



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

10.03 AM, THURSDAY, 17 NOVEMBER 2016

Continued from 16/11/2016

PN1701

VICE PRESIDENT WATSON: Any changes in appearances?

PN1702

MS SWEET: Good morning.

PN1703

VICE PRESIDENT WATSON: Are there any changes in appearances?

PN1704

MS R SWEET: I beg your pardon. Good morning, Commission. My name is Sweet, initial R. I am briefed by PricewaterhouseCoopers in this matter, who is an interested party. I'll refer to the organisation as PWC. There was at a directions hearing on 27 October 2015 permission to appear granted to counsel for all - 16, sorry. Permission to appear was granted to counsel for all purposes, however I was not in attendance and neither was PWC at that directions hearing, so in the event that that grant of permission doesn't cover me, I seek it now.

PN1705

VICE PRESIDENT WATSON: Permission is granted, Ms Sweet. Thank you.

PN1706

MS SWEET: Thank you, Vice President.

PN1707

VICE PRESIDENT WATSON: Ms Burke?

PN1708

MS BURKE: Thank you. Before the first witness, which is my friend's witness, is called this morning, some minor administrative matters to bring to the attention of the Full Bench. The first of those relates to an inquiry made of Dr Flood by yourself, Vice President. There was a question about the national - about a survey and particular cultural and linguistically diverse groups and their attitudes to domestic violence. The transcript reference is PN 796.

PN1709

Dr Flood wasn't able to name the survey in his response to your question and I just wanted to confirm the name of that survey is the National Survey on Community Attitudes to Violence Against Women 2009. It's an 80-page survey. I'm happy to provide hard copies if that would assist the Full Bench, or I can email a link, whichever form you would prefer to receive it in - if you're interested in looking at it at all, that is.

PN1710

VICE PRESIDENT WATSON: If it's publicly available I'm happy to receive the link.

PN1711

MS BURKE: Thank you. I'll arrange for that.

PN1712

VICE PRESIDENT WATSON: And copied to the other parties.

PN1713

MS BURKE: Certainly, yes. It is referred to in our submissions, but I'll ensure that everybody has a copy.

PN1714

VICE PRESIDENT WATSON: Yes.

PN1715

MS BURKE: The next matter was just to confirm that we informed your associate after business hours last night of the changes in the line-up for today, and just to confirm that, Ms Eckersley at 10, Ms Kun at 11, and then the afternoon witnesses were not able to be brought forward. One of them, in fact, is in a conciliation in this Commission this morning and into this afternoon and so we will be seeking the indulgence of a long break, which will be used productively, to return at 2 o'clock for Bernadette Pasco, half past 2 for Michele O'Neil and 3 o'clock for Sunil Kemppi.

PN1716

With respect to the witnesses for tomorrow, I understand Ms Dann is now no longer required for cross-examination and so the last witness that the ACTU will call will be Ms McFerran, and after that the witness called by my learned friend Mr Ferguson.

PN1717

MR FERGUSON: And if I could advise the Full Bench of one change in relation to that issue. Ai Group filed a statement of Mr Matthew Potter. We're withdrawing that statement.

PN1718

VICE PRESIDENT WATSON: Very well. So there will be no cross-examination of Mr Potter.

PN1719

MS BURKE: Sadly, no. Those are all the matters I wished to bring to the attention of the Full Bench this morning.

PN1720

VICE PRESIDENT WATSON: Thank you, Ms Burke. Ms Sweet?

PN1721

MS SWEET: If the Commission pleases. PWC has filed with the Commission an outline of submissions dated 20 June 2016 and a witness statement of Debra Marie Eckersley of the same date. Ms Eckersley is a partner of PWC who at the time of making the statement was the human capital leader of PWC. Does the Bench have copies of that statement and submissions to hand?

PN1722

VICE PRESIDENT WATSON: We do.

PN1723

MS SWEET: Thank you. Since 23 November 2015 PWC has had in place a family and domestic violence and sexual assault support policy. The policy provides an entitlement of up to 10 days' paid leave per annum which is non-cumulative and provides additional leave at PWC's discretion in addition to other financial and emergency support measures to support employees experiencing - who have recently experienced these types of violence. That policy is found at annexure A to Ms Eckersley's statement, pages 12 and 13.

PN1724

Just briefly, Ms Eckersley's statement deals with six topics. The first is the rationale for creating the policy in the first place. The second is the process for undertaking to formulate the policy. The third is the cost associated with introducing the policy. The fourth has been the reaction of employees to the policy. The fifth is, in a very broad brush way, that - the statement speaks to the claims made by employees to access the entitlements under the policy, and finally it makes a comparison between the policy and the proposed modern award clause as at the date of the statement. I understand that there's now been some minor amendments to that clause which Ms Eckersley does not deal with.

PN1725

I have advised the other parties that I wish to adduce some very short additional oral evidence from Ms Eckersley to update two aspects of her statement. The first is simply her current position and responsibilities and - the first is that. The second is the number of employees who have sought access to the policy, some updated figures in that respect. I understand there is no objection to that course from the other parties. If there's nothing further I will call Ms Eckersley.

PN1726

VICE PRESIDENT WATSON: Ms Eckersley.

<DEBRA MARIE ECKERSLEY, AFFIRMED

[10.10 AM]

PN1727

VICE PRESIDENT WATSON: Thank you, Ms Eckersley. Please be seated.

PN1728

Ms Sweet?

EXAMINATION-IN-CHIEF BY MS SWEET

[10.10 AM]

PN1729

MS SWEET: Thank you, Vice President.

PN1730

Ms Eckersley, I'm just going to ask you to make sure you keep your voice up?---Okay.

PN1731

Can you please repeat your full name for the Commission?---Debra Marie Eckersley.

*** DEBRA MARIE ECKERSLEY

XN MS SWEET

PN1732

And what's your business address, Ms Eckersley?---201 Sussex Street, Sydney.

PN1733

And you are a partner at PWC. Correct?---Yes.

PN1734

Have you made a witness statement in this matter?---Yes.

PN1735

I'm going to hand you a bundle, Ms Eckersley?---Thank you.

PN1736

Do you have there a document headed Statement of Debra Marie Eckersley?---Yes.

PN1737

Is that, ma'am, 11 pages in length?---Yes.

PN1738

It's dated 20 June 2016?---Yes.

PN1739

That's your signature on the 11th page?---Yes.

PN1740

There are two annexures to the report. Is that correct?---Yes.

PN1741

Have you read your statement before coming to the Commission today?---Yes.

PN1742

Are you satisfied that the matters in it are true and correct as at the date you signed it?---Yes.

PN1743

I tender that statement, Vice President.

PN1744

VICE PRESIDENT WATSON: The statement with the attachments will be exhibit S1.

**EXHIBIT #S1 STATEMENT OF DEBRA MARIE ECKERSLEY
DATED 20/06/2016, TOGETHER WITH TWO ATTACHMENTS**

PN1745

MS SWEET: Ms Eckersley, if I can take you to paragraph 2 of your statement?---Yes.

*** DEBRA MARIE ECKERSLEY

XN MS SWEET

PN1746

You see you say that at the time of making the statement you were currently the human capital leader for PWC in Australia?---That's right, yes.

PN1747

Since making that statement have you handed the reins of human capital leader to another person?---Yes, I have.

PN1748

How many years did you hold those responsibilities of human capital leader?---A little over four years.

PN1749

And you have been and remain a client facing partner of PWC in the people consulting group?---Yes, I am.

PN1750

I'll now take you to paragraph 33, Ms Eckersley?---Yes.

PN1751

I'll take you to five lines down, about halfway across, "I can say that." Do you have that?---Yes.

PN1752

"As at the date of making this statement we have received two requests for leave and one other request in accordance with the policy." Now, this was on 20 June 2016 these figures were correct. Since that time, till say, close of business yesterday, have there been any additional requests to access the policy?---Yes. There have been two further requests.

PN1753

That's a total of five?---Yes.

PN1754

What were the nature of the entitlements sought under the policy for those additional requests?---They were a combination of leave and other support in terms of the way that those individuals work.

PN1755

Sorry, I'll just - my friend has something in his throat.

PN1756

MR FERGUSON: I apologise.

PN1757

MS SWEET: Could you just repeat that answer - - -?---Sorry.

PN1758

- - - just for the transcript?---It was a combination of requests for leave and other support in the way in which they undertake their role.

*** DEBRA MARIE ECKERSLEY

XN MS SWEET

PN1759

I have no further questions for you, Ms Eckersley. Just wait there.

PN1760

VICE PRESIDENT WATSON: Mr Arndt?

CROSS-EXAMINATION BY MR ARNDT

[10.14 AM]

PN1761

MR ARNDT: Good morning, Ms Eckersley?---Good morning.

PN1762

My name is Julian Arndt. I'm appearing in this matter on behalf of the Australian Chamber of Commerce and Industry, the Australian Business Industrial and New South Wales Business Chamber. I just have some questions about your statement which you've just attested to. You have a copy of the statement with you?---Yes.

PN1763

I should also note there's a copy of the Clerks Award just near the box there. I'm not sure if we'll get to it. If we get to it I'll direct you to it?---Okay.

PN1764

So you've given us an update about your current role, and you are still currently a partner in people and organisation at PWC. Is that right?---Yes.

PN1765

How long have you been a partner in that role?---I've been a partner since 1 July 2000, so 16 and a little bit years.

PN1766

When did you commence at PWC?---I commenced in May 1994.

PN1767

Did you work anywhere before that? I'm guessing not?---I did. So I worked - - -

PN1768

COMMISSIONER SPENCER: I think that was a compliment?---Yes. I didn't - thank you.

PN1769

MR ARNDT: Very well picked up. Very well picked up?---I worked at Ernst and Young for two years and I also worked at another small chartered accounting firm here in Melbourne.

PN1770

Now, that complicates my next question. Are you in fact an accountant?---I am a chartered accountant.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1771

It's also true that you're one of Australia's leading remuneration and performance advisers and you are appointed to independent board - you are the appointed independent board remuneration adviser for many Australian listed companies. That's right?---Yes.

PN1772

Can you just give me a sense of what that means, what you actually do in your role as a client facing partner at PWC?---Absolutely. I work with clients in helping them to work through their people, kind of opportunities and challenges, and my particular field of expertise as it relates to my client work is around remuneration, particularly for executives.

PN1773

So I'm guessing you really require to have a very good understanding of the remuneration of the top end of town. High net worth executive type, that's your area of expertise?---Yes.

PN1774

Yes. Now, as part of your day-to-day role, and I know you've had several roles within the organisation, are you required in your role to review minimum employment conditions or pay, for example?---In my role with clients most of my work is at the executive level. In my preceding - in my previous role as the human capital leader for our firm in Australia I was responsible for the pay arrangements, if you like, for our whole firm, so our whole - over 7000 people.

PN1775

Which would include both award covered employees and partners and executives and high net worth individuals?---My focus was less on partners, it was more on employees within our firm.

PN1776

Would you have come across in your role, and please tell me which part of your role, modern awards?---I have come across them. I would not consider myself to be an expert in modern awards.

PN1777

When you say you've come across them, do you mean in your role in managing the 7000 PWC employees you've had to occasionally open a modern award and dig into it and see minimum entitlements, or do you mean in giving advice to clients you've had to give - -?---That would be in my role internally in the firm in my human capital capacity previously.

