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**PRODUCTIVITY COMMISSION**

**INQUIRY INTO PAID MATERNITY, PATERNITY  
AND PARENTAL LEAVE**

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

**TRANSCRIPT OF PROCEEDINGS**

**AT SYDNEY ON TUESDAY, 20 MAY 2008, AT 9.00 AM**

**Continued from 14/5/08 in Melbourne**

**MR FITZGERALD:** Firstly, may I just welcome you to the fifth day of the public hearings in relation to this inquiry, the inquiry into paid maternity, paternity and parental leave. I'm Robert Fitzgerald, the presiding commissioner on this inquiry, and my fellow commissioner is Angela MacRae. It's good to be in Sydney. It's particularly good to be on this site, which used to be the site of the Crown Street Women's Hospital, which was a very prominent, in fact almost a dominant, force in women and child care from a health aspect in the early days. This inquiry, as you know, is an important inquiry. It affects the lives of approximately 250,000 newborn children and their parents and families each year in Australia. We've had the pleasure of having hearings in Canberra, Hobart, two days in Melbourne, and we have two days here in Sydney, and we'll do the rest of Australia in the coming weeks.

I just want to make a couple of opening comments which are of a formal nature. Firstly, in relation to written submissions, participants have until the first week of June for written submissions to be placed with the commission, and we welcome those. Those submissions can be of any nature at all. They can simply be an email, a letter, a short paragraph or two, or they can be a fully-fledged submission, whatever it would take for you to be able to indicate the sorts of areas or issues of concern to you. Secondly, there will be a draft report released by the Productivity Commission to the community in early September of this year, and following the draft there will be a further round of public hearings, written submissions, and consultations. The final report will be delivered to the Australian government at the end of February 2009.

Thirdly, in relation to the participants, these proceedings are somewhat informal, although given the set-up I'm never sure that it looks like that. Participants are able to make opening comments and then Angela and I get the chance to have a discussion. Whilst participants are not required to take an oath they are required to be truthful in the comments they make. Finally, the media are entitled to be present at all stages during the inquiry, and they are able to take photographs. If you don't wish to be photographed you can advise our staff accordingly. The only thing is, media is not able to take audio recording during the day. But they are entitled, if participants wish, to interview participants after their presentations. If there are any queries, our staff are at the back, and we hope that the next couple of days will be as interesting as the former four days of public hearings have been.

So with that I'll conclude my opening comments. We might start with our first group, the Australian Industry Group. If you could give your full names and positions, and the organisations you represent.

**MR SMITH (AIG):** Stephen Smith, director of national workplace relations for Australian Industry Group, and also representing the Engineering Employers Association of South Australia.

**MS EDWARDS (AIG):** My name is Samantha Edwards. I'm an adviser in workplace relations policy at Australian Industry Group.

**MR FITZGERALD:** Can I just check, can people hear at the back? Can we just make sure we speak up as loudly as possible. Some rooms are better than others. Okay, Stephen.

**MR SMITH (AIG):** Thank you, commissioner. AI Group welcomes the opportunity to contribute to this inquiry. We see it as an important area of public debate and we believe that significant benefits would flow to the Australian community if a fiscally responsible, publicly-funded paid maternity leave scheme was introduced. As you would be aware, commissioners, AI Group has played a leading role over the past six years or so in supporting the introduction of a government-funded paid maternity leave scheme. We supported the introduction of such a scheme during the HROEC inquiry in 2002 and also during the Senate inquiry into a paid maternity leave bill introduced by the Australian Democrats.

However, we would make a strong point, that we are opposed to the introduction of any paid maternity leave scheme which is funded by employers. The significant costs of such a scheme would place an excessive burden on industry which would most likely lead to lower employment levels and reduced competitiveness for Australian businesses, both large and small. It's also likely that any such scheme would adversely impact upon employment opportunities for women. That said, we do believe that employers should be encouraged to look at this issue within their enterprises, and of course many, many do choose to provide paid maternity leave arrangements and, of course, broader arrangements for parental leave.

AI Group has developed a model for a paid maternity leave scheme which we believe is both socially desirable and economically achievable. We would say though, commissioners, that we have our national executive meeting in Canberra tomorrow and this issue is on the agenda for discussion at that meeting, and therefore the details of the model that we will talk about today may be refined in the light of that discussion as well as in the light of the discussion here today, and our final position will be set out in our written submission. Essentially, our model is a publicly funded one that provides payments to working women for 12 to 14 weeks at the level of the minimum wage, and I now hand over to Samantha Edwards to go through the model in more detail.

