

Australian Industry Group

# 4 YEARLY REVIEW OF MODERN AWARDS

**Objections to Statements of Lay  
Evidence Filed by the ACTU**  
Family and Domestic Violence Clause  
(AM2015/1)

**13 November 2016**

**Ai**  
GROUP

## 4 YEARLY REVIEW OF MODERN AWARDS

### AM2015/1 FAMILY AND DOMESTIC VIOLENCE CLAUSE

#### INTRODUCTION

1. On 14 – 18 November 2016, a Full Bench of the Fair Work Commission (**Commission**) will hear evidence called by the Australian Council of Trade Unions (**ACTU**), Price Waterhouse Coopers and the Australian Industry Group (**Ai Group**) in relation to the ACTU's claim for a new paid leave entitlement for employees subject to family and domestic violence.
2. Ai Group objects to the admission of various parts of the statements of evidence of lay witnesses (that is, witnesses other than those advanced as experts) that have been called by the ACTU<sup>1</sup>. This submission identifies the relevant parts of the ACTU's evidentiary case and sets out the basis for our objections. We intend to speak to this submission during the aforementioned proceedings.

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<sup>1</sup> Given the nature of the evidence given by the three individual employees called by the ACTU and the issue of a confidentiality order in respect of their evidence, we have not here dealt with their statements.

## THE ADMISSION OF EVIDENCE IN THESE PROCEEDINGS

3. We acknowledge, firstly, that by virtue of s.591 of the *Fair Work Act 2009* (**the Act**) the Commission is not bound by the rules of evidence. Despite this, the Commission and its predecessors have noted that the rules of admissibility of evidence are relevant to proceedings before it.
4. In a passage often cited by subsequent decisions, a Full Bench (Ross VP, Duncan SDP and Bacon C) of the Australian Industrial Relations Commission (**AIRC**) made the following comments: (emphasis added)

[48] While the Commission is not bound by the rules of evidence that does not mean that those rules are irrelevant. As the then President of the Industrial Relations Commission of Western Australia said in respect of a similar provisions in the then *Industrial Relations Act 1979* (WA):

*"However, this is not a licence to ignore the rules. The rules of evidence provide a method of enquiry formulated to elicit truth and to prevent error. They cannot be set aside in favour of a course of inquiry which necessarily advantages one party and necessarily disadvantages the opposing party (R. v War Pensions Entitlement Appeal Tribunal: ex parte Bott [1933] 50 CLR 228 Evatt J. at 256 (dissenting)). The common law requirement that the Commission must not in its reception of evidence deny natural justice to any of the parties acts as a powerful control over a tribunal which is not bound by the rules of evidence."*

[49] A similar observation was made by the Industrial Commission of New South Wales in *PDS Rural Products Ltd v Corthorn*:

*"First, it is correct to say, as the commissioner did, that he was not bound to observe the rules of law governing the admissibility of evidence (s 83). It should be borne in mind that those rules are founded in experience, logic, and above all, common sense. Not to be bound by the rules of evidence does not mean that the acceptance of evidence is thereby unrestrained. What s 83 does do in appropriate cases is to relieve the Commission of the need to observe the technicalities of the law of evidence. Common sense, as well as the rules of evidence, dictates that only evidence relevant to an issue which requires determination in order to decide the case should be received. This means that issues must be correctly identified and defined. This did not happen in this case."*

[50] We agree with the above observations. In our view the rules of evidence provide general guidance as to the manner in which the Commission chooses to inform itself.<sup>2</sup>

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<sup>2</sup> *Hail Creek Coal Pty Ltd v CFMEU* (PR948938).

