

## ***Director of Public Prosecutions (NSW) v Al-Zuhairi* [2018] NSWCCA 151 (27 July 2018) – New South Wales Court of Criminal Appeal**

‘Evidence’ – ‘Fair hearing and safety’ – ‘Physical violence and harm’ – ‘Safety and protection of victims and witnesses’ – ‘Victim experiences of court processes’

Charges: Assault occasioning actual bodily harm x 1

Appeal type: Appeal on the case stated; Appeal against acquittal

Facts: The respondent was convicted of assault occasioning actual bodily harm for assaulting the brother of his ex-partner (the complainant). The complainant’s evidence-in-chief was a recorded statement pursuant to [s 289F\(1\)](#) of the *Criminal Procedure Act* (NSW). The recording was not tendered in evidence. The transcript did not set out the content of the recorded statement.

On appeal, Colefax SC DCJ held that the recorded statement was required to be tendered as an exhibit. He set aside the respondent’s conviction.

Issues: Whether, in a proceeding for a ‘domestic violence offence’, a recorded statement by a complainant must be formally tendered in the Local Court for the contents of the recorded statement to be put into evidence.

Decision and Reasoning: The Court of Appeal (Payne JA, Hulme and Fagan JJ) quashed the orders made by the District Court, and remitted the matter to the District Court for re-hearing. The Court held that the playing of the recording in the Local Court was sufficient to render it evidence for the purpose of an appeal to the District Court.

The significance of the decision is that recorded statements given by complainants in domestic violence offences can be accepted as evidence as if the contents were given by the complainant in person, notwithstanding that the contents were not recorded on the Local Court transcript or admitted formally as an exhibit.