**MS EDWARDS (AIG):** Thank you. We're going to start by talking about what we see as being the primary aims of being a model, and obviously the options paper canvasses the fact that it is important to make some selection about what the main

objectives would be, and that shapes the design of the scheme. Although there are so many entirely worthy goals that can be achieved by paid maternity leave, and we don't think there's any that have been raised that aren't entirely worthy of being achieved, we do see a scheme primarily as aiming at encouraging women's labour force participation and attachment to the workforce and of course recognising the opportunity cost that's faced by women in their child-bearing role.

The goal of encouraging women's labour force participation attachment of course takes on particular significance in the current climate where there's both a labour and skills shortage, and what flows from that is that there's a lot of community and economic benefit that would flow, as we've also canvassed. Although Australia has a relatively high labour force participation rate by OEC standards what is sometimes not known is that the participation rate of women in Australia, and particularly in the peak child-bearing years, is actually below average. Many different factors influence women's labour force participation, and we don't see this as a simple issue and one which paid maternity leave alone is likely to make significant differences, necessarily. But maternity leave arrangements can play a positive role by helping to maintain women's attachment to the workforce and provide job security.

On the issue of funding, as Stephen said, one of the central issues, of course, in designing an appropriate scheme is how it would be funded. AI Group has consistently advocated that any scheme must be publicly funded and not funded by employers, whether that's direct or through a social insurance or levy-style system. A system which mandates direct payment by employers, as you will have heard, is discouraged by the ILO and there's obvious reasons for that. Any scheme which requires employers to afford monetary entitlements to some employees and not others obviously builds in inherent risks of discrimination. A levy-style system is also undesirable and is being strongly opposed by AI Group. A levy-style system would effectively be a tax on employment and it would have negative employment effects.

In terms of how it would be funded from existing revenue, AI Group proposes that the scheme be funded by abolishing the baby bonus, but in conjunction with this it would be necessary to review family based welfare payments to ensure that women who fall outside the paid maternity leave scheme still have access to appropriate assistance. Obviously that could be done as part of the general tax review that's going to be happening shortly and is due to be completed by the end of next year.

In terms of duration of benefits, a government-funded scheme must be set as a fiscally responsible level. It is clear that there are many options for setting the number of weeks and the level of benefits, and no doubt you would have heard many different options and combinations of these. In AI Group's view, the federal

minimum wage, which is currently at about \$522 a week gross, represents a fair payment standard under the scheme. Employees would be entitled to the federal minimum wage or their previous earnings, whichever is the lesser. The 14 week minimum set by the 2000 ILO Maternity Protection Convention has gained increasing prominence in the public debate, and that's moved up from the 12-week standard that was adopted as part of the 1952 convention. That's why, in AI Group's view, 12 to 14 weeks is appropriate. But as we said, the national executive will be looking at this issue shortly.

The period of paid maternity leave should not extend the total period of 52 weeks for which employees are entitled to be on leave under the Workplace Relations Act at present, and under common award provisions. In terms of eligibility, obviously this is a critical issue. The way we see it working is for it to be aligned with the existing unpaid parental leave entitlements which carry a return-to-work guarantee. Without the necessary job security the important goals relating to workforce attachment of women may be undermined. Eligibility would therefore be restricted to employees with 12 months' service with a single employer. Permanent employees and casuals employed on a regular and systematic basis would be eligible. AI Group proposes that women not in employment or failing to meet the eligibility criteria would have access to family based welfare payments, as I foreshadowed.

Interaction with the current paid maternity leave arrangements is very important, and obviously that's being looked at in the options paper as well, and there has been a concern that there may simply be a cost shift from the businesses which are currently providing paid schemes to effectively a taxpayer funded system. Although they remain in the minority, a sizeable proportion of working women now have access to paid maternity leave in the private sector. We think it's very important that a scheme not be designed to in effect punish employers who have led the way by providing schemes. For example, it wouldn't be appropriate to exclude women who might have access through existing company arrangements because this in effect would punish best practice employers and could discourage the introduction of other family-friendly work practices in the future.

In terms of the payment mechanism, we propose that by agreement it would be possible for the employer to pay the employee directly. We believe this would facilitate the payment by the employer of top-up pay to the level of the employee's wage and the continuation of payment, should an employer choose to pay for longer than the government-funded period.