5. This decision was adopted by a Full Bench of Fair Work Australia (as it then was) in the following terms: (emphasis added)

[28] The tribunal is not bound by the rules of evidence and therefore has a discretion to admit as evidence material that would not be admissible under the rules of evidence. However, this does not mean that the rules of evidence are irrelevant to the exercise of that discretion in response to an objection to the reception of particular evidence. On the contrary, as was pointed out by the Full Bench in *Hail Creek Pty Ltd v Construction, Forestry, Mining and Energy Union* the rules of evidence “provide general guidance as to the manner in which the Commission chooses to inform itself”. The rules of evidence are not arbitrary and were developed by reference to notions of what is fair and appropriate and, as such, they often provide a good starting point for a consideration of whether an objection to the reception of particular evidence by the tribunal should be upheld or rejected.<sup>3</sup>

6. More recently, Commissioner Wilson considered the proper approach to be taken in admitting evidence in the context of an application for an unfair dismissal remedy:

[13] While the Fair Work Commission is not bound by the rules of evidence and procedure, that is not to say the Commission should not have regard to such rules in making its decisions, and for good reason. In this regard, Commissioner Thatcher observed the following;

Section 591 of the Act provides that FWA is not bound by the rules of evidence in relation to a matter before it. However that does not mean that the rules of evidence are irrelevant. In its decision in *Re: Michael King* the Full Bench agreed with the following observation of the Industrial Commission of New South Wales in Court Session in *PDS Rural Products Ltd v Corthorn*, which relevantly included:

“... it is correct to say, as the Commissioner did, that he was not bound to observe the rules of law governing the admissibility of evidence (s 83). It should be borne in mind that those rules are founded in experience, logic, and above all, common sense. Not to be bound by the rules of evidence does not mean that the acceptance of evidence is thereby unrestrained. What s 83 does do in appropriate cases is to relieve the Commission of the need to observe the technicalities of the law of evidence. ....”<sup>4</sup>

7. Section 590 grants the Commission power to inform itself “in such manner as it considers appropriate”. This power is tempered by an obligation on the Commission to exercise its powers in a manner that is fair and just<sup>5</sup>. In performing its functions, the Commission must also take into account “equity,

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<sup>3</sup> See for example *The AMIEU v Dardanup Butchering Company Pty Ltd* [2011] FWCFB 3847 at [28].

<sup>4</sup> *Carol Haslam v Fazche Pty Ltd T/A Integrity New Homes* [2013] FWC 5593

<sup>5</sup> See s.577(a).

good conscience and the merits of the matter”<sup>6</sup>.

8. These matters were deemed relevant by earlier authorities when considering s.110(2)(b) of the *Workplace Relations Act 1996*, which relieved the AIRC of the need to apply the rules of evidence. Despite this, the AIRC stated: (emphasis added)

[27] But s.110(2)(a) does not mean that the rules of evidence are irrelevant. It is clear that members of the Commission are bound to act in a judicial manner and that the principles of natural justice are applicable to hearings before the Commission.

[28] The term *natural justice* in the context of administrative decision making has essentially been equated to an obligation to act fairly. As Kitto J said in *Mobil Oil Australia Pty Ltd v FCT*:

*"What the law requires in the discharge of a quasi-judicial function is judicial fairness. This is not a label for any fixed body of rules. What is fair in a given situation depends upon the circumstances."*

[29] In addition to the general obligation to act fairly there is also the statutory injunction in s.110(2)(c) that the Commission act according to "equity, good conscience and the substantial merits of the case." In view of these obligations it is appropriate, I think, to have regard to the rules of evidence as a guide to the exercise of the Commission's discretion to accept and exclude evidence.<sup>7</sup>

9. The authorities we have here cited support the proposition that whilst the Commission is not bound by the rules of evidence, the Full Bench is nonetheless bound to act in a judicial manner and therefore should not admit into evidence those elements of the witness statements that we have identified below. We submit that such an approach is appropriate given the principles of natural justice and the obligation on the Commission to act fairly.
10. Should the Commission decline to strike out the relevant parts of the unions' evidentiary case, Ai Group intends to make submissions as to the appropriate weight that should be attributed to such evidence, in due course.

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<sup>6</sup> See s.578(b).

<sup>7</sup> Re *CFMEU* (PR941737). See also *King v Freshmore (Vic) Pty Ltd* (Print S4213) at [60] – [63].

