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Adelaide	(08) 8110 8999
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PRODUCTIVITY COMMISSION

**DRAFT REPORT ON PAID MATERNITY, PATERNITY
AND PARENTAL LEAVE**

**MR R. FITZGERALD, Presiding Commissioner
MS A. MacRAE, Commissioner**

TRANSCRIPT OF PROCEEDINGS

AT ADELAIDE ON WEDNESDAY, 12 NOVEMBER 2008, AT 10.32 AM

MR FITZGERALD: Good morning everybody. Welcome to the very first day of the second round of public hearings following the release of the draft report into paid parental leave. Public hearings will take place in a number of cities over the next couple of weeks, with a view to the final report being provided to the government at the end of February 2009. As was the case in relation to the first round of public hearings, they are open to the media, who are able to take photographs but not sound-recordings.

Whilst there's no sworn evidence, participants are reminded that under the Productivity Commission Act they're required to provide truthful submissions and advice to the commissioners. I'm Robert Fitzgerald. I'm the presiding commissioner on the inquiry, with my fellow commissioner, Angela MacRae. So we might start. If you can give your full name and position within the organisation and the organisation, for the purposes of the record.

MR PLATT (AMMA): Christopher Platt. I'm the director of workplace policy for the Australian Mines and Metals Association.

MS TRETHERWEY (AMMA): I am Alice Trethewey, policy and employee relations assistant for the Australian Mines and Metals Association.

MR FITZGERALD: Good to see you again. If you could give us some opening comments and then we'll have time for a bit of questioning.

MS TRETHERWEY (AMMA): On 2 June 2008 AMMA lodged a submission to the Productivity Commission's inquiry into paid maternity, paternity and parental leave, which I will refer to as paid parental leave. In that submission AMMA supported a government-funded paid parental leave scheme and we continue to do so. The key points of the initial submission were that a compulsory paid parental leave scheme be taxpayer-funded, with quantum and duration of payment assessed in consideration of affordability and competing budgetary interests.

The scheme should be administered by a government agency, without additional burdens placed on business. Employers should not be subject to industrial claims in relation to a paid parental leave entitlement, such as for top-up payments to increase the statutory level or length of payment to a pre-leave salary or a claim from those not legally entitled to the paid leave, and the negotiation of any additional voluntary entitlements should not be subject to compulsory arbitration or protected industrial action.

Having considered the commission's draft report released on 29 September, there are a range of issues which are of concern to AMMA. The key areas which we wish to address today are: who is to make the paid parental leave payments and

issues raised by different eligibility levels and the status of the employer during the period of leave; the recommendation that employers fund superannuation contributions during the period of leave, with no reimbursement; the proposals to amend the National Employment Standards; the provision of advice to employers in relation to the scheme; and, finally, those issues on which the commission has requested specific feedback.

Firstly, AMMA is concerned with the differing levels of eligibility proposed by the commission and the possible obligations each raises for employers. AMMA contends that the different requirements will cause uncertainty and confusion among both employers and employees as to both eligibility for the scheme and the status of the employer during the leave period. The recommendation that employers make the paid parental leave payments before being reimbursed by the government is not supported by AMMA members.

83 per cent of respondents to a recent AMMA survey indicated this would place an additional administrative and financial burden on their workplace in identifying eligibility, making the payments, including varying payroll systems to account for wage variations and accruals, tracking reimbursements and potential increases to payroll tax and workers compensation payments. Most felt that this aspect of the scheme should be handled by the government.

AMMA also has concerns with obligations that flow from an employer paying wages, including payroll taxes, other forms of paid and unpaid leave, workers compensation premiums and severance and redundancy pay in some circumstances. AMMA contends that clarification is needed as to the employment status of the employer in relation to periods of paid parental leave.

For example, will the period be regarded as service for the purpose of sick leave, annual leave, termination or redundancy calculations and long service leave, and will workers compensation payments be required to be made, and will the payment form part of salary for taxation purposes? AMMA submits that, if the government has the capacity to make payments to certain employees, independent contractors and welfare recipients who are ineligible for paid parental leave under the National Employment Standards, it should be able to extend these services to all employees eligible for paid parental leave.

In relation to superannuation, it is AMMA's view that the funding of superannuation should not be treated any differently from the primary leave payment. Thus, if employers are responsible for making superannuation contributions, those payments should also be reimbursed by the government. Some AMMA members estimate that the cost of providing these contributions in relation to employees on paid parental leave would be \$50,000 a year as a result of the

commission's proposals. This is an added burden to employers, with minimal demonstrable productivity offset.

Some recommendations of the commission affecting employers are supported by AMMA. Firstly, AMMA welcomes the commission's proposal that the National Employment Standards be amended to increase the period of notice required to extend unpaid leave from four to six weeks. AMMA members see the extension of the notice period as a positive step towards recognising the effects of employee absences on workplaces, with some advocating for a requirement that 12 weeks' notice would be more appropriate.

In relation to the recommendation that adoptive parents be afforded the same entitlement to unpaid leave and the return-to-work guarantee, AMMA supports that proposal. The majority of AMMA's survey respondents agree parents of adoptive children are deserving of an equal entitlement. The recommendation that employers should be provided with advice on how to reduce the disruption burdens associated with the scheme is also strongly supported by AMMA, particularly if the scheme is implemented in its current form. AMMA is similarly supportive of the proposal for a web-based calculator to assist employers in determining which employees would be eligible and set out any obligations for employers.

In relation to those issues the commission has requested specific feedback on, AMMA wishes to provide opinion on the practicalities of taking paid parental leave part-time; the effect of the period of paid parental leave being longer than 18 weeks; the merits of a "keeping in touch" provision; and whether sick, annual and long service leave should be accrued during paid parental leave periods.

AMMA contends that the practicalities of an employee taking paid parental leave part-time would vary in each circumstance. Thus AMMA submits that if the commission were to recommend that paid parental leave be taken part-time, it be restricted to those circumstances where agreed between an employer and employee. AMMA does not oppose the extension of length of paid parental leave, subject to the leave maximum contained in the National Employment Standards, on the basis that all payments are funded by the government. The current proposal would, however, increase the costs incurred by additional superannuation employer contributions.

Recommendation 2.10 proposes a "keeping in touch" provision. Where an employer and employee agree, AMMA supports the provision of this option. In relation to the commission's request for feedback on whether sick, recreation and long service leave should accrue, AMMA submits that this would result in additional cost and complexity for employers. What would the salary for the additional accrual be? The employee's normal salary or the paid parental leave benefit? AMMA contends paid parental leave would not be regarded as service for any of these

purposes, whilst recognising that the employee's continuous service would not be broken by paid parental leave.

AMMA acknowledges the proposal that there be no requirement for employers to continue or increase any current voluntary paid parental leave schemes and that any agreement to increase or top up an employee's payment to the pre-leave salary is to be the decision of the employer. Nevertheless, AMMA and employers remain concerned about claims from unions to top up the government payments, to broaden the eligibility for paid leave, or increase the number of weeks of payment. Accordingly, AMMA seeks the commission's recommendation that protected industrial action and compulsory arbitration on paid parental leave matters be expressly prohibited.

MR FITZGERALD: Thanks for that. Can I just start, if I might. In relation to the eligibility levels, there are effectively two eligibility sets. One is for an employee that works more than 12 months with a single employer at more than 10 hours per week, and then there is the rest. So what is it that you would like changed in the eligibility criteria?

As we understand it, all an employer has to do is ask two or three questions: "Is the employee pregnant or had the child?" "Has the employee been with an employer for more than 12 months?" and "Has the employee worked for more than 10 hours per week?" If the answer to that is tick, tick, tick, then there are certain entitlements, superannuation, and the paymaster function. If the answer to those are no, then in fact they fall into the other category. So what is it in the eligibility criteria that you would like changed?

MR PLATT (AMMA): From our perspective, we've got two eligibility criteria: the one that you've just outlined and the one in the National Employment Standards. We're suggesting that there should be a single criteria, because the end result of it is, if you've got an employee who has served for 12 months but not with you, then that employee is going to be treated differently to an employee who has served 12 months with that employer. Obviously the differences are who makes the payment, whether or not it's being recouped and the like. So our preference would be for a uniform scheme with a single entitlement, such as the one that is contained in the National Employment Standards.

MR FITZGERALD: The National Employment Standard already has the eligibility criteria in relation to unpaid leave of 12 months. So it's already made that determination. We've simply reflected that. The second thing is, in relation to the National Employment Standards, it talks about a significant connectedness to the employer. We've decided that we should give greater certainty to employers and made a point of 10 hours per week, rather than the current arrangement, which is "a

substantial connectedness", which leaves both employer and employee in a position of some vagary. So what we've actually tried to do is to give employers and employees greater certainty.

MR PLATT (AMMA): The issue still remains that there are two standards and our contention is that there ought to be one standard.

MR FITZGERALD: Yes, well, what is it?

MR PLATT (AMMA): In our view, the standard should be that that is contained in the National Employment Standards at the moment.

MR FITZGERALD: Does that mean that you there saw that the eligibility criteria would still be 12 months with one employer, but a substantial connectedness with that employer?

MR PLATT (AMMA): That's correct.

MR FITZGERALD: How does that benefit employers?

MR PLATT (AMMA): It makes it simpler for us to determine it, as in, whether or not someone has been working with that particular employer for 12 months or has a substantial connection with the employer is something within that employer's knowledge. Obviously the employer won't have knowledge about what has happened prior to their relationship with the employee.

MR FITZGERALD: I'm surprised that you seek a more ambiguous definition than one with greater clarity. I'm surprised that you would find that more beneficial, when that would lead to disputation between the employee and the employer as to whether or not they're entitled or not entitled.

MR PLATT (AMMA): I'm seeking for a single definition - that's the important part of it - as opposed to two definitions. If the Productivity Commission has the view that the current proposal contained in the NES is ambiguous, then the Productivity Commission should be making some recommendations to the government to vary the definition contained in the NES. But what we are looking for is a single standard, not two.

MS TRETHERWEY (AMMA): And a single administration of the scheme as well, I think.

MS MacRAE: One of the reasons we didn't choose the NES definition is that their definition for casual - that "substantial connectedness" doesn't give you the coverage

of the paid parental leave scheme that we've suggested, so we wouldn't be looking at self-employed, for example, because they wouldn't have a substantial connectedness. So we've gone for a separate definition, and the 10 hours was supposed to make it easier for employers, but you're telling me it's not making it easier, it's making it harder, because it's another rule.

MR PLATT (AMMA): That's right.

MS MacRAE: We just thought it was an easier rule than the rule that you're currently applying for NES, where many employers - smaller ones at least - may not have to be looking at that definition that giving 10 hours would be an easier rule for them than trying to use the NES standard. Your argument, if I can just get it clear, is that you would say, "If we have a single definition, the government paid it all" - if the government was to pay it all, the definition really wouldn't matter to you one way or the other, would it, because you wouldn't need to worry about the definition in that sense?

MR PLATT (AMMA): That's right. Yes, if the government paid it all, including superannuation, and subject to some of our concerns about the impact on other entitlements, I think you're right. What the definition is wouldn't matter.

MS MacRAE: Wouldn't matter.

MR PLATT (AMMA): I just think, for the sake of simplicity, it would be useful to have a single definition and, if the Productivity Commission has got a view that the government's proposal in respect to the NES is unclear, then we would respectfully suggest that you ought to be recommending to the government to change the NES in a particular way. But the key for us is simplicity, and there is simplicity in having a single definition.

MS MacRAE: The other alternative, from our point of view, would be we'll keep the NES definition - and I know you're opposed to it - but use that for where the employer would be making the payments and things, and anyone that falls outside of that but who we think should be entitled should fall to a government payment. So don't make the 10-hour thing the key for whether the employer pays, make the definition that's used under the NES the definition, and then we're not introducing a new - - -

MR PLATT (AMMA): I still think that adds an added complexity, because the employee is going to be asking the employer for some advice, "Am I entitled to PPL? Who is going to make my payment?" So in the end it's still going to be something that we have to grapple with.

MR FITZGERALD: Sure.

MR PLATT (AMMA): I don't think it's a huge issue.

MS MacRAE: Yes.

MR PLATT (AMMA): I think it's one that ought to be relatively easily resolved.

MR FITZGERALD: The only problem is, we have no input in relation to the NES per se, so at the end of the day the government will have to decide whether or not it chooses to be more definitive in the NES. So, yes, we could make a recommendation, but at the end of the day you may well end up with still those two situations.

MR PLATT (AMMA): You've made a recommendation in relation to variations of the notice provisions of the NES.

MR FITZGERALD: Yes, we could do it.

MR PLATT (AMMA): I don't see that there would be any issue.

MR FITZGERALD: Therefore the question is: do you have any problem with the 10 hours?

MR PLATT (AMMA): No.

MR FITZGERALD: If I can just move to the second one about the paymaster function - the payroll function - yes, there is a slight increase in administrative costs associated with this. To what extent do you think this is an actual added burden? Is it that you are concerned about the repayment by the government, or is it something else?

MS MacRAE: Really, is it a cash flow issue or is it an admin issue, or is it both?

MR PLATT (AMMA): There are two issues. There's both.

MR FITZGERALD: One of the things we've been very clear about is that we want this to be a work-related payment. We do not want it to be a welfare payment. As a consequence of that, there needs to be a connectedness with the employment situation. What we've tried to do is to make it relatively simple in its construct, and many of your members would already be providing voluntary paid parental leave schemes. So this would simply dovetail into those. So where is the greatest concern? Is it cash flow, as Angela has indicated, or is it in administrative?