So in conclusion, AI Group believes that there is a strong case for the introduction of a publicly-funded paid maternity leave scheme in Australia. However, we would reiterate that we're opposed to the introduction of any paid

maternity leave which is funded by employers.

**MR FITZGERALD:** Good. Thank you very much for that. I might ask Angela if she would like to start off.

**MS MacRAE:** One of the things that I was interested in was, I think if I understand you correctly, although you're accepting all of the objectives that we'd set out as possible ones in our issues paper, that the workforce participation was your key objective in terms of your design for the scheme. But if I also heard you correctly, you also said that you wouldn't expect that a paid maternity leave scheme of the sort that you're putting up would impact on participation very much. I just wondered if you had any more detail that you could give us on that.

**MS EDWARDS (AIG):** I think it would likely have some affect, but with any of these decisions that are so complex in terms of why a woman may choose or not choose to enter or remain in the workforce, there's interaction with so many other issues, child care, the ability to return to a job which meets their needs and the circumstances of the women. We certainly think it would make a contribution, but it's so hard to isolate any of these effects. It would be something that would be the subject of review, we think, within sort of 12 or 18 months after a scheme was introduced.

**MS MacRAE:** Just in relation to the eligibility issue, I was interested that you were keen to pick up the eligibility rules for the unpaid leave. Do you see an issue there in relation to the exclusion of a wide range of casuals and those with a limited attachment to the workforce?

**MR SMITH (AIG):** I might answer this one. It's one of those issues where the line has to be drawn somewhere, and we think if the line is drawn to include those that are included within the unpaid arrangements then it makes for a much simpler system because, in effect, parental leave is leave, so this is a payment arrangement that aligns with the concept of parental leave under common award provisions, under the Fair Pay and Conditions Standard, and when the government's new National Employment Standards come into place if there's a separation between this scheme and all of those arrangements in terms of eligibility it will be a much more complicated system.

**MS MacRAE:** Just in relation to again eligibility, you've talked I think only about maternity leave. Do you have a position on paternity leave or would you see some of that leave being available to either partner at the choice of either the couple or the mother? Do you have a policy position on that?

**MS EDWARDS (AIG):** We do primarily see it as a maternity leave scheme;

certainly at least in limited circumstances we think it should be available to the father. I think it's really about incremental stages. We do see it as a maternity leave scheme initially, but it's something that could be reviewed over time. Again that's an issue that the national executive might consider.

**MR FITZGERALD:** I was just wondering if you could speak up, it's hard to hear up the back there.

**MS EDWARDS (AIG):** Sorry.

**MR FITZGERALD:** Could I just go back a little bit, in relation to the scheme itself, the objective that you're seeking to achieve is about workforce participation, but the eligibility criteria that relates to unpaid parental leave requires an attachment to an employer which is about workplace attachment. I was just wondering whether you can explore for us what you think is the most important issue there, because it strikes us that if it's about workforce attachment then in fact the eligibility has to be different to that which exists for the right to return from unpaid parental leave.

**MR SMITH (AIG):** We don't necessarily see it that way. If the eligibility is linked in with the workplace attachment then we have large membership and our members have given us very clear statistics and examples of where this has significantly improved their return-to-work outcomes within workplace. So if that is reproduced across the workforce then it will have an overall effect as well. We do think the scheme becomes a lot more complicated again if you move the eligibility away from the unpaid arrangements, hence why we have gone down this path. On that issue about broader arrangements again, once you move away from the unpaid arrangements it gets complicated in every respect.

**MR FITZGERALD:** So what proposal do you have or do you think the government should adopt in relation to women who fall outside of that eligibility criteria? I link it to a comment you might clarify. I think you said that it would be at the minimum wage or their average wage for a period of time, whichever is the lesser. If you make a universal payment to people who are not in the paid workforce or fall outside the eligibility criteria could you end up with a situation where that payment is greater than is going to those that are on part-time or sustain casual work in the workforce?

**MS EDWARDS (AIG):** That does become an issue, and the interaction and comparison between different types of welfare payments is always interesting. It creates different incentives. I think that would primarily be an issue for the tax review, but the way we see it it would be an issue if you were effectively entitled to more being out of the workforce than you were on a paid maternity leave scheme. That would seem to create some possibly perverse incentives but more so just

wouldn't seem to align very well with the goals.