## **OBJECTIONS TO THE ADMISSION OF EVIDENCE**

11. We here set out our objections to the admission of parts of various lay witness statements filed by the ACTU in these proceedings.
12. Our objections are made on one or more of the following bases:
  - That the evidence is hearsay; that is, it is evidence of a prior representation made by a person to prove the existence of a fact that it can reasonably be supposed that that person intended to assert by the representation;
  - That the evidence is in the nature of an opinion that is expressed without there being a proper basis for that opinion;
  - That the evidence is speculative in nature;
  - That the evidence cannot be tested due to the anonymity of the persons referred to in the evidence and its admission is therefore inherently unfair; and
  - That the “evidence” is in fact a submission and does not communicate a matter of fact.

## Marilyn Beaumont

Paragraph	Objection	Basis
44	Opinion without proper basis / submission	The witness is expressing her opinion, the basis for which is not made out in her evidence.
46	Opinion (submission)	The witness is making a submission about the alleged unfairness of the circumstances described and in so doing, is advocating a particular position. This is not a question of fact or an opinion for which she has a proper basis.
47 first sentence	Opinion without proper basis	The witness is expressing her opinion, the basis for which is not made out in her evidence.
47 last sentence	Opinion (speculation)	The witness is speculating that a paid leave clause might lead to monitoring and reporting to the workplace leader or Board. The basis for her opinion is not made out in her evidence.
48 “The implementation of an entitlement to domestic violence leave would form part of the human resource reporting and allow organisations to properly assess the cost of domestic violence to their business”	Opinion (speculation)	The witness is speculating that an entitlement to domestic violence leave would form part of the human resource reporting and this would allow organisations to properly assess the cost of domestic violence to their business. The basis for her opinion is not made out in her evidence.
48 “currently that information is unable to captured where women are taking other forms of leave, such as sick leave or annual leave, to deal with domestic violence.”	Opinion without proper basis	The witness is expressing her opinion, the basis for which is not made out in her evidence.
49 first sentence	Opinion without proper basis	The witness is expressing her opinion, the basis for which is not made out in her evidence.
51 final sentence	Opinion (submission)	The witness is making a submission or advocating for the importance of providing a safe environment. This is not a question of fact or an opinion for which she has a proper basis.

54	Opinion (submission)	The witness is making a submission about the role that employers should play and in so doing, is advocating a particular position. This is not a question of fact or an opinion for which she has a proper basis.
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## Jocelyn Bignold

Paragraph	Objection	Basis
12 “She said that she did not draw a wage and her husband did not give her enough money to feed the family.”	Hearsay	The evidence cannot be relied upon to establish that “the unidentified person did not in fact draw a wage or that her husband did not in fact give her enough money to feed the family.  The nature of the evidence, whereby the person has not been identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.
12 “She felt that the only way to make ends meet was to scavenge in rubbish bins.”	Opinion / hearsay	The basis for the witness’ statement is not clear. In either event, it cannot be relied upon to establish that the employee in fact felt that the only way to make ends meet was to scavenge in rubbish bins. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.
12 second last sentence	Hearsay	The evidence cannot be relied upon to establish that the employee could not in fact “hold down a job ... because as soon as she was found, she was hounded out again.”  The nature of the evidence, whereby the person has not been identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.
12 last sentence	Hearsay	The evidence cannot be relied upon to establish that the abuse was in fact perpetrated by her father or that it in fact went on for 25 years.  The nature of the evidence, whereby the person has not been identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.
21 first sentence	Hearsay	The evidence cannot be relied upon to establish that some women were in fact being performance managed out of their jobs because of reasons that related to their experience of family violence.  The nature of the evidence, whereby the relevant employees and employers have not been identified, renders the evidence highly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.