PN1778

Your statement is dated 20 June. At paragraph 3 of your statement, and you can go to it if you like, you say a proportion of PWC's employees are covered by modern awards?---Yes.

PN1779

Do you know how many are?---I could not tell you today that number.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1780

It says here that the proportion of those covered by modern awards are in mainly clerical occupations?---Yes.

PN1781

Do you have any idea of how many clerical roles there are at PWC - and if I ask any question which you don't have knowledge of, please just say, "I don't know"?---I would - no, I don't know that number.

PN1782

For those award covered employees that PWC does have, if they are engaged under modern awards they're engaged under the Clerks Award, aren't they?---That is my understanding. I need to be clear, I'm not an employment lawyer, but that is my understanding.

PN1783

Now, I'm not going to take you to the award, because I'm guessing you don't have familiarity with it. Can you tell me though - there's a salary provision in the Clerks Award. PWC employees are paid salaries, aren't they?---Can you just clarify that question for me?

PN1784

Employees may be paid an hourly rate, a weekly rate or a yearly rate. In the Clerks Award there is a provision to pay employees a yearly rate. All PWC employees - leaving aside casuals - they're paid a salary, aren't they?---So we - yes, they're paid an annual salary, yes, meeting all the requirements of the clerical award, is my understanding.

PN1785

Yes, and we'll get to that in just a minute. Do you know how many employees are casuals at PWC?---Look, I don't have that number. I don't have that number with me. It's a small - of our over 7000 employees it's a small number compared to obviously our permanent employee population.

PN1786

Most likely grads or para accountants or just general?---No, our graduates are permanent employees of our - - -

PN1787

Sorry, I'll rephrase that. Clerks. Younger people coming into the business, they might be engaged as a casual but - - -?---No. No.

PN1788

Just - okay. Now, you say at paragraph 3 employed staff are engaged on employment contracts and the remuneration, termination and leave entitlements are in accordance with legislation. When you say "legislation" you mean the National Employment Standards, do you?---I do mean - we do mean that, but any relevant legislation in the way in which we employ our people.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1789

Basically it passes the - the employment conditions pass the minimum standards that are required by the law?---Yes, at least.

PN1790

At least. Now, you also say at 3 that those - well, it is true, isn't it, that your employment conditions for all employees, if you are covered by a modern award, is in accordance with the modern award, consistent with the modern award?---It's at least consistent with the modern award. That is my understanding, yes.

PN1791

And if you don't know you can tell me, but as a general proposition it's true that PWC staff are paid well above minimum standards?---They are paid above minimum standards, yes.

PN1792

You don't have any knowledge as to the gap between what PWC award covered employees are paid and what the minimum award rate is?---No, I couldn't answer that question today.

PN1793

I want to ask you some questions about PWC - and I think these should be non-controversial, just to spoil the surprise. So PWC has 7000 employees and 500 partners in Australia?---Approximately, yes.

PN1794

200,000 employees in its global operation?---Approximately, yes.

PN1795

Is it the largest professional services firm in the world?---That may well depend on how you define the word "large", because there's various ways in which you could, you know - yes, whether it's revenue or employees, et cetera. So I don't know if I could answer that question. We're certainly one of the largest, yes.

PN1796

I can show you a copy - this is the global annual review 2016?---Great.

PN1797

If I told you it said that PWC in Australasia and Pacific Islands had a financial year 2016 revenue of US\$1.4 billion, does that sound about right?---Yes.

PN1798

And the gross revenue globally is US\$35 billion?---Yes. That sounds right, yes.

PN1799

Yes, and PWC is part of what's known as the big four of professional services firms, isn't it?---Yes.

PN1800

It's the case, isn't it, that there is a healthy degree of competitiveness amongst the big four professional services firms?---Yes.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1801

That competitiveness would extend to clients - would it, to clients?---We compete for clients, yes .

PN1802

It would extend to work, different projects?---To be honest, I'm trying to understand the question. Can you rephrase that for me please?

PN1803

I'll withdraw that question then. I'll get to where I'm getting to. There is a competition between the big four professional services firms to attract and retain employees?---Yes. We compete with the other big four and many, many other organisation for talent, yes.

PN1804

You said before that PWC's conditions of employment are well above the minimum standards in Australia?---Yes.

PN1805

And that's something that's a source of - not only a source of pride but also, I guess, an attractive component of coming to work at PWC, employment conditions?---Yes. Like every employer, we strive to have good employment conditions for our employees, because we feel that it helps us attract and retain great talent.

PN1806

Can I ask you about some of those conditions, very briefly - and I'm assuming that in your role as human capital leader you've had familiarity with this. If you haven't, just tell me. Does PWC have a parental leave policy?---Yes.

PN1807

A paid parental leave policy?---Yes.

PN1808

Do you know off the top of your head how many weeks that paid parental leave policy entitles someone taking paid parental leave to?---I believe it's 18 weeks.

PN1809

Is there a - I don't know if to describe it as a secondary carer, but is there a dad and partner paid parental leave component to the policy as well?---Our parental leave policy is completely gender neutral. So there is no such thing as a dad parental leave policy, there is a parental leave policy, and then there is a secondary carer.

PN1810

That's the one I'm looking for?---Yes, which entitles the secondary carer to three weeks' paid leave under that policy.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1811

Can you tell me what the all roles flex program is?---Yes, it's a - all roles flex is a policy philosophy and approach that we have within PWC in Australia that enables our people to work when, how and where they need to be at their best to deliver to our clients. So it's an approach to flexibility within the workplace.

PN1812

Does the firm provide the bare minimum 20 days' annual leave to its employees?---We provide the statutory amount of 20 days in annual leave. We have other leave arrangements, but the annual leave is 20 days to employees.

PN1813

I'm not sure if this is right, but is one of those other leave arrangements birthday leave?---Yes.

PN1814

Where someone gets a day off because it's their birthday?---Yes.

PN1815

Like any big corporate employer - or maybe not any big corporate employer, but there's various other initiatives that PWC have such as gym membership discounts, personal insurance services, emergency and short notice care options for parents. That's right?---Yes.

PN1816

And it goes without saying, and as we've already discussed that - in fact, you've already answered this - salary rates paid to PWC employees are over minimum standards?---That is my understanding. Without sitting here and auditing every 7000 people today, but that is my understanding, yes.

PN1817

The conditions given to PWC employees, they're market leading, aren't they?---We try to be market leading, yes.

PN1818

And where there's a policy it's best practice, or at least that's the aim?---So our intention is to have best practice people policies which allow us to attract and retain talent within the framework that we are a commercial organisation.

PN1819

A very large commercial organisation?---A large commercial organisation, yes.

PN1820

Now the statement details a number of initiatives that PWC has pursued, being progressive on gender equality particularly - or maybe not - take away particularly. Being progressive on gender equality is something that PWC is proud of?---Yes we have work to do like every organisation, but we are proud of our continuing work on gender equality.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1821

Can you explain what PWC diversity and inclusion strategy is?---So our diversity and inclusion strategy is really about enabling all of our people to be able to live to their full potential in our workplace and in life. So it's basically about trying to ensure that everyone who works there feels included and able to be at their best.

PN1822

And that approach has manifested itself in various forms and one of the forms is the initiative we're basically here today speaking about, the firm's domestic violence leave policy. What is the official - just remind me what is the official title of the policy?---Sorry. It is the - and I might just make sure I get the words completely right if it's - - -

PN1823

Okay, I probably might be able to?---Yes.

PN1824

Family and domestic violence and sexual assault support - - -?---Violence and sexual assault support policy, yes.

PN1825

Now PWC is quite obviously proud of the policy?---Yes, we're proud of the policy. Yes.

PN1826

And it considers it best practice?---We consider it the best practice for us.

PN1827

Now if I could take you to 10 of your statement, if that's all right?---Page 10 or paragraph 10?

PN1828

Page - paragraph 10 please. This paragraph talks about the time before the introduction of the policy. Now you say that the firm had no formal response to domestic or family violence or sexual assault. Prior to the introduction of the policy are you aware of PWC refusing time off to anyone who asked for it for the reasons that they might ask for it under the policy?---No.

PN1829

Now prior to the policy's introduction are you aware of any PWC employee getting time off but because they had exhausted all their paid leave they had to take unpaid leave to deal with matters arising under the policy?---No I'm not.

PN1830

Now I'm very, very conscious that there are confidentiality obligations under the policy?---Yes.

PN1831

And that if this question can't be answered just please tell me?---Mm-hm.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1832

You've given us some updates about the numbers of requests under the policy. I'm particularly interested in the request for leave. Do you know the nature of those requests for leave; why was the leave being asked for, and it's fine if you don't know?---My understanding, and it's important that I point out that I am not across the detail of - but what I have been told in summary is that the leave was requested for those - not every one of those five requested leave. So but in these particular circumstances it was time to remove themselves from a dangerous situation.

PN1833

Go back to your statement at paragraph 12?---Yes.

PN1834

Now the motivation for the creation of the policy was twofold. Tell me if I'm right. You wanted to provide entitlements for paid leave but you also wanted to send a message to staff?---Yes and it - and our policy isn't just about leave. So it wasn't just about - - -

PN1835

No, that's fine I'm just - - -?---- - - entitlement to leave and we did want to send a message internally that we as an organisation were open to people sharing what was going on in their lives so that we could help in a way that we thought was appropriate, help them through that situation. Without the policy or the communications around the policy we felt that people if they were in that situation didn't understand that we were actually there to help.

PN1836

You wanted a very public message - and when I say public, to your employees - that PWC cared about them and they were willing to go above and beyond to help them in times of personal distress?

PN1837

MS SWEET: Well, sorry, I just object to the - it's broad brush "going above and beyond". Above and beyond what?

PN1838

MR ARNDT: I withdraw the question.

PN1839

You wanted to show that PWC cared about its staff and wanted to support its staff in times of personal distress?---Yes.

PN1840

Was it important that all PWC employees fell under the policy? It is universal across all employees?---Yes, because they all work for PWC.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1841

Now the decision to create the policy and to roll it out, that was a result of the diversity and inclusion strategy?---I think it would be right to say that the DNI strategy was one of the catalysts for the - for our internal discussions around what

we would do, but it would also be fair to say that we felt that the time had come within our own people policies to recognise that our existing policies and leave arrangements did not cover many situations that we felt we had a role as an employer to play in. So yes, the DNI strategy was important and is important but it was also a broader view that from a caring from our people, and care is actually one of our core values as an organisation, that that was one way in which we could bring that to life for our people. And at that time and continuing now it's a significant and tragic societal issue and we thought we could help where we could help, which is with our employees.

PN1842

It wasn't a result - well, was it a result from pressure from employees?---I wouldn't say it was pressure from employees. I would say that there were some employees who are interested and passionate and in some cases personally affected by family and domestic violence who did raise "Could we do something?" and "Should we do something?" and we were more than happy to have those conversations. I don't think I would use the word pressure though.

PN1843

And it wasn't a result of any request from a union that you brought in this policy?---No.

PN1844

No, I don't imagine there is a strong union presence at PWC?---No there is not.

PN1845

Now your evidence has been that the policy has been well received?---Yes.

PN1846

Now if we could go to 18 of your statement. In this paragraph you identify some of the things that the executive board took into account in approving the policy?---Yes.

PN1847

Now paragraph 18A, that's a figure of national cost, right?---That's my understanding, yes.

PN1848

Now did PWC seek to identify the cost to PWC of this type of violence?---No we did not do that in relation to our own organisation.