**MR FITZGERALD:** A number of the proposals that we've had so far have actually said that there should be a government-funded scheme to a minimum wage level irrespective of the number of hours that you've worked prior to the birth of the child. Even if there is an eligibility criteria there seems to be a view that in fact that should be a minimum payment irrespective, and not attached to the hours that have been worked previously.

**MR SMITH (AIG):** We'll have a look at that issue, because it is a really important one, and reconfirm our position or put a different position in our final submission, because it is an issue that does require a lot of thought.

**MR FITZGERALD:** Can I just go back to an issue related to the employer not being required to pay. Is it AIG's view that the employer reaps benefits from a paid parental leave scheme, or is it the view of AIG that all of those benefits are attributable to the individual family or worker? If there is a benefit to the employer why is it illogical that the employer should not pay some portion of that leave scheme?

**MR SMITH (AIG):** Employers, we believe, should be encouraged, or certainly there shouldn't be any disincentives there to dealing with this issue in enterprise. But, yes, the employer does in many cases derive a benefit from it in terms of reduced training costs and all of the benefits that come from longstanding and valued employees remaining in work when they may not have returned in other circumstances. But we see this as a significant community issue and of course employers pay a significant percentage of the taxation that's collected in Australia. As a community issue we believe it should be funded as a community issue. Many, many employers will choose, of course, to do more than what the minimum is. But we see this as a minimum level of support that should be provided by the community.

**MS MacRAE:** Can I just ask, in relation to your members that already do have schemes - and you discussed this a little bit in your opening comments, but have you had any indication if a scheme such as the one that you're proposing was to go forward what might happen to those existing arrangements?

**MS EDWARDS (AIG):** We have canvassed this issue. We think it's highly unlikely that great numbers of businesses will simply abolish their scheme. It's very likely that they will review it, not necessarily with a view to, "Quick, let's save costs, let's scrap what we can," but just with a view to restructuring it to make more sense. So it may be that you pay the top-up pay under our scheme, the 12 to 14 weeks, and then you work out, "Okay, we're willing to pay eight weeks after that as well," or



whatever it may be. It may be that they channel funds into different family-friendly areas. I mean, I think the main reason for most businesses, or at least a significant reason, is to be an employer of choice. On that criteria, if everyone is now going to get the federal minimum wage it's very unlikely - - -

**MS MacRAE:** Yes, they still need to have something beyond that.

**MS EDWARDS (AIG):** Yes.

**MS MacRAE:** One of the other interesting things that we've heard from a number of the small business organisations is that a period of leave as short as 12 to 14 weeks can be actually quite difficult for them if that was the period of leave that an employee took because it's difficult to attract someone to fill that position. It's really too short to offer it to someone as a permanent, so you're looking at a temping-type arrangement, whereas something longer, say 26 weeks - and even if you think that people may well, if they had the opportunity, take that at half pay, for example, if you were looking to fill a position for 12 months that in fact that's a much easier proposition for a small business because they can get someone in to fill that position for that period and then have the original employee come back. Do you have a view on that?

**MS EDWARDS (AIG):** Well, under our scheme it's aligned with the unpaid parental leave entitlements, so you have the 12 months. At the moment the average number of weeks that women are having off is around 34, which is a lot more than 12 to 14 weeks anyway. So I'm sure that there would be some women who at the moment don't take any leave or take very small amounts who as a result would be taking around 14 weeks, so I suppose it would be an issue in some businesses.

**MR SMITH (AIG):** One interesting thing here is we had a major involvement in the family provisions test case of the Industrial Relations Commission and we had 20 witnesses appear on our behalf, and a lot of those witnesses were small and medium organisations, in fact the majority were, and this was a big issue as to what did they do to cover for people who were off on maternity leave. It seemed, based on that evidence and the other evidence before the commission, that in most cases by far people employ casuals to cover for maternity leave absences. In that case this issue wouldn't be an issue. So we certainly don't see that that is any grounds for providing payment for a longer period, and obviously in a taxpayer funded model some compromises need to be made about what the community should be prepared to fund in the light of those resources potentially being offered to other people and in other areas.

**MR FITZGERALD:** Just on that, I was wondering what you think will be the impact of the scheme that you've proposed. If we were looking forward a couple of

years, if you were to introduce a scheme in the nature that you've suggested, what do you think will have changed in the workplace?