<p>21 second sentence</p>	<p>Hearsay / opinion without proper basis</p>	<p>The basis for the witness' statement is not clear. In either event, it cannot be relied upon to establish that some women were in fact unsuccessful in obtaining a new job due to a poor reference.</p> <p>The nature of the evidence, whereby the relevant employees and employers have not been identified, renders the evidence highly prejudicial.</p>
<p>21 last sentence</p>	<p>Hearsay / opinion without proper basis</p>	<p>The basis for the witness' statement is not clear. In either event, it cannot be relied upon to establish that many women were in fact managing chronic illness or injury as a result of their experience of violence.</p> <p>The nature of the evidence, whereby the relevant employees and employers have not been identified, renders the evidence highly prejudicial.</p>
<p>23.1 last sentence</p>	<p>Hearsay / opinion without proper basis</p>	<p>The basis for the witness' statement is not clear. In either event, it cannot be relied upon to establish that most women supported by MCSW had in fact not told previous employers about their experience of family violence.</p> <p>The nature of the evidence, whereby the relevant employees and employers have not been identified, renders the evidence highly prejudicial.</p>
<p>23.3</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish the truth of the various representations it contains.</p> <p>The nature of the evidence, whereby the persons have not been identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
<p>61 second sentence, after the words "in our experience"</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that having a job will in fact assist some women to leave a violent relationship because, in particular, it will give them more financial autonomy to make decisions about housing.</p> <p>The nature of the evidence, whereby the persons have not been identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>

## Sandra Dann

The evidence of Sandra Dann contains numerous 'case studies'. In each instance, the evidence is in the nature of hearsay. In some cases, it would appear to be second-hand or some more remote form of hearsay. Furthermore, the individual who is the subject of the case study and those persons or bodies referred to in it (including the employer, where relevant) have not been identified, by virtue of which the admission of the evidence would be particularly prejudicial to respondent parties.

Ai Group opposes the admission into evidence of each of the case studies contained in Ms Dann's statement. In the table below, we have identified specific parts of the various case studies that are particularly problematic.

Paragraph	Objection	Basis
22 case study, last sentence	Hearsay	<p>The evidence cannot be relied upon to establish that 'Mary' was in fact dismissed or that she was dismissed on the basis that "she was just too difficult".</p> <p>The nature of the evidence, whereby the employee and employer have not been identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
25 case study: "once she revealed the DV she was systematically bullied out of her position"	Hearsay	<p>The evidence cannot be relied upon to establish that 'Donna' was in fact systematically bullied out of her position once she revealed the DV.</p> <p>The nature of the evidence, whereby the employee and employer have not been identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
26 first sentence	Opinion (speculation)	<p>The witness is speculating that an employer may make certain comments while providing a referee check. No basis for this is made out in her evidence.</p>

<p>27</p> <p>Case study: "Sylvia was terminated for performance issues (lateness)"</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that 'Sylvia' was in fact terminated or that she was terminated for performance issues.</p> <p>The nature of the evidence, whereby the employee and employer have not been identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
<p>27</p> <p>Case study: "He told them that she's had heaps of personal and family problems, that there's been issues with attendance and that the abusive husband had been coming on to work premises causing problems"</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that the unidentified previous employer in fact made the stated remarks.</p> <p>The nature of the evidence, whereby the employee and employer have not been identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
<p>27</p> <p>Case study: "have requested a statutory declaration (they emailed her a prepared statement of what they want her to sign) from her saying she has nothing to do with her ex husband). They also want a copy of the Intervention Order as they say it covers them."</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that the prospective employer has in fact requested a copy of the statutory declaration as described or the Intervention Order.</p> <p>The nature of the evidence, whereby the employee and employer have not been identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
<p>29</p> <p>Case study: "He then told her that she had to choose between her job and the CAT scan – he said "you can't have both".</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that 'Kelly's' unidentified employer in fact told her that she had to choose between her job and the CAT scan.</p> <p>The nature of the evidence, whereby the employee and employer have not been identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>

<p>29</p> <p>Case study: final paragraph, save for the last sentence</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish the truth of the various representations made.</p> <p>The nature of the evidence, whereby the employee and employer have not been identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
<p>33</p>	<p>Hearsay / opinion without proper basis</p>	<p>The basis for the witness' statement is not clear. In either event, it cannot be relied upon to establish that situations where workers are experiencing domestic violence are on the whole reported to WWCs as being very poorly handled, most often because of the lack of awareness by managers and supervisors of what to do. Nor can the evidence be relied upon to establish that the relevant managers and supervisors have a lack of awareness as to what to do.</p> <p>The nature of the evidence, whereby the relevant employees and employers have not been identified, renders the evidence highly prejudicial.</p>
<p>34</p> <p>"women report that they are often made to feel responsible for their partner or ex partner's behaviour"</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that women are in fact made to feel responsible for the behaviour of their partner or ex-partner.</p> <p>The nature of the evidence, whereby the relevant employees and employers have not been identified, renders the evidence highly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
<p>35</p> <p>second sentence</p>	<p>Opinion (submission)</p>	<p>The witness is making a submission about the content of an award clause dealing with domestic violence and in so doing, is advocating a particular position. This is not a question of fact or an opinion for which she has a proper basis.</p>