PN1849

Did the board take into account any specific information about the prevalence of domestic violence at PWC?---No, we took into account the prevalence of family and domestic violence within Australian society and believed that it would be naive to suggest that we would be immune from that as an organisation.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1850

But in creating the policy PWC didn't work out what effect the actual policy would have on the organisation per se, that's right?---Sorry, can you repeat that one for me?

PN1851

Sorry?---Sorry.

PN1852

In creating the policy PWC didn't have regard to the direct costs of domestic and family violence on PWC or the particular need within its organisation that it was addressing - that the policy would address?---No, we did not do an economic analysis of the impact on PWC of domestic violence. No we did not do that.

PN1853

Did the board, the executive board make any enquiries as to what it might cost the business?---In putting the recommendation and paper and draft policy to the executive board I explained the costs we could be likely to incur, including training for example that is mentioned in the statement. But I feel I should also say that the conversation at the executive board did not spend long on the economic and financial costs of this. The conversation was more focused on the human impact.

PN1854

Are you saying that the board in its conversations and deliberations about this basically determined this was the right thing to do?---We determined it was the right thing to do within the context of we didn't think that the costs of implementing such a policy were material enough to spend a lot of time thinking about it and talking about it, and our experience subsequently backs up that assertion of the time.

PN1855

Talking about preparation costs, now considerable work and time was put into devising the policy wasn't it?---I'd probably have to ask you to elaborate on the word "considerable".

PN1856

One part of your statement intrigues me. It's the tangible cost amount. When you say tangible - - -?---Are you - sorry, are you referring to a specific paragraph here?

PN1857

Yes I am. We're going to 28 of your statement?---Mm-hm.

PN1858

You say that:

PN1859

The only tangible costs we incurred in relation to the development and implementation of the policy was the training and that amount was at \$23,000.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1860

When you say tangible costs what do you mean?---What I mean when we said - when I said that was out of pocket cost if you like.

PN1861

So like a disbursement?---Yes.

PN1862

Yes?---So there was, you know, a cheque out the door. There was time of our own people including my own in talking to people outside our organisation who had already implemented similar arrangements and with, you know, experts in the area of family and domestic violence. So there was a time element to that. I think time very well spent, and actually not an enormous - not a ridiculous amount of time.

PN1863

Part of that time was speaking to the various individuals listed at 14 of your statement?---Mm-hm.

PN1864

Karen Willis, AM, executive officer of Rape and Domestic Violence Services Australia, Kate Jenkins, Victorian Equal Opportunity and Human Rights Commissioner, now Federal Sex Discrimination Commissioner, Julie McKay, executive director of the UN Women National Council Committee Australia. How did PWC go about getting access to those people or did PWC make the requests for those people to help them in this policy?

PN1865

MS SWEET: I just rise because I wonder if that answer is going to have any benefit to the Commission in making its determination in this matter.

PN1866

VICE PRESIDENT WATSON: We'll allow the question.

PN1867

THE WITNESS: So if you could repeat the question. Was it how?

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1868

MR ARNDT: How did the firm make the connections to what is a very distinguished list of experts in the area?---So each of those three individuals, so there's probably a different how with each of those three individuals. I start with the last one, Julie McKay. PWC is a sponsor of UN National - UN Women National Committee Australia and for full disclosure I am a board member of UN Women National Committee so there is a relationship there. Kate Jenkins at that time as it says there was the Victorian Equal Opportunity and Human Rights Commissioner. She convened - Kate convened a Male Champions of Change network in Victoria. Our CEO Luke Sayers is a member of that as a male CEO in Melbourne so through that - so we contacted her through that relationship, and Kate - sorry, Karen Willis of the Rape and Domestic Violence Service Australia, there is a staff member, a director of our firm, who has a relationship with Karen

Willis so we leveraged that, if you like, to meet with Karen. Also the training that you mention that was delivered by the Rape and Domestic Violence Service, we went through a procurement process in relation to that and we spoke to a few organisations and we got proposals from two, one of which was Rape and Domestic Violence and that happen - that was the one we ultimately selected. So that is the nature of our relationships with those.

PN1869

You've just mentioned training?---Yes.

PN1870

Why did PWC see that as necessary?---We felt for us that the first conversation that an individual has which is a - you know, a difficult thing for them to do, to say to their employer "I am suffering from some form of domestic violence", that's not an easy conversation to start and we thought it was important, and advice again given to us was that it was important that that first conversation was a good conversation and therefore we decided to train - it was a day's training - a selection of people across our firm that actually came from all around Australia to effectively become a - what was referred to a tellable person. So I am one of those. I had that training, I am one of those people, and it was just about how do you have that conversation, empathy, no judgment and some bust - and to bust some myths about what domestic violence actually is in the Australian community. So we felt that that was us as a responsible employer trying to make sure that that was a good conversation. But that was the reason that we did that for the sake of the employees who were disclosing this occurring and also for the sake of the person who's receiving that disclosure, to look after themselves through that.

PN1871

Now that training cost \$23,000 and I don't mean to be churlish but that's not a huge amount of money for PWC is it, for a nationally rolled out policy?---No it's not a huge amount of money to us. No.

PN1872

Can we talk about the clause - - -?---I should - yes.

PN1873

No, please?---That wasn't just for one day. I mean we literally did train in Melbourne, Sydney and Perth and so there was travel costs in that et cetera for the Rape and Domestic Violence Service. So we consider it to be very good value.

PN1874

And an important part of the rollout of the policy?---That was the decision we took, yes.

PN1875

Now can we go to the policy itself now. Now as you've made clear this isn't just about leave, it has got some other elements to it. It also includes coverage for victims of sexual assault?---Yes.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1876

Some provision of emergency funds, a \$250 provision. It does have some limitations. It doesn't extend to casual employees?---The - - -

PN1877

In terms of the paid leave entitlement?---I was just going to say - - -

PN1878

Yes?---I was just checking because - - -

PN1879

Yes?---- - - it does actually - - -

PN1880

No, you're quite right?---- - - apply to casual employees, it's just the paid leave component which, yes, we made that decision. Yes, but it does apply to casual employees.

PN1881

And if - my questions are very much focused on the leave component and I'll try and make those as clear as possible, but in respect of the entitlement to 10 days' paid leave you've said that the decision was made not to extend that to casuals. Can you explain why that decision was made?---Well, casual employees do not receive paid leave in our other policies as well. So no entitlement to annual leave, statutory leave in that regard, so we applied the same thinking and lens to that.

PN1882

Now you've confirmed you reviewed the ACTU clause or at least you had at the date of the statement?---Yes I did read it at the time of the statement.

PN1883

So at least in terms of permanent employees, and when I say permanent, non-casuals, in terms of the paid leave entitlement the ACTU clause and the PWC policy, they're identical in terms of the guaranteed entitlement to leave aren't they?---I'm going to have to allow someone else to make that judgment. I - - -

PN1884

I'll rephrase it then?---Yes.

PN1885

Can you take it from me that the ACTU clause provides for 10 days of paid leave to - - -?---I understand that the proposal, yes, is for 10 days. Yes.

PN1886

And the PWC policy also provides 10 days of paid leave to full-timers?---For up to 10 days, yes.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1887

Up to 10 days, and that's the guaranteed leave amount. There's some discretion in the PWC policy to go further but it's a 10 day entitlement?---Yes we don't use

language like "guaranteed" but it is up to 10 days if people - if we believe - yes, when someone discloses to us, then it's up to 10 days. Yes, I'm drawing that distinction because as I said of our current cases, if you like, there has been some leave but it hasn't been a full - it's not necessarily the full 10 days. So there has been people - there have been people take two days.

PN1888

So the full scope of the policy hasn't been necessary as yet?---I'm going to decline to answer that on the basis of the confidentiality.

PN1889

If you could go to paragraph 30, and we're almost done?---Of the statement, yes?

PN1890

Of the statement please. It says you've read the ACTU clause, the 10 days per year is the same as what PWC is providing, and you believe it's reasonable. What do you mean by reasonable?---So when we were doing our own research into our own policy that we implemented a year ago the common standard was 10 days. So the - those organisations who had implemented domestic violence leave, at that stage the most common standard was 10 days. So on that basis and also - on that basis we found that 10 days was reasonable in our view.

PN1891

Can I just stop you there?---Sure.

PN1892

In terms of the other organisations, do you know - what organisations are you talking about?---So we certainly looked at Telstra. We looked at NAB. Those are the two I remember but we also - and we spoke to. I also know that there were others at the time that at the moment I am - I can't remember the names of. But I distinctly remember Telstra and NAB at that time.

PN1893

So the 10 days' paid leave was reasonable on the basis that it was comparable to other businesses such as Telstra and NAB and others?---Yes. Yes, and in discussions with people who work in the field of domestic violence they felt that it was reasonable as well and I trusted - I trust their judgment in relation to this because I am not an expert in domestic violence.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1894

And I appreciate it's difficult because we are talking about the PWC policy and the ACTU clause as well, which are as we've said equivalent in terms of the 10 days paid leave, but when you say at 39 that it's reasonable, you're saying it's reasonable for PWC or for all award-covered businesses?---I am saying it's reasonable for PWC and I believe that 10 days is reasonable in terms of helping provide something that's meaningful to an individual experiencing this kind of trauma and violence, to at least give them a - potentially a break from work expectations for a couple of weeks in order to focus on what's actually more important. And that statement that view that 10 days is reasonable I - in my

personal opinion I think it's not just reasonable for PWC, it feels reasonable in a broader sense as well. But again I'm not an expert in domestic violence.

PN1895

When you give that answer the standard of reasonableness, if I can put it that way, you're framing it in terms of the employee requirement?---I'm framing it in terms of the - I am framing it in terms of the human, yes.

PN1896

But there's no - and tell me if I'm wrong, when you say it's reasonable, at 39, you're not having regard to different circumstances of different businesses, are you?---No I'm not considering every different type of business. No.

PN1897

And - - -?---I'm looking at it from the - I am looking at it from the human victim, yes.

PN1898

You'd agree - - -?---And knowing that in our organisation, and I can only really talk to our experience, that it's - we haven't had to use 10 days annual - sorry, 10 days domestic violence leave very often at all so the impact on us as a commercial organisation has been minimal within the context of our organisation. I can only talk to our experience.

PN1899

No further questions. Thank you very much, Ms Eckersley?---Thank you.

PN1900

VICE PRESIDENT WATSON: Ms Eckersley, you've referred to the personal carer's leave policy. Can you tell me the entitlements that are available for leave under that policy for employees?---It's 10 days per annum if the employee is sick or a member of their family. It's very close to the statutory - my understanding is it's quite close to the statutory definition.

PN1901

And is there facility for further paid leave available at the discretion of someone?---Yes, under our personal and carer's leave?

PN1902

Under your policy, yes?---Yes there is further discretion available. Yes.

PN1903

Yes, and in your experience is that common that further paid leave under that policy is provided?---Yes it does - it certainly does occur especially if someone is experiencing a long term illness before the kind of insurance arrangements are fully operational.

PN1904

Yes, and would you describe PWC aspirationally and in reality a high trust organisation?---Yes.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1905

Yes?---Trust is actually at the foundation of our whole approach and philosophy.

PN1906

Yes. Thank you.

PN1907

COMMISSIONER SPENCER: Can I just ask you just in terms of the mechanics of how the clause works, I noticed one of the considerations of the board was perhaps this exposure to some sort of vulnerability. At point B you say at paragraph 18:

PN1908

Domestic and family violence also creates possible legal independence and reputational risks to the firm if someone else, an individual external to PWC, has access to and can control the information and IT resources available to one of our staff members.