**MR SMITH (AIG):** We do genuinely believe that this is going to make a contribution to the community in terms of participation, in terms of other socially important goals. It's very hard to quantify, but as Samantha said, we think what there should be is a formal review of the scheme after, say, 12 to 18 months, and this issue of paternity leave, for example, could be looked at then, because we're putting a view that this should be a maternity leave scheme. That's a legitimate issue that should be considered but we don't see it as an issue that is as significant as the paid maternity leave issue. We're coming from a position where we don't have a scheme at the moment.

So we think rather than putting in place a very complicated scheme we're better off putting in place something that the community understands, the employers will support, which is very important because another aspect of that evidence before the Industrial Relations Commission, when the unions were seeking a doubling of the one year unpaid maternity leave entitlement, there were lots of managers of companies, the vast bulk of them were women, who said that the balance would have been wrong and they will discriminate. They would discriminate because the cost of employing those women would become too great, in their view, and it wouldn't happen overtly and it might be a surprising thing that someone is prepared to stand up and give evidence, but that's what they said, and I think there is a real risk that that might happen if the balance is wrong.

**MR FITZGERALD:** You've raised the issue of the Industrial Relations cases but I was just wondering if you could just clarify your view in relation to the National Employment Standards, which are up for discussion and consideration at the moment by the Rudd government. There has been a view that, firstly, unpaid leave should be part of those standards and, secondly, in this inquiry a number of participants have put forward the view that the National Employment Standards should cover paid parental leave. I was wondering whether you could put your position on that.

**MR SMITH (AIG):** Yes, we have a very clear position on that. We very strongly oppose the ACTU's proposal in that respect for the standards to provide for paid parental leave. As we've said, we believe that the National Employment Standards should address the issue of unpaid leave in a similar way to the Australian Fair Pay and Conditions Standard. We have put in a lengthy submission in respect of the National Employment Standards, and we raised a whole series of technical-type issues in relation to the National Employment Standards and the parental leave parts of those standards which we'd be happy to provide the commission with if it would assist.

**MR FITZGERALD:** One of the other things that's come up in the inquiry has been a view that paid parental leave should be the subject of awards generally, whether it's National Employment Standards in terms of setting a minimum, but the capacity for awards to deal with that. The basis of that has been that the impacts of these schemes apply differentially in different industries, just as they apply differentially between small and big business. Some have said to us the best way to achieve, particularly, top-up payments is through bargained awards as well as through collective bargaining in those organisations where that's appropriate.

**MR SMITH (AIG):** Commissioner, this is a critical area. AI Group was heavily involved in the process of responding to and making representations to the government in relation to the National Employment Standards and in relation to the award modernisation request that was issued by the deputy prime minister. One extremely important aspect of that request and the associated transitional legislation is the link that's drawn between awards and the National Employment Standards. We were very concerned about some media coverage of some ACTU strategy papers that seemed to say that the union movement was going to use this concept that awards could build on the National Employment Standards to pursue a raft of new claims for all sorts of different improved entitlements, and this area could be one such entitlement.

The final outcome, we would have worded it a little more strongly ourselves, but it makes it clear that the National Employment Standards set a basic standard. Awards can build on and provide industry relevant detail if it's necessary for them to do so having regard to existing award entitlements. So, for example, in an area where the award did have an existing paid maternity leave arrangement, there aren't many awards like that, then the unions would have a good argument consistent with existing award entitlements that that award could adequately build on.

But an award like the Metal Industry Award, for example, that's never had paid maternity leave entitlements, there would be no ability, we would believe, for that sort of issue to be progressed in the award. If the link between the National Employment Standards and awards was changed it would open up huge problems and create widespread disputations. So we strongly urge the commission not to make any recommendations in that area when it's been worked through quite vigorously in another place.

**MR FITZGERALD:** My last comment, related to that, is in some senses there are two views around parental leave. One is that it is no different to all other leave, that it is simply another leave payment and should be treated accordingly. The alternative view is, particularly given the universal schemes that have been proposed, is that it is of a different character, of a different nature, and that's why we need a universal scheme rather than a scheme that simply is negotiated in the normal way

and funded in the normal way. I was wondering whether you could explore how you see that.

**MR SMITH (AIG):** We do see it as a different type of leave, but not one that should sit outside of the arrangements that are there for categories of leave. If I recall correctly, maternity leave was introduced in 1979 in awards, and for that whole period it has been treated as a particular category of leave. It has some different elements to it because, for example, other types of leave don't accrue during periods of parental leave and so on. But we do very much see it as leave and therefore we see the payment of it as something that should be linked to that eligibility relating to the unpaid arrangements.