<p>35</p> <p>final paragraph of case study, save for the final sentence</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish the truth of the various representations made.</p> <p>The nature of the evidence, whereby the employee and employer have not been identified, renders the evidence highly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
<p>37</p> <p>third sentence</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that the relevant employers are in fact openly hostile to the idea of union involvement or any ideas of worker's rights and how to achieve them.</p> <p>The nature of the evidence, whereby the relevant employees and employers have not been identified, renders the evidence highly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
<p>42</p> <p>first sentence</p>	<p>Opinion without proper basis</p>	<p>The witness is expressing her opinion, the basis for which is not made out in her evidence.</p>
<p>42</p> <p>case study, first paragraph, third sentence</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that the friend of the caller in fact had no personal leave left due to having to attend a whole range of issues like reporting to the police etc.</p> <p>The nature of the evidence, whereby the relevant persons have not been identified, renders the evidence highly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
<p>42</p> <p>case study, second paragraph, "and at the point of resigning from her job as she could see no other way out of her predicament"</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that the friend of the caller was in fact at the point of resigning because she could see no other way out of her predicament.</p> <p>The nature of the evidence, whereby the relevant persons have not been identified, renders the evidence highly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>

<p style="text-align: center;">42</p> <p style="text-align: center;">case study, third paragraph</p>	<p style="text-align: center;">Hearsay</p>	<p style="text-align: center;">The evidence cannot be relied upon to establish that the friend of the caller had not in fact notified her workplace of the domestic violence because she didn't know how to without risking losing her job.</p> <p style="text-align: center;">The nature of the evidence, whereby the relevant persons have not been identified, renders the evidence highly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
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## Mick Doleman

Paragraph	Objection	Basis
13 third last sentence	Opinion without proper basis	The witness is expressing his opinion, the basis for which is not made out in his evidence.
13 second last sentence	Opinion without proper basis	The witness is expressing his opinion, the basis for which is not made out in his evidence.




## Brad Gandy

Paragraph	Objection	Basis
7 “workers regarded it as an important claim and one that they supported”	Hearsay / opinion without proper basis	The basis for the witness’ statement is not clear. In either event, it cannot be relied upon to establish that the workers in fact regarded it as an important claim and one that they supported.
15 first sentence	Opinion (speculation)	The witness is speculating that a dedicated FV clause would provide employees with a “clear avenue”. The basis for his opinion is not made out in his evidence.
15 “the task of approaching management who are familiar with FV leave as a category would be far less daunting”	Opinion (speculation)	The witness is speculating that it would be far less daunting for an employee to approach management who are familiar with FV leave. The basis for his opinion is not made out in his evidence.
15 “I believe they would utilise it”	Opinion (speculation)	The witness is speculating that if he directed an employee to an award or agreement entitlement to FV leave, they would utilise it. The basis for his opinion is not made out in his evidence.
18 third last sentence	Opinion without proper basis	The witness is expressing his opinion, the basis for which is not made out in his evidence.
18 second last sentence	Hearsay / opinion without proper basis	The basis for the witness’ statement is not clear. In either event, it cannot be relied upon to establish that employees, in general, will not know that a policy exists or that they will not know how to use it.
18 last sentence	Opinion without proper basis	The witness is expressing his opinion, the basis for which is not made out in his evidence.