MR PLATT (AMMA): There are two concerns, and I don't propose to order them in any particular fashion. Obviously our larger members are going to have sufficiently more cash reserves than small businesses. Despite the fact that publicly you only hear about the BHPs and the Rios of the world, there are a raft of smaller contractors, small businesses, that assist with mine operations across Australia.

MR FITZGERALD: Sure.

MR PLATT (AMMA): So we shouldn't expect that everybody is a multinational billion-dollar corporation. So I think the two issues - I'm not attempting to order them, because their impact will vary. First of all, you've got the issue of cash flow, as I've mentioned. Our view there is that the existing proposal has the government making direct payments to a number of PPL recipients, so the government is already going to have to have a system in place to do it. Whether or not it piggybacks off the Medicare system or the welfare system is a matter that the government could deal with. But, having said that, there's no reason why the government couldn't make the payments in respect of all PPL recipients.

The second one in relation to the administrative effect is that there needs to be some work done in terms of whether or not the person would fall under the employer-provided PPL or the government-provided PPL in terms of the payment. Then there would have to be a calculation as to whether or not the employee's wages, when unbundled, were higher or lower than the minimum. If it was the case where a different wage was going to be paid, there may well be some payroll changes to be made.

Certainly the larger companies in the resource sector tell me how expensive it is to get someone in to change some figures on a computer program in order to make different payments. So that would be an added cost burden to them. Then, as we highlighted in our overview, if you've got leave accruals whilst they're on PPL, then you've got to add the leave accrual. Is it at a different rate in terms of the payment than the normal rate? So all of those factors combine to make it an administrative nightmare as far as we're concerned.

MR FITZGERALD: We acknowledge that there's an administrative cost, but to call it a nightmare is a bit odd, because at the moment, as we indicated, in relation to the actual total payroll of most businesses, a very small number of employees would be taking this at any one time, depending on the nature of the business. The second thing is, it's only for 18 weeks. The third thing is, a lot of employers already provide voluntary parental leave arrangements anyway, so this simply dovetails into that.

MR PLATT (AMMA): But the difference with the voluntary PPL payments is that

it's a continuation of the relationship with the employer. It's an agreed basis. The wages don't vary.

MR FITZGERALD: Yes, but if you're saying to me that to change the rate of pay for someone is a nightmare, that's an overstatement surely, because you change the rates of pay of employees all the time, as we do. They move from full-time to part-time, they move up and down, you negotiate new wage arrangements. That's just a normal, standard part of doing payroll. Surely that can't be the problem.

MR PLATT (AMMA): But you've added a layer of complexity.

MR FITZGERALD: That is a change of rate to the minimum wage.

MR PLATT (AMMA): That's right. The change of rate and, again, the details on the calculation of the entitlements is an unknown. Our support for PPL was predicated on it being a government-funded and government-administered scheme.

MR FITZGERALD: Yes.

MR PLATT (AMMA): And we're quite clear about that.

MR FITZGERALD: Sure.

MR PLATT (AMMA): We expressed a view at the initial hearing that it actually should be the full rate of pay, because that makes life a lot easier for us. But the proposal at the moment adds to our financial burden, in the sense that we're paying these payments in advance and seeking to recoup them, and it provides additional administrative costs. That doesn't fall within the conditions upon which we supported the PPL scheme.

MR FITZGERALD: Sure. So have you worked out any calculation as to what that may be? For example, in the United Kingdom the government at some levels actually provides 100 plus per cent reimbursement to firms to cover, to some degree, the administrative costs. Have you looked at that?

MR PLATT (AMMA): No, I haven't looked at trying to quantify the administrative costs but - - -

MS TRETHERWEY (AMMA): In the response to our survey there was divided opinion on the extent of the costs and I think it would really vary in each company's circumstances.

MS MacRAE: That 50,000 number was a shock to me. You mentioned in the

opening comments - we're going to super here, which is a slightly different issue, so perhaps I shouldn't jump ahead to that already, but you mentioned that one of the employers had said they thought it might cost them \$50,000 per year. The maximum per employee on leave that they could pay - - -

MR PLATT (AMMA): This is not per employee. I think you'll find this is a figure - - -

MS MacRAE: No, for the employer. But per employee the maximum is about 1000. Well, it's 881 for the 18 weeks and then they might cop the father as well, I suppose. The absolute maximum for a family would be 1000. So they are estimating they would have 50 people on parental leave in any given year. If they did, they must be a pretty sizeable firm, I would have thought.

MR PLATT (AMMA): I'm not sure which firm provided that. I haven't got that level of detail in terms of the survey, but some of our members employ many thousands of employees.

MS MacRAE: It wouldn't surprise me if they've got many thousands of employees, but then I think the 50,000 looks less scary. Do you know what I mean? If people see this in the paper and think, "Small business is going to be hit by \$50,000," it's just - - -

MR PLATT (AMMA): I think you're right.

MS MacRAE: It's a scary-looking number if you're a small business, and it would be nothing like that for those guys. That's the only point I'm making there: that 50,000 sounds like a big number, but if you're a Rio or a BHP it's not a big number, it's a small number.

MR PLATT (AMMA): No, but I must admit people have a view that the mining industry is a cash cow ready to be milked at any time. We've got a condensate tax that's been imposed at half a billion dollars per annum; we've got a coal levy that the New South Wales government is continuing to impose.

MR FITZGERALD: Sure.

MS MacRAE: We're obviously not directing it just at you guys.

MR FITZGERALD: But I suppose the overall position is that this scheme means that business, including government businesses - which is a huge percentage of the business market - would pay a maximum of 7 per cent of the scheme in total, and in that 7 per cent are all the government agencies, both state and Commonwealth, as

well. That seems to us to be a very modest contribution by the employers to this scheme.

MR PLATT (AMMA): It might seem to be modest - - -

MR FITZGERALD: In fact, it's \$70 million net to business over the whole economy in any one year.

MR PLATT (AMMA): That's in relation to the superannuation contribution?

MR FITZGERALD: That's in relation to everything - super and other costs.

MR PLATT (AMMA): I think the key issue is this: your recommendation proposes that the government makes payments and administers the scheme in relation to some of the people under the scheme. What I'm suggesting is, if the government has the payment methods and the administrative scheme in place for those people, why don't you extend it for everybody and take the burden off business?

MR FITZGERALD: In doing that you obviously discount entirely any benefit to employers of having a scheme which keeps employees and employers more closely attached during the maternity period. The whole premise of this scheme is that it starts from one fundamental conclusion, and that is that this should be a workplace entitlement. How it's funded is a secondary consideration which we've looked at. But if you want this to simply be really a different form of baby bonus or a maternity payment in the traditional sense, are you placing no value at all on seeking to have the employer and the employee connected during or at or around the time of the birth of the child? That's a central question.

Of course the government can make the payment. That's a given. Or we could say, "All employers have to make the payment," and that's at the other end of the scale, and we've said in fact something quite different to that. We want it work-related, but we want the government to largely subsidise it, which seems to us to be an appropriate middle ground. It provides benefits to the employer, but it is largely - to the extent of 93 per cent - funded by taxpayers.

MR PLATT (AMMA): Employers in the resource sector do value the relationships with their employees and employees who are taking parental leave. That's part of the reason why at the moment a number of our members do have paid parental leave arrangements that they've negotiated with their employees or they provide for their employees. So that does demonstrate we have some value.

MR FITZGERALD: Sure.

MR PLATT (AMMA): But that's a voluntary scheme and it's a scheme which an employer can introduce to demonstrate that it's an employer of choice. We're talking about a compulsory scheme, a universal scheme, and I think it's notable that both the ACTU submissions and ours and other employer groups was on the basis that the government fund the scheme and provide the necessary administration.

MR FITZGERALD: All right. Just one last comment about the employer's involvement. Over time this scheme will get merged with the voluntary schemes. Already we see employers starting to talk about reshaping their own schemes. For example, let's assume government adopted the 18 weeks. They may well reshape their current scheme so that they will top up for that 18-week period and, depending on the nature of the scheme, may extend it by a few weeks.

So within a very short period of time we're actually going to see simply a parental leave payment made to employees which will have two components. One is the negotiated component, one will be the mandated component, and over time it will simply be seen to be a workplace entitlement. If, however, right from the beginning you treat this as a welfare payment, you never get that merger over time. I would have thought to business over time the first arrangement might in fact have great attraction, where simply it is a parental leave scheme. It's got a couple of elements to it. But to the employee it will simply be a payment by the employer - end of story - and it will be a merged system.

I would have thought that's the logic of what's going to happen within a very short period of time, without increasing the commitment of the employers beyond their current voluntary arrangements, but rejigging them, whereas the other always means that they're going to be two entirely separate systems.

MR PLATT (AMMA): I think the message that is not getting through is that this scheme will benefit Australia as a whole. It is a scheme that is in the national and the public interest and that, accordingly, the scheme should be funded by the broadest base possible; that is, by the government. I think that's the area where it would appear that we've got a fundamental disagreement.

MR FITZGERALD: It's an earlier point which I think we're still grappling with, and that is whether it's a workforce-related payment or not. The second is the way it's funded and the extent of its funding. I think they're two different positions.

MR PLATT (AMMA): If you take the position that the scheme is in the national interest and it will promote a higher population growth for Australia and support families when they need it most, then the scheme will be one that will be funded by the government. One of the things that you did raise in one of your questions to me

was the issue of the payments being connected with employment. I took that as meaning that, in your view, the paid parental leave will be regarded as service for all purposes and therefore employees would be accruing sick leave, annual leave, long service leave and the like.

MR FITZGERALD: We are currently looking at that. There seem to be conflicting views. We're seeking advice from the Department of Education, Employment and Workplace Relations on those issues. It depends on whether or not the payment is one of an agency for government or actually an employer payment.

MR PLATT (AMMA): From our perspective, that's another reason why the payment should come directly from the government rather than from the employer.

MS MacRAE: Certainly in relation to where we're at in the draft, the recommendation is that super would be paid, but only up to the maximum of the minimum wage and not on pre-earnings. But in relation to those other entitlements, those administrative issues from employers do loom quite large and we have said that we're taking more information on that. But at this stage we haven't said that we'd recommend that it be included for those things, because we can see there's a lot more administrative complexity in that than there is in super.

MR PLATT (AMMA): And how do you see that superannuation payment being treated in a defined benefit scheme, as opposed to an accumulation scheme, and where an accumulation scheme has got particular contributions for insurance purposes?

MS MacRAE: Those things would have to be worked out. When the SG was first introduced, it was pretty complex for the actuaries to do all that, but I'm sure, given that they've now got the formulas for all those things, we can come up with a formula that will work.

MR PLATT (AMMA): Would any accruals be accrued at the rate of the PPL, or would it be the employee's normal rate?

MR FITZGERALD: If there are any accruals, it will be at the mandatory rate, because that's the only thing that can be mandated. It's up to the mandatory rate, the same as the super.

MR PLATT (AMMA): Was there any reason to have a split system; a system where part of the people are administered and funded by the government and part are funded by employers?

MR FITZGERALD: We would prefer all of them to be paid through the

employer, but the reality is that the NES cuts off at 12 months for unpaid parental leave, so to create an alignment with the NES we chose 12 months. That's why. The other point is, no matter where you draw the line, whether it's 12 months or six months or three months, you end up with that problem. There will be a group who will not be able to be provided by employers - particularly casuals that have multiple employers.

So there will always be a group who do not neatly fit in a situation where employers can be required to make those payments. At whatever point you draw the line, that's the case. By trying to do exactly what you indicated right at the beginning, and that is to draw an alignment with the NES, the 12-month figure is the figure that's chosen. There will always be a group that require direct payment by the government. Where you draw the line, however, changes that grouping. So if you go to six months it will be more paid by employers and less by government direct.

MR PLATT (AMMA): Has any modelling been done on the additional cost it would be for the government if they were the administrator for the entire scheme?

MR FITZGERALD: What we've tried to do is look at the cost to business of the administration. That's the concern. Because government is by default the payer. In other words, it has to bear the costs, irrespective of what they are. The real cost is the cost to business and is that a reasonable impost on business? The draft made some conclusions in relation to that, but we're doing further work on that at the moment.

MS MacRAE: In the UK, the reimbursement they give for businesses there is 106 per cent. It's for small business. They have a cut-off - I think it's a turnover cut-off for their business. So they have basically accepted that there's a 6 per cent additional cost to business, which is partly cash flow, partly admin that they reimburse. It was something we looked at.

But then when we looked at the actual cost for business out of these schemes we thought, "Maximum cash flow costs would be \$5 a week" - absolute maximum, because we're suggesting you have to get at least monthly reimbursement, and the maximum payment is determined by the minimum wage. So \$5 a week. The maximum payment for super is, maximum, 3 per cent of annual salary. Both of those amounts seemed fairly modest. Certainly in terms of cash flow, if that was what we were looking at reimbursing, we thought orchestrating that would be difficult.

MR PLATT (AMMA): So if a company was operating on an overdraft and the payment was additional to their normal operating expense, will that \$5 a week cover the interest on the overdraft?

MS MacRAE: That \$5 a week is at least a 10 per cent interest rate assumed.

MR FITZGERALD: It's assumed. We acknowledge that there's a cost, but when we looked at the numbers the cost was so small the issue was whether or not you should bother reimbursing it or not. The UK scheme is only for small employers anyway. So we're still looking at that issue. Thanks for that. I deliberately wanted to just challenge you on some of the issues because you're first up, so you get the tougher questioning.