PN1909

I'm just interested in that, and I understand your clause is aimed at encouraging disclosure and yet the recording of that is anonymous as I understand. That that protection which is one of the considerations of the firm's IT and resources assets, how does that work in terms of - because the ACTU clause is seeking some sort of evidentiary requirement and does ask the employer to keep the information sensitive but there's no particular controls. I'm just wondering how your firm - I notice - - -?---Yes.

PN1910

It's a long-winded question but I notice that you talk about not recording - - - ?---Yes.

PN1911

- - - the claim in your iResources or anywhere else, so I just wonder how if in fact you've got this consideration that your assets might be vulnerable, you've only recorded you claim in an anonymous way, how do you manage some of those issues?---So the clause around confidentiality in our policy - so I'm just referring to that just so I can - that it is kept confidential and that's absolutely true, "Will only be disclosed if necessary".

PN1912

Right?---"For PWC to provide you with the support" so if we actually think we actually need to do something because we're worried about the individual's safety "to maintain the safety of you and/or your coworkers". Now that in our mind was actually - it gave us in the right circumstances the flexibility to disclose either internally to the right people, if we were worried about coworker safety or our assets, even though the policy doesn't really say that specifically. So I feel like we're trying to manage that as best we can and recognising that sometimes we need to work through that on a case by case individual basis, and it's hard to reduce it to a paragraph in a policy. But we try to give ourselves that ability.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1913

Right, and I couldn't see that there was any particular evidentiary requirements that you - is there scope or flexibility or do you have discretion that's not within the policy?---We do not ask for evidence and it comes back to we are a trust based organisation and we felt, and we did consider this in the development of the policy, for us in our environment we felt that asking someone to front up to someone and say what's going in their life and to be that empathetic to that individual and at the same time ask them to prove what's going on for them, we felt that was actually a kind of breakage in the trust that we do pride ourselves on. So no, there is no evidence requirement.

PN1914

All right, and just a last question. In understanding how it's recorded in your system is 10 days - I understand there's the discretion for longer, but there's no particular recording of the name. It's done on some anonymous basis. How do you understand when the person reaches 10 days or how?---So the - so there's two, I think two points implicit in that. One is there is a - it's called a spreadsheet where the relevant human capital relationship manager, who is generally speaking a tellable person, goes into that spreadsheet and enters the nature of the request for access but completely anonymously.

PN1915

So is that Court proceedings or something? What is the nature of the - or is it simply the nature of - - -?---It's, you know, we granted - - -

PN1916

- - - the leave?---- - - five days' leave or we've provided \$250.

PN1917

Right?---Or we've changed bank accounts or details or contact details in our systems. So the nature of what it is. So there's that, and that's really just for us to know is it actually - is the policy doing what we want it to be doing because the - you know, the nature of our organisation is we want to know whether things are working. But when it's so shrouded in confidentiality that's quite hard for us to do. But that's okay, but it's hard. The second thing around the kind of monitoring of the leave taken, we are a timesheet based organisation, most of us anyway, and so we have to record leave which is how we monitor all forms of our leave. We have - this kind of leave though is not in the system as domestic violence leave for all the obvious reasons and it is under a bucket of other leave. And so we rely on the HC relationship manager to monitor that, but they're also talking regularly to that individual.

PN1918

They're their immediate supervisor are they?---They may not be their - - -

PN1919

Right?---No, so when I talk about a human capital relations, that is the HR team.

*** DEBRA MARIE ECKERSLEY

XXN MR ARNDT

PN1920

Yes?---So they're not their supervisor.

PN1921

Right?---And they may well - that individual might not go to their kind of local relationship manager. They may choose to go to someone else because they want to keep it just a little bit removed from their local team, that disclosure. So it could be anyone of those tellable people that are easily accessible through our intranet to find out who you can talk to. So that person who has that initial contact is not just responsible for filling out the form, you know, getting the mechanics to work. They're actually responsible for the kind of ongoing support which means they'll know whether they're at work and then we can check through systems as well.

PN1922

Thank you very much.

PN1923

VICE PRESIDENT WATSON: Ms Sweet?

RE-EXAMINATION BY MS SWEET

[11.08 AM]

PN1924

MS SWEET: Thank you. Just a few matters in re-examination.

PN1925

Ms Eckersley you were taken by the Vice President to the issue of personal and carer's leave and you gave some evidence that there's possibly a 10 day entitlement with the provision for further carer's leave or personal leave at the discretion of PWC. When the board was considering whether or not to implement the policy was the fact of the availability of that entitlement something that was taken into consideration?---Yes, so there was definitely a conversation around - a short one because they were so committed to the philosophy, but there was a question of "We already offer every time of leave you can imagine including birthday leave which was referred to earlier, so how do - how does this all kind of fit together?" So what I explained to them, which they got very quickly, was that personal and carer's leave is there for when an individual is sick or they're caring for a family member. There are a number of activities or attendances or needs that an individual experiencing family or domestic violence may need to attend to that do not fall within our definition, and my understanding, the statutory definition of personal and carer's leave. So whether that be Court attendances, counselling, relocation, any of those kind of things, they did not fall within our definition of personal and carer's leave and in a high trust based organisation we would not want to encourage our employees to effectively lie to us to take that leave in the - instead of something which is - so they would basically have to tell us they're doing - they're actually sick when really maybe they're not sick at that time. So we felt that the existing leave framework for us did not cater for what we were actually looking to achieve.

*** DEBRA MARIE ECKERSLEY

RXN MS SWEET

PN1926

And you were salsa taken by Mr Arndt to the board's deliberations and he asked you a question along the lines of did the board simply decide that this was the right thing to do when talking about not considering for a long period of time the cost of implementing the policy, and you gave some evidence that the board didn't consider that the cost of implementing the policy was material enough to stop the implementation going ahead and you said "and our experience subsequent to that backs up" the board's view at the time. Can you tell the Commission about what you meant when you say "our experience subsequent to that"? What experience do you mean?---I mean that there have been as I've said five claims under the policy, which for an organisation of our size is immaterial. It's shocking we have any claims, to make that point, but it is a small number in the context of the economic cost and for most of those claims it's actually been really time with a tellable person, referring them to the right support services, and we have - yes, so the cost has actually been very, very low and actually all - I'm delighted that all five of those individuals are still employed by PWC today and I don't know but I could hazard a guess that maybe they wouldn't be if we hadn't supported them in the way that we have. I cannot say that with factual accuracy but I'm delighted - I can say with a factual accuracy that they're still with us today.

PN1927

VICE PRESIDENT WATSON: Is flexible work arrangements an important element of the support that's provided in those cases you've had experience with?---Yes I - absolutely. I think the whole thing has to come together. So I think the fact that people can work flexibly, they don't need to come into the office for example, does allow - and it is highly valued by all our employees. So I think it is an important adjunct. I personally believe though that the kind of calling out of our support of people allows us to have a different conversation and work with them in a different way, that if they didn't understand that actually we don't judge, it's something we can have a good conversation about and help them work through.

PN1928

MS SWEET: Nothing further, Vice President.

PN1929

VICE PRESIDENT WATSON: Thank you for your evidence Ms Eckersley?---Thank you.

PN1930

You can step down.

<THE WITNESS WITHDREW

[11.13 AM]

PN1931

VICE PRESIDENT WATSON: Ms Burke?

PN1932

MS SWEET: Vice President, if my instructor and I might be excused from the Bar table?

*** DEBRA MARIE ECKERSLEY

RXN MS SWEET

PN1933

VICE PRESIDENT WATSON: Yes, by all means. Thank you Ms Sweet.

PN1934

MS SWEET: Thank you very much.

PN1935

MS BURKE: The next witness is Ms Kun who I understand is being called into the Court room. Before I formally call her, my understanding is there are a number of outstanding objections to her statement. Perhaps I can just confirm which of those are outstanding, if any.

PN1936

MR FERGUSON: We don't propose to press those objections at this stage on the basis that we'll make submissions as to the weight of the material at the appropriate time.

PN1937

VICE PRESIDENT WATSON: Yes, thank you. That's noted.

PN1938

MR ARNDT: The Australian Chamber's position is the same as it was stated yesterday.

PN1939

VICE PRESIDENT WATSON: Thank you.

PN1940

MS BURKE: Thank you, I'm grateful to my friends. I call Julie Kun.

PN1941

THE ASSOCIATE: Please state your full name and address?

PN1942

MS KUN: Julie Vanessa Kun (address supplied).

<JULIE VANESSA KUN, AFFIRMED

[11.15 AM]

EXAMINATION-IN-CHIEF BY MS BURKE

[11.16 AM]

PN1943

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

PN1944

Ms Burke?

PN1945

MS BURKE: Thank you.

*** JULIE VANESSA KUN

XN MS BURKE

PN1946

Ms Kun, can you please repeat your full name for the Commission?---Julie Vanessa Kun.

PN1947

And your address?---(Address supplied)

PN1948

Thank you, and your occupation?---CEO of WIRE.

PN1949

Thank you, and have you prepared a statement for the purposes of these proceedings?---Yes I have.

PN1950

And can I ask you to look at the folder in front of you please, and is that a document headed "Witness statement of Julie Kun" and it's 58 paragraphs?---Yes.

PN1951

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

PN1952

Thank you, and I'll just take you through those. At paragraph 1 of the statement, as you've said you're no longer the deputy CEO of the Women's Information Referral Exchange or WIRE as I'll call it for the benefit of the transcript, you are - since the middle of June you've been the CEO of WIRE?---That's correct.

PN1953

Thank you. Can I ask you to turn to paragraph 17 please?---Yes.

PN1954

The last sentence of that paragraph reads "This website will be launched in June 2016". I understand it should now read "This website was launched in July 2016"?---Correct.

PN1955

Thank you, and can I ask you please to turn to paragraph 32 on page 5. In the last sentence there which currently reads "I refer to and adopt that submission in the statement" there should be a pen with you there in the witness box, if you could just cross out the words "and adopt"?---Done.

PN1956

Thank you, and together with those corrections and amendments does this statement contain your evidence to this Commission?---Yes it does.

PN1957

Thank you. I tender that statement.

*** JULIE VANESSA KUN

XN MS BURKE

PN1958

VICE PRESIDENT WATSON: Exhibit B12.

**EXHIBIT #B12 WITNESS STATEMENT OF JULIE VANESSA KUN
WITH AMENDMENTS**

PN1959

MS BURKE: Thank you Ms Kun. Please just wait there. There will be some questions?---Thank you.

PN1960

VICE PRESIDENT WATSON: Mr Ferguson.

CROSS-EXAMINATION BY MR FERGUSON

[11.18 AM]

PN1961

MR FERGUSON: Good morning, Ms Kun. My name is Mr Ferguson. I represent the Australian Industry Group. I just have a small number of questions for you?---Not a problem.

PN1962

I take you to paragraph 13 of your statement if I may?---Yes.

PN1963

You there talk about the Women's Support Line. As I understand it women can avail themselves of calling that line and chat about any issue, in essence?---That's correct.

PN1964

Yes, and is that a kind of counselling service?---To a layperson you may call it counselling. We don't. We call it support because it's a one-off service where we take someone from what their issue is to a resolution or a next steps, whereas counselling may go on for a lot longer than that and may be in a lot more depth.