## Michelle Jackson

Paragraph	Objection	Basis
17	Opinion without proper basis	The witness is expressing her opinion, the basis for which is not made out in her evidence.
18	Hearsay	The evidence cannot be relied upon to establish that in fact 6 of 945 employees at Greater Dandenong Council had accessed family violence leave over the previous three years.
19	Hearsay	The evidence cannot be relied upon to establish that in fact 2 of 364 employees at Surf Coast Shire Council accessed family violence leave since 2013.

**Julie Kun**

Paragraph	Objection	Basis
32 final sentence	Opinion (submission)	The witness purports to incorporate WIRE's submission into her evidence. The submission does not communicate matters of fact. Rather, it states WIRE's position in relation to various issues pertaining to family violence and in that way, advocates the organisation's position.
35 final sentence	Hearsay	The evidence cannot be relied upon to establish that because 'Hilary's' relationship was so abusive her capacity to work in fact went down and her income in fact dropped because she wasn't able to juggle everything and her energy levels weren't there.  The nature of the evidence, whereby the person is not identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.
46 first sentence	Hearsay	The evidence cannot be relied upon to establish that the relevant women have in fact experienced difficulty finding and maintaining employment.  The nature of the evidence, whereby the relevant persons are not identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.
50	Opinion (submission)	The witness is making a submission about and in so doing, is advocating a particular position. This is not a question of fact or an opinion for which she has a proper basis.
51 	Hearsay	The evidence cannot be relied upon to establish that a staff member of the CEO was in fact experiencing family violence and that she had not in fact told management.  The nature of the evidence, whereby the employee and employer are not identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.

<p>51</p> <p>[REDACTED]</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that the staff member did not tell her CEO because she was in fact ashamed and scared that others would think that she must be bad at her job.</p> <p>The nature of the evidence, whereby the employee and employer are not identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
<p>52</p> <p>“women tell me they didn’t disclose the violence they were experiencing because of fear that they would lose professional face, lose credibility and miss out on promotion opportunities”</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that the unidentified women did not in fact disclose the violence they were experiencing and that this was because they in fact feared that they would lose professional face, lose credibility and miss out on promotion opportunities.</p> <p>The nature of the evidence, whereby the relevant employees are not identified, renders the evidence particularly prejudicial.</p>
<p>54</p> <p>[REDACTED]</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that the employee was in fact disciplined and told that she could be terminated from her role.</p> <p>The nature of the evidence, whereby the relevant employee and employer are not identified, renders the evidence particularly prejudicial. It is also unclear as to whether the evidence is second hand or indeed a more remote form of hearsay.</p>
<p>57</p>	<p>Opinion (speculation)</p>	<p>The witness is speculating that “situations such as these could be avoided” if a paid leave entitlement was in existence. The basis for her opinion is not made out in her evidence.</p>

**Fiona McCormack**

<b>Paragraph</b>	<b>Objection</b>	<b>Basis</b>
25	Opinion (submission)	The witness is making a submission about the responsibility borne by employers to take action and prevent domestic violence. In so doing, she is advocating a particular position. This is not a question of fact or an opinion for which she has a proper basis.
30	Opinion (submission)	The witness is making a submission about “workplace culture”. In so doing, she is advocating a particular position. This is not a question of fact or an opinion for which she has a proper basis.
31	Opinion (submission)	The witness is making a submission about that which is necessary for a business to do. In so doing, she is advocating a particular position. This is not a question of fact or an opinion for which she has a proper basis.

## Samantha Parker

Paragraph	Objection	Basis
17 first sentence	Hearsay	<p>The evidence cannot be relied upon to establish that these unidentified women are in fact concerned about taking leave from work to attend court.</p> <p>The nature of the evidence, whereby the relevant women have not been identified, renders the evidence particularly prejudicial.</p>
17 second sentence	Opinion (speculation)	<p>The witness is purely speculating that a woman in paid employment seeking an ADVO may already have taken leave from work. No basis for this is made out in her evidence.</p>
18	Opinion without proper basis	<p>The witness is expressing her opinion, the basis for which is not made out in her evidence.</p>