MR PLATT (AMMA): No worries.

MR FITZGERALD: But we appreciate that.

MR PLATT (AMMA): Thank you very much for your time.

MR FITZGERALD: If we could have the Australian Women Lawyers. Welcome. If you could give your full names and the position and organisation that you represent, for the record.

MS SAW (AWL): My full name is Lee-May Saw. I am the treasurer and New South Wales director of Australian Women Lawyers. This is something we didn't give notice on, but I would also like it placed on record that I am in fact also here in my capacity as president of the Women Lawyers Association of New South Wales today. There has been a slight recent change in the position of New South Wales, which I will detail in our presentation today.

MR FITZGERALD: That's great. Kerry.

MS CLARK (AWL): Kerry Clark. I am president of Women Lawyers in South Australia, but here in my capacity essentially as a director of Australian Women Lawyers. I think New South Wales Women Lawyers probably have some views that the other organisations - our position differs somewhat. So that's why we make that distinction.

MR FITZGERALD: If you could give us some opening comments and then we'll have some time for questions.

MS SAW (AWL): In relation to an introduction about our organisation, Australian Women Lawyers is the national body representing women lawyers' associations across Australia. In our submission, it's a unique professional legal organisation, not because we represent a network of some 3000 women and, more recently, male lawyers as well across Australia, but because of the breadth of the legal profession that we represent.

Not only are our members solicitors and barristers, as traditionally is understood in the community in the sense of the word "lawyer", but our members are members of the judiciary, law students, community legal centres, large and small private firms, corporations, in-house counsel, academics, policy lawyers, lawyers employed in government departments, retired lawyers, lawyers on maternity leave - lawyers really from all walks of life in the most genuine sense of the word.

Since its formation in 1997, AWL has been advocating for measures that support the advancement of women in the legal profession and women in the general community. One of these measures has been a national scheme of government-funded paid parental leave. In more recent times, it has become somewhat commonplace for us to be asked, "Is there still a need for an organisation like AWL?" To this we reply that, while there has been significant progress in terms of the advancement of women in the legal profession and women in the general

community, the continued need for measures like paid parental leave is a testament to the need for the continued existence of AWL.

The Women Lawyers Association of New South Wales - wearing my other hat - was formed in 1952 and is the oldest women lawyers' association in Australia. WLANSW represents a network of some 600 women, and more recently male lawyers as well. We did in advance - I think late yesterday afternoon - send through a list of issues.

MS MacRAE: Yes.

MS SAW (AWL): I can tell you, given the time constraints of this presentation, we won't be addressing all of those issues. We would, however, like to contribute a further written submission in response to the draft report. However, we'd require an extension of time past this Friday.

MR FITZGERALD: That's fine.

MS SAW (AWL): A two-week extension we would be asking for.

MR FITZGERALD: If you could send us an email on that, that will be fine.

MS SAW (AWL): So to hone down the list of issues that we sent through, there are five essential issues that we'll be addressing in our presentation. The first issue will be paternity leave. It's number 3 on the list. Paternity leave, supporting parent leave. Number 2 will be the issue of adoption leave. Number 3 will be the definition of "self-employed". Number 4 will be the first item on our list, statutory paid parental leave, an urgent national priority. Number 5 will be, just in loose general terms, the relevant legal aspects.

To start with the first issue on the list - that is, the issue of paternity leave, as defined and set out in the commission's draft inquiry report - in our submission, the term that best describes the two weeks of paternity leave, as outlined in the draft report, is in fact "supporting parent leave", and we support the recommendations and position of the Human Rights and Equal Opportunity Commission in this respect.

We refer to pages 5 to 6 of our written submission, and that's submission number 143, and note that we strongly support the commission's recognition of the diversity of contemporary family types. However, it is our strong submission that it's simply inaccurate for any parental leave taken by the supporting parent of a female same-sex couple, for example, to be referred to as paternity leave. There were some aspects in relation to the transferring and sharing of leave that I think Ms Clark wanted to address.

MS CLARK (AWL): With the definition, as lawyers I guess we're always keen on how you define things, but it seems to us outdated to use the terms "maternity" and "paternity". For us to go back and amend the legislation to use a more gender-neutral term down the track just seems pointless. Why not call it primary carer leave and supporting parent leave, rather than maternity and paternity? The other example, of course, would be what happens when you have two male parents. Is one of them going to take maternity leave?

In terms of transferring of the leave within a family, this is an issue that is of great concern to our members as lawyers. Quite often women who are lawyers will be the primary income earner in their family. Obviously they will want to take some time off immediately following the birth of a child to recover and bond with the child and establish breastfeeding, but for many of our members their commitments to their mortgage and everything else will be such that it won't make sense for it to be the woman, if she is the primary income earner, to be taking that more extended leave, and they would prefer to be able to set it up within their family in a way that works for them.

So, even though we recognise that it would be administratively slightly more complex to allow for the shifting of a portion of leave to be taken by one parent and a portion by another parent, we think that there is merit in that, and it's worth that additional administrative cost, otherwise the system wouldn't achieve that objective of allowing families to be flexible and to set up their work-family balance in a way that suits them best. It would essentially impose the view that it should be the mother that stays at home. For a lot of our members, they're probably leading the way in terms of having partners who do stay at home with their kids more often.

So we would prefer there to be provision for a block portion of the leave to be transferred to the other parent, but also for there to be provision if a woman wishes to return part-time that can facilitate their partner staying at home for, say, two days a week and them going to work for three days a week. Another thing that is of concern to our members is that the legal profession is one where you need to be continually updated on your skills and the law. It's constantly changing. So it does make it more difficult perhaps than in other occupations to take an extended break. For that reason, it's quite common for people to want to return part-time. So we'd like to see a scheme that encourages that.

That probably dovetails into another one of our longstanding views at AWL that there should be a statutory right to at least request part-time work, which is in the NES. We think that it would be nice if we're going to have this change to the overall policy of how we manage work and family in Australia to actually introduce all of those things in one go and have the paid parental leave system come in at the same

time as that right to request flexible work.

MS SAW (AWL): Moving on to our second issue, which is the issue of adoption leave, certainly I am aware that there are current changes in relation to adoption law happening in New South Wales which make it, in essence - I'm yet to look at the detail - easier for adoptions to happen. It would be the view of Australian Women Lawyers that it is essential that any proposal put forward by the Productivity Commission is consistent with existing - and we concede that there are a number of acts and statutes which need to be looked at, and we will name them at the end of our presentation, and are willing to follow up on that further in our further written submission. But it's essential, in our submission, that the scheme is consistent with the existing legal regime.

In relation to adoption leave, in particular, I note that there's a distinction drawn in the draft inquiry report between non-family adoptions and family adoptions. To put our view in a bit of context, I recently participated in the Australian Committee of Attorneys-General harmonisation conference, where one of the issues that Australian Women Lawyers and New South Wales Women Lawyers were pushing was reforms to adoption law. It's an existing project and one that I still need to follow up on in much detail, but as part of that project I have been reviewing the various adoption acts across the states and territories in Australia.

I can tell you that there are enormous differences, particularly when it comes to the issue of family adoptions. So the period of relationship between family members, for example, varies hugely between states and territories, from no set time limit set in Queensland, for example, to New South Wales having the strictest period of duration, which is that family members must have a five-year relationship with the child before they can formally adopt - which then obviously becomes a problem where it's a fairly young child you're talking about, of less than five years of age - to South Australia where I think, and Ms Clark will correct me if I'm wrong, it's something like three years, and other states and territories it's one year.

I think that in relation to the objects - and they're certainly adequately outlined in the report - of why you would introduce adoption leave for non-family adoptions, there's something to be said about those arguments applying equally to certain types of family adoptions and there's a need to perhaps look a bit closer at what types of family adoption relationships that could apply to.

For example - and Ms Clark and I were talking about this issue earlier today - if it was obviously a stepfather of the child and the child was still with their biological mother, who'd remarried, and it was a case where the stepfather was seeking to adopt, perhaps that's not a situation where you would say that there should be an automatic statutory right to paid adoption leave.

But, for example, if you do truly and genuinely recognise the complexity and diversity of family types, we are a multicultural country, we are a country where there are families - talking about my personal family, for example, we have family members who are overseas, who perhaps we wouldn't have as strong a bond and attachment to, yet because we have quite a large family network and unit, if some tragedy was to happen to an uncle or auntie of mine overseas and their children had nobody to care for them, my parents would of course step in and seek adoption arrangements. But that's not to say that they have as strong a bonding and attachment as even some non-family adoptions may have.

I note that in my current practice I certainly come across a lot of cases where in New South Wales the Department of Community Services are involved, so that children are placed in foster care and there's a long-term order made that the children are to be placed under the responsibility of the minister of community services until 18. They may be in foster care for quite some time before those foster parents seek to adopt. Because we're talking about New South Wales, it has to be - actually, I need to follow up on that detail. But it may be that they have a stronger bonding and attachment in those circumstances. It's a non-family adoption situation but they may well have a stronger bonding and attachment to the people adopting them than the other family-type adoption I was describing previously.

MS CLARK (AWL): In summary, our submission would be that you can't draw the line on the basis of is it an inter-family adoption or not, because there will be some inter-family adoptions, depending on which definition you take, and that's complicated because of all the different acts - but if, for example, there's a tragedy, as Lee-May suggested, where someone is killed and then automatically you have kids in your care, we think that they should be entitled to a period of paid leave.

MR FITZGERALD: But if you're talking about a statutory scheme which actually has to have something with criteria, clearly you do not want a scheme which simply provides parental leave where there's been a coming together of two families and there's a mutual adoption taken place. So you're talking about exceptional circumstances.

MS SAW (AWL): Yes, that's right.

MR FITZGERALD: Rather than having a situation where you have a statutory scheme that applies to all adoptions.

MS SAW (AWL): Yes.

MR FITZGERALD: You're saying there needs to be some capacity for

exceptional circumstances.

MS CLARK (AWL): There has to be some flexibility, yes.

MS SAW (AWL): That's absolutely correct.

MR FITZGERALD: Otherwise you open the net. It becomes huge.

MS SAW (AWL): Yes. So administratively if there was some capacity to review that.

MR FITZGERALD: That's fine. All right. Your other points?

MS SAW (AWL): Our next point is the definition of "self-employed". So far as the legal profession is concerned, we would see the priority, so far as the self-employed are concerned, to be the sole proprietors of our profession, so we see that as sole practitioner solicitors and barristers who are in sole practice at the bar. Next in order of importance and preference would be solicitors in equity partnerships as opposed to non-equity partnerships.

MS CLARK (AWL): We should just point out that a lot of solicitors will have the title of "partner" within a firm. They're in fact salaried.

MS SAW (AWL): They're employed partners, and I think that's the same with other professions. Just on this point, I considered the suggestions in the draft inquiry report borrowed from New Zealand in relation to the evidence of self-employment, being a statutory declaration from the self-employed person and an accountant. We would support that suggestion. We will be coming back to the issue, however, of self-employment later.

MS CLARK (AWL): I am a barrister, so I am self-employed. As a barrister, you are not allowed to be in partnership with anyone or in a company. You have to be completely independent. That's part of the deal. One of the reasons I think why so few women are at the bar - and in Adelaide there are only 30 of us out of probably over 200 barristers - is because it can be very difficult if you have a family. It's not just that you're taking away your ability to earn an income; it's that you have ongoing expenses which you will be expected to pay while you're out. So a big issue for a lot of our barrister members is, "How am I going to fund not just my financial needs in terms of a wage?" but I would have to, for example, continue to pay rent on my chambers and my share of all the ongoing expenses.

MS SAW (AWL): And this has been raised in our written submission: particularly when that's put in the context of the work that Australian women lawyers have

historically done, in New South Wales women lawyers certainly, on the advancement of women in the profession. We're talking about senior counsel, barristers, other people being appointed to the bench as judges. We're talking about, in more recent times, equity partners in the larger firms who are being appointed to the Supreme Court. So in terms of those objectives, certainly that's what we would see as the priority areas.

MS CLARK (AWL): I think, anecdotally at least, in South Australia the women who have most commonly access to paid maternity leave as part of their package with their employer are women in the larger commercial firms who are employed solicitors. A lot of the firms in Adelaide actually don't provide anything to their other partners within the firms. It's like, "Well, we have an obligation to our employees. We've got retention issues. Therefore we need to offer it," but the partners are not necessarily willing to support each other because, you know, "We're in a business partnership. It's not up to me to fund you to have maternity leave." So you have this differentiation, where women may be actually better off staying an employee during the child-bearing years rather than seek advancement to partnership, where they won't be entitled to those sorts of benefits.

MR FITZGERALD: Sorry, we're going to run out of time, so we need to get to your other points so that we can ask questions, but can I just ask this: a partner in a firm would in fact be covered by us, by our definition, because our definition is all-inclusive. In fact, nobody misses out. We've tried to pick up everybody, so whether they're an equity partner or an employed partner, they would be caught by our scheme, would they not, or do you think our scheme is deficient in some way?

MS SAW (AWL): No, we're not suggesting in any way that the scheme is deficient, but in terms of how you would define "self-employed" - - -

MR FITZGERALD: I know, but in a sense we capture all of those people you've talked about through a very broad based set of definitions.

MS SAW (AWL): But I guess administratively still under the - - -

MR FITZGERALD: Sure.

MS SAW (AWL): And this came up in questioning of the people before us. There's that issue of who receives the direct payments and who - - -

MR FITZGERALD: Sure. Yes, that's true.

