable to go out with friends due to shortage of money, having to ask for material assistance from welfare agencies.

PN1065

I think the answer is yes, you used a different standard of poverty?---There's many standards of poverty.

PN1066

You use a different one to the Australian poverty line?---If that's a financial threshold and income level, we didn't use income level.

PN1067

Thank you. You then on page 5 talk about economic abuse, and you set out there a list of behaviours that might represent that. Can I put to you, doctor, that in any situation where there is a contested and heated divorce, some of those are likely to appear?

PN1068

MS BURKE: I object to the question. This is going over ground that my friend has already asked.

PN1069

VICE PRESIDENT WATSON: I'll allow the question.

PN1070

MR WARD: I didn't hear him ask this.

*** NATASHA CORTIS

XXN MR WARD

PN1071

MS BURKE: He asked Dr Cortis questions about what the different forms of economic abuse might look like, about legal proceedings, including court

proceedings, including relating to property settlements, including related child support payments.

PN1072

MR WARD: I'm asking about divorce.

PN1073

VICE PRESIDENT WATSON: I don't propose to limit the cross-examination for that reason. You might need to repeat the question.

PN1074

MR WARD: You set out on page 5 a list of behaviours that you described as economic abuse. What I'm putting to you is that in a contested and heated divorce some of those are likely to appear?---I agree, yes.

PN1075

Yes. Thank you?---Just to point out the important thing about that paragraph is that economic harms associated with domestic violence don't only arise from economic abuse. Even when economic abuse doesn't occur, domestic violence contributes to harms for women. There are physical and emotional tactics that generate significant costs.

PN1076

I think your answer to the question was yes. Can I take you to paragraph 10. You talk there about a study by Hughes and Brush. Am I right in saying that is a study by Americans in America?---Correct.

PN1077

You talk there about persons being subject to welfare. That would be the American welfare system?---Yes.

PN1078

You talk there about women being employed for short periods of time. I take it those women obviously would be employed on the American wages system, whatever that is?---Yes.

PN1079

Yes?---So just to point out, though, that it is American, and in including it I gave significant care to selecting that, because it is particularly robust. It has a large sample size and it is the only study that I've seen that links earnings data to social security data and to court data. There isn't research like that available in Australia that shows the impact on women's earnings of applying for a protection order.

PN1080

Doctor, with the utmost respect, we have a limited amount of time. I'll ask you a question, if you answer it, you should not make submissions after I finish the question. Okay?---Okay.

*** NATASHA CORTIS

XXN MR WARD

PN1081

She had answered the question. Paragraph 11, you talk about the Cortis/Bullen 2016 research report. Which report is that?---The Horizons Report.

PN1082

That's the Horizons. Thank you very much?---Yes.

PN1083

Can I take you to paragraph 18?---Which paragraph, sorry?

PN1084

Eighteen?---Eighteen, yes.

PN1085

You say in paragraph 18 that there's a survey of 134 Australian women. Can you tell me who did that survey?---I just need to double check the reference. The Centre for Women's Studies and Gender Research at Monash University.

PN1086

Do you know how those 134 people were chosen?---I believe it was a service user sample. So it was from domestic violence services.

PN1087

So these 134 people are using domestic violence services and they were picked from that?---Yes.

PN1088

Right. Okay?---That's right. The purpose was to see how many people who presented to domestic violence services had experienced financial abuse.

PN1089

The phrase "financial abuse" is not one that you use elsewhere in this report. Is financial abuse a proxy for economic abuse?---It's usually used in a slightly narrower sense, relating to credit and debt.

PN1090

Can you help me out? How is debt financial abuse?---For example, an abusive partner may coerce a woman to hold debt, his debt, in her name.

PN1091

Right, okay, thank you for that. Can I take you to paragraph 22. I struggle with this. You say in paragraph 22, the following:

PN1092

Domestic violence can have a mix of effects on women's workforce participation. It may disrupt attendance and productivity and lower women's occupational status, and performance without affecting macro level indicators such as workforce participation rates.

*** NATASHA CORTIS

XXN MR WARD

PN1093

Can I just put a couple of scenarios to you, and see if I've misunderstood you. Let us assume for a minute that there's somebody who's a victim of physical violence, and they take, as they are entitled to at the moment, paid personal leave to go and see a doctor?---Mm.

PN1094

Is that what you're meaning by disrupt attendance and productivity?---No.

PN1095

So the taking of paid leave, you're not referring to situations where people might take paid leave to disrupt attendance, productivity, and lower women's occupational status?---Certainly taking paid leave would be one - taking paid leave to access supports for domestic violence would disrupt attendance. The thinking behind that paragraph was that domestic - the thinking was about the research studies which have shown that domestic violence may be a motivator to work or it may disrupt attendance and productivity. It can have a mix of impacts on women's workforce participation.

PN1096

So you weren't specifically turning your mind to somebody taking paid leave, but you've just accepted that taking paid leave would disrupt attendance and productivity?---It could disrupt attendance.

PN1097

Thank you. Can I take you to paragraph 24. You say there "American Research"?---Yes.

PN1098

Is that the same American research as before, or different American Research?---I believe this is a different American study. Again, that's taken in the absence of specifically Australian studies, which is a convention in the social sciences, to take research findings from other liberal welfare economies which are similar enough to Australia.

PN1099

So the 824 women there are Americans living in America?---Yes.

PN1100

What is meant in America as a low income neighbourhood?---So I'm not sure, and it would have been defined in the context of that study.

PN1101

As far as you're aware has it an American meaning?---Yes.

PN1102

You use a phrase there which we haven't seen in this case so far. "Physical aggression"?---That was the language used in that research study.

*** NATASHA CORTIS

XXN MR WARD

PN1103

Is that a proxy for physical assault?---Physical violence, that's right.

PN1104

Threat and assault?---Physical aggression. It would be a threat of a physical nature.

PN1105

Right. Thank you.

PN1106

VICE PRESIDENT WATSON: Could shouting be physical aggression?---Possibly, yes.

PN1107

MR WARD: I'm going to try and ask this. I suspect I'll be stopped, but I'll ask it anyway. You talk in paragraph 26 about this notion of economic abuse and employment sabotage?---Yes.

PN1108

The description of that, I'll confess I found quite troubling. For somebody to do that, the perpetrator, I take it they're quite troubled people.

PN1109

MS BURKE: I object.

PN1110

MR WARD: Do you know anything about the perpetrators?---I'm not an expert on perpetrators.

PN1111

Okay. Well, then I won't ask the question. You then say in paragraph 26, "An American study." That's a different American study, or is it that the one in 24?---I'll just double check the reference. I believe it's different. Yes, it's a different one.

PN1112

A different one. Okay. Again, about what's going on in America?---Right, in the absence of sufficiently robust Australian studies - - -

PN1113

Was that a yes?--- - - - we draw research findings from other liberal welfare economies.

PN1114

I'll ask the question again, is that about what's going on in America?---Yes.

PN1115

Yes. You use a phrase there, you say "survivors of domestic violence"?---Yes.

*** NATASHA CORTIS

XXN MR WARD

PN1116

What does that phrase actually mean?---People who have left a violent relationship.

PN1117

In the field of study "survivor" means somebody who's left a relationship?---Yes, and that's the language that would have been used in that particular study.

PN1118

Those are the questions.

PN1119

VICE PRESIDENT WATSON: Maybe a survivor of the relationship, or survivor of the domestic violence, would someone who takes steps to bring an end to domestic violence be a survivor of domestic violence?---Anybody who wasn't killed by domestic violence is a survivor.