**MR FITZGERALD:** I just wanted to ask one last question before asking Angela. Then what's your view in relation to a couple of other issues: a number of the submissions we've received or will receive, based on participants' comments, relate to the continuation of superannuation payments by employers on behalf of employees, the continued accrual of annual leave, sick leave, long service leave, during the period of maternity or paternity leave. Do you have a view about how that should be handled?

**MR SMITH (AIG):** We do. It is an issue that is covered quite clearly in the existing arrangements and we don't see a need to change that. Now, there are some awards and clauses within awards in the superannuation area that do provide that superannuation has to be paid on various types of paid leave. So some awards deal with this issue specifically, but the general position is that when people are off on parental leave then leave accruals and so on cease and restart. We could be talking about quite a lengthy period, of course, because in the unpaid area not only is there the right to one year there's an ability to request an extension and so on. So once you go away from the existing very clear position it does get again quite complicated.

**MR FITZGERALD:** Okay.

**MS MacRAE:** I just ask again, I know that you're proposing that there not be an employer contribution, but I'd just be interested in your views about should there be an employer contribution. For the reasons you outlined in your opening statement, asking an individual company to pay in respect of their own employees is problematic because of the discrimination issues. Do you have a view about a pooling of those? So if employers were to pay a percentage of their payroll into a pooled arrangements from which payments would be made in general, have you got views about a pool-type arrangement?

**MR SMITH (AIG):** We do. There's been many of these proposals over the years for all sorts of things, whether it be protecting employees entitlements or this sort of

leave, long service leave and severance arrangements in the construction industry. The starting position is that all of these things impose additional cost on business. They're a direct tax on employment, in effect. But also, there's lots of problems associated with the structures that are potentially put in place to manage those funds.

We see this as a legitimate community issue that should come out of taxpayer funds, which of course as I've said, the business community contributes a high percentage of, a significant percentage of, and it makes for a much simpler structure than trying to manage a pool to deal with this issue. You've then got all sorts of issues over time about is the pool sufficient, how is the pool managed, and a raft of issues. We just believe that that would be a very damaging way to go.

**MR FITZGERALD:** In some industries of course there are pooled funds. In some of the construction industry areas, for example, there's pooled funds, as I understand, in relation to some entitlements because of the nature of that industry and the short-term contractual nature of engagement.

**MR SMITH (AIG):** Yes, but those funds, and the two key ones of course are severance and long service leave, come out of lengthy industrial battles of a former era. We accept that those funds are in place, and in some cases we sit on boards to make sure that employers' interests are protected in relation to those funds. But they're all quite problematic when you look at those funds around the country. Unions push to extend those entitlements outside of long service leave and severance, and to try to deal with issues of annual leave and a raft of other entitlements.

So we have ongoing battles to try to keep those arrangements to what they are in terms of the entitlements. Also, if you look at the construction industry, every time there's a new bargaining round the unions seek to increase those contributions. So the severance entitlements have absolutely no relationship with any outcome, it's just a cash payment people get when they leave the employer or leave the industry. So it's just subject to significant industrial pressure, and we've also been having a longstanding battle with the Victorian long service leave scheme which is creeping into manufacturing, creeping into the IT sector. It's highly problematic, and we would very strongly oppose those sort of arrangement.

**MS MacRAE:** I can probably predict what you're going to say, but we have had a number of submissions that have talked about possibly giving people blocks of leave. So rather than saying, for example, with the unpaid leave, "Once you're back to work you're back to work and you've lost any remaining entitlement that you might have otherwise had" - I guess when we're talking about 12 to 14 weeks that's a relatively short period and it's not such an issue, but do you have a view about the issues that might arise if people were given some flexibility around how they take the leave? So

if they were entitled to 14 weeks say they could take it any time within the first 12 months, just to take an example. Could you tell us how you would see that sort of flexibility being built into a scheme.

**MR SMITH (AIG):** Again, perhaps it's an issue that we should look at before we put in our final submission, but there are some interesting examples overseas with this, particularly in Scandinavia where people basically, as we understand it, have an entitlement to a particular amount of money, if that's the best way of describing it, and they can take it in various different ways: half pay for twice the period or whatever. Those things certainly are worth looking at but not to the cost of making the scheme excessively complicated. But we would like to look at that issue in a little more detail and explore that Swedish - and Norway has another scheme like that that would be well worth looking at.