MS MacRAE: So basically you're saying you support the definitions that we've got.

MS SAW (AWL): Yes.

MS MacRAE: And if we were to think about changing it for any reason, that's an issue for us to keep in mind.

MS SAW (AWL): Yes, and just to fast-forward our presentation a little bit, some of the issues that we would see that the Productivity Commission may wish to consider in redefining, if necessary, the definition of "self-employed" are issues like the annual turnover of the individual business, the number of equity partners in the business and the number of employees, and certainly the number of employees is raised in some formal way in the draft report.

MR FITZGERALD: Have you got a couple of final points so that we can just have some discussion, otherwise we're going to run out of time for that. Are there a couple of last points you'd like to make?

MS SAW (AWL): One of the issues that AWL is most concerned about is recent comments made by the federal government that there are thoughts to shelve a scheme of paid parental leave altogether. We stand by our written submission and, in our view, that is our number one preference. I guess this is where the position of New South Wales Women Lawyers differs to that of Australian Women Lawyers, in that we have a worst-case scenario clause, I suppose.

We are saying that as part of our worst-case scenario clause there is a position we are willing to live with. There's a position that we say, should the Productivity Commission be of the view that there is a current economic national situation that needs to be taken into account in perhaps reconsidering the proposal in this draft inquiry report, we would certainly live with the position of 14 weeks at the federal minimum wage for the primary carer, two weeks for the supporting parent, with no requirement for employers to pay superannuation for any paid leave, and with a requirement that reflects the existing regime of the Workplace Relations Act and existing state and territory statutes, that there be 12 months' continuous leave with the one employer only.

We would say that, initially at least, that should be for people who were employed full-time, and the definition of "full-time" should be 38 hours a week, as per the current Australian Fair Pay Commission standards and that there should be an exception to those two things when it comes to the self-employed, and that the payments should be directly from the government and not administratively run through employers' offices.

The only caveat we would put on that position, as I'm talking from a New

South Wales Women Lawyers hat, is that the 14 weeks at the federal minimum wage - and the Productivity Commission, I can see from the report, would have this information better than we do certainly - must be above the value of existing payments. So we are talking about the maternity leave and family tax benefit B in combination.

MS MacRAE: Yes, sure. Just to be clear, though, even the first preference of the New South Wales lawyers would be to stick with the arrangements we propose.

MS SAW (AWL): That's correct.

MS MacRAE: But, given the financial crisis, the fall-back would be what you've just outlined?

MS SAW (AWL): We accept that there may be a social and practical reality, which we would urge the Productivity Commission to in fact consider, because the last thing - and I can say this on behalf of all Australian Women Lawyers, not just New South Wales Women Lawyers - we want is for there to be no scheme introduced at all. We are far better off having a scheme of paid maternity leave - and there is a clause in the draft report where there will be a review of any initial scheme anyway, where, I suppose from New South Wales Women Lawyers' perspective, a lot of the additional issues could be picked up, perhaps. There might be - even in terms of evidence. So when it comes to small business, for example, and the questions being asked to the people that were before us, perhaps there would be more evidence in relation to those issues to be gathered at the review.

MR FITZGERALD: Can I just clarify, in relation to your fall-back scheme, did you say that you would accept as a bottom line position that it would only apply to full-time employees and self-employed?

MS SAW (AWL): Yes.

MR FITZGERALD: So you would exclude part-time and casuals from that?

MS SAW (AWL): I suppose they would be entitled to the existing scheme and payments.

MR FITZGERALD: Maternity leave.

MS SAW (AWL): Somebody who has worked 10 hours part-time would be entitled to the same amount of payment as somebody who has worked full-time for the 12 months. So those issues perhaps are better off ironed out, I suppose, at the next review. That is what New South Wales would say.

MR FITZGERALD: I understand why you're putting a potential fall-back position because of the current financial circumstances: there's a danger but. One of the whole purposes of this scheme is to in fact get greater duration for parents to stay at home with their children. The group that are most likely not to have access to paid parental leave at the moment are low-paid, particularly casuals and part-timers. So if you actually looked at the group that you would want behavioural change in - that is, the ability to stay at home longer with their child - it would in fact be those that are on low-income areas, whereas most full-time people - not most - well, in fact, yes, the majority of full-time people are in fact covered by some form of scheme now.

MS SAW (AWL): I would beg to differ on that. I think the reports, statistically speaking, across the community, show it's something like 50 per cent of women.

MR FITZGERALD: Five-three.

MS SAW (AWL): Fifty-three. Anecdotally - we just had a discussion about this at our New South Wales executive committee meeting last night - we would say in the legal profession that's reflected, when you take into account that there are lawyers working in small business - and I can indicate I work in a very small firm - who are on much less pay than in-house general counsel of BHP and lawyers working in the community legal sector. Community legal centres also have a much smaller budget than BHP. So that is why. As I said before, the fall-back would be that those people who are working part-time, those people who are casual, initially would still be entitled to the maternity allowance and family tax benefit B.

MR FITZGERALD: Sure.

MS CLARK (AWL): One thing that I would like to add, if I can - both personally, but I think that this would be reflected by just about all women's organisations - is that if there is any potential in the community for employers to discriminate against women on the basis that, "If I hire a woman I'm going to have to pay them maternity leave" - - -

MS SAW (AWL): And that's coming into our final topic, which is the legal aspects.

MS CLARK (AWL): - - - we strongly feel that amendments to the Commonwealth Sex Discrimination Act need to be made concurrently with the introduction of this scheme to ensure that that doesn't happen and that there are appropriate remedies available and disincentives to employers to behave in that way.

MS SAW (AWL): In that respect, I apologise for not having it here today, but there

is a current inquiry occurring into the amendments for the Sex Discrimination Act. Australian Women Lawyers and New South Wales Women Lawyers, with the support of some of the other state and territory women lawyers' organisations, has made a detailed submission to that inquiry and we will annex that to our further written submission.

MR FITZGERALD: Your view therefore is that the current anti-discrimination legislation is not sufficient to protect discrimination against - - -

MS CLARK (AWL): It should be strengthened. It could be better.

MS SAW (AWL): When you look at the federal act, it's an act that draws from an international regime that is only for women. So what about the men that get discriminated against? At a federal level, there is no protection for them at all. Even at a state level, there is gender neutral - so New South Wales, for example, has gender-neutral language, but the number of actions brought in New South Wales since the introduction of the Anti-Discrimination Act is something like three.

MR FITZGERALD: Sure. But can I ask this question: we have a number of submissions by people that specialise in discrimination law and they're traditionally in the legal aid centres in the lead-up to the draft report, and we've had some discussion with some of them subsequent to this. Do you believe that the proposal we're putting forward would in fact have the effect of increasing discrimination about women, given that the greatest disruption to business is in fact the taking of leave, which people are already entitled to under the National Employment Standards. So that return to work - what will be shortly two years of unpaid parental leave - is already there. Do you have a view as to whether or not anything in this scheme will increase the propensity of employers to discriminate?

MS SAW (AWL): I can indicate that Ms Clark is actually a specialist in this area - - -

MS CLARK (AWL): Don't say that.

MS SAW (AWL): - - - more so than any community legal centre.

MR FITZGERALD: We're very happy to have specialists. We don't mind.

MS SAW (AWL): From my understanding - and I've written on this issue; I've made submissions on this issue for several years now - there are a high number of actions being brought at present. So there is the propensity for that to increase, and Ms Clark will know more about exact figures and details.

MS CLARK (AWL): Unfortunately, I think the answer is probably yes. I don't think it's a huge problem, because the current state of the employment market is such that employees - especially skilled employees, and lawyers fall into that category - are in demand. That's why they've been able to negotiate the paid parental leave that some of them already have.

So I suspect it won't be a huge issue within the legal profession, but I can see from my work that - the highest number of complaints in our state Equal Opportunity Commission relate to pregnancy and child-rearing types of complaints, and the vast majority of those complaints are by women. So we'd be kidding ourselves if we sat here and said that it's not still a problem in the community.

I think larger organisations are probably better set up, with their well-resourced human resources departments, to manage things properly. They don't tend to have as big issues, but it's on the smaller side of things, where people perhaps don't have a good understanding of what their legal responsibilities are, that it can be a problem. And it could just be the perception as well, without - - -

MS SAW (AWL): But could I also say that we're moving from a regime which specialists in this area of the Sex Discrimination Act have been saying for over a decade at least has led to a piece of legislation that is overwhelmingly out of date, and so introducing these measures could only - and I heard my friend Ms Clark's comments, but my understanding on a reading of this report is that the community legal centres were saying that there is existing high rates of discrimination.

MR FITZGERALD: The question for us is not that.

MS CLARK (AWL): Will it be any worse than that?

MR FITZGERALD: The question is: are there elements in the scheme that are likely to increase that by any significant - we looked at that very carefully and we could not find evidence, because the greatest reason for discrimination now is the fact that people are entitled to take leave, and that doesn't change under ours. All that changes is there's now payment.

MS SAW (AWL): I suppose my answer would be - and it relates to something I said before - the existing Sex Discrimination Act does not accommodate men.

MR FITZGERALD: No, that's right, and you're going to give us a submission which indicates some wording or some areas where it could be amended?

MS SAW (AWL): Yes, we've already drafted a detailed submission and we will annex that and send that through.

MR FITZGERALD: Thanks very much for that. We look forward to receiving the written submission. That's terrific.

MS CLARK (AWL): Thank you for having us.

MS SAW (AWL): Thank you.

MR FITZGERALD: If we could have Erica Jolly. Hi, Erica. I have to leave, so Angela is going to handle this. I'm sorry about that.

MS JOLLY (AFUW-SA): That's all right.

MR FITZGERALD: It's just a clash.

(Mr Fitzgerald leaves)

MS MacRAE: Perhaps then if we could start. If you could just introduce yourself and any organisation you represent, and then some introductory comments and then, hopefully, some time for questions.

MS JOLLY (AFUW-SA): My name is Erica Jolly. I'm the vice-president of the South Australian chapter of the Australian Federation of University Women, and I'm also its liaison person in areas of education and health. I am here to follow up a point that we made in our original submission in May. If you don't mind, I'll just read it.

MS MacRAE: Sure.

MS JOLLY (AFUW-SA): The South Australian chapter of the Australian Federation of University Women wishes to congratulate the commissioners for the effort they have made to bring in a universal scheme for workforce women. It's clear from the detail provided just how much care has been taken to meet the challenges from different sections of society. The interests of the future of the nation have been in their sights as they examined submissions presented. However, AFUW-SA wishes to emphasise two aspects of the Productivity Commission's draft inquiry report into "paid parental leave: support for parents with newborn children".

In its original submission in May 2008, AFUW-SA made these points, based on the views of Aboriginal members of the South Australian Office for Women:

When we generalise, we forget the needs of significant groups in our society. Maternity leave must be paid to all women regardless of race and culture. It must go to all women that are ongoing employees, full-time or part-time. Paid maternity leave must be paid to Aboriginal women who receive Community Development Employment Program or Step-up/Steppers.

They are in fact employed in situations where, too often, there is no real work. In the section on employee eligibility, 2.15 of this draft report, AFUW has found no reference to Aboriginal or Torres Strait Islander women who have worked an average of 10 hours a week in the 12 months preceding the expected date of birth or

adoption but who have worked as part of the Community Development Employment Program in areas where there are few or no real jobs. These women have shown a genuine attachment to the labour force, doing essential work, sometimes in night patrols, as far as government - state, federal and territorial - have enabled them to earn a living.

The Rudd government, which initially intended to get rid of the CDEP option, has woken up to the fact that in a significant number of areas there is no real work. As was made evident in the ABC Channel 1's documentary on the Northern Territory intervention, there are serious anomalies. These affect the Aboriginal mothers of newborn babies to as significant a degree as the non-Aboriginal mothers of newborn babies, probably even more so, since too often there is much less access to health services for women in this position. Like all other women who apply for maternity-parental leave for their paid work, even paid at CDEP levels, they should receive the minimum wage.

I'm unaware of any superannuation paid by or for women caught in this situation, unable to get the real work they desire because it's not available. Where the work they've been doing has been turned into real work, paid at regulation rates, they should have the information needed to apply for paid maternity leave.

AFUW-SA notes the concern expressed to prevent the creation of perverse incentives for people to enter the labour force merely to qualify for the benefit. As the requirements re hours of work per week for the last 12 months would apply to all seeking paid maternity leave, AFUW-SA suggests that, given the lack of other avenues of work in many remote communities, the CDEP and Step-up/Steppers should be seen as equivalents, given that the mother would be going back to the work she'd been doing under the CDEP scheme when the maternity leave expires.

AFUW-SA notes the participants' concern about the adverse effects of early return to work on the health and wellbeing of mothers and infants, 4.9, and the special cases listed at 4.15 to 4.16.

AFUW-SA suggests an additional special case - not necessarily the death of the mother or primary carer. "Illness or some other reason" may mean that the grandmother must take care of the newborn baby. If that grandmother has been in paid work, CDEP or real work for the required period, she should receive the paid maternity leave to help to give the baby a healthy beginning to its life.

AFUW-SA feels the need to reiterate these points that it raised in May, since it fears that once more the specific needs of Aboriginal and Torres Strait Islander mothers could be lost in generalities.

By its emphasis on the positive effects for the health of mother and newborn child, AFUW-SA has sought to reinforce the AFUW case put by Dr Jennifer Strauss, and she has made a submission to the draft inquiry report and we support it. We support very much how inclusive it is and we want to see it even more specifically inclusive.