PN1120

So they may or may not have left the relationship?---Correct.

PN1121

Yes. Ms Burke.

RE-EXAMINATION BY MS BURKE

[11.14 AM]

PN1122

MS BURKE: Thank you. Just a couple of questions in re-examination, Dr Cortis. You were asked some questions by my learned friend Mr Ferguson about Journeys Home, and you were given this copy of the report from the wave 1 findings?---Yes.

PN1123

And you started to give it - you were asked specifically questions about the representativeness of the sample in wave 1?---Yes.

PN1124

And you began to say something about the pathways approach to that data?---Yes.

PN1125

What did you mean by that?---So our analysis used two different approaches, analysing Journeys Home. One was a pathways approach, which looked at - in wave 1, divided women in to two groups, those who were affected by domestic violence in the six months prior, and those who weren't. And we looked at their pathways across the subsequent six waves of the study. The other approach took a more retrospective approach, and looked at women's financial wellbeing in wave 6, and looked at differences based on whether they were exposed to violence at all, once during the study period, more than once, or not at all.

*** NATASHA CORTIS

RXN MS BURKE

PN1126

Thank you. Have you discussed this approach and the results from it in your report, the report that's marked NC3 for this Commission?---Is NC3 the report, sorry? I'm confused by that.

PN1127

NC3 is the report, the 26 page report?---Yes. That's right. Yes.

PN1128

For convenience, can you just identify where in your report you set out that explanation and the findings from it, the pathways approach and the other one?---So section 5. Yes, section 5.

PN1129

Thank you, I don't have any further questions.

PN1130

VICE PRESIDENT WATSON: What page is that, section 5?---Page 11.

PN1131

Thank you. Are you talking about the Horizons Report?---I'm talking about the 26 page report.

PN1132

MS BURKE: The report to the Commission?---27 page report.

PN1133

VICE PRESIDENT WATSON: Yes?---But in the Horizons Report it's reported in much more detail.

PN1134

MS BURKE: Thank you, no further questions. If the witness could be excused.

PN1135

VICE PRESIDENT WATSON: Thank you for your evidence, Dr Cortis. You can step down.

<THE WITNESS WITHDREW

[11.17 AM]

PN1136

Professor Humphreys is the next witness?

PN1137

MS BURKE: Yes.

PN1138

VICE PRESIDENT WATSON: Mr Ferguson, can I just say, because it has arisen a couple of times, in cross-examination if you wish to draw the attention of the witness to a particular thing, for the purposes of asking a question, that might be legitimate, but simply referring to a document and asking the witness to note things is not actually a good use of our time.

*** NATASHA CORTIS

RXN MS BURKE

PN1139

THE ASSOCIATE: Please state your name and address.

PN1140

MS HUMPHREYS: Catherine Frances Humphreys (address supplied).

<CATHERINE FRANCES HUMPHREYS, AFFIRMED [11.18 AM]

EXAMINATION-IN-CHIEF BY MS BURKE [11.19 AM]

PN1141

VICE PRESIDENT WATSON: Thank you Professor Humphreys. Please be seated.

PN1142

MR FERGUSON: Thank you Professor Humphreys. Can you please repeat your full name for the Commission?---Catherine Frances Humphreys.

PN1143

And your address?---(Address supplied)

PN1144

Thank you. Your occupation?---I'm professor of social work at the University of Melbourne.

PN1145

Have you prepared a report for the purposes of these proceedings?---I have.

PN1146

If you could please in that folder in front of you there turn to the tab marked with your name. I can see that there's a document up there as well, that shouldn't be there. So if I can just ask that that additional document be removed. Thank you. Do you have there in front of you a documented headed Statement of Professor Cathy Humphreys. It's 15 paragraphs, signed and dated by you on 27 May 2016?---I do.

PN1147

Behind that there is an annexure CH1, which is your resume?---Yes.

PN1148

Behind that there is an annexure CH2, which is a letter of engagement from the ACTU to you?---Yes.

PN1149

And behind that and marked CH3 there's a document headed Expert Report of Professor Cathy Humphreys. It's 29 pages?---Yes.

PN1150

Thank you. I understand you wish to make some corrections to the expert report?---Yes.

*** CATHERINE FRANCES HUMPHREYS

XN MS BURKE

PN1151

Can I ask you, please, to turn first to page 4?---Yes.

PN1152

At paragraph 2.2?---Yes.

PN1153

The second sentence?---Yes.

PN1154

The words - so the second sentence begins, "She wished to ensure." Skipping down the next line, "reaction to being abused, and that these symptoms or impacts of abuse were did not become attached." That's what it currently reads. Do you wish to replace that with, "impacts of abuse did not become attached to the women with a diagnosis"?---Yes, that's right.

PN1155

So the "were" after "abused" is crossed out?---Yes.

PN1156

All right. If I can ask you to look at paragraph 2.5, please. At the end of that paragraph there's a reference to the Royal Commission Report, page 269?---Yes.

PN1157

Should that be to chapter 20 of the Royal Commission Report?---Yes.

PN1158

Just to clarify, for members of the Full Bench, the Royal Commission Report is in some seven or eight volumes, and each volume starts page numbering anew. So these corrections will need to be made. If I can ask you now, please, Professor Humphreys, to look at paragraph 3.1 of your report?---Yes.

PN1159

On the third last line there is a reference there to the RC report, page - - -

PN1160

SPEAKER: Sorry, what paragraph was that?

PN1161

MS BURKE: I beg your pardon, 3.1. There is a reference there to the RC Report page 29. Should that be RC Report, volume summary and recommendations?---Yes.

PN1162

Can I ask now please to turn to paragraph 5.7. Looking at both paragraph 5.7 and 5.8, there are references in both those paragraphs to the Royal Commission Report?---Yes.

PN1163

Should those references be to volume 6 of the report?---Yes.

*** CATHERINE FRANCES HUMPHREYS

XN MS BURKE

PN1164

Finally, please turn to paragraph 8.1?---Yes.

PN1165

The first sentence currently reads, "In summary, women are at most danger of losing their employment when they are experiencing DFV." Do you wish to amend that to read, "of losing their employment when they are leaving violence relationships"?---Yes.

PN1166

Thank you. So does that report, with those corrections, accurately set out your opinions that have been formed by you on the basis of your expertise?---Yes.

PN1167

Thank you, I seek to tender the statement and the annexures.

PN1168

VICE PRESIDENT WATSON: Exhibit B6.

**EXHIBIT #B6 STATEMENT OF CATHERINE HUMPHREYS
DATED 27/5/16**

PN1169

MS BURKE: Thank you, Professor Humphreys. Please wait there.

PN1170

VICE PRESIDENT WATSON: Mr Ferguson.

CROSS-EXAMINATION BY MR FERGUSON

[11.24 AM]

PN1171

MR FERGUSON: Good morning, Professor. My name is Mr Ferguson. I represent the Australian Industry Group, a party in this proceedings opposed to the ACTU's claim. I just have a relatively small number of questions for you. I take it you've read the definition of domestic violence contained in the ACTU's proposed domestic violence clause?---Yes.

PN1172

I'm going to ask that you be provided with a copy?---Thank you.

PN1173

Have you got that?---Yes.