**MR FITZGERALD:** Just a final couple of questions, in terms of the actual method of payment you've indicated that the payment could be directly by government or through the employer. Would that apply where the employer is providing additional top-up so therefore it's easier, or is there a reason why all payments should come through employers? I think we've had this discussion, but in the UK model the employer makes the payment, the government reimburses the employer to a certain level. One of the reasons they've put forward for that is it enhances employer employee attachment, or workplace attachment. I think in our conversations you thought that there were some difficulties in that being universally applied.

**MR SMITH (AIG):** We would have concern about it being universally applied because there would be a lot of employers who would not support that sort of arrangement. But there'd also be employers, we believe, that would like to preserve the link with the workplace, obviously those that are providing enhanced benefits, so they could provide a person's full salary and then seek reimbursement. But the way we see it working is that arrangement should only be by agreement between the employer and the employee because there will be some examples where the employer wouldn't support that and perhaps some examples too where the employee would prefer to get the payment directly from the government. So we see if it's as an option that's available if both of the parties want it then it would be picked up in a lot of cases, but it shouldn't be a universal assumption.

**MR FITZGERALD:** My final question goes back to your issue which you've raised about the discrimination about the employment of women who are of child-bearing age. To what extent is that argument lessened because of the tight labour market that we're now in and are likely to be in for a considerable period of time? Do employers really have the luxury now that may once have happened where there were high levels of unemployment or lesser labour shortages? I'm just wondering to what extent that that argument has diminished as a significant

argument. Clearly it's one that we're very conscious of. One doesn't want to introduce any scheme that has the perverse effect of discriminating against women or fathers in that category. But I wonder whether that argument is a little less now than it may otherwise have been.

**MR SMITH (AIG):** I don't think it's an argument that should be overlooked or reduced in importance based on the existing skills shortages and labour shortages. That family provisions test case was only a few years ago and the evidence was very strong from a host of different organisations, particular small and medium ones, that said that the balance in that was all wrong and if the entitlements are too onerous then it wouldn't happen in an open way but it would result in discrimination, not only within their own organisations but they genuinely perceived that that would be a community effect.

Now, they were people prepared to stand up, and very genuine business people that were running businesses. They were bending over backwards to offer their employees flexibility. It was a very positive message in the evidence that they provided that there's a host of flexibility there. But in the area of what the result would have been of the ACTU's proposals they saw they would have resulted in discrimination.

**MS EDWARDS (AIG):** It's an interesting issue, I've never thought about the fact that sex discrimination might be lessened in areas of labour shortage. But I think as well you've got to remember as well that there's not just discrimination in the issue of whether to choose to hire someone. It may permeate the workplace just in terms of attitudes towards women having children and those sort of things, and although it's abhorrent to think that would happen you've got to guard against these risks, and I think there are pretty sound reasons behind the ILO recommendation for not mandating the direct payment.

**MR FITZGERALD:** Any other comments? Have you got any other final comments before you conclude?

**MR SMITH (AIG):** No, commissioner.

**MR FITZGERALD:** Good, thank you very much.

**MS EDWARDS (AIG):** Thank you.

**MR FITZGERALD:** If we could have our next participant, I think it's Louise Tarrant. So if we could please have your full names and the positions and the organisations that you represent. Thanks.

**MS TARRANT (LHMU):** Louise Tarrant, national secretary, LHMU, and Sharon Eurlings, a member of ours at Star City Casino in Sydney.

**MR FITZGERALD:** Good. All right, Louise, could you just give me the full name of the organisation.

**MS TARRANT (LHMU):** Liquor, Hospitality and Miscellaneous Union is the name of the organisation. We're a union and we cover a range of low paid workers, mainly in the service sectors.

**MR FITZGERALD:** Good. Over to you.

**MS TARRANT (LHMU):** I'd like to firstly start off by introducing Sharon Eurlings to you. Sharon is a member of ours at Start City Casino and she would like to convey a message from her experiences to the commission.

**MS EURLINGS (LHMU):** My name is Sharon Eurlings. I've been working at Star City Casino for nearly 13 years. I'm a mother of two kids. The eldest is three years and eight months old, and the youngest is 14 months. I've taken maternity leave for both kids and have been lucky to receive six weeks paid maternity leave; that is, three weeks paid before the leave and three weeks paid after two months of returning to work. I've also been fortunate enough to take the full 12 months off without pay for both kids. For my first-born I took 12 months off without pay and my husband resigned from his job to look after our daughter, Alea, for the next 12 months. He in return did casual work, forgoing all his work entitlements such as superannuation and annual leave to fit in with my work commitments.