AFUW-SA asks the productivity commissioners to continue to think long term, as it's clear in the draft report that they've been doing so. Where the health of mother, father, child are improved by this time of bonding and care, there is a decrease in the overall health cost to the nation, and I don't know how much that's being taken into account. Preventive is always more important than afterwards.

The Rudd government says it's looking for the long-term needs of the nation. Let it do so where paid parenting leave is concerned and let the needs of Aboriginal mothers and carers not be forgotten.

MS MacRAE: Thank you very much for that. There are just a couple of points that I'd make. The first thing is just in relation to the Aboriginal issues. You've made your point very clearly in relation to CDEP and I think I understand that. So basically what you'd be looking for in terms of where we've talked about these issues in the draft, you'd want us to make an explicit claim that CDEP should be included - - -

MS JOLLY (AFUW-SA): Absolutely.

MS MacRAE: - - - as genuine work, if I can call it that. So that's your first point. The second point about grandmothers, would you see that as a general - you would like to see a general inclusion, in terms of the eligibility criteria, that we would say that it could be the mother entitled or another primary carer, if the primary carer was a grandmother, or would you see it as broader than just grandmothers? Would it potentially be others?

MS JOLLY (AFUW-SA): The point that was made to me by Joanne Leonello of the Office for Women here was the grandmothers, because in so many instances the grandmothers pick up the needs of the baby, and she said "grandmothers".

MS MacRAE: Right. So that's the key thing.

MS JOLLY (AFUW-SA): So that's what I've said. And the grandmother might have been on the CDEP. So that's the element I'd like to see made explicit. However, if the grandmother couldn't do it because of her health problems and there was another close carer who could do it, who was in that same financial situation, I'd like that to be stated as well.

MS MacRAE: Okay. Just in relation to the general cost savings to the community, I must say that we at the commission have tried very hard to look at some of the long-term benefits and, as you would have seen in the report and in the subsequent appendices, we've looked extensively at the child development literature and the ongoing costs and benefits that there might be to society of having a healthy well-positioned child, I suppose, if I can put it that way. It's very difficult to estimate those costs. In relation to any subsequent submission that you might make to us, are you likely to have any other firm evidence or academic evidence on that sort of thing?

MS JOLLY (AFUW-SA): No, we're not likely to, because our purpose was to reiterate what we'd said.

MS MacRAE: Sure.

MS JOLLY (AFUW-SA): Because when we came in May, Robert Fitzgerald made the point that this point hadn't been raised before.

MS MacRAE: Yes.

MS JOLLY (AFUW-SA): And I haven't seen it raised again in the draft inquiry.

MS MacRAE: Yes. We certainly have had it come up in a few of the discussions we've had subsequent to the draft, but I must say only internal, informal sort of meetings that we've had at this stage with other departments. So it isn't something that has come up super regularly. It does help us that you've come back to talk about it again today, and we are currently in negotiations with some people in both Western Australia and the Northern Territory - some Aboriginal women's groups there.

Robert is going to the Northern Territory, and I think possibly the north of Western Australia, for some other meetings for other work he's doing with the commission, and he's likely to meet with those groups as well, so it will be interesting to see what other issues they've had that might come forward. We certainly are very grateful, because we haven't had a lot of input on the Aboriginal issues and it's something that we can certainly look at for the final. That's been very helpful. I think you've covered your points very well, actually, so I don't think there's anything else that I would like to ask you, except to thank you for coming today.

MS JOLLY (AFUW-SA): Thank you for your work.

MS MacRAE: Thank you for putting it so kindly and diplomatically, because we

don't always get that either. We will break for now then and reconvene at 1.30 with the Working Women's Centre.

(Luncheon adjournment)

MS MacRAE: We are starting again with our hearings here in Adelaide. Robert Fitzgerald will be absent for a time, but we'll obviously mention for the tape when he's able to return. We are welcoming the Working Women's Centre in South Australia with Sandra Dann. If you could introduce yourself and I understand the bodies that you are representing, and perhaps some introductory comments, and then maybe have some time for some questions.

MS DANN (WWCSA): I'm Sandra Dann. I'm the director of the Working Women's Centre in South Australia, but I'm speaking on behalf of the three Working Women's Centres - here in South Australia, the Working Women's Centre in the Northern Territory and the Queensland Working Women's Service. I have prepared some statements to make today. First of all, I want to congratulate the Productivity Commission on the work that's been done so far. We were particularly happy to see mention of our submission in the draft report. So thanks for that.

Our written response is still being finalised as we speak and there will be input from all of the state consultations that we've been able to attend that were conducted on behalf of Security4Women, the National Foundation for Australian Women and so on, and we'll have that to you by Friday. We see the proposal as it stands as a very good starting point for the introduction of a paid parental leave scheme. I can quickly go through my comments.

MS MacRAE: Yes.

MS DANN (WWCSA): But if it gets too tedious then stop me and I'll try and answer questions.

MS MacRAE: No, that's fine.

MS DANN (WWCSA): Who should the scheme enable? Definitely mothers and fathers and same-sex partners. So we're very happy with that. I guess we'd like to stress the role that Aboriginal grandparents and other extended family play in the primary caring roles of newborn babies and we'd like to see the scheme available to grandparents and aunties and so on when they are the primary carers, as nominated by the mother.

We also had some considerations around single mothers, where they have no support person, whether that could be extended to someone that they nominate, particularly when women experience postnatal illness and depression. We think the paid leave for the other primary carer for children should be in addition to any paid leave for mothers. So we're happy with that. We believe that it should be systematic, officially sanctioned and written into contracts and awards. The "take it or leave it" proposition suits us. We see that as favourable.

Where there's any dispute about entitlement to paid parental leave, it's essential that mothers are given priority in that. We believe there should be enough flexibility to allow parents to make the best arrangements to suit their situations. We believe in a quarantined period for the father or the other caregiver, as well as for the mother, and we would see six weeks as being the minimum for the mother to take, to ensure that there's no risk of a controlling partner taking all of the leave.

We agree that this is a scheme that provides entitlements for parents in paid work. We're very keen to see the scheme extended to include CDEP participants. Many of those "workers" have been in long-term positions, sometimes up to 12 years and, as I understand it, they're only entitled to two weeks' leave at the time of birth, and only if the host employer allows it.

We have some concerns too for workers on 457 visas. We think they should also be entitled to paid parental leave. We have a current case in South Australia where sponsorship of a 457 worker was withdrawn when the supporting organisation found out the woman was pregnant, even though she had advised immigration of that on her nomination form. So we're starting to see some more cases where the intricacies of what can happen when women are pregnant are becoming more apparent.

We still have a slight concern about the impact on families where the mother is the primary breadwinner and not the primary carer, and therefore we believe that the family would not be eligible for family tax benefit B. We agree with the average of at least 10 hours a week on a continuous basis for 12 months or more, but we'd be happy to see the scheme available to any working woman that becomes pregnant.

We do have some concerns there about proving that continuous employment. Many women, particularly in more precarious areas, work on short-term contracts, and there is often a period of inactivity while one contract ends and another begins. Perhaps if women have been actively looking for work during that period, that should count as well towards the 12-month requirement. We can understand the intent of a 12-month workforce attachment being perhaps to discourage a paid parental leave scheme being seen as a reverse incentive to becoming employed just to have a baby and get paid leave.

We're picking up on the popular media portrayal of the current baby bonus. We actually don't share the belief that that's how the baby bonus has been used. There are many, many reasons why young women have babies - and young women including Aboriginal women - and the data that we have access to suggests that over the period 1980 to 2007 teenage fertility for women aged 15 to 19 years has decreased by 42 per cent and, particularly for young Aboriginal women, it's so hard

for them to get employment anyway. I don't see that we should have a fear about that, if that's the intent of the 12 months continuous basis, and I'm sure it's not the only rationale. We believe there should be the same rights for adopting parents and those of stillborn babies or babies who die after birth.

We'll continue to push for 12 months' minimum paid parental leave. That was our original position. A full six months' paid leave would be a little bit better than 18 weeks, but 18 weeks we see as a good start to get the scheme up and running. I must say that we have spent a long time talking about some of the technicalities, but at this stage we're more keen to see a scheme introduced as quickly as possible than worry about some of the finer details that can be tweaked. Whatever scheme comes in, we will live with that, but continue to monitor the impact of that on working women.

We favour flexibility around the starting date for taking leave. Some women, as we know, work right up to the time of birth; others need to take leave earlier than that. We recommend six weeks before the due date of birth, and we don't have any problem with the request for medical certificates by employers either six weeks before the due date or six weeks after. That's okay.

In terms of should people be able to use sick leave, rec leave or partly accrued long service leave, we favour again choice for men and women in how to use their leave to best suit their family situation, but we feel strongly that people should not be required to use sick leave, annual leave or long service leave in place of paid parental leave. We see those as employee entitlements and not relevant to pregnancy.

We can see some problems for low-paid women with the presumption that they can top up to the six months recommended. Why do we say that? Well, many of the low-paid women, particularly in this state, are casual employees. They have no access to leave entitlements on which to draw to top up for that last part to make up the six months that's recommended for breastfeeding.

The reliance on other forms of leave to top up finances during unpaid leave periods means that women will have reduced amounts of those forms of leave such as sick and carer's leave that they need more than ever after the birth of a child. We're cognisant too that the draft report often has the flavour of this being about the first baby, but we know that many women already have children, they use up their leave entitlements, particularly during school holidays and when children are sick, and they may not have leave to draw on.

It's unlikely that low-income women will have enough accrued leave to bring their period of paid leave to six or 12 months. It's precisely those women who already have pressures in their lives and, as such, need support to care for their

newborn babies, that often don't have that luxury.

We are happy with the minimum payment level being at the adult full-time minimum wage. We do have some concerns around juniors and trainees and apprentices. Working Women's Centres perhaps question, and always have questioned, is it discriminatory to pay juniors less? We have certainly campaigned in the past to remove junior rates of pay. We're mindful too that some trainees are in fact maturer-age women; they're not necessarily young.

Perhaps there could be a no-disadvantage mechanism to ensure no loss of current entitlements if - there's talk in the draft report about the rates for juniors and trainees and apprentices being set administratively but, if they're to be disadvantaged, then that's something to consider.

We do favour a government-funded scheme. We don't favour a HECS-style scheme at all. We believe the dangers there are to increase future debt for women, and we already know from the work done in gender pay equity that women already have enough problems with their superannuation, so to introduce another levy would, in our view, not be a good thing.

We don't have strong views around how it should be funded, either by a universal levy or simply from taxation. It's possibly simpler to be funded through general taxation. We do strongly support a scheme review after two years and want to ensure that there are adequate resources there to also conduct ongoing research.

Superannuation: no problems with the 9 per cent minimum. Employers can pay more if they wish. We did notice there's an issue for women with multiple employers who won't qualify for superannuation, only the minimum wage, for the 18 weeks. I guess our question is: if women are doing hours with multiple employers and with one of those employers they're doing 10 hours a week, would they qualify to be paid super?

MS MacRAE: I can answer that now, if you want.

MS DANN (WWCSA): Yes.

MS MacRAE: One of the conditions we had was that if you were taking the - you have to qualify under our scheme, but you also have to have been getting super before you went on leave, so if that 10 hours was of a sufficient pay level that you were getting super before you had the baby, then yes, you would.

MS DANN (WWCSA): Okay. We like the idea of the payment being made by employers, because it reinforces the sense of workforce attachment, so we support

the recommendation made in the draft report.

We've had a deal of discussion about whether the government should separate the workforce attachment payment from a payment which, I guess, symbolically recognises the costs of having a baby. That's the old concept of the baby bonus or child endowment. We recognise that working mothers will be better off financially under the proposed scheme, so again I guess our view is: let's get the scheme in and we can tweak it later.

We have mixed views about should employers receive a payment to compensate them. It seems that that payment to compensate for administrative costs and so on has worked. We look to the UK for that. And, being a small community organisation, we wouldn't knock back some assistance, but philosophically we believe that paid parental leave is like any other employee entitlement and we are prepared to budget for that.

How leave should be taken: we do favour the option of part-time leave. Again, it gives flexibility and choice. And we support the continuation of workers' current rights to extend leave, although a lot of our work is in assisting women to keep their jobs when employers are reluctant to keep jobs open, so we support ongoing employer education to address that issue.

Should leave accrue? Absolutely, yes. "Keeping in touch" provisions: the only comment we would make there is that we like the provision, but it must be at the request or agreement of the employee, not demanded by the employer, and we would want any work that is done during this time to be paid at the normal rate of pay. We know that women often are under extreme pressure from employers contacting them whilst they're on parental leave.

Just a few comments about intersections of a proposed parental leave scheme with other government policies, and one of those is around the 457 visa requirements: women working under that visa have to earn a certain amount of money and they're only allowed to have a certain amount of time off in that period, so I think that would conflict with the 18 weeks.

MS MacRAE: Okay.

MS DANN (WWCSA): Now, I know that you don't have powers to wave a magic wand over any other legislation, but that's one that has come to our attention.

MS MacRAE: Right.

MS DANN (WWCSA): We believe that government will need to continue to

support implementing family-friendly work practices and they may have to supply some incentives, like the work and family proposal that gives employers some assistance to implement initiatives that make the balancing of newborn babies possible.

We like recommendation 2.11 and perhaps more resources may be needed to support breastfeeding in the first six months of an infant's life. Our belief is that low-income women will be advantaged by 18 weeks' pay at the minimum rate and that breastfeeding is more likely, but there need to be very clear protections against unfair dismissal for, particularly, low-income women. Our concern about the Fair Work Australia proposal, which only gives women seven days to lodge an unfair dismissal, is that we think it is not realistic.