PN1174

I just want to explore with you, given your expertise, what types of behaviours you would understand to be covered by that definition?---So there are - - -

*** CATHERINE FRANCES HUMPHREYS

XXN MR FERGUSON

PN1175

I'm sorry, I was going to put - that wasn't the question. I was just giving you some context. My apologies. I assume you would agree that the definition would capture any form of physical violence?---Yes.

PN1176

That would include situations where a party uses physical force against a relevant person and it causes an injury?---Yes.

PN1177

What about if it didn't cause an injury?---Yes, it could still be - pushing and shoving doesn't necessarily create an injury, but can be very frightening.

PN1178

Would pushing or shoving that wasn't frightening be covered by that clause?---Yes.

PN1179

In your understanding. Would you understand emotional abuse to be covered for that definition?---Yes.

PN1180

By the definition provided in that clause?---Yes.

PN1181

I'm going to ask you further questions about the definition contained in that document that you have. Would psychological abuse be caught by that definition?---Yes.

PN1182

Economic abuse?---Yes.

PN1183

What about the threat of psychological abuse?---Yes.

PN1184

The threat of economic abuse?---Yes.

PN1185

Coercive behaviour?---Yes.

PN1186

Stalking?---Yes.

PN1187

Threat of stalking?---Yes.

*** CATHERINE FRANCES HUMPHREYS

XXN MR FERGUSON

PN1188

What about if someone uses harsh words against their partner?---It depends on the context. So that you can't just say that any harsh words equals domestic violence. There's a context in which there's a regime of control that's established, and harsh

words by someone in an equal relationship where you're having a conflict is different from harsh words where it's a context in which there's been physical or sexual or emotional abuse.

PN1189

I'm just asking you about this definition and your understanding?---Mm.

PN1190

You say you'd need to understand the full context of the relationship, would you, in order to understand whether particular conduct is abuse?---I think you have to be careful about the expansion of abuse to harsh words. Lots of people use harsh words in relationships. It's not necessarily a definition by itself of domestic violence.

PN1191

Would shouting at someone be domestic violence?---Not always.

PN1192

Covered by that - sorry, would it be covered by that clause?---Not always. You know, it needs to be violent, threatening, or abusive behaviour by a person. So shouting can be a form of domestic violence, but the context is important. I don't think that - yes.

PN1193

VICE PRESIDENT WATSON: Calling names?---Well, it depends what sort of names. You know, swearing at a person in ways that are derogatory and humiliating, that sort of name calling can be experienced as extremely abusive. But not all name calling would necessarily constitute domestic violence.

PN1194

Where's your other abusive behaviour? So do we look at what the dictionary says about what abuse is?---We could, yes. I mean, to a certain extent abuse, and what's experienced of abuse, has a subjective quality about it that can't be necessarily pinned down exactly. Context does count. People do shout at each other, or call each other names, and it's not necessarily something that would necessarily fit immediately in to the context of domestic violence. Because I think that we don't want to become - you know, most couples when they separate there's a lot of strong words that happen, and it's not always domestic violence.

PN1195

MR FERGUSON: Just, again, to clarify, I'm just asking for your view about what behaviours fall within that definition as contained in the document that you've been provided. Circumstances where one partner criticises the way in which another partner undertakes some sort of domestic chore. Could that be caught by this definition?---It could, but it's not always. Partners do criticise each other in the way in which they divide up their domestic duties. Women have a lot to say about men, and men have a lot to say about women in this area. I don't think that we necessarily call all of that domestic violence.

*** CATHERINE FRANCES HUMPHREYS

XXN MR FERGUSON

PN1196

In general terms, in order to determine whether it is behaviour that falls within this definition, do you need to understand how it makes the other partner feel?---We don't always have access to that.

PN1197

I agree, but do you need to understand that in order to - - -?---It's helpful to understand it, but there's some circumstances in which it will be patently obvious and you don't need to have the subjective opinion of the other person. But there will be circumstances where you do?---Particularly when it comes to emotional abuse, I think you need to understand the context.

PN1198

In order to know whether it falls within this definition, do you need to understand the motivation of the partner that might be engaging in the conduct?---Not always. Most abusers wouldn't necessarily say that they're trying to create a regime of control. They wouldn't necessarily say they would be trying to create fear, but that is what may be occurring, and they wouldn't necessarily determine that that is what they were doing. So motivation, proving motivation, I think would be taking it outside the definition. Would you say that these forms of abuse could occur through various different mediums, such as face to face conversations, telephone conversations?---Yes. Yes, and also electronically.

PN1199

Yes, email?---Virtual. Social media, etcetera.

PN1200

And SMS, those sorts of things?---Mm.

PN1201

Thank you for your time.

CROSS-EXAMINATION BY MR WARD

[11.32 AM]

PN1202

VICE PRESIDENT WATSON: Mr Ward.

PN1203

MR WARD: Thank you. Professor, good morning. My name is Nigel Ward, I appear for the Australian Chamber of Commerce and Industry. Do you have a copy of your report?---I do.

PN1204

Can I just start with some clarification questions, if I can. Could I ask you to go to paragraph 1.12. Do you have that in front of you?---I've got 1.1 and 1.2.

PN1205

1.12?---1.12, sorry.

*** CATHERINE FRANCES HUMPHREYS

XXN MR WARD

PN1206

My apologies?---Yes.

PN1207

Would I be right in saying that data is drawn from the PSS?---I'm just not sure whether that's from the PSS or the NCAS, the National Community Attitudes Survey. I think it's from the PSS.

PN1208

You're just not quite sure?---Not entirely sure.

PN1209

That's fine. In paragraph 1.15 you used the phrase "survivors"?---Yes.

PN1210

I'm not trying to be crass, but can I understand what you mean by the phrase "survivors"?---I guess that there's a lot of discussion in the sector about whether you refer to people who are subjected to domestic violence as victims or as survivors, because there's certainly a discourse which says that if you always talk about women's survival, or, you know, the survival of those subjected to domestic violence, then you speak to their resilience. But it can underestimate the level of victimisation. So I guess we often talk about victim survivors.

PN1211

Just for my benefit and clarification, is the phrase survivor referring to somebody who's still in a violent relationship, or is it a reference to somebody who has left a violent relationship?---I would usually use them in both senses.

PN1212

In both. Right. So in the first case one is surviving and in the second case one has survived and left?---Well, post-separation violence continues for a very large group of women, so that - and their children. So I don't necessarily make that distinction between victim survivors, in terms of whether they're in the relationship or have separated, because of the levels of post-separation violence.

PN1213

So my distinction is perhaps an inappropriate one. It's the fact that somebody is, in my words, coping with the situation?---Yes.

PN1214

Yes, okay. In paragraph 2.2 you talk about a study which looks at issues of anxiety, and depression, and suicidal feelings. Can I just make sure that we're clear. You do understand that if somebody was suffering from depression, or those types of medical conditions, they currently have access to paid personal leave to deal with those matters?---Yes, I do understand that.

PN1215

Can I take you to 2.5. You say in paragraph 2.5 the following:

*** CATHERINE FRANCES HUMPHREYS

XXN MR WARD

PN1216

There is now overwhelming evidence that the health and wellbeing of women separating from domestic violence is compromised. The impact of violence, the highly controlling behaviours of perpetrators of DFV, the constant verbal abuse and degradation, the anxieties created by financial abuse, and the threats to their lives and those of their children take their toll on the emotional wellbeing of women.