PN1965

Yes, and that line can deal with far more than issues of domestic violence?---Sorry, what was that?

PN1966

That line - - -?---Yes we - it deals with domestic violence, yes.

PN1967

Yes, and it can deal with broader issues as well?---Anything.

PN1968

Yes. Are you aware that another service available to victims of domestic violence is the National Sexual Assault Domestic and Family Violence Counselling Service?---Yes. Yes.

PN1969

So that's the telephone number 1800RESPECT?---Yes.

*** JULIE VANESSA KUN

XXN MR FERGUSON

PN1970

Is it?---Yes.

PN1971

And I understand that services provides a confidential online and telephone counselling information and referral service available 24 hours a day, seven days a week?---Correct.

PN1972

Are you aware that that's staffed by professional counsellors with tertiary degrees and a minimum of two years' counselling experience?---I believe they're professionals. How much year experience I'm not quite sure.

PN1973

I'll just take you to paragraph 34?---Yes.

PN1974

You there say starting in the second paragraph:

PN1975

Financial abuse is often hidden or unrecognised even by the women who experience it. There is poor public awareness or understanding of the issues by professionals, service providers and legal or financial support service industries.

PN1976

Who are the professionals you're referring to there?---The professionals could be financial counsellors. There's a banking industry, there's a whole lot of professionals that come into contact with women that are experiencing financial abuse and it can also be community sector professionals.

PN1977

What do you mean by community sector professionals?---Social workers, youth workers, welfare workers.

PN1978

And they generally have a poor understanding of these sorts of issues, or sometimes have a poor understanding?---Sometimes, yes.

PN1979

Yes?---Yes it's - - -

PN1980

Who are you referring to when you say service providers?---The service providers would also be the family - it can be the family violence sector, workers within that. It's a big sector, yes.

PN1981

Is there anyone else you can identify?---The broader community services sector as well, yes.

*** JULIE VANESSA KUN

XXN MR FERGUSON

PN1982

And just for the purpose of clarity, when you refer to financial support services industry what do you mean?---Yes, financial planners, banking industry, finance.

PN1983

I'll just take you to paragraph 40. You there say that WIRE provides training about financial abuse in the context of family violence and that's designed for amongst other community - workers in the community sector?---Mm-hm.

PN1984

Am I right to assume that part of the purpose in providing that training is to combat this lack of understanding amongst some of those workers?---Definitely.

PN1985

Are you aware of any sort of mandatory legal requirement that such workers undertake this training?---No, but out of the Royal Commission there will be financial counsellors and other community services sector will be receiving training on financial abuse. Whether it's mandated, I don't know.

PN1986

Yes?---But - yes.

PN1987

So are you talking about workers in Victoria?---Yes.

PN1988

And I just want to talk to you about the nature of financial abuse if I may?---Mm-hm.

PN1989

It can take many forms can't it?---Correct.

PN1990

I just take you to paragraph 37 and paragraph 37A specifically. From reading that I understand, and you'd agree with me, that that can include limiting access to shared moneys?---Yes.

PN1991

Is limiting your partner's access to shared moneys always financial abuse?---No.

PN1992

Is it - when do you say it's financial abuse?---When power and control is involved as with all family violence. It's when it's not equal and not respectful.

PN1993

So is it if one partner is in some way trying to control another partner's behaviour through limiting access, that that would be financial abuse?---Correct. So if a - one person was saying "I won't give you access to the money unless you have sex with me" that's financial abuse.

*** JULIE VANESSA KUN

XXN MR FERGUSON

PN1994

Yes, but what about if one partner volunteers to allow the other partner to manage the couple's resources; could that be financial abuse?---If they volunteer freely. That what we say at WIRE is if that person who volunteers knows that any time if they say "I want to have a look at the accounts" or "I now want to be involved" they could and they don't fear the repercussions of that statement.

PN1995

So in order to work out whether it's financial abuse you need to know whether that partner feels that way?---Yes it's about power and control. Yes.

PN1996

And I understand - well, would you agree with me that financial abuse could include the situation where somebody tries to limit their partners' access to paid work?---Yes.

PN1997

And that could include behaviours such as sabotaging someone's employment?---Correct.

PN1998

And could include for example hiding a set of keys?---Correct.

PN1999

And it could include restricting access to training or education?---Yes.

PN2000

I think I've read somewhere that it could include incurring a parking fine in another partner's name?---Usually incurring several and on purpose and hiding them.

PN2001

How many?---It's impossible to say whether it's one or whether it's 10. Again we go back to family violence is about power and control. It's about them not disclosing and so that person is left with the increasing fines that come with not paying a parking fine.

PN2002

So in order to identify whether or not someone is suffering financial abuse do you need to have a broad understanding of the nature of their relationship?---At WIRE before we would make that determination about whether a person is experiencing about financial abuse, we would talk about the context of the relationship and have that conversation with the person.

PN2003

And then you just make that decision based on what the woman tells you or the person tells you?---We would base it upon our expertise and what the woman tells us.

*** JULIE VANESSA KUN

XXN MR FERGUSON

PN2004

I take it you wouldn't necessarily speak to the partner?---No.

PN2005

Thank you for your time. Those are the questions.

PN2006

VICE PRESIDENT WATSON: Ms Burke.

RE-EXAMINATION BY MS BURKE

[11.27 AM]

PN2007

MS BURKE: Just briefly in re-examination, Ms Kun, you were asked some questions about how you and your colleagues at WIRE will ascertain if you think somebody is subjected to financial abuse and you were asked if you would speak to the partner. Does WIRE normally conduct investigations into whether financial abuse is occurring in a broad sense?---No. No, we talk to the woman. We can spend 40, 50 minutes, even sometimes more, investigating what is going on in that woman's relationship, see whether she discloses it's financial abuse and then we might talk about that those behaviours that she's describing can constitute financial abuse.

PN2008

And is it the assumption of yourself and your colleagues at WIRE that you will believe a woman when she tells you of her experiences?---Yes.

PN2009

Thank you, no further questions. If the witness could please be excused?

PN2010

VICE PRESIDENT WATSON: Yes. Thank you for your evidence Ms Kun. You may step down?---Thank you.

<THE WITNESS WITHDREW

[11.28 AM]

PN2011

VICE PRESIDENT WATSON: We shall adjourn now until 2 pm, is that right?

PN2012

MS BURKE: Thank you very much, yes.

PN2013

VICE PRESIDENT WATSON: Yes. We will now adjourn.

LUNCHEON ADJOURNMENT

[11.28 AM]

RESUMED

[2.02 PM]

*** JULIE VANESSA KUN

RXN MS BURKE

*** BERNADETTE PASCO

XN MS BURKE

<BERNADETTE PASCO, SWORN

[2.02 PM]

EXAMINATION-IN-CHIEF BY MS BURKE

[2.02 PM]

PN2014

VICE PRESIDENT WATSON: Thank you Ms Pasco. Please be seated?---Thank you.

PN2015

Ms Burke.

PN2016

MS BURKE: Ms Pasco, please repeat your full name for the Commission?---Bernadette Pasco.

PN2017

And your address?---Level 6, 179 Queen Street, Melbourne.

PN2018

And your occupation?---I'm a Financial Counsellor and Training Manager, Manager Sector Projects. I have had a change in my title.

PN2019

Thank you, and have you prepared a statement for the purposes of this matter?---Yes.

PN2020

Can I ask you please to look at the folder in front of you, there should be a tab right open there with your name on it and in there is a document headed Witness Statement of Bernadette Pasco. If you can just turn the pages, it's 10 pages long and 49 paragraphs?---Yes.

PN2021

Is that the statement you've prepared for the purposes of this proceeding?---Yes it is.

PN2022

Thank you. I understand you wish to make some minor corrections to that statement?---Yes.

PN2023

The first of those, as you've already mentioned, is at paragraph one of your statement. Are you now the Manager of Special Projects?---That's right, yes.

PN2024

Sorry, and just for clarification that's at the Financial and Consumer Rights Council?---That's right, yes.

*** BERNADETTE PASCO

XN MS BURKE

PN2025

Thank you, and if you could turn please to paragraph 16 of your statement. In the first sentence there, your qualification is currently described as a Diploma of

Community Services, Financial Counselling. Should that read Diploma of Financial Counselling?---Yes.

PN2026

Thank you, and with those corrections, this statement forms your evidence before this Commission?---Yes.

PN2027

Thank you. I tender that.

PN2028

VICE PRESIDENT WATSON: Exhibit B13.

EXHIBIT #B13 WITNESS STATEMENT OF BERNADETTE PASCO

PN2029

MS BURKE: Ms Pasco, please wait there, there'll be some questions?---Thank you.

PN2030

VICE PRESIDENT WATSON: Mr Ward.

CROSS-EXAMINATION BY MR WARD

[2.05 PM]

PN2031

MR WARD: Thank you, your Honour. Ms Pasco, my name's Nigel Ward, good afternoon. I appear in these proceedings for the Australian Chamber of Commerce and Industry which is an employer interest, just by way of introduction?---Thank you.

PN2032

Can I just understand some very simple basics about the Financial and Consumer Rights Council. Am I right in saying it doesn't actually employ the financial counsellors?---Yes.

PN2033

It's sort of like a governing body, is that right?---Yes, we are a peak body and a professional association for financial counsellors that are employed in agencies.

PN2034

You provide professional development to them as required?---Yes.

PN2035

I think you said when you started, that you are a financial counsellor yourself?---Yes.

PN2036

Are you currently a practising financial counsellor?---I practise aspects of financial counselling through supervising workers in the workforce.

*** BERNADETTE PASCO

XXN MR WARD

PN2037

Thank you. Now I've had a reasonable look at your website. There's a statement on your website under the heading "What is financial counselling". I just want to quickly read it to you and ask you a question. It says "Are you struggling with your debts, unable to pay your bills, thinking about loan consolidation, considering bankruptcy, struggling with rent, mortgage or housing stress? If so speak to a financial counsellor".

PN2038

Am I right in saying that the primary focus of the counselling is associated with debt?---Yes.

PN2039

And credit status, not being able to pay bills?---Financial difficulty is the primary focus of the work.

PN2040

The service is undertaken, as I understand it, through making appointments to see counsellors face-to-face?---There are two ways; one is through a phone based financial counselling hotline which runs - it's a national number. The secondary way is through a one-to-one, face-to-face appointment with a financial counsellor.

PN2041

But the primary way is your 1800 number is it?---That is one of the gateways, yes.

PN2042

Right?---I think only about five percent of our case work comes from phone.

PN2043

I think you say in your statement that the counsellors are embedded in community organisations?---Yes, they work in a diverse range of community organisations; they might be community health services, community legal centres or other community organisations.

PN2044

You said in your statement that there's 200 in Victoria; are they all embedded in community organisations?---Yes.

PN2045

Are they embedded because that puts them close to their client base, is that the reason why they're embedded?---That's one of the reasons.

PN2046

What are the other reasons?---The other reasons are to ensure that the client can get referral access to other things that they might need for their situations. So it might be say within a mental health service, you, as a financial counsellor, you would refer to a support worker in the mental health service so you link people in with something that empowers them to change things about the way they do things.

*** BERNADETTE PASCO

XXN MR WARD

PN2047

It's an element of a one stop shop?---It's an element of that, yes.

PN2048

Can I take you to your statement? Can I take you to paragraph 20? Do you have that in front of you?---Yes I do.

PN2049

You say in paragraph 20 "perpetrators often control the victim" and I assume there you're talking about victims of domestic violence?---Yes I am.