The stats that have been gathered so far by the Northern Territory Working Women's Centre show that, for every one of their non-English-speaking-background clients and every one of their Aboriginal clients, it took them longer than seven days to lodge their unfair dismissals, so we do have a concern about women still having their employment terminated when they either let their employer know that they're pregnant or when they're on parental leave.

We talked in our first submission about the difficulties for women returning to work around requesting part-time work, requesting flexible work arrangements to accommodate their caring responsibilities, requesting changes to rosters to allow for child care and school pick-ups and drop-offs, the access to carer's leave being "restructured" out of the workplace while on maternity leave, and the ability to continue breastfeeding after returning to paid work, and it may well be that there are other industrial instruments that will need to be reviewed to ensure that those women aren't further disadvantaged.

We reiterate the problems that women have under the current "right to request" legislation and we talk again about our preference for the employer to have an obligation to provide.

We talked in our first submission about the experience of many of our clients returning from maternity leave being at more risk of bullying, harassment and discrimination, so that would fit into the category of other legislative tools perhaps. We don't want already vulnerable women to be in the even more vulnerable position of having to beg their employers for sensible entitlements.

Finally, any scheme needs to be resourced to inform and educate both employers and employees, and whatever resources are developed need to spell out clear protections for low-paid women against unfair, unlawful termination, and also around the return to work part-time.

We will be urging for paid parental leave to be funded in the next budget, and finally I want to thank the Productivity Commission again not only for the draft report but for providing extra material to make the scheme clear to employers. We appreciated the fact sheet; that was a good initiative. I did get a copy of a PowerPoint presentation. That has all been very useful, so thank you for those extra efforts.

MS MacRAE: Excellent. Thank you very much. There's an awful lot there, of course.

MS DANN (WWCSA): Yes.

MS MacRAE: And some of it we are familiar with from your original submission and it's absolutely fine that you've come to reiterate some of those points. Can I just take up a couple of things in particular. Just at the end of the presentation there you were talking about the problems about unfair dismissal and the existing problems women have in relation to getting pregnant and subsequently returning to work.

One of the issues that we thought about a lot in trying to design the potential business input into the plan was to try and make sure that we wouldn't be aggravating any of those sort of discrimination issues, and if you're familiar with our fact sheets and other material, you will see that the financial burden on employers is not going to change very much as a result of this. But do you see that there's anything we could have done differently if we were still asking for an employer contribution of some sort that might go even further to try and mitigate any potential discrimination problems?

MS DANN (WWCSA): Look, I'm a bit hardcore on this. There are laws in this land. There have been laws around not discriminating against pregnant women for a long, long, long, long time. I think this push for paid parental leave is an ideal opportunity to reacquaint ourselves with what the laws actually say, and start complying.

MS MacRAE: Your feeling is that if we had significant and good compliance with the existing laws, that might be enough, and I suppose the bigger question for us is: there's nothing in this scheme that would exacerbate those pressures that are currently in the system?

MS DANN (WWCSA): No.

MS MacRAE: No. Okay.

MS DANN (WWCSA): I think what the proposed scheme has done is bring this to consciousness for a lot of employers and employees, who either assumed we had paid parental leave or haven't done a lot of thinking about it in the past. So, yes, it's possibly a good time to revisit what employers' responsibilities are.

MS MacRAE: Yes.

MS DANN (WWCSA): I want to make clear that we don't actually have any problems with the existing provisions under the Australian Human Rights Commission. The only thing there is that, when women lodge discrimination matters, they do take a long time to be heard, and that's not a criticism of the commission; that's the way that the world works.

In terms of the unlawful termination provisions in the federal workplace legislation, there are difficulties that crept in under what was known as the Work Choices legislation, for women to prove that unlawful component around pregnancy being used to terminate a worker's employment. We would like to see a return to the easier forms of conciliation there, at conference. It's much more complex now and more expensive for women if they are challenged on jurisdictional issues and to take those matters on is much more difficult for them. But it's a much quicker remedy, so that's why sometimes we would favour that over a human rights approach.

MS MacRAE: Okay. Could I also just ask a little bit more on one of the interesting things that we haven't had much feedback on that I'm aware. What we've proposed, and I'm sure you're aware, is that for the 18 weeks the eligibility would depend on the mother's entitlement and, assuming they were entitled, they would then be able to transfer to the father if they chose for that 18 weeks. But you're suggesting that we should actually quarantine a period for the woman of at least six weeks and that that was potentially a concern about controlling partners.

MS DANN (WWCSA): Yes.

MS MacRAE: Would you say that's a significant enough issue that we should put in that quarantining arrangement?

MS DANN (WWCSA): I can't give you any evidence based research. We're currently doing quite a deal of work on the impact of domestic violence on women workers, and it is something that we're becoming more aware of. We've only scratched the surface really. We know in this country that there are unacceptably high rates of women who experience violence in their relationships. In our view, that has to impact on women who work. I think the common view is that any woman that experiences domestic violence lives in a refuge somewhere, but the vast majority of those women continue to try and go to work every day and look after their families.

So it is something that we've become more aware of. I don't know what the statistics would be and whether it is a big enough concern to go that way.

MS MacRAE: Yes, okay. Obviously it's very common internationally that there is a period quarantined for women.

MS DANN (WWCSA): Yes.

MS MacRAE: So initially we thought, "We'll do that," but then of course we thought, "Well, everybody wants choice and flexibility." We could think of cases where you might have a mother that had postnatal depression and wanted to get back to work quickly, and other situations where it might just be that the woman is the primary earner and so it makes sense for her to go back and to want to transfer it almost immediately, especially if she was in a workplace where it might be breastfeeding-friendly. So we thought that, rather than constrain it, we would leave it open and then people would have maximum flexibility, but the point you've raised is a counter one which we hadn't really put into the mix. So it's helpful, but - - -

MS DANN (WWCSA): Maybe it's more around the mechanism for how she transfers that leave to ensure that she's not coerced into doing that. I don't know how you do that, but I'm sure - - -

MS MacRAE: Yes. At the very least, it's an issue that we can flag as something that, as you say, might be considered in that transfer mechanism. We've tried to get to a level of detail in what we've proposed so that it's useful to be taken to the next stage, but obviously we're not trying to dot every i and cross every t, because we are not expert enough to do all that level of detail.

MS DANN (WWCSA): Yes. There is research that has been conducted about violence in pregnancy which would be useful to draw on. I'm sure that, through the National Women's Safety Council or whatever it's called, those issues will be well considered.

MS MacRAE: Yes, okay. Just in relation to pre-birth leave, that was another issue where we initially had thought that, again, it's very common internationally to allow for some period to be taken in the pre-birth period. We looked at the protections that are currently available under the NES and thought that, given that we've got all those and what we're really looking for is to try and get as many weeks as possible at home with the child, it would make sense to not allow a pre-birth period.

It seems like the evidence is that most women are taking the leave they need. If they're sick, many of them will have sick leave that they can take. That was really our thinking behind taking away the potentially six weeks or two weeks or whatever

it might be - allowing some sort of pre-birth leave. What was your thinking behind the six weeks? Are you aware of women that are not getting the leave they need pre birth?

MS DANN (WWCSA): Certainly, but I guess the way around that would be to - it's all about how you frame it, isn't it? It might be that six weeks is recommended from a health point of view. It is good to have a rest before the birth; there are a lot of things to be done. So it might more be in the language that frames the period of leave, but not taking away the choice of women to - - -

MS MacRAE: Yes. Certainly you're not mandating that people would have to take that leave.

MS DANN (WWCSA): No.

MS MacRAE: But you're saying that it should be an option that's available.

MS DANN (WWCSA): Yes.

MS MacRAE: It's just that on the evidence that we were able to access for the inquiry it looked like those that were taking leave and wanted it before the birth were either accessing sick leave or were taking periods of leave beforehand and that financing that didn't seem to be such an issue compared with financing post birth, and, given we had limited resources, we thought we'd go the post-birth option.

MS DANN (WWCSA): Yes.

MS MacRAE: So, okay, I'm interested just to hear your views on that. The 457 visa issue isn't something that we've had raised before either, as far as I know, so that's useful. In your submission that you will make for us, will that issue be covered, do you think?

MS DANN (WWCSA): Yes. Not in great detail, because we're just beginning to see issues for women generally. In South Australia the cases that have come before us have all been nurses who have come here on visas, so they're professional workers, and only one of those has involved a woman who is pregnant, but it did bring to mind how is this going to dovetail with a paid parental leave scheme?

MS MacRAE: Okay, that's useful. It's interesting, the other issues that you raised around juniors and apprentices. We've been hit on both sides on that one.

MS DANN (WWCSA): I'm sure you have.

MS MacRAE: Criticised for being too generous by one group and not generous by the other.

MS DANN (WWCSA): Good luck with that one!

MS MacRAE: So that's an issue that's back in our balance, but it's interesting that you've raised it as well. Another issue which we have heard quite regularly is in relation to subsequent children, and we have basically tacitly been assuming that the eligibility requirements wouldn't be different from one child to the next, and we've had a bit of feedback about whether or not that might influence the spacing of children and whether that's a reasonable thing. In relation to the problems that you see with that, are you likely to recommend an alternative that you would see to what we've proposed? Would you want to change the entitlements for subsequent children, or would you change for all, or - - -

MS DANN (WWCSA): No.

MS MacRAE: - - - how would you deal with that? No. Okay.

MS DANN (WWCSA): No, we wouldn't change that.

MS MacRAE: So you will raise it as an issue but you won't give us an alternative view?

MS DANN (WWCSA): No.

MS MacRAE: Okay, I think that's all fine. I don't think there's anything else I need to take up, except to say thank you very much for coming. We look forward to your further submission and thank you for all the work you've done in being involved in all the consultations and things with the NFAW and the Safety for Women. Is that what they're called?

MS DANN (WWCSA): Yes. Thanks.

MS MacRAE: So thank you very much.

MS DANN (WWCSA): My pleasure.

MS MacRAE: Mr Fitzgerald might pop in midway through your presentation, so I hope you don't consider that rude.

MS HILDYARD (SAU/ASU): No, that's all right.

MS MacRAE: But we've tried to organise things as close as we could. It was just a jam-packed schedule today. If you would like to introduce yourself and who you're here to represent.

MS HILDYARD (SAU/ASU): Sure.

MS MacRAE: And then obviously you've got a fairly substantive opening statement.

MS HILDYARD (SAU/ASU): Indeed.

MS MacRAE: And then hopefully we'll have some time for some questions.

MS HILDYARD (SAU/ASU): Thank you. My name is Katrine Hildyard. I'm the acting secretary of the Australian Services Union, the vice-president of SA Unions, and I'm also on the ACTU Women's Committee, which is really the body that's put significant work into our submission. So I guess I really am wearing three hats today. I did just want to say that the submission is quite lengthy, and this is my first appearance in front of the Productivity Commission, obviously, so if there's a better way to give it to you - in written form or something - please let me know. I'm sure I should probably know that already, but - - -

MS MacRAE: No, that's fine. We're more than happy for you to make a statement today. Hopefully we will have time for questions, so if it looks like it's going to go over a half-hour, I might interrupt you.

MS HILDYARD (SAU/ASU): Yes, absolutely.

MS MacRAE: But we'd be very happy to take - if you're happy to email that to us?

MS HILDYARD (SAU/ASU): Sure.

MS MacRAE: You can either make it as a formal submission or not, but it will help us in just considering the points you're raising.

MS HILDYARD (SAU/ASU): Sure.

MS MacRAE: So that would be great.

MS HILDYARD (SAU/ASU): Absolutely. Just to flag first of all, the submission is based around nine key areas, first of all looking at some of the key elements of the model. Sorry, it's quite lengthy, as you can see.

MS MacRAE: That's all right. I'm happy for you to kind of summarise and then give us the fuller material later, if that's easier.

MS HILDYARD (SAU/ASU): No worries. Yes, I'll see how I go. Then looking at the protection of existing workplace entitlements, legislation, and also enforcement around legislation; complementary National Employment Standards, so touching on some of those links in some of the other standards; administration; equitable entitlements; and basically talking about the principle that no family should be worse off under the new scheme.

First of all, to start, we broadly believe - both the ACTU and SA Unions - that the introduction of paid parental leave is vital for Australian families and Australian parents, the majority of whom, all of our statistics show, currently still receive no paid parental leave whatsoever. Broadly, we do support the proposal for a paid parental leave scheme which consists of the 18 weeks' paid leave for the primary carer and the two weeks' paid leave for the secondary carer. We do concur with the commission that the paid parental leave scheme will have a positive effect on child and maternal health, parents' labour market attachment, gender equity and work-life balance.

Our first recommendation, which really is an overarching recommendation for all of the other recommendations that I'll make, is that we believe that the government must make the implementation of the paid parental leave scheme a priority in the 2009 federal budget. We would see that as providing great economic stimulus rather than any sort of economic risk to Australia.

In particular, we welcome particular elements of the model: those which provide an entitlement to superannuation contributions as part of the paid leave; the inclusion of parents in non-permanent jobs and for parents who are working across multiple jobs; provisions for maintaining workforce links; application of the entitlement equally to all carers, including same-sex parents; the capacity to share the leave between primary carers and provision of paid concurrent leave; and prompt and efficient payment of the entitlement by the PAYE system.