PN1217

I'll just leave it there. I take it there you're talking about somebody within an abusive relationship where there is a deep and ongoing pattern of abuse?---That describes a deep and ongoing pattern of abuse. You don't necessarily always need the (indistinct) abuse to create a situation of fear, which creates post-traumatic stress. You know, one serious incident of violence can leave someone extremely traumatised and afraid, and in an ongoing way. So there are - and I guess it's why the definitions were discussed, because there's a range of ways in which the health and wellbeing of domestic violence victim survivors are undermined. So there are different - you know, it's not one size fits all.

PN1218

Fits all. Yes. Can I just try and put that in to some context. In Dr Cox's evidence yesterday, she said this, and I'll just read it to you:

PN1219

Most women reported that their most recent incident of cohabiting partner violence occurred more than 10 years ago.

PN1220

She said that in her evidence. I'm happy to show it to you if you want to see it.

PN1221

MS BURKE: Sorry, Mr Ward, could we have the reference please?

PN1222

MR WARD: My apologies. It's paragraph 7.18. Would I be right in saying that if one experienced a single domestic violence event, and it was now 10 or more years ago, your description in 2.5 is less likely to apply to them?---Yes, it - I guess if you take my report as a whole, it tries to highlight the complicated ways in which domestic and family violence is experienced. And clearly a serious one off incident may have long-term effects. It may have long-term effects on health. There's a lot of women who are disabled. And it may not be many incidents. It may be that, you know, there was something that broke their back, or, you know, created a severe knee injury, etcetera. So it's hard to say what will be a long-term effect. What we do know is there are, for a group of women, a substantial long-term effect to their mental health and wellbeing. I know certainly that one of my closest colleagues left when her child was an infant, but the Family Law Court has insisted on ongoing contact for the last 12 years. She continues to have ongoing litigation abuse that she needs to deal with, 12 years after she has left a situation of domestic violence.

CATHERINE FRANCES HUMPHREYS

XXN MR WARD

PN1223

With respect, Professor, is that a criticism of the Family Law system in Australia?---It is, with respect, a criticism of the Family Law system in Australia.

PN1224

Can I take you to paragraph 3.1? You talk here about the three pillars. Secure and affordable housing, financial security, health and wellbeing. By financial security, does that - and I'll put this to you, and tell me if you agree with me, being in employment, controlling your own finances, and having control over your assets. Is that what you mean by financial security?---All those aspects of financial security can be very important. For most people in Australian society employment is one of those pillars of financial security. There's a group of women with inheritance, or family members, or whatever, who are rich. You know, they may have financial security. It's not necessarily a large group of the population, but they're there. So the elements of financial security for the most part require assets and employment. Inheritance is helpful.

PN1225

VICE PRESIDENT WATSON: It's not the world I'm ever going to live in.

PN1226

MR WARD: Can I take you to paragraph 3.7, please? I think Dr Cox tried to help me with this yesterday. You say here there are many advantages to women gaining employment in the post-separation period, and I think you've just explained that. "Not the least of these is financial security, an issue which is highly significant given the relationship between domestic violence, homelessness, and poverty." I'm just trying to understand the relationship between those propositions. Is it your professional view that domestic violence leads to homelessness and poverty, or is it that it's quite common that somebody who is homeless has experienced domestic violence? Or is it more complex than that, Professor?---In terms of, if you're separating, then trying to find accommodation that you can live in with your children is really important. There's a small group of women that are able to stay safely in their own home, if they are able to pay the mortgage or the rent, and they can get their intervention order well supported in the breach. Most women don't have that option, and so when they're leaving they have to find accommodation. And, as we know, particularly if you're on benefits, the latest reporting suggests that one per cent of the rental market is open to you if you're on benefits. So it's - so homelessness is a great threat to women and their children who are trying to separate from domestic violence.

PN1227

Is that a governmental failure that we don't have more public housing available for these people?---Well, we know that for the most part the social housing sector is very constricted and constrained, and there's huge pressures on it. You could equally say that it's the developers who - or the people that own investments, who aren't making properties available as well. You know, so there are a range of reasons. You know, the complexities of the housing market are ones that women living and leaving domestic violence have to negotiate.

*** CATHERINE FRANCES HUMPHREYS

XXN MR WARD

PN1228

I understand. Thank you very much. On paragraph 3.8 you say:

PN1229

For many women, financial control, financial manipulation, can begin when they separate. Child support payments, property settlements, transferring of debts by their ex-partners, are areas of significant vulnerability.

PN1230

Would you agree with me that in many contested and heated divorces those are elements that you would find?---There are elements of those in - working out how you divide up the assets, and where children live, is indeed a complex issue. For the most part domestic violence is a precursor to leaving, rather than something that occurs on leaving. There's an escalation often on leaving. Women who are scared have less ability to negotiate fair settlements in these spaces, and are very vulnerable to financial abuse. So the Royal Commission has done an excellent report on financial abuse. My most recent research in the area of interviewing 50 women, 46 of whom have separated, financial abuse was a huge issue for that group of women.

PN1231

I think what you just said to me is that some of these things are common in divorces, but they're more acute in domestic violence situations?---They're more acute in domestic violence situations, because trying to negotiate with someone that you're afraid of, a lot of women are walking away rather than trying to deal with the threats, and the fear, and the escalation of violence. It's where they need good lawyers.

PN1232

Am I right in saying, then, that the society as a whole is not protecting them. The police system, the court system, is not protecting them?---I think that we've got a long way to go in terms of every sector being able to manage and intervene effectively in financial abuse.

Can I take you to paragraph 5.1. You say here many women are not in a position to separate when their residency status is dependent on their partners. Can you just tell me there, is that the case, then, that they're not Australian citizens. Can you just explain to me what you mean by that?---There's a group of people in Australia whose resident status is dependent on their being in a relationship with their partner, and if they separate then they may lose their resident status. And their children do too.

PN1233

They're people that come from other countries?---Yes.

*** CATHERINE FRANCES HUMPHREYS

XXN MR WARD

PN1234

If you can't answer this, please say so straight away, are some other countries more accepting and tolerant of domestic violence to the Australian society?---I think it's difficult to answer that question. The World Health Organisation data

would show that there's differences in the level of domestic violence in some countries, relative to our own.

PN1235

In that case we might have imported the problem to Australia?---That's difficult to answer.

PN1236

That's fine. Now, on paragraph 5.6, you talk about a variety of strategies and interventions related to the perpetrator of these offences. Am I right in saying you have some knowledge of perpetrators of these offences?---Yes.

PN1237

You do, good. You say here that some of the strategies involved behavioural change programs?---Mm.

PN1238

I take it that that would suggest that some of the perpetrators are, in my lay language, suffering from psychological disorders?---Men's behaviour change programs in Victoria don't necessarily deal with psychological problems as the first line of action. A lot of it is about looking at and understanding their issues in relation to other issues that are more sociocultural, rather than just psychological.

PN1239

Can you help me with what you mean by sociocultural?---About understanding themselves as men and why they might think that they're entitled to engage in violence and abuse towards their partners.

PN1240

Is that your way of saying that our society culturally teaches men to be like that?---It can be a - not necessarily taught, but can be part of the mores of the society, which can make those sorts of - that sense of entitlement pervasive. So that you have to explain in some ways why it is that there's a gendered imbalance in relation to who's perpetrating the abuse, and who are the victim survivors of abuse. So that isn't just because men are more psychological problematic than women.

PN1241

Does that mean it's latent in all men?---No, I don't think that's what it's saying at all. I think, though, that it's - that there are men who are more vulnerable, for a range of reasons, to taking up that sense of entitlement to be abusive.