PN2050

"through financial abuse", and then you go on to discuss that. Would I be right in saying that financial abuse as you know it and describe it, can also be present without there being domestic violence?---There is always that possibility that there's no physical violence, but our experience is that it is almost always present with other forms of domestic or family violence.

PN2051

Let me understand that. So if there is physical violence, you're saying there's nearly always financial abuse as well?---Yes, yes.

PN2052

But there could be circumstances where there's financial abuse without physical violence?---Yes.

PN2053

Yes, and is financial abuse most common in your experience where couples are separating?---No, not necessarily.

PN2054

So it could be while the relationship is continuing?---Yes.

PN2055

But does it also happen at the point of separation as well?---It may escalate at the point of separation.

PN2056

So it could become more acute?---It may, yes.

PN2057

Can I take you to page - sorry, can I take you to paragraph 29, you say there in the second sentence "financial counsellors have reported that this type of work is significantly more complex and time intensive than that required for the average financial counselling case". Do you see there?---Yes, absolutely.

*** BERNADETTE PASCO

XXN MR WARD

PN2058

When you say reported, does that mean that you have had conversations with other financial counsellors about this?---Yes, as a peak body and as the training manager for numbers of years in the peak body, we have lots of conversations

with all of our members and also with agency managers around the type of case work that they see.

PN2059

So through your career from time to time, you've had conversations and this is what you've heard?---That's right, yes.

PN2060

Can I ask this, is the complexity, the technical complexity of the financial problem?---The complexity is multiple, so there are often technical financial complexities, but there is also often psychological complexity, complexity of family relationships, cultural issues, so a range of issues that may be related to their ability to sustain themselves, to be employed, to engage even in a conversation about family violence.

PN2061

Okay, so can I just ask this then, in terms of the non-financial complexities, I assume some of those would be present if you were dealing with a client who had a mental or psychological disorder generally?---Yes.

PN2062

Are the financial complexities largely related to the perpetrator controlling the financial resources of the relationship?---Some of it is in relation to the perpetrator controlling; some of it is directly controlling the finance; some of it is in relation to controlling aspects of debt and escalating those issues around debt. So that may not be directly related to a financial transaction or issue, but it is a much more complex issue. One of those might be a garnishee on a wage or something like that.

PN2063

I see, of the perpetrator?---It could be the perpetrator or the victim.

PN2064

I take it that the garnishee would be an issue because there's an outstanding debt?---That's right, so debt collection may lead to garnishee.

PN2065

I see. Of course that can happen when there isn't domestic violence as well?---That's right, but we see it more commonly with the domestic violence situation.

PN2066

Are you saying that there are more garnishee orders related to domestic violence than not to domestic violence?---Anecdotally I could say yes.

PN2067

Anecdotally you say that. Now you use a phrase here "the average financial counselling case"?---Yes.

*** BERNADETTE PASCO

XXN MR WARD

PN2068

Can we just understand that. Is the average financial counselling case where somebody is unable to pay their bills?---An average financial counselling case would be where a client would have maybe from six to 10 issues in relation to finance that may be across a range of different aspects.

PN2069

Such as?---So they might be in relation to access to Centrelink; it might be in relation to their income; it might be in relation to their wage; it might be in relation to leave that - they've got no leave left, so they've got no money; it might be in relation to utilities and outstanding debts that are not in their name for example, or they may all be in their name; it may be in relation to tax issues, company directorships and ranges of other things.

PN2070

So when you use the phrase average financial counselling, it's likely to have a mixture of those things?---That's right, yes.

PN2071

So I take it then, given that's a very long list that the real complexity of dealing with the victim from domestic violence is more associated with the non-financial aspects?---No, I wouldn't agree with that.

PN2072

So what do you add to the list then that you just made out in relation to a domestic violence victim?---Well, the crucial nature of the financial issue often escalates those other non-financial issues, so the two go hand in hand.

PN2073

That's what I was trying to put to you?---Sorry, yes.

PN2074

Yes, so it's the non-financial issues that creates the additional sensitivities that the Council has to work with?---Yes.

PN2075

Can I take you to paragraph 44. Paragraph 44 you say this "Given the impact of family violence on the victim's financial security, financial counselling is needed to assist women and victims. The assistance financial counsellors can provide for client's experience of family violence includes the following" and then you've got a list from (a) to (h)?---Yes.

PN2076

Do you see that list?---Yes I see the list.

PN2077

Would I be right in saying that a financial counsellor may very well provide that list of assistance to somebody who isn't a victim of domestic violence?---They may actually provide those services for other clients who are not suffering from family violence.

*** BERNADETTE PASCO

XXN MR WARD

PN2078

No further questions, thank you.

PN2079

VICE PRESIDENT WATSON: Ms Burke?

PN2080

MS BURKE: No re-examination. If the witness could be excused please.

PN2081

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

<THE WITNESS WITHDREW

[2.16 PM]

PN2082

MS BURKE: The next witness is Michele O'Neil. I understand has just been called into the court room.

<MICHELE FRANCES O'NEIL, AFFIRMED

[2.17 PM]

EXAMINATION-IN-CHIEF BY MS BURKE

[2.17 PM]

PN2083

VICE PRESIDENT WATSON: Thank you Ms O'Neil, please be seated. Ms Burke?

PN2084

MS BURKE: Ms O'Neil, can you please repeat your full name for the Commission?---Michele Frances O'Neil.

PN2085

And your address?---500 Swanston Street, Carlton.

PN2086

And your occupation?---I'm the National Secretary of the Textile Clothing and Footwear Union of Australia.

PN2087

Thank you, and have you prepared a statement for the purposes of this proceeding?---I have.

PN2088

If I can ask you to look at the folder in front of you, there should be a tab with your name on it open there. If you can just open that; is that a document headed Witness Statement of Michele O'Neil?---It is.

PN2089

It should be 44 paragraphs, signed and dated by you on 30 May 2016?---That's correct.

*** MICHELE FRANCES O'NEIL

XN MS BURKE

PN2090

It attaches three annexures?---That's right.

PN2091

Is that statement together with those annexures, does all that form your evidence before this Commission?---It does.

PN2092

Thank you, I tender that statement.

PN2093

VICE PRESIDENT WATSON: Exhibit B14.

**EXHIBIT #B14 WITNESS STATEMENT OF MICHELE FRANCES
O'NEIL DATED 30/05/2016**

PN2094

MS BURKE: Thank you Ms O'Neil. Please just wait there.

PN2095

VICE PRESIDENT WATSON: Mr Ferguson.

CROSS-EXAMINATION BY MR FERGUSON

[2.18 PM]

PN2096

MR FERGUSON: Good afternoon Ms O'Neil, my name is Mr Ferguson. I'm from the Australian Industry Group?---Good afternoon.

PN2097

Ms O'Neil, I see you've been associated with the textile, clothing and footwear industry for a long time?---That's correct.

PN2098

I understand from your statement you've seen a number of changes in the structure of that industry?---Yes.

PN2099

I've reviewed relevant ABS statistics that suggest that in the period from August 1986 to August 2016 the total number of persons employed in the TCF industry has declined from around 130,000 to under 31,000. Would you accept that there has been a decline of employment in the industry of that kind of magnitude?

PN2100

MS BURKE: I object to that. Could the witness please be shown the ABS statistics or have the source of that statistic identified.

*** MICHELE FRANCES O'NEIL

XXN MR FERGUSON

PN2101

MR FERGUSON: The source of that statistic is Labour Force Australia Detailed Quarterly, table 06 Employed Persons by Industry Subdivision Main Job (indistinct) August 2016, sheet data 1, columns EY to FG. Would you agree that

there's been a decline in levels of employment in the industry of that kind of magnitude over that period?---Yes Mr Ferguson, without reviewing the document, I'm not going to comment on the exact figures you gave me, but I would say there's been a significant decline in employment in the industry, but I'd also add to that that figures by ABS in relation to this industry are notoriously unreliable.

PN2102

Would you accept that there's been a very significant decline over the last 10 years?---Yes, I would.

PN2103

Would you accept that the Department of Employment is foreshadowing further significant declines of employment in this industry within the next four years?---I don't know what you're referring to Mr Ferguson.

PN2104

Would you accept that one of the major challenges facing employers in this industry is competition with lower waged countries?---It's one of the challenges; there's many challenges facing employers in this industry.

PN2105

There are. In paragraph 11 of your statement, there you talk about restructuring in the industry and you say there's been a major shift in TCF production from larger factories to smaller makers and the home based sector. Would you accept there's also been a decline in the overall levels of production in Australia?---Yes.

PN2106

In paragraph 14, you talk about increasing pockets of casualisation in the sector. Would you accept that there's also been, over the past 20 years, an increase in the proportion of the workforce engaged on a part time basis?---No.

PN2107

I want to talk to you about enterprise bargaining, if I can for a moment. Is it the intention of the TCFUA to now pursue paid domestic violence leave provisions in all enterprise agreements and negotiations going forward?---Yes, we have a policy where we have our members endorse the claims that they put on in enterprise bargaining, but it's definitely our policy and our approach to raise domestic violence leave - family and domestic violence leave as a claim with our members and if it's endorsed by our members in that workplace, then it forms part of a claim.

PN2108

Do you intend to encourage members to press for that in bargaining?---Yes, we've embarked on an exercise of educating our members about this and have been doing that over the last couple of years.

*** MICHELE FRANCES O'NEIL

XXN MR FERGUSON

PN2109

I'll just take you to paragraph 31 of your statement. I'll ask, did you personally undertake all the bargaining for all those agreements?---I was involved in the bargaining in a number of those agreements. In some cases I was involved in all

of the meetings; in others I was involved in some of the meetings and in others, I was involved in giving advice and assistance to our organisers who were involved in the bargaining.

PN2110

Some of those you didn't actually participate in the bargaining?---Well, I consider being involved - - -

PN2111

At the bargaining table, so to speak?---Okay, well I consider being involved in the bargaining being involved in discussing the detail with our officials who are responsible for it. So, I would say I was involved in all of them.

PN2112

And in some cases you weren't at the bargaining table, so to speak?---I wasn't physically at the table in every case, but I was in a number of the cases. For example, with Billabong I was involved in every meeting that the company and the union had to negotiate the agreement.

PN2113

Now while your union wasn't successful in getting paid leave, or paid domestic violence leave in those agreements, do you accept that a number of them contained additional or more generous leave provisions than would otherwise be provided for under the NES or the textile - for the industry award?

PN2114

MS BURKE: I just object. The question is very very broad. If my friend could put precise propositions to the witness that she's able to answer. Better leave provisions - which leave provisions? There are more than one in the NES and in which agreements is he speaking about.

PN2115

VICE PRESIDENT WATSON: Yes, in fairness to the witness, I think you should be more specific Mr Ferguson.

PN2116

MR FERGUSON: Well, without trying to take too long for this, in relation to the agreements identified in paragraph 31, do you understand that some of those agreements contain leave entitlements that are not provided for in the national employment standards or the Textile Clothing and Industry Award.

PN2117

MS BURKE: Objection. It's exactly the same question asked in a differently expressed, equally broad way.

PN2118

MR FERGUSON: I'm endeavouring to be narrower, but I will narrow it further. Do you accept - are you aware that some of those enterprise agreements provide for blood donor leave?---Yes.