We do have some concerns with particular aspects of the model. First of all, in terms of eligibility, the ACTU continues to advocate for a government minimum wage level component topped up to full income replacement level by employers. In the ACTU's original submission to the Productivity Commission, the ACTU

proposed a model which provided a minimum payment of the minimum wage, plus a 9 per cent superannuation payment for all mothers provided by the government, with employers being required to provide the top-up to ordinary time earnings, plus 9 per cent superannuation for all mothers in paid employment.

We believe that this model is affordable for employers and is simple to administer. Under the ACTU original proposal, the basic government-funded entitlement was universally applicable and, whilst employer top-up payments to ordinary time earnings were subject to a minimum duration of six months' employment with the employer, complications associated with determining a sufficient connection to paid work were effectively avoided.

The ACTU does welcome the Productivity Commission's efforts to address the discriminatory eligibility tests for unpaid parental leave which effectively excludes casuals, particularly those working for multiple employers, as I mentioned. We would make a number of suggestions in respect of the proposed eligibility criteria, first of all in relation to the employment test. We would recommend that the eligibility criteria of average number of hours worked in the year prior to the birth should be seven hours, given that's generally commensurate with one day of work, which is often worked, particularly, by parents who have returned to work after an initial period of parental leave. In addition, we believe that provision should be made for casual employees, whose total hours required should be decreased by the average combined annual leave, public holiday and sick leave entitlements that they would be entitled to should they be a permanent employee.

The ACTU also supports the commission's definition of "workforce tenure" as based on employment with a number of employers, which I've mentioned in terms of multiple employers. Many women do have multiple employers, particularly, our statistics show, in the lower-paid hospitality, retail and direct care sectors. We believe that it is a very important equity measure to include multiple employment when addressing the length of employment tenure. We are of the view, however, that the requirement for parents to have 12 months' workforce tenure is discriminatory against a significant proportion of women, particularly those in the sectors that I've outlined.

For example, the Shop Assistants Union estimates that in the 21 to 45 age group, around 16,000 women working in the retail sector have less than 12 months' service, and six and a half thousand of those would not work for more than 10 hours per week, so we believe there is a significant percentage that would miss out in that regard. So we would recommend that the workforce tenure criteria for paid maternity leave should be six months' employment across any number of employers.

Further in relation to that particular issue, the inclusion of multiple employers

in terms of calculating the amount of total hours worked by a parent requires consideration of the onus to produce evidence of hours worked in a timely manner. We believe a provision should be included which stipulates which employer, if any, is responsible for the initial payment of the leave entitlement. Consideration, we think, could be given to using the lodgment of tax-free threshold forms by employees as a guide to which employer should carry the obligation of payment. We also believe further on that point that consideration should be given to the evidentiary requirements necessary to establish meeting the employment tests and to the obligations of the parties in providing evidentiary material in a timely manner.

We do believe that the definition of "continuous employment" may also disadvantage workers who work seasonally. Their average hours may well exceed 10 hours per week but they are performed on an irregular basis, so continuous employment, we believe, should be a consideration but not necessarily a requirement to meet the employment test; that there need to be some measures around those particular circumstances.

Further, whilst we support the enhanced eligibility for a significant number of parents attached to the labour force through the inclusion of multiple employment in the workforce tenure test, there is now basically a division between leave from employment related to the birth and care of an infant, which applies to employees who do have the 12 months' service with one employer, and income replacement during some or all of that leave, which applies to employees who have worked continuously for an average of 10 hours per week for any number of employers over a 12-month period.

We think that that particular difference is likely to lead to significant confusion and the eligibility for the two forms of parental support, as well as mitigation of the goal of supporting labour market attachment, for those employees who meet the new test of working an average of 10 hours per week for any number of employers over a 12-month period. So, in short, we believe that the National Employment Standards must provide that all parents entitled to 18 weeks' paid parental leave be currently entitled to 18 weeks' unpaid parental leave from their employer, with the attendant return-to-work protections, just moving on to the next part.

The ACTU proposal is that we align the national employment unpaid leave standard with the paid maternity leave standard as much as possible, so therefore where mothers, including casuals, meet the criteria of working an average of 7.3 hours per week for any number of employers over a six-month period, they should be entitled to the National Employment Standards unpaid leave and return-to-work entitlement where they have at least six months' employment with the same employer.

MS MacRAE: Just to clarify that, you'd be saying ideally, if you met your eligibility test for the paid leave, you would get a return-to-work guarantee for that period, or are you saying you would extend the existing return-to-work rules in NES to that group?

MS HILDYARD (SAU/ASU): The latter. In short, we recommend that the length of service criteria, including for casuals, of the standard unpaid leave and return-to-work entitlement of six extend, yes, if it's the same employer.

I guess there will nevertheless be a number of mothers who are entitled to paid maternity leave who have not had six months' employment with a single employer, so some additional options that we see to minimise the division between those remaining parents and to facilitate their labour market attachment might include introducing a right to request, with a commensurate obligation on the employer to reasonably consider unpaid parental leave and return to work from paid parental leave for those parents not entitled to unpaid parental leave under the standard. We also believe another strategy could be to provide financial support to employers who provide unpaid leave and return-to-work entitlements to employees with less than six months' service.

In terms of requirements on taking the leave, the ACTU believes that we must ensure the proposed entitlement provides the greatest flexibility possible to parents in how they manage the care of their newborn child, as underpinning a number of the other points that I'll make.

The requirement to commence the government entitlement within six months of birth we think is unduly restrictive and doesn't give parents that flexibility. Parents, we think, should be able to access their existing workplace entitlements and government entitlements fully without any restrictions. Employees who are currently entitled to take leave at a reduced rate of pay, for instance, over a longer period of time in their workplace agreement should be able to do so without it negatively affecting their paid government entitlement.

So the six months may restrict the capacity of both employees and employers - of choice to gain additional entitlements through bargaining in the future and, we believe, may have the unintended effect of dampening the extent to which workplace bargaining is able to deliver further improvements in paid parental leave, and that's certainly not a situation we would see as, again, providing that economic stimulus.

We don't think there is any evidence to suggest that an increase in a relatively small amount of paid leave as a portion of unpaid leave necessarily leads to an increase in the total amount of leave taken, so we would recommend that the requirement to commence the government entitlement within six months of the birth

should be amended to include the additional words "or upon expiry of existing workplace entitlements, whichever is the latter".

We believe paid parental leave should be available for birth-related leave which may commence prior to the birth of the child, and that could include alternative forms of leave, such as antenatal leave, personal carer's leave, special maternity or "no safe job" leave, and also recreational, annual and long service leave. These are not available to many mothers, as you would be aware, particularly part-timers and casuals, and obviously they do not adequately cover the purpose of the leave.

We believe there is substantial evidence of the need of mothers to have access to a bank of paid leave in order to manage ongoing caring responsibilities and their own personal and health issues, particularly upon return to work, and that can extend for some period of time. We also recommend that there should be provision for parents to take the paid parental leave entitlement at half-pay. This would ensure a better budgeting strategy for many families. We think it's not overly onerous to administer, has minimal impact on tax and welfare structures and, indeed, aligns with many employed parents' existing entitlements to take the paid maternity leave at half-pay.

We also believe that entitlements should accrue during the period of paid parental leave. As in any other leave entitlement, employees should accrue annual, sick, long service leave entitlements, superannuation, incremental salary progression, during the period of the paid parental leave. We believe this is integral in promoting greater gender pay equity, by ensuring women are not further disadvantaged by taking the extended periods of birth-related leave. We also believe, given we're talking about an 18-week period of time, that again it's not an onerous cost to employers to simply accrue those entitlements.

We also understand that the creation of a national long service leave scheme is currently a key point of discussion at COAG and that that discussion would just simply need to extend to deemed periods of paid parental leave counting for service with respect to accrual of long service leave entitlements. As such, we recommend that the relevant long service leave acts are amended so that paid parental leave is counted as service for the purpose of accrual of long service leave entitlements. We also recommend that the relevant national employment standard is amended so that paid parental leave is counted as service for the purpose of accrual of annual leave, sick leave and the calculation of incremental progression.

In terms of the issue of time attending work under the "keeping in touch" provision, we believe that where parents are required to participate in training and planning days, et cetera, they should be paid at their ordinary time rate, or penalty

rate if appropriate, not the federal minimum wage rate. Such days, we believe, should be a separate arrangement to paid parental leave payments fully paid by the employer. We also recommend that time spent attending work whilst on paid or unpaid parental leave should be paid at the ordinary time rate, including applicable penalty rates. Alternatively, time spent attending work could be counted as time off in lieu of payment, with any payment above the minimum wage accounting for a proportionate amount of additional paid leave.

Although parents can, under the scheme, work up to 10 days during their paid parental leave by mutual consent in certain circumstances, such as where there are negotiations occurring around return to work, we believe that it would be difficult in some circumstances for parents to refuse to come to work. We therefore recommend that the provision for time spent attending work whilst on paid or unpaid parental leave must include appropriate anti-coercion and anti-discrimination protections, and an employee's right to refuse an employer's request to attend work whilst on paid or unpaid parental leave must be enshrined in those.

In terms of superannuation, we believe that the paid parental leave entitlement must include superannuation contributions. We support the model's inclusion of superannuation contributions both as an alignment of paid parental leave with other forms of leave and as a mechanism to address the discriminatory effect of child-bearing on women's retirement income savings. The requirement to meet the current unpaid parental leave provisions of the National Employment Standards in order to be eligible for superannuation contributions for the parent must be removed, in our view, so we therefore recommend that superannuation contributions equal to the current superannuation guarantee amount should be provided to all employees entitled to the scheme.

The requirement that in order to be eligible for superannuation contributions the parents must already be eligible for superannuation contributions does not address the disadvantage already faced by many women who earn less than \$450 per month in their main job, which is the superannuation guarantee threshold. We believe that that would result in 11 per cent of employed women being ineligible for superannuation contributions during the period of paid parental leave, as is the case anyway with that 11 per cent.

MS MacRAE: Sorry, we've probably got about five minutes, so I just want to make sure that you can give me all your key points in that time, because I can see you've still got a lot there.

MS HILDYARD (SAU/ASU): Yes, no worries. Maybe if I just go to recommendations, because, like I said, when I put my three hats on, I had people around the country giving me pages and pages of notes. I'm delivering it all. So I'm

happy to do that. Perhaps if I just move to the key recommendations.

MS MacRAE: Yes, that might be good, because I've got a few questions for you on what you've told us so far.

MS HILDYARD (SAU/ASU): Absolutely.

MS MacRAE: And there might be a little bit more. But, as I say, we're more than happy to take the full statement if you'd like to put it on the record. We're very happy to have it, but it's just that we mightn't have time to hear it all today.

MS HILDYARD (SAU/ASU): Sure. I'd better do that. Probably the second recommendation in relation to superannuation contributions is that superannuation contributions on paid parental leave should be paid at the rate the employee was entitled to prior to commencing the leave. The other recommendation in relation to superannuation is that all paid parental leave be included in a definition of "ordinary time earnings, salary and wages" for the purposes of the Superannuation Guarantee Act. If I move to the next section. That was sort of the bigger section, so I'll move to the short recommendations under "Protection of existing workplace entitlements".

Obviously we have a principled position that it is of the utmost importance that employee entitlements achieved through workplace bargaining are not undermined by the provision of the new scheme. We have a few recommendations in this section. First of all, we would recommend the inclusion of a specific provision in the legislation which ensures that there will be no disadvantage to employees with respect to their existing parental leave entitlements as a result of the implementation of the new scheme, as a broad principle; also, that the requirement to commence the government entitlement within six months of the birth should be amended to include the additional words "or upon expiry of existing workplace entitlements, whichever is the latter," so it's always in addition to what has already been negotiated in the workplace.

We also - which is often the case in terms of workplace agreements and what's been negotiated around parental leave - recommend that the employee's existing rights to take paid parental leave at half-pay or other formats and to commence paid parental leave prior to the expected birth date must be explicitly protected in the legislation. Finally on that point, we would also recommend that the requirement to exhaust existing provisions, which states "any period of other continuous leave available at the birth of the child", must be amended so that it reads "any period of other continuous paid parental leave available at the birth of the child" so that people aren't required to use up other leave entitlements prior to.

In terms of legislation and enforcement, we have a couple of points there.

First of all, I guess, just to make a statement, we would think that it's difficult to make very clear recommendations in respect of the most appropriate form of regulation of the scheme without knowing all the details of the proposed industrial relations bill. However, again, as principles, we would see that it would be critical to the scheme to implement adequate protection for all beneficiaries, access to Fair Work Australia for cost-effective, informal, efficient dispute resolution procedures in relation to paid parental leave issues and the capacity for regular review, including upon application by relevant parties, so that it continues to be a jurisdiction that is accessible.

In that regard, and in relation to a number of other points, we believe that there are several complementary National Employment Standards which must be considered alongside the paid maternity leave scheme. We would recommend looking at some of those with a view to amending them; in particular the return-to-work provisions should be strengthened to secure the parents' right to their original job and access to part-time work. Carer's leave provisions should be amended to include care of all dependants and removal of the requirement for care to be related to disability or particular injury. The right to request flexible work arrangements should be strengthened to require employers to reasonably consider an employee's request and for the employer to be able to reject a request on a limited set of reasonable business grounds. We also would like to see amendments around the provision of breastfeeding breaks and antenatal leave in the National Employment Standards.