PN1242

What are those reasons?---I think that's a complicated question.

*** CATHERINE FRANCES HUMPHREYS

XXN MR WARD

PN1243

I appreciate that. I'm happy to have a complicated answer?---Well, we would say, and I'm sure that you probably have some people who will be giving expert evidence around the prevention of domestic and family violence, and it is about

addressing respectful relationships, and how society supports respectful relationships, rather than locker room talk, one might say.

PN1244

Does alcohol and drugs have much to play with this?---There are contributing factors which - so that there are a range of factors that would consider to be contributing, one of which would be alcohol and drugs, for some of them.

PN1245

Can I just take you to your conclusion, which is paragraph 8. I note that the first time you mention the actual claim by the ACTU is in your conclusion. Can I just make sure that you understand these things, if I can. Do you understand that employees who are the victims of domestic violence may have an ability, currently, to claim personal leave or carer's leave to deal with their situation?---Yes, but a lot of that personal leave is dependent upon being able to prove that you are depressed, or have a major health problem. Actually some of these women - you know, at any point in time you might have a health problem, a mental health problem, but you might also have a housing problem, a justice problem, a child protection problem, a child care problem. So that the entitlements at the moment, in my understanding don't necessarily cover off on the complexities of the issues that may be facing someone living with domestic violence.

PN1246

I might not have understood you. If I was suffering from depression because of domestic violence, versus suffering from depression due to some other reason, the same test would apply to get personal leave?---Yes, but not all women are suffering from depression. So you shouldn't necessarily have to prove you're depressed to get the leave.

PN1247

That's okay, that was (indistinct), because it was your example, not mine. Please use your example. You do also understand that if somebody was really in need of paid leave they could take their annual leave, at the moment?---Yes, certainly.

PN1248

Do you also understand that if you're a casual employee, your casual loading compensates you for personal leave, carer's leave, and annual leave?---Yes, I do understand that.

PN1249

Do you understand that employees have rights to unfair dismissal claims, if they're sacked unfairly?---Yes, I understand that.

PN1250

Do you also understand that they have various rights in relation to discrimination?---Yes, I do understand that.

*** CATHERINE FRANCES HUMPHREYS

XXN MR WARD

PN1251

No further questions. Thank you.

PN1252

VICE PRESIDENT WATSON: Ms Burke.

RE-EXAMINATION BY MS BURKE

[11.54 AM]

PN1253

MS BURKE: Just one question in re-examination, Professor Humphreys. You were just asked some questions about employees' existing rights. You identified the discrimination law, some employees will have rights under discrimination law. Are you aware of any discrimination law in Australia that allows an employee to take action on the basis of having been discriminated against because they are a victim of domestic violence?---I'm not across that, no.

PN1254

Thank you.

PN1255

VICE PRESIDENT WATSON: Thank you for your evidence, Professor Humphreys. You can step down.

<THE WITNESS WITHDREW

[11.55 AM]

PN1256

I think for the purposes of the transcript, there were some references, Mr Ward, to paragraph numbers that may have been an earlier draft, rather than the final document. Especially part 3 of the report. So we'll need to make sure we're all looking at the same document, especially when we get to submissions.

PN1257

MR WARD: I'm sorry, your Honour, I was using the one which I had. I didn't know if it had been replaced. I apologise.

PN1258

MS BURKE: I understood the paragraph numbers hadn't changed. Perhaps Mr Ward and I can go through the transcript and notify of any corrections that need to be made if they do.

PN1259

VICE PRESIDENT WATSON: Yes. I think in particular for the final submissions, rather than the transcript. We might be referring to different documents.

PN1260

MS BURKE: Thank you. Certainly we'll make note of that. The next two witnesses to be called are lay witnesses, and there are some objections outstanding to those witnesses. I've spoken about this with my learned friend, I'm just proposing to request a short adjournment of 10 minutes so we can finalise our discussions around those objections. Then if there are any left to be ruled on we can do those before the witnesses come back. They're both here and ready to give evidence.

*** CATHERINE FRANCES HUMPHREYS

RXN MS BURKE

PN1261

VICE PRESIDENT WATSON: Yes. Are these the objections that you filed written submissions on, Mr Ferguson?

PN1262

MR FERGUSON: Yes. As I understand it.

PN1263

VICE PRESIDENT WATSON: I think it's noted in those submissions that if the objections aren't granted then submissions might be made as to questions of weight. It is a common approach of this Commission to allow some latitude in terms of evidence, but that doesn't necessarily imply that it would be given weight at the end of the day. I think we're looking at an efficient process for hearing the matter as a priority. Anyway, we'll adjourn for 10 minutes.

PN1264

MS BURKE: Thank you very much.

SHORT ADJOURNMENT

[11.57 AM]

RESUMED

[12.17 PM]

PN1265

VICE PRESIDENT WATSON: Ms Burke?

PN1266

MS BURKE: Thank you for that indulgence, it's been very productive. I call Marilyn Beaumont.

PN1267

VICE PRESIDENT WATSON: Ms Beaumont.

<MARILYN KAY BEAUMONT, AFFIRMED

[12.17 PM]

EXAMINATION-IN-CHIEF BY MS BURKE

[12.18 PM]

PN1268

VICE PRESIDENT WATSON: Thank you, Ms Beaumont. Please be seated. Ms Burke?

PN1269

MS BURKE: Ms Beaumont, can you please repeat your full name for the transcript?---Marilyn Kay Beaumont.

PN1270

And your address?---(Address supplied)

PN1271

And your occupation?---Board director and consultant in the health and community services industry.

*** MARILYN KAY BEAUMONT

XN MS BURKE

PN1272

Thank you. And have you prepared a statement for the purposes of this proceeding?---Yes.

PN1273

Can I ask you to just look at the folder in front of you there. Turned up at the front of you there, is that a document headed, "Witness statement of Marilyn Beaumont"?---That's correct.

PN1274

And it's 12 pages, including attachment MB1, which is a copy of your resume?---That's correct.

PN1275

I'm afraid the statement is not dated but can I just ask you please to turn to paragraph 44 of that statement, and I'll ask you to be handed a pen and if you could please just strike out paragraph 44, just put a line through it? With that amendment which is the subject of discussions between my friend and I, that represents the conclusion of any outstanding issues with relation to objections and I seek to tender that statement.

PN1276

VICE PRESIDENT WATSON: We'll mark that statement Exhibit B7.

**EXHIBIT #B7 WITNESS STATEMENT OF MARILYN KAY
BEAUMONT WITH PARAGRAPH 44 STRUCK OUT**

PN1277

MS BURKE: Thank you. Ms Beaumont, please just wait there.

PN1278

VICE PRESIDENT WATSON: Mr Ward?

CROSS-EXAMINATION BY MR WARD

[12.20 PM]

PN1279

MR WARD: Thank you, your Honour. Ms Beaumont, good afternoon. My name is Nigel Ward. I appear in these proceedings for the Australian Chamber of Commerce & Industry, and some other employer interests. I'm just going to ask you some questions. I think when you answered your barrister's questions about your current status you said you were a board member?---I'm a board director, yes.

PN1280

Board director?---Mm.

PN1281

In your statement you say you're actually the chairperson. Are you no longer the chairperson?---That is a board position.

*** MARILYN KAY BEAUMONT

XXN MR WARD

PN1282

Right, so you are - - -?---That is one of a few that I hold.

PN1283

Right?---So I'm the chairperson of the Australian Women's Health Network National Board.

PN1284

So that position is current?---That's correct.