*** MICHELE FRANCES O'NEIL

XXN MR FERGUSON

PN2119

Is blood donor leave something that your union has proposed in the course of many enterprise agreement negotiations?---It's something that used to be contained in our awards, so the history is that once it was no longer contained in the awards, it's something that we have routinely raised in negotiations and it's included in some agreements, but not others.

PN2120

Yes. Some of those enterprise agreements, you've been successful in obtaining personal carers' leave entitlements to exceed those provided in the NES, haven't you?---Yes.

PN2121

Some of those agreements, you've been successful in obtaining entitlements to unpaid leave for various purposes, haven't you?---Yes.

PN2122

Thank you for your time; no further questions.

PN2123

VICE PRESIDENT WATSON: Ms Burke?

RE-EXAMINATION BY MS BURKE

[2.27 PM]

PN2124

MS BURKE: Just one question in re-examination Ms O'Neil, in answer to a question about the labour force Australia data held by the Australian Bureau of Statistics, you said that figures held by the ABS in this industry are notoriously unreliable, can you explain what you meant by that?---What I mean by it is that there's a large number of workers in our industry who work from home, usually called outworkers, and they often don't appear in the formal statistics created by the ABS in relation to the industry, so there's a fair amount of sham contracting and confusion amongst, particularly those group of workers as to their status and also, in some cases, to their employment status and in others, in terms of their industry.

PN2125

Thank you. No further questions. There are no questions from the Bench. If Ms O'Neil could be excused.

PN2126

VICE PRESIDENT WATSON: Thank you for your evidence Ms O'Neil. You can step down.

<THE WITNESS WITHDREW

[2.28 PM]

PN2127

VICE PRESIDENT WATSON: Has Mr Kemppi concluded his other commitment?

*** MICHELE FRANCES O'NEIL

RXN MS BURKE

PN2128

MS BURKE: Yes I believe he has in this building and he's very close outside.

PN2129

I'm sorry, he's not conveniently located on this floor. Could I seek the Full Bench's indulgence to stand down for five minutes while we locate him.

PN2130

VICE PRESIDENT WATSON: We will adjourn for a short time.

PN2131

MS BURKE: Thank you.

SHORT ADJOURNMENT

[2.29 PM]

RESUMED

[2.36 PM]

PN2132

VICE PRESIDENT WATSON: Ms Burke.

PN2133

MS BURKE: Thank you members of the Full Bench. I call Sunil Kemppli.

PN2134

VICE PRESIDENT WATSON: Mr Kemppli, would you come to the witness box pleas.

<SUNIL KEMPPI, AFFIRMED

[2.36 PM]

EXAMINATION-IN-CHIEF BY MS BURKE

[2.36 PM]

PN2135

VICE PRESIDENT WATSON: Thank you, Mr Kemppli. Please be seated?---Thank you.

PN2136

Ms Burke.

PN2137

MS BURKE: Mr Kemppli, can you please repeat your full name for the Commission?---Yes, it's Sunil Vinu Kemppli.

PN2138

Thank you, and your occupation?---I'm the Senior Industrial Officer and currently the Acting Director of the Policy Industrial Research and Legal Unit of the CPSU.

PN2139

Your address?---Level 10, 440 Collins Street, Melbourne.

*** SUNIL KEMPPI

XN MS BURKE

PN2140

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

PN2141

Can I ask you to look at the folder in front of you. There's a tab there with your name on it, if you can just turn that page?---Yes.

PN2142

It's that document there headed Witness Statement of Sunil Kemppi which is 31 paragraphs and attached to it behind that yellow page there are three annexures marked SK1, SK2 and SK3 respectively?---Yes.

PN2143

I understand you wish to make an amendment to one paragraph of that statement, which is at paragraph 13?---Yes I do.

PN2144

In the first line there it says "The CPSU has prepared a model enterprise agreement in support of our claim". Should the word "clause" be entered after the word "agreement"?---Yes, that's correct.

PN2145

Thank you. With that correct, do those 31 paragraphs and the annexures to your statement, form your evidence to this Commission?---Yes it does.

PN2146

Thank you, I seek to tender that statement.

PN2147

VICE PRESIDENT WATSON: Exhibit B15.

EXHIBIT #B15 WITNESS STATEMENT OF SUNIL KEMPPPI

PN2148

MS BURKE: Thank you Mr Kemppi; please just wait there?---Thank you.

PN2149

VICE PRESIDENT WATSON: Mr Ward.

CROSS-EXAMINATION BY MR WARD

[2.39 PM]

PN2150

MR WARD: Thank you, your Honour. Mr Kemppi, my name is Nigel Ward. I appear for the Australian Chamber of Commerce and Industry which you probably know if the employer organisation. Can I just ask - I noticed that you haven't been at the CPSU for very long, is that right?---I've been there for just over a year since about August of last year.

*** SUNIL KEMPPPI

XXN MR WARD

PN2151

If at any stage I ask you a question and you can't answer because you haven't been there very long, just say so, just say so?---I should be fine, but I'll let you know.

PN2152

Sorry?---I should be fine, but I'll let you know.

PN2153

I wouldn't want you to be criticised in doing your job. Are you aware that the ACTU claim relates to 122 modern awards?---I am aware that it relates to all of the modern awards, but I didn't know the precise number.

PN2154

Are you aware of how many of those awards cover CPSU members?---Once again, I'm not aware of the precise number that cover CPSU members, given that we have quite a broad range of coverage; and in fact, broader than one might imagine. I know of, at the very least, two major awards; one that covers APS workers, one that covers what effectively what might be described as sort of corporate entities of the Commonwealth, but not necessarily APS. However, you know, we also have members in a range of fields, Telstra, broadcasting, the ABC and beyond, all of whom would have modern awards that covered them.

PN2155

Do you know the name of the two major awards?---I didn't put it in my statement - off the top of my head I think it's the - I'm sorry, the exact name actually escapes me. It's the - - -

PN2156

I won't pressure you, that's fine, that's fine. I think at paragraph 29 you say the majority of your members are covered by enterprise agreements. Do you actually know the percentage?---I don't know the percentage, no.

PN2157

But it's certainly more than 50 percent?---Yes, it is the majority.

PN2158

Do you know if it's more than 80 percent?---I do not know exactly if it would be more or less than 80 percent. Is it closer to 50 or 100? You must have some sense of it because you say it's the majority?---I would say it's closer to 100.

PN2159

Thank you, thank you very much. Can I take you to paragraph 9. If you just open the statement in front of you.

PN2160

DEPUTY PRESIDENT GOOLEY: Can you just be clear; are you referring to the CPSU as a whole, or the PSU group of the CPSU?---Thank you for allowing me to clarify. I am referring to the PSU group within the CPSU.

PN2161

MR WARD: That's the public sector side?---That's the Federal public sector side.

*** SUNIL KEMPPI

XXN MR WARD

PN2162

DEPUTY PRESIDENT GOOLEY: Commonwealth.

PN2163

MR WARD: Commonwealth; thank you very much?---Yes.

PN2164

Your Honour's immediately realised that I'm a private sector man - immediately; which will become even more evident in a moment?---Sorry?

PN2165

Paragraph 9. You use a phrase there, you say in paragraph 9 in the current round of APS bargaining you're negotiating with some 99 agencies. Can you just explain to me what is meant by the current round?---What I mean by the current round of APS bargaining is the round of bargaining that the CPSU / PSU group is currently involved in with respect to agencies and departments whose agreements reached their nominal expiry date in 2014. So essentially, we're talking about the Department of Immigration, DHS, the ATO as well as some agencies like MBIA for instance.

PN2166

Just sorry, did you say expired in 2014?---Yes. Sorry, nominally expired in 2014 I should have said.

PN2167

So some of them could have expired later?---No, all of the agreements in the APS expired - nominally expired on 30 June 2014.

PN2168

Okay, so they have a common expiry date?---They did, yes.

PN2169

You're currently still negotiating with 99 agencies?---We're currently - in terms of still negotiating - I'm sorry I don't have the exact figure. Of those 99 that have issued NERS, some of them would have concluded bargaining. We're still negotiating with what I would describe as the majority - the agencies that cover the majority of employees in the public sector.

PN2170

But still being negotiated?---Yes.

*** SUNIL KEMPPI

XXN MR WARD

PN2171

Yes, thank you very much. Can I take you to paragraph 10. You say in the current round of APS bargaining members in the public service have endorsed a claim which covers various working conditions. Does that mean that the CPSU in the public sector formulate a common log of claims?---A little bit of both. There is a set of claims which are common to all agencies, however in each agency, there are also agency specific claims and the claim in any given agency might contain some of those common items, but will be tailored to that particular agency.

PN2172

In terms of the common log of claims, how many items are on that?---Once again, I don't have the actual number of items that are common.

PN2173

You have no recollection at all?---Not the actual number, no.

PN2174

Is it more than 20?---Yes, I'd say there are more than 20.

PN2175

Is it proper to call that log an ambit log of claims?---No, I think it's quite a reasonable log of claims.

PN2176

Do you expect the employer to agree to all of those claims?---We certainly expect to have discussions around all of those claims and those are what we seek in an agreement in their form. We're not asking for things for the sake of asking for them.

PN2177

Let me ask that again, when you serve that law of claims, is it your intention to pursue it until the employer agrees to all those claims?---Do you mean agrees to all those claims in the form that we have put?

PN2178

Yes?---Right. Well, I don't think that's ever the intention in bargaining. When you serve a log of claims, it's the intention in bargaining to try to get those things, but of course, we're approaching these things in good faith and we're trying to reach an agreement, so if the employer were to come up with all but one of the things, or everything but slight modifications, of course we're open and reasonable to that.

PN2179

So you, like most people, do you bargain and you ultimately come up with a cocktail of conditions that you think your members will agree to?---Essentially yes. That's a broad categorisation, but something like that, yes.

PN2180

Do I take it that if the employer is not coming to the table with a position you find acceptable, your members may well resort to protected industrial action to persuade the employer to change their position?---Yes, and that has happened in some agencies.

*** SUNIL KEMPPU

XXN MR WARD

PN2181

Right. Can I take you to paragraph 14. You say in paragraph 14 in the second sentence, "personal and carer's leave not only does not cover the range of circumstances such as court appearances that leave may be needed for, but could also easily be exhausted", I'm going to try and do this efficiently and see if you agree with me. I've read quite a number of the public sector enterprise agreements

and I'm happy to take your individual ones if I'm pushed by your counsel, but it would appear that a lot of your enterprise agreements have 20 days personal leave in them?---There's a range of different entitlements; some have 20 days.

PN2182

Some have 20 days. Do any have more?---That I'm aware of, no.

PN2183

No. But there are quite a number that have 20?---Yes.

PN2184

Yes, and you say there that those leave entitlements could be exhausted, have you ever undertaken a study of the taking of leave in the public sector?---I have not, no.

PN2185

No, thank you. Can I take you to paragraph 15 and this just shows my ignorance, and I apologise for that. You talk in paragraph 15 of this concept of miscellaneous leave. Can you help me out and tell me what miscellaneous leave is?---It's a construct that to the best of my awareness seems perhaps peculiar to the public service; I've not seen it in a private sector context. It appears to be I would say broadly akin to what one might call just ordinary unpaid leave in the private sector. In some agencies, however, it can be used to cover a range of different types of leave, so in some agencies, and I don't have an example to hand, but I have seen a clause where bereavement and compassionate leave are in fact under miscellaneous leave. More commonly than that though, miscellaneous leave effectively refers to, or effectively grants a power to, or a discretion to grant leave in certain circumstances that aren't already covered in the agreement.