I'm just looking at a way I can fast-track this. Administration: basically the really key point there is that we support the proposal that payments are made via the PAYE system. We would also think that that is the scheme that would be least onerous to employers in terms of setting up how payments are made. In terms, broadly, of equitable entitlements between mothers in paid employment and non-working mothers, we believe basically - again, as a principle - that the net position of working and non-working parents accounting for family tax benefits A and B and other welfare payment recipients should be aligned. We believe that this is a matter of maintaining a position of equity of government assistance, particularly in the context of mothers' fluctuating participation in the workforce and the difficulties in establishing their criteria for determining a mother's connection to paid employment.

The other recommendation, in terms of equitable entitlements, are that payment of the scheme should be at least at the federal minimum wage for all working parents, including those earning less than the federal minimum wage - again, to bring that equity in. Finally, in terms of ensuring that no family should be worse off under the new scheme, we would recommend that further modelling should be conducted to ensure that no parents are worse off as a result of the interaction of the paid

parental leave scheme with existing tax and welfare schemes, and we believe that, in addition to the evaluation mechanisms outlined by the commission, the evaluation of the scheme two years into its life should not be limited to administrative aspects but broadened to include all aspects.

In terms of, broadly, the parental leave framework, we support the model as a positive first step in the provision of paid parental leave for Australian families. However, I guess in the absence of the commissioner dotting our original model, what the ACTU would advocate is for a staged five-year plan to achieve paid maternity leave at the full income replacement level. The ACTU also supports a staggered increase to 26 weeks and, in that regard, we do note the European Commission's current proposed directive to increase the minimum period of maternity leave from 18 to 24 weeks at 100 per cent of salary levels by 2011. So, broadly, we would recommend that staged increase of the proposed entitlement to 26 weeks at full income replacement levels over a five-year period.

MS MacRAE: Thank you very much. I think you must have a bit of a sore throat now.

MS HILDYARD (SAU/ASU): I've very rapidly been given material from all over the place.

MS MacRAE: There were two key areas that I have quick questions on and then Robert might want to have a quick word. You talked about the long service leave and negotiations on getting a national long service leave fund, if I can call it that, if I'm using the right terminology, and you were talking about rolling paid parental leave into that. Is that what I understand you were proposing: that would be part of the same fund, or that you would have a separate fund but it would operate on the same sort of terms as the - - -

MS HILDYARD (SAU/ASU): Basically, that the long service leave legislation is amended, first of all, so that paid parental leave is counted as service for the purpose of accrual of long service leave entitlements.

MS MacRAE: Okay. Sorry, I misunderstood that.

MS HILDYARD (SAU/ASU): That was really the key point there.

MS MacRAE: For those people that are not currently covered by the NES - so where there are other state based employees - would they be covered by that scheme as well and, if they're not, do you have a concern about the fact that you would get a disparity then between what might be counted as accruals for long service and other leave entitlements for NES employees and others that are outside of that regime?

MS HILDYARD (SAU/ASU): Yes, and that's why we would say - if I'm understanding your question correctly - that every relevant piece of long service leave legislation needs to be amended.

MS MacRAE: So every piece would have to be?

MS HILDYARD (SAU/ASU): Yes.

MS MacRAE: That would cover the long service leave. Would you see the same requirement then for things like counting it as service for holiday pay and carer's leave?

MS HILDYARD (SAU/ASU): Yes.

MS MacRAE: All those things on the same sort of basis?

MS HILDYARD (SAU/ASU): Yes. That is one of our specific recommendations - that the NES is amended so that it's counted for service for the purposes of annual leave, other leave, et cetera.

MS MacRAE: But not just the NES.

MS HILDYARD (SAU/ASU): No, that's right.

MS MacRAE: You'd have to do all the other bits of stuff, too.

MS HILDYARD (SAU/ASU): Exactly.

MS MacRAE: From your experience in that area, what's the likelihood that we would get a change in all of those bits of legislation, if not concurrently, within a reasonable time frame? Could we do it so that we could have a start date that might be 1 July 2009 or 2010? That's one of the things that we've sort of talked about a bit in our report; about the problems of trying to get those things amended and operational from a common date. It just seems that we might be moving heaven and earth to do it.

MS HILDYARD (SAU/ASU): I agree with your point that you're making about the complexities of that. I guess we would recommend it as a principle, and I would think that the concept of having a start date to allow for all of the relevant legislation to be changed would be appropriate, and I do agree that that would probably have to be some time into the future.

MS MacRAE: You did also go into quite a lot of detail about the employment eligibility test.

MS HILDYARD (SAU/ASU): Yes.

MS MacRAE: I think I understood all of that. But basically you're arguing for a seven-hours rather than a 10-hours - - -

MS HILDYARD (SAU/ASU): From 10 hours.

MS MacRAE: - - - minimum and six months rather than 12, to put it in a nutshell, with a few other bells and whistles.

MS HILDYARD (SAU/ASU): Yes.

MS MacRAE: But then later on you talked about "the importance of aligning the benefits for those inside and outside the workforce". It made me think that if, at the end of the day, we were trying to give people who weren't getting paid parental leave the same amount of benefits as those who were, which would seem to be the bottom line of the political treatment at the end - - -

MS HILDYARD (SAU/ASU): Yes.

MS MacRAE: - - - why would we bother with an eligibility test at all? Why don't we just say, "There's no eligibility test employment based," because we want everyone to get the same level of benefit at the end of the day and, if we did that, haven't we then undermined the whole principle of a paid parental leave scheme? Aren't we back to just a glorified baby bonus and, if we are, then - - -

MS HILDYARD (SAU/ASU): What are we doing here? Yes, I understand what you're saying.

MS MacRAE: You are getting right to the fundamentals here.

MS HILDYARD (SAU/ASU): Yes.

MS MacRAE: And I am putting you on the spot a bit, I appreciate that.

MS HILDYARD (SAU/ASU): Probably it's partly where my presentation went. I'm just trying not to be too frank. The political realities are that the point that I made at the conclusion about the broad scheme is, I guess, something for the future. I imagine that we will come up with something that is much more based and connected to work at this point, so to be honest really we're covering two points

there. So if we do go down a path of looking at eligibility and the paid work framework, we would like to have the reduction from 10 hours to seven hours in the future. Obviously, there are other models that we can look at. Does that sort of answer your - - -

MS MacRAE: I think probably as directly as you can.

MS HILDYARD (SAU/ASU): Yes.

MS MacRAE: There was something else that just came to my mind then that I was going to ask; something that was at the very end of your presentation - about the longer term, seeing this as a good start, if I can put those words in your mouth.

MS HILDYARD (SAU/ASU): Yes.

MS MacRAE: If you were to go down the track of looking for full replacement wages and all of that, then you would have an ongoing distinction between those who are in the paid workforce and those who are outside, and I guess that's the further point: to the extent that you're very concerned about this equality at the beginning, is that primarily stemming from the fact that ultimately governments are going to be paying in the first instance?

MS HILDYARD (SAU/ASU): Yes.

MS MacRAE: But if the employer was to top that up, you're obviously not going to be asking them, so you're getting this disparity again.

MS HILDYARD (SAU/ASU): Yes.

MS MacRAE: Is that an ongoing concern to you or not, is really the next stage of the question.

MS HILDYARD (SAU/ASU): Yes.

MS MacRAE: Do we need to fight hard to get this equality at the beginning if ultimately you're looking for what could be a very wide disparity down the track in any case?

MS HILDYARD (SAU/ASU): I think that is a possible consequence, absolutely.

(Mr Fitzgerald returns)

MR FITZGERALD: I am sorry that I wasn't able to be here for all of the

presentation.

MS HILDYARD (SAU/ASU): No problem.

MR FITZGERALD: I was standing at the back of the room for most of it, so I picked up most of it. I noted your views in relation to accrual of other entitlements and the extension of superannuation and so on. The presentation we had this morning from the Australian Mines and Metals Association is in stark contrast to that. They claim that even our current proposal in relation to superannuation goes too far and that any further cost impediments on business would be an unreasonable impost. Others have said to us that, of course, every time you increase impost on business, you increase the likelihood of discrimination against the employment of women of child-bearing age. How do you deal with that argument, because clearly we're going to hear from a number of business groups - not all but a number - who will put the same proposition that we've heard this morning and yet your position is to go much further. How do you answer that issue?

MS HILDYARD (SAU/ASU): The really simple, short answer is that in the long term, particularly in South Australia where we have chronic skills shortages in particular industries, and with the mining expansion, one of our key areas of economic growth in South Australia - to cut a long story short, we would say that we think improvements to the scheme in this regard actually provide economic stimulus rather than economic risk, in the long term, if we are to distinguish ourselves in particular industries and particular states where there are skills shortages. I know that's quite a short answer to that question.

MR FITZGERALD: Do you believe that increasing the cost burden to business has the potential to lead to more active discrimination against the employment of women, as some have indicated?

MS HILDYARD (SAU/ASU): I think that possibly in the short term, yes, and possibly through a lack of education about the long-term benefits to Australia and the Australian workforce and the development of a strong workforce, particularly in, as I said before, sectors where there are shortages. I think possibly in the short term, yes, and that's certainly, as a union official, my experience, absolutely. I could give you quite frank examples. But I think if you look at examples around the world where there are schemes more generous than the model that has been proposed, it is something again in the long term that can provide a cost benefit to particular industries.

MR FITZGERALD: My other question relates to the equality issue and I understand your answer to Angela's question. But it is a concern to me that we don't draw sufficient distinction between the objectives that we're trying to meet for the

different groups - for those that are not attached to the workforce and those that are. One of the issues that you and the union movement will need to address is whether or not you support the objectives that we've set out and, if so, as a consequence of those, certain design features flow.

MS HILDYARD (SAU/ASU): Yes.

MR FITZGERALD: Then there are separate objectives for those that are not attached to the workforce, which have to be met in a different way. My concern at the moment is that they are getting merged, and what is actually emerging is the lack of parity about objectives, because our objectives meet this group but are completely irrelevant for that group. So I think that, even at the end of the day, if the government were of a mind to in fact increase the support for people that stay at home, they would have to do so through objectives other than those that underpin parental leave. It is a comment, and sort of a half question, because it is a problem. Equal payment to all people is not equitable; it can't possibly be equitable because they are in different circumstances.

MS HILDYARD (SAU/ASU): Different contexts.

MR FITZGERALD: So it is just a question and it's - - -

MS HILDYARD (SAU/ASU): One of the first statements that I made is that, yes, I think there are complexities, and I do agree that I think the debate has become more complex because of this element of the two groups and, as the model has been put out, one of the immediate reactions was to make that comparison, as you say. Broadly, the ACTU position is that we don't want the introduction of a scheme to be held up.

MR FITZGERALD: Sure.

MS HILDYARD (SAU/ASU): As I said in the closing, yes, we think there are things that we need to look at, we think there are ways we can review, but in no way do we want the introduction of a scheme to be held up at this point. I think it would be fair to say that we have been waiting for it long enough, but we certainly don't want to not go forward with the scheme.

MR FITZGERALD: I appreciate the political dimension in its broadest terms of that argument. I think it would be difficult for people to expect the commission to adopt that view without a much clearer analysis of what is trying to be achieved beyond simply getting the scheme up. At the end of the day, you might be right, but from our point of view I think that we are still back at saying, "Well, what objectives are you trying to meet for the different groups?"

MS HILDYARD (SAU/ASU): Yes.

MR FITZGERALD: I think that's the case. Can I just ask one last question because we are out of time and Angela has to catch a flight. The NES and the changes to the NES: we heard this morning from the Australian Mines and Metals Association - you may have already covered this - that they believe that our definition of "10 hours per week" - well, what they are saying is that we should use exactly the same set of criteria under the NES, which is 12 months and a significant or substantial association with the particular worker. We put it to them that, actually, putting 10 hours per week would be beneficial to employers; it would give clarity. Their view was that it added complexity. I was wondering whether you have a view about that because we're actually trying to reduce complexity.

MS HILDYARD (SAU/ASU): Yes.

MR FITZGERALD: Because the other definition is at least contestable and lacks some clarity.

MS HILDYARD (SAU/ASU): Yes. I'm not sure at which point you came in, because I did cover this point at length, I think.

MS MacRAE: Yes.

MR FITZGERALD (SAU/ASU): That's fine. I came in on the point about the change to seven, but I didn't pick up the bit about the - - -

MS MacRAE: I think you missed the opening a little bit on that.

MR FITZGERALD: All right.

MS HILDYARD (SAU/ASU): In short, the main point that we made is that we think the minimum should be the seven hours a week, because that is often commensurate with a day, but the other key points that I brought in are that women make up predominantly the casual and part-time workforce who often work across multiple employers, et cetera.

MR FITZGERALD: Yes.

MS HILDYARD (SAU/ASU): So the reality is that there is more complexity when you're talking about connection to work, hours of work, et cetera. The main part of my argument covered some of those points and why we think we need to look at it differently.

MR FITZGERALD: Good.

MS MacRAE: At the end of the day, you're also recommending that, to make it less complex, you'd actually align the paid and the unpaid to the more generous paid - - -

MR FITZGERALD: Yes, I thought you did.

MS HILDYARD (SAU/ASU): Funny about that!

MR FITZGERALD: Are there any other questions?

MS MacRAE: No, that's fine.

MR FITZGERALD: Again, apologies for being otherwise engaged - still on parental leave, I might say. That concludes this particular hearing, unless there are any final comments that anyone would like to make. No? Thank you very much.

MS HILDYARD (SAU/ASU): Thank you.

MR FITZGERALD: The hearings remain adjourned until we next meet in Canberra.

**AT 2.47 PM THE INQUIRY WAS ADJOURNED UNTIL
TUESDAY, 18 NOVEMBER 2008**

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