PN1285

Okay. And you also said you were a consultant. Do I take it that you run your own consultancy?---That's correct.

PN1286

And could you tell me what sort of consulting services do you provide?---So within organisations, principally with the health and community services sector, I would review the quality and scope of health services. I've also consulted with leadership teams about building capability. I've also consulted with individuals in terms of their leadership and mentoring, upcoming leaders.

PN1287

Do you provide any consulting services related to domestic violence?---I have, but not currently. So I have completed some standards in terms of the Loddon Mallee Women's Health Service which I refer to in my evidence, and that was as a consultant.

PN1288

Okay. When you say you consult on health services, can you just help me as a lay person, actually what are you consulting on when you consult on health services?---So I would be involved in, if it's a multi-campus service I would be involved in the scoping of population health data, understanding what the health priority issues are within a catchment, the developing of service profile, developing capability to meet the needs of the community, or within the leadership team, developing capability for development of new services, potentially.

PN1289

And your work in the leadership space, is that mentoring and coaching around leadership as a concept?---Yes.

PN1290

Yes. Can I just turn then to the Australian Women's Health Network. Can you tell me, how is it funded?---It does operate on some government grants but significantly, donations and philanthropic funds.

*** MARILYN KAY BEAUMONT

XXN MR WARD

PN1291

And government grants are from the federal government, or state?---Federal government, and there is none ongoing after 31 December. So the board will be operating as a volunteer board completely, with no staff.

PN1292

Can I just understand that?---Mm.

PN1293

Are you telling me that the Commonwealth government is stopping funding to your organisation?---The decision in terms of wind-back of some of the health promotion funding led to a defunding of a range of organisations including the Australian Women's Health Network.

PN1294

So when that occurs you'll be living off donations, is that right?---That's correct.

PN1295

Right. And in your statement at paragraph 10 you say you've got a diverse range of members, organisational and individual. In terms of the organisational members, what sort of people might be member?---So organisations might include the women's hospitals, for example, the sexual assault services, domestic violence services, some of the peak organisations around health promotion and public health, the Public Health Association of Australia, Australian Women Doctors' Federation, a number of the women's health services in each of the states and territories, domestic violence services.

PN1296

Yes, okay. And in terms of individual members what sort of individual members are we talking about?---Individuals such as myself - - -

PN1297

Right?---Not connected to an organisation, researchers, academics, members of parliament.

PN1298

Really?---Yes.

PN1299

Commonwealth or Federal - Commonwealth?---Commonwealth.

PN1300

That's encouraging.

PN1301

VICE PRESIDENT WATSON: How is this assisting us, Mr Ward?

PN1302

MR WARD: Your Honour, I just want to understand the organisation, your Honour. I want to understand what motivates it and what drives it.

PN1303

VICE PRESIDENT WATSON: Do you need to do that through cross-examination?

*** MARILYN KAY BEAUMONT

XXN MR WARD

PN1304

MR WARD: Well, I was doing it. I've finished it now. Can I take you to paragraph 22. You refer here to a variety of common health consequences. I'm just struggling a little bit. You've said, "reduce socio-economic status". Can you just explain to me how reduced socio-economic status is a health consequence?---One of the concepts within health promotion is the social determinants of health and that talks about those things which contribute to health, rather than the health sector which deals with illness or deviations from health, so the social determinants of health include housing, education, socio-economic wellbeing, and so on, so it's in that context.

PN1305

Thank you. You say in your statement that you used to be you might still be a psychiatric nurse. When did you finish psychiatric nursing?---I'm not sure that I ever have. I did finish my work in clinical nursing some time ago when I became involved in elected office in the Nurses' Federation, so my last clinical role as a psychiatric nurse would have been as a drug counsellor in South Australia in the 1980s but I am involved in governance of health services which include mental health service delivery.

PN1306

Can I take you to paragraph 39. You say there in paragraph 39, "Adverse impacts include the relationship between economic security and health and wellbeing." Then you make this statement. "A supportive workplace will have a range of measures in place including having access to paid family and domestic violence leave". I take it you're expressing an opinion there as the chair of the Australian Women's Health Network?---I found it difficult to locate one point of my experience in putting the statement together and I believe that statement relates to my understanding as an employer in the various organisations I've been an employer, and as a board member. I can say that a workplace which supports women to disclose in a safe way leads to much more effective and earlier intervention and therefore a much better outcome in terms of health and wellbeing for the woman.

PN1307

So you're saying it's both a personal opinion and your opinion as chairperson of the Australian Women's Health Network?---It's my opinion as the chair of the Women's Health Network but also my experience.

PN1308

So it's your opinion then as a psychiatric nurse, a consultant, that's what's based your opinion - - -?---That's correct.

*** MARILYN KAY BEAUMONT

XXN MR WARD

PN1309

Yes. And do I take it that it's true then that you hold the view that any business that doesn't have that is our unsupported - - -?---I think there are a range of ways that a workplace can be supportive but I think that having a clause in an industrial award leads to a range of other actions that relate to policy in practice. And so I think the two run hand in hand. I think there are supportive workplaces that the

workers would benefit from having a paid clause that would increase the capacity of the workplace, because in my view, when you have a legislated or industrial requirement the workplace then develops policy in practice to support its implementation.

PN1310

So let me just understand. I think what you've just said to me is that if you don't have paid leave it doesn't necessarily mean you're unsupported, yes?---I think there's a greater impetus.

PN1311

Right, and I think what you're now telling me is that if the ACTU's claim was granted, you're encouraged by that, not so much about the claim but about the other things the workplace might do?---I'm encouraged that women would have access to paid leave and that it would lead to a supportive workplace.

PN1312

And when you say, supportive workplace, what do you mean by that?---I mean that there would be capacity developed within management to support applicants, or an award clause of domestic violence leave, and the increased capacity of the management leads to a more supportive workplace because there is better understanding.

PN1313

And that's what the Australian Women's Health Network advocates for?---That's what the submission to the Royal Commission stated and our most recent submission to Federal government, yes.

PN1314

That's yes?---Yes.

PN1315

Now can I take you to paragraph 46. You say there that – you talk about people taking sick leave, caring for aged family members, do you understand that employees are entitled to claim paid sick leave today if they're in full time or part-time employment?---Yes.

PN1316

And if they're sick they're entitled to do that?---Yes.

PN1317

Do you also understand that that leave is specifically there to allow them to care for children under the age of 18?---Yes.

*** MARILYN KAY BEAUMONT

XXN MR WARD

PN1318

Yes. You go on and say that it's unfair for women to carry the greater burden of needing time away from work to take action to secure their own and their children's lives, free from family violence. You'd agree with me – is that your personal opinion or is that the opinion of the Australian Women's Health Network?---It's my personal opinion.

PN1319

Thank you. In paragraph 48 you talk about your role as a board director. Is that a reference to your role as a board director of the Australian Women's Health Network, or a board director on some other board?---A board director of a variety of boards, and certainly as my experience as a board director of my current board, other than the Australian Women's Health Network.

PN1320

How many boards are you on?---At the moment, two.

PN1321

Two. What's the other board?---Bendigo Healthcare Group.

PN1322

No further questions.

PN1323

VICE PRESIDENT WATSON: Ms Burke?

PN1324

MS BURKE: No re-examination.

PN1325

VICE PRESIDENT WATSON: Thank you for your evidence, Ms Beaumont, you can step down.