## Emma Smallwood

Paragraph	Objection	Basis
3 last sentence	Submission / hearsay	The witness purports to incorporate the Stepping Stones report into her evidence. The report does not communicate matters of fact. Rather, it reflects the various findings made by the author in relation to the research conducted and/or is an expression of her opinion in relation to various matters pertaining to family and domestic violence. In addition, various parts of the report amount to hearsay.
23 last sentence	Hearsay	We refer to our submission below regarding Annexures EM-1 and EM-2.
24 third sentence	Hearsay / opinion without proper basis	The basis for the witness' statement is not clear. In either event, it cannot be relied upon to establish that the debts of many of the relevant women were in fact accumulated by their abusive partner.
24 last sentence	Hearsay / opinion without proper basis	The basis for the witness' statement is not clear. In either event, it cannot be relied upon to establish that in fact one quarter of all women in the project were impacted by a debt that was accumulated by an abusive partner against their wishes, without their knowledge or understanding or where they were under duress.
25 first sentence	Opinion without proper basis	The witness is expressing her opinion, the basis for which is not made out in her evidence.
25 last sentence	Opinion (speculation)	The witness is speculating as to the possible impact in the circumstances described, the basis for which is not made out in her evidence.
27	Hearsay	We refer to our submission below regarding Annexure EM-1.
29 first sentence	Hearsay	<p>The evidence cannot be relied upon to establish that the relevant women in fact lost their employment as a result of having to take days off work as a result of family violence or that they in fact faced entrenched poverty including homelessness.</p> <p>The nature of the evidence, whereby the relevant employers and employees have not been identified renders the evidence particularly prejudicial.</p>

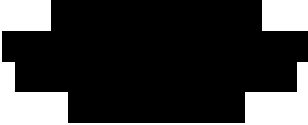

29 save for the first sentence	Hearsay	We refer to our submission below regarding Annexure EM-2.
54	Hearsay	We refer to our submission below regarding Annexure EM-3.
58 Second sentence	Opinion without proper basis	The witness is expressing her opinion, the basis for which is not made out in her evidence.
Annexures EM-1, EM-2 and EM-3	Hearsay	The evidence cannot be relied upon to establish the truth of the various representations made.  The nature of the evidence, whereby the research participants or any individuals or organisations (including their employers) have not been identified, renders the evidence particularly prejudicial.



**Jessica Stott**

Paragraph	Objection	Basis
<p>12 second last sentence</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that the unidentified client's unidentified employer had in fact chosen to protect her safety by terminating her employment.</p> <p>The nature of the evidence, whereby client and her employer have not been identified renders the evidence particularly prejudicial.</p>
<p>12 </p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that the unidentified client in fact lost her job as a result of family violence.</p> <p>The nature of the evidence, whereby client and her employer have not been identified renders the evidence particularly prejudicial.</p>
<p>19 "She said that the impact of violence on her mental health had contributed to her unemployment"</p>	<p>Hearsay</p>	<p>The evidence cannot be relied upon to establish that the impact of violence on the unidentified client's mental health had in fact contributed to her unemployment.</p> <p>The nature of the evidence, whereby the client has not been identified, renders the evidence particularly prejudicial.</p>

**Karen Willis**

Paragraph	Objection	Basis
<p>12</p> 	Hearsay	<p>The evidence cannot be relied upon to establish that after a while, the unidentified client's colleagues in fact stopped asking and would just roll their eyes.</p> <p>The nature of the evidence, whereby the client, her colleagues and her employer are not identified, renders the evidence particularly prejudicial.</p>
<p>12</p> 	Hearsay	<p>The evidence cannot be relied upon to establish that she in fact knew by the way they looked at her that they all thought that she was to blame.</p> <p>The nature of the evidence, whereby the client, her colleagues and her employer are not identified, renders the evidence particularly prejudicial.</p>
<p>19 final sentence</p>	Opinion without proper basis	<p>The witness is expressing her opinion, a proper basis for which is not made out in her evidence.</p>
<p>21 The example</p>	Hearsay	<p>The evidence cannot be relied upon to establish the various representations made.</p> <p>The nature of the evidence, whereby the client and her employer have not been identified, renders the evidence particularly prejudicial.</p>
<p>46</p>	Opinion without proper basis	<p>The witness is expressing her opinion, a proper basis for which is not made out in her evidence.</p>