PN2186

It's a form of discretionary leave that covers things not otherwise in the agreement?---Yes, and quite commonly it's unpaid.

PN2187

And quite commonly it's unpaid. As a matter of practice in the public sector, is it common to grant miscellaneous leave?---I haven't undertaken a study on how common it is.

PN2188

I see?---So I shouldn't really answer.

PN2189

That's cool. I did notice that some of your agreements say something rather peculiar about it; they say you can use it for everything but moving house. Have you seen that in your enterprise agreements?---If I've come across it, I haven't thought of it, it hasn't jumped out at me.

*** SUNIL KEMPPU

XXN MR WARD

PN2190

It must be another peculiarity to the public sector?---Perhaps public servants move less than private citizens.

PN2191

Maybe they move more, I don't know, maybe they do. Can I take you then lastly to paragraph 29. No, I'll withdraw that. You say in your statement, you make a variety of observations about the government's current position and I think you say they're opposition to what's called enhancement of conditions. That's a statement you relate to their current policy on bargaining. Are you familiar with what I'm talking about?---Yes I am and I'm actually just trying to locate the clause of the policy if that helps. I think it's about clause 45 or 46 from memory of the workplace bargaining policy.

PN2192

Yes, I think you're right. I'm not going to take you to it, but I just want to make sure you've got that in your mind?---Yes, I know what you're referring to.

PN2193

The government policy isn't law, is it; it's just their stated position, if I can use that phrase?---It's their stated position. It's certainly rigidly applied and rigidly adhered to, but it is not a law, it's not an act of parliament.

PN2194

So by way of comparison, it would be like a private sector company saying we're not paying anybody more than two percent this year?---No, I disagree with that. I think that there are distinct differences between the Commonwealth's public sector policy and the sort of policy or directive you might find in a private enterprise. In a private enterprise, the relationship between sort of top and bottom tends to be much more linear; there are less fences and walls I suppose you could say. In a private enterprise, you know the board might set a governance position; the executive might roll that out and manage it and people on the ground might adhere to it, but I'd say there's a lot more opportunity there for the top to influence the bottom and the bottom to influence the top. With the various arms of the Commonwealth, once the government has set a policy, there is very little that an agency can do but comply with it.

PN2195

So if you wanted to go against that policy you would have to resort to protected industrial action to persuade the employer?---Well, the protected industrial action does persuade the agency on the things that the agency is allowed to move on within the policy. As to whether the protected action can influence the government to change their policy, that is a different question. You know, we're not talking - I think we're getting outside of the realm of protected action that can be taken by any one agency and then talking about various levels of action taken across the public sector as a whole. So it becomes quite a different kettle of fish to the one that you might experience in a straight forward private sector arrangement - sorry, private sector company.

*** SUNIL KEMPPU

XXN MR WARD

PN2196

Well, only this, Mr Kemppi, if a private sector company took a position on wages and was prepared to tolerate whatever protected action the union threw at it, that's exactly the same as the position that you've described with the

government?---With respect to industrial action, yes. There are other industrial mechanisms.

PN2197

I understand that?---For instance, we're in the middle of a good faith bargaining case at the moment with the Commonwealth. I imagine that that case would be a lot more straightforward to prosecute in a private sector environment. So perhaps with relation to industrial action what you say is correct, but obviously there's much more to the picture than that.

PN2198

I'm sure there's much - yes, I'll accept that. Can I take you to paragraph 29. You say "The majority of CPSU workers are covered by an enterprise agreement. These members would be assisted by a clause in the underlying award providing for family and domestic violence on the leave on the basis that this would underpin collective bargaining results." Are you simply saying there that by putting it in the award, it would be easier to put in your enterprise agreements?---For those workers who are on enterprise agreements already or will be on enterprise agreements, what I'm saying is that if there were an entitlement in a modern award, the boot test and things like that which relate to the interaction between awards and enterprise agreements, would come into play and there would be much stronger likelihood of collective bargaining around an entitlement for family and domestic violence leave.

PN2199

That is at least equivalent to that in the award?---That is at least equivalent, yes.

PN2200

No further questions.

PN2201

VICE PRESIDENT WATSON: Mr Kempfi, can I ask you a question about the model clause that you've attached to your statement?---The CPSU model clause?

PN2202

Yes?---Yes.

PN2203

In clause 1.5.3 deals with flexible work arrangements. Is that intended to reflect or build on the provisions of the Act in relation to the flexible work arrangements?---It's essentially intended to do both. So it's intended to be not entirely unlike the provisions in the Act, but it is intended to build on them.

PN2204

How is it intended to build on it?---Essentially by ensuring that victims of family and domestic violence are able to access these things by way of making a - essentially by way of making a request. It's also intended to build on them in the sense that they would have the right to have the flexible working arrangement as opposed to simply the right to request one.

*** SUNIL KEMPPFI

XXN MR WARD

PN2205

Well, how do you say that? The agency will approve any reasonable request. Is that intended to be something different to the provisions of the Act, is it?---In our view, it's intended to be clearer. There is room I suppose to debate what is reasonable in the situation; just like under the Act there's room to debate what is a reasonable business ground for refusal and so on. But essentially, it is intended as framing it as a say, more positive request as opposed to a reason for denial.

PN2206

And is that different based on difficulties that have been experienced in making requests?---I couldn't provide particulars or specifics, but anecdotally I have heard that victims - well people making requests in general have had a difficult time in terms of being able to make the request and have it granted.

PN2207

So you're aware of cases of where request have been made and not been granted?---I'm aware - - -

PN2208

Without giving any specifics of any particular case, but are you aware that there are such cases?---Anecdotally, yes I've been told that there are such cases, but to be honest, I haven't been provided the specifics of those cases.

PN2209

Anything about the incidents of those cases?---No, I can just say that I've been told that in general, people have found it difficult when making these requests, they haven't always been granted or there's been some difficulty in terms of making and having them granted.

PN2210

So this wording is intended to enhance the ability of the request to be granted?---Yes it is.

PN2211

And is it intended to build on the provision of the Act in any other way?---It is also - well, in addition to the things that are specified in 8(e), it also brings this request into the ambit of the enterprise agreement and the dispute resolution process that follows as opposed to being a matter under the Act.

PN2212

But in terms of - well a provision of the Act can be accessed at any time whether there's an enterprise agreement in place or not; can it not?---Yes, that's correct.

PN2213

But in terms of the substance of that paragraph, is there anything other than the matter that we first discussed that is intended to be an enhancement of the provisions of the Act?---I would have to have a closer look at the Act again but my understanding is that the factors in (a) to (e) are more prescriptive in our clause.

*** SUNIL KEMPPPI

XXN MR WARD

PN2214

More specific?---Yes.

PN2215

Yes, thank you?---Thank you.

PN2216

Ms Burke?

RE-EXAMINATION BY MS BURKE

[2.59 PM]

PN2217

MS BURKE: Just one question arising out of an exchange between yourself Vice President and Mr Kemppe. Mr Kemppe, I'm happy to hand you my copy of the Act if that would assist, but otherwise can I just perhaps read out section 65(1A)(e) which is the relevant section. It gives the employee the right to request a flexible working arrangement if the employee is experiencing violence from a member of the employee's family. Can I ask you to look at the definition in 1.2 of Family Violence in your model clause and does that definition there, which is derived from the Family Law Act 1975 extend to domestic - or extend to abuse by a family or household member?---Yes it does, and in fact I've missed something obvious in my earlier answer. By way of our definition being much broader than physical violence and including financial and emotional abuse as an example, and a range of other things including coercion, yes the effect of our clause 1.5.3 is much broader.

PN2218

Does it also extend to violence experienced from a member of a person's household as well as their family?---Yes it does.

PN2219

Thank you. No further questions.

PN2220

VICE PRESIDENT WATSON: Thank you for your evidence Mr Kemppe. You can step down?---Thank you.

<THE WITNESS WITHDREW

[3.00 PM]

PN2221

MS BURKE: That concludes the witnesses for today and tomorrow morning Ms McFerran will give evidence. If I can just inform the Commission that the ACTU will not rely on the first of her expert reports; there are two. The first of those was an analysis of agreements on the workplace agreements database, that statement will not be read, that report. The second report will continue to be relied on.

PN2222

VICE PRESIDENT WATSON: So what witnesses does that leave us with tomorrow?

SUNIL KEMPEE

RXN MS BURKE

PN2223

MS BURKE: Still Ms McFerran, just that the scope of her evidence has been reduced by half.

PN2224

VICE PRESIDENT WATSON: Yes.

PN2225

MS BURKE: Following Ms McFerran, Ms Mandel, whose statement also looks at agreements on the workplace agreements database.

PN2226

VICE PRESIDENT WATSON: Just the two witnesses and they should be able to be dealt with in the morning?

PN2227

MS BURKE: Certainly.

PN2228

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

ADJOURNED UNTIL FRIDAY, 18 NOVEMBER 2016

[3.02 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

| | |
|---|---------------|
| DEBRA MARIE ECKERSLEY, AFFIRMED | PN1726 |
| EXAMINATION-IN-CHIEF BY MS SWEET | PN1728 |
| EXHIBIT #S1 STATEMENT OF DEBRA MARIE ECKERSLEY DATED 20/06/2016, TOGETHER WITH TWO ATTACHMENTS | PN1744 |
| CROSS-EXAMINATION BY MR ARNDT..... | PN1760 |
| RE-EXAMINATION BY MS SWEET | PN1923 |
| THE WITNESS WITHDREW | PN1930 |
| JULIE VANESSA KUN, AFFIRMED..... | PN1942 |
| EXAMINATION-IN-CHIEF BY MS BURKE | PN1942 |
| EXHIBIT #B12 WITNESS STATEMENT OF JULIE VANESSA KUN WITH AMENDMENTS..... | PN1958 |
| CROSS-EXAMINATION BY MR FERGUSON..... | PN1960 |
| RE-EXAMINATION BY MS BURKE | PN2006 |
| THE WITNESS WITHDREW | PN2010 |
| BERNADETTE PASCO, SWORN | PN2013 |
| EXAMINATION-IN-CHIEF BY MS BURKE | PN2013 |
| EXHIBIT #B13 WITNESS STATEMENT OF BERNADETTE PASCO..... | PN2028 |
| CROSS-EXAMINATION BY MR WARD | PN2030 |
| THE WITNESS WITHDREW | PN2081 |
| MICHELE FRANCIS O'NEIL, AFFIRMED..... | PN2082 |
| EXAMINATION-IN-CHIEF BY MS BURKE | PN2082 |
| EXHIBIT #B14 WITNESS STATEMENT OF MICHELE FRANCIS O'NEIL DATED 30/05/2016 | PN2093 |
| CROSS-EXAMINATION BY MR FERGUSON..... | PN2095 |
| RE-EXAMINATION BY MS BURKE | PN2123 |
| THE WITNESS WITHDREW | PN2126 |

| | |
|---|---------------|
| SUNIL KEMPPI, AFFIRMED..... | PN2134 |
| EXAMINATION-IN-CHIEF BY MS BURKE | PN2134 |
| EXHIBIT #B15 WITNESS STATEMENT OF SUNIL KEMPPI | PN2147 |
| CROSS-EXAMINATION BY MR WARD | PN2149 |
| RE-EXAMINATION BY MS BURKE | PN2216 |
| THE WITNESS WITHDREW | PN2220 |