<THE WITNESS WITHDREW

[12.33 PM]

PN1326

MS BURKE: Thank you. The next witness is Michelle Jackson, she's just being called. If I can just indicate the outcome of the objections at this point. There were three objections to Ms Jackson's evidence. The ACTU agrees to withdraw paragraph 17 and paragraph 19, and just to be clear because it is important, the reason for the withdrawal of 19 is that I understand that that council has written to the Commission with that evidence with those figures in them and that material is available on the website, so there is no need for Ms Jackson to give that evidence. And paragraph 18 remains.

PN1327

VICE PRESIDENT WATSON: Yes, thank you.

<MICHELLE JUNE JACKSON, AFFIRMED

[12.34 PM]

EXAMINATION-IN-CHIEF BY MS BURKE

[12.35 PM]

PN1328

VICE PRESIDENT WATSON: Thank you, Ms Jackson, please be seated.

*** MICHELLE JUNE JACKSON

XN MS BURKE

PN1329

MS BURKE: Ms Jackson, can you please restate your full name for the Commission?---Michelle June Jackson.

PN1330

And your address?---(Address supplied)

PN1331

And your occupation?---Branch Executive President of the Australian Services Union.

PN1332

Thank you. And have you prepared a statement for the purposes of these proceedings?---Sorry, I didn't hear - - -

PN1333

Have you prepared a statement for these proceedings?---Yes, I have.

PN1334

And if you could just look at the folder in front of you there, is that - - -?---Yes.

PN1335

Your statement, headed, "witness statement of Michelle Jackson"? It's five pages including the attachment, MJ1, which is a list of local government agreements providing for 20 days paid leave?---Yes, it is.

PN1336

And I understand you have some corrections you wish to make to that statement?---Yes, I do.

PN1337

Can I ask you to look at paragraph 1. You've already perhaps revealed this but in the statement it says you're a branch co-ordinator for the ASU. You are now Branch Executive President, is that correct?---Yes, that is correct.

PN1338

Thank you. And can I ask you to turn to paragraph 16(c) please?---Yes.

PN1339

There's some typographical errors in this paragraphs and I'd just like to go through them line by line. Should that read, "At the Greater Dandenong City Council", and then we insert the word, "negotiations"?---Yes.

PN1340

Feel free to use the pen there to mark that up if that's convenient. It goes on to read, "Which took place between March and November 2015" – if you can just add a comma there, and then cross out, "At Greater Dandenong City Council"?---Yes.

*** MICHELLE JUNE JACKSON

XN MS BURKE

PN1341

Then it reads, "Anthony Camillo, manager, Pitman(?) Procurement Services, raised concerns about leave being granted on", and if you can just insert the word, "and", after that - - -?---Yes.

PN1342

So it reads, "on an annual basis", and insert the word, "proposed" - - -?---Yes.

PN1343

"A one-off 20 day entitlement". Then there's a full stop and a missing word, "he", so "he believed"?---Yes.

PN1344

And with those corrections does that paragraph accurately reflect your evidence?---Yes.

PN1345

Can I also ask please that you put a line through paragraph 17 of your statement there?---Yes.

PN1346

And of paragraph 19?---Yes.

PN1347

And with those corrections there, is that statement, as a whole, your evidence to the Commission?---Yes.

PN1348

Thank you. I tender the statement.

PN1349

VICE PRESIDENT WATSON: Back to paragraph 16(c), half way through, did he say he believed that an employee should be able to resolve the situation, et cetera?---Yes.

PN1350

Is it more accurate to say that he said he believed, rather than assume what he actually believed?---Yes. Yes, because he did say it, yes.

PN1351

Yes. We'll mark that statement exhibit B8.

EXHIBIT #B8 AMENDED WITNESS STATEMENT OF MICHELLE JACKSON

PN1352

MS BURKE: Thank you, Vice President. Would you just please just wait there.

PN1353

VICE PRESIDENT WATSON: Mr Ward?

*** MICHELLE JUNE JACKSON

XN MS BURKE

PN1354

MR WARD: Thank you. Ms Jackson, my name is Nigel Ward. I appear for the Australian Chamber of Commerce & Industry and other employer interests in this matter. I'm just going to ask you some questions then Mr Ferguson is going to ask you a couple, as well. Can I just start by understanding, you say in paragraph 4 that your role currently involves negotiating enterprise agreements. In the last 12 months how many have you personally been involved in?---In the last 12 months, I'm just thinking it would have been the – I would say in the last 12 months it would be four, and I'm currently involved still in three.

PN1355

You say in paragraph 5, "The ASU has members of more than 500 social and community service employers in Victoria. It is difficult to negotiate and maintain that number of enterprise agreements". Are you saying there that you've got 500 enterprise agreements?---No, I'm saying that we have members at 500 different employers.

PN1356

And how many enterprise agreements would you have covering those 500 employers?---Roughly about 30.

PN1357

Thirty. When you say it's difficult to negotiate and maintain that number is that because the union doesn't have enough financial resources to put organisers on?---It's because of the logistics. We have, of those 500 employers there are 400 employers where we have five members or less at each of those employers.

PN1358

You simply don't have the resources to send organisers around to organise and to negotiate?---No, that would be correct.

PN1359

Yes. Yes. Can I take you to paragraph 13. You say at paragraph 13, "Coming into contact or the fear of coming into contact with a perpetrator can make it difficult to concentrate at work, and work to the standard that the employee or the employer would want". Can I ask you this, have you based that statement on any academic study?---No.

PN1360

It's just your opinion, is it?---Yes.

PN1361

Yes. Now are you familiar with the ability of an employee to make a request for flexible working arrangements under the Fair Work Act?---Yes, I am.

*** MICHELLE JUNE JACKSON

XXN MR WARD

PN1362

Are you aware that that right extends, and I'll just quote, "to an employee who is experiencing violence from a member of the employee's family"? I'll help you in

a way – can I show you a copy of section 65 of the Fair Work Act, to be fair to you?---Yes.

PN1363

Do you have that in front of you?---Yes.

PN1364

I don't need to go through this in great detail but can you just accept for the present purposes that what I'm telling you is true, that this is a copy of section 65 of the Fair Work Act which allows employees to make a request for flexible working arrangements and it identifies circumstances where these requests can be made, and can I ask you to have a look at 1(A)(E)?---Yes.

PN1365

Have you seen that?---Yes.

PN1366

Were you aware of that?---No.

PN1367

Okay, well then if you weren't aware of it I – well, let me just ask you one more question. I take it, if you're not aware of it, you haven't helped any members in relation to those requests?---No, I haven't but I am aware that they can make the request but it doesn't mean the request will be granted.

PN1368

So you're not aware that it's in the Act?---No.

PN1369

But now you're telling me you are aware you can make the request?---I'm aware that employees can make requests for flexible working arrangements. I'm also aware that the employer can deny those requests.

PN1370

Yes?---And there is my understanding that – no access to the Fair Work Commission if the request is denied.

PN1371

Have you helped any of your members with those requests?---Not under this provision of the Act, no.

PN1372

Thank you. Now in terms of bargaining, when your union is bargaining, tell me if I'm wrong – does your union form a log of claims to serve on the employer?---Yes, we do.

PN1373

And is that a log of claims that's established as a standard log of claims and approved by your executive?---No, it's not.

*** MICHELLE JUNE JACKSON

XXN MR WARD

PN1374

So it's a log of claims that you develop, employer by employer, is it?---Yes, it is.

PN1375

In consultation with your members?---Yes, it is.

PN1376

And you serve that log of claims on the employer?---Yes.

PN1377

And is it your experience that the employer serves a log of claims back on you?---Sometimes they do, sometimes they don't.

PN1378

So in some occasions you're debating competing logs of claims, and in other occasions it's just your log of claims?---Yes.

PN1379

And you're aware, are you, that if you're not satisfied with how the employer's conceding to you, you can take protected industrial action to support your claims?---Yes.

PN1380

Yes, but do you do that very often?---I wouldn't say often, but we do do it from time to time.

PN1381

I take it, on the occasions you do it, you do it because the members are strongly supporting the claims you're making?---Yes.

PN1382

Yes. You say at paragraph 6, you're talking about family violence provisions, you say, "bargaining outcomes are inconsistent". That would be an entirely understandable outcome, wouldn't it, given the way you bargain?

PN1383

MS BURKE: I object to the question. Understandable to who?

PN1384

MR WARD: Okay. Well, let me put it a different way. You bargain employer by employer?---Yes.

PN1385

I take it that the employer sitting across the table from you will make their own mind up which claims they concede and which claims they won't concede?---Yes.

PN1386

Yes, and I take it that, for instance, for wage increases in bargaining, would it be the case that all of your bargain wage increases are consistent, or are they different from different employees?---They're different.

*** MICHELLE JUNE JACKSON

XXN MR WARD

PN1387

Yes, so it's quite common to have inconsistent outcomes, employer by employer, in bargaining?---Yes.

PN1388

Yes. No further questions, thank you.

PN1389

VICE PRESIDENT WATSON: Mr Ferguson?

CROSS-EXAMINATION BY MR FERGUSON

[12.47 PM]

PN1390

MR FERGUSON: Ms Jackson, my name is Mr Ferguson, I represent the Australian Industry Group. We're opposed to the ACTU's claim. I have a small number of questions. I just want to take you to paragraph 15 of your statement. Have you got a copy there?---Yes.

PN1391

You there refer to negotiations relating to the Hazelwood Power Enterprise Agreement 2015. I'll just clarify, was a claim for paid domestic violence leave ever advanced by the union in the course of those negotiations?---Not to the employer.

PN1392

Were you personally involved or personally undertaking those negotiations?---No.

PN1393

I take it you have some understanding of the content of that agreement based on your statement?---Yes.

PN1394

Is it your understanding that that agreement provides for a scheme of uncapped paid sick leave?---Yes.

PN1395

And it provides for a raft of additional leave entitlements that exceed anything provided in the NES or any relevant award that would otherwise apply to the employees covered by it, doesn't it?---Yes.

PN1396

No further questions.

RE-EXAMINATION BY MS BURKE

[12.49 PM]

PN1397

*** MICHELLE JUNE JACKSON

XXN MR FERGUSON

*** MICHELLE JUNE JACKSON

RXN MS BURKE

MS BURKE: Ms Jackson, I just want to take you to paragraph 13 of your statement please and the first sentence there. You were asked by Mr Ward about your opinion?---Yes.

PN1398

Is that opinion based on anything?---That opinion is based on my discussions with members that are affected by family violence, about their experiences of being in the workplace.

PN1399

So it's based on your experience as a union organiser?---Yes.

PN1400

And can I ask you also about paragraph 5 of your statement. You were asked about the 500 employers that your members are working at, and please correct me if I've got this wrong but I understood your evidence to be that of those 500 employers, 400 of them are not covered by enterprise agreements, is that correct?---No.

PN1401

I'm sorry. I misunderstood that. So perhaps you can just explain to me. Do you mean you have enterprise agreements that cover - - -?---No, the evidence was that why it was not practical to bargain, was that of those 400 of the 500 employers have – we have five members or less at each of those employers.

PN1402

I see?---Yes.

PN1403

Thank you.

PN1404

VICE PRESIDENT WATSON: I think you said you had 30 enterprise agreements - - -?---Yes.

PN1405

Or thereabouts?---Yes.

PN1406

MS BURKE: Thank you, no further questions.

PN1407

VICE PRESIDENT WATSON: Thank you for your evidence, Ms Jackson, you can step down?---Thank you.

<THE WITNESS WITHDREW

[12.51 PM]

PN1408

VICE PRESIDENT WATSON: Does that conclude the evidence for today?

*** MICHELLE JUNE JACKSON

RXN MS BURKE

PN1409

MS BURKE: It does. It does but I can assure you, for what it's worth, that the time will be used very productively this afternoon to continue to be efficient.

PN1410

VICE PRESIDENT WATSON: Yes. Well, I think some of the issues are being confined, I think, in the demands of the parties before us. It may be that the evidence can be expedited on the other days, as well. We're anxious not to have breaks in the evidence and to have it continuous, as far as possible, that cross-examination is really only engaged into the extent that it's necessary, and there is some interest in seeing whether there can be an earlier finish on Friday, through the adjustment of those witnesses but maybe that's something the parties can consider and discuss, and give further attention to the timetable for the remainder of the week.

PN1411

MS BURKE: Certainly.

PN1412

VICE PRESIDENT WATSON: We will adjourn until 10 am tomorrow.

ADJOURNED UNTIL WEDNESDAY, 16 NOVEMBER 2016 [12.52 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

NATASHA CORTIS, AFFIRMED	PN873
EXAMINATION-IN-CHIEF BY MS BURKE	PN873
EXHIBIT #B5 WITNESS STATEMENT OF DR NATASHA CORTIS DATED 26/05/2016, TOGETHER WITH ANNEXURES	PN904
CROSS-EXAMINATION BY MR FERGUSON.....	PN906
THE WITNESS WITHDREW	PN954
NATASHA CORTIS, RECALLED	PN998
CROSS-EXAMINATION BY MR FERGUSON, CONTINUING	PN998
EXHIBIT #F2 JOURNEYS HOME RESEARCH REPORT.....	PN1032
CROSS-EXAMINATION BY MR WARD	PN1043
RE-EXAMINATION BY MS BURKE	PN1121
THE WITNESS WITHDREW	PN1135
CATHERINE FRANCES HUMPHREYS, AFFIRMED.....	PN1140
EXAMINATION-IN-CHIEF BY MS BURKE	PN1140
EXHIBIT #B6 STATEMENT OF CATHERINE HUMPHREYS DATED 27/5/16	PN1168
CROSS-EXAMINATION BY MR FERGUSON.....	PN1170
CROSS-EXAMINATION BY MR WARD	PN1201
RE-EXAMINATION BY MS BURKE	PN1252
THE WITNESS WITHDREW	PN1255
MARILYN KAY BEAUMONT, AFFIRMED	PN1267
EXAMINATION-IN-CHIEF BY MS BURKE	PN1267
EXHIBIT #B7 WITNESS STATEMENT OF MARILYN KAY BEAUMONT WITH PARAGRAPH 44 STRUCK OUT	PN1276
CROSS-EXAMINATION BY MR WARD	PN1278
THE WITNESS WITHDREW	PN1325

MICHELLE JUNE JACKSON, AFFIRMED	PN1327
EXAMINATION-IN-CHIEF BY MS BURKE	PN1327
EXHIBIT #B8 AMENDED WITNESS STATEMENT OF MICHELLE JACKSON	PN1351
CROSS-EXAMINATION BY MR WARD	PN1353
CROSS-EXAMINATION BY MR FERGUSON.....	PN1389
RE-EXAMINATION BY MS BURKE	PN1396
THE WITNESS WITHDREW	PN1407