The year after that I took another 12 months off after having a second baby, Dylan. My husband, on the other hand, went back to full-time work. It was a picture-perfect arrangement but our financial situation has taken a beating. We drew on equity out of our home despite the six weeks paid maternity leave and the baby bonus. To recover financially we've decided to both return to full-time work. We've made arrangements with family to help us without compromising the welfare of my children. I've managed to get permanent Thursdays and Fridays off. I work from 4 am to midday on a permanent basis. My husband looks after the kids on Saturdays and Sundays, my mother-in-law on Mondays, and my own mother on Tuesdays and Wednesdays. Both mums are still at the young working age, and as a consequence my poor mum misses out on her days off as she is at my place looking after my kids.



**MS TARRANT (LHMU):** Thanks, Sharon. I think that's a pretty good picture of the sort of patchwork quilt of care that a lot of women are trying to cobble together to cope. In terms of the comments we'd like to address to the commission I'd like to say we welcome the opportunity. We note that it is happening in a very tight labour market and wonder if that's really the driver, and why suddenly it's on the agenda again after so many years of trying to get it on the agenda. Nonetheless, we still welcome the opportunity. I also want to say that the comments we make today are going to be quite narrow in focus. We're not going to try to address the whole gamut of parental leave. We particularly just want to focus on how do we come up with a system of income support for women that have children, and in that sense we're not addressing the full caregiver issue. The other thing that we also want to say is that we'll cover some sweeping statements today and then reinforce it with some more statistical detail in our submission.

I guess the first thing we want to do, though, is go back, as you quite rightly point out in your issues paper, and say what are the objectives of any scheme that we come up with. I guess that's the other that we would say at the outset. We are less interested in being drawn today to the specifics of the final model but are more interested in what are the underlying foundations and drivers for what that model might look like. So we would argue that there are three key drivers that we would see as important in this debate. One relates to women's social input. In that sense we talk about a social input being the role that they essentially do in family formation, in child rearing, and so around that we address a whole range of issues of health and wellbeing of the woman, the child and the family unit.

So just to recap, and I'm sure you'll have plenty of submissions on these issues, but I guess we're keen to recap a little. Having a child, the birthing process actually does have quite a significant physical impact on women, and I think that that's been lost in the social conscience of the community. I think because pregnancy has become such a natural phenomena, pregnant women are acceptable to be seen in public, it's acceptable to wear modern clothing, it's acceptable to work when you're pregnant. All these things have happened in recent decades. So in some ways it's almost become that the birth process is just very natural and easy and almost seamless. So I think there's a failure to recognise that there's a major physical, social and emotional impact on women for quite a period after the birth. I think that's been lost by us actually making more natural the whole pregnancy phenomena. I think that works against women's interests.

I think that we also fail to recognise that in pre-birth situations, we have a number of our members working in childcare, aged care, hospitality, the areas that have quite a level of physical work: picking up young children, helping elderly people in aged care facilities, carrying heavy trays, making beds and heavy work in hotels. Those situations for late stages of pregnancy also require, I think, different

sorts of consideration for leave provisions rather than in some areas where work can be virtually up to the time of birth. So we think that the physical nature of some of the work that's happening for women needs to be considered as well.

We think breastfeeding is clearly a major issue and it should be one of the driving issues when we talk about the social input side of this issue. It's an issue of there's plenty of evidence based research now around the impacts that breastfeeding has on the wellbeing, both physical and emotional, for infants. But we also know in a number of studies, certainly there's a recent Melbourne University that does show that women going back to work earlier - I think those that go back at around three months - about half drop off breastfeeding, and those that go back within six months it's triple the level of ceasing of breastfeeding.

So although women probably try quite desperately to manage breastfeeding and return to work within that six-month period it often doesn't work. It was interesting, we've just done a study of parents and child care. What we found is parents with young children tended to prefer child care close to work and those with older children wanted child care close to home. The supposition we drew from that was in fact that connection around breastfeeding.

I think the other thing we should be saying about the sort of social input side of women's presence in the reproduction cycle is that the expectation of women is that they will have children. I think there's a bit of a social norm developing that in fact it's now a lifestyle choice and a lot of women are choosing not to have children. But in fact most of the research, women do in fact, and men, by and large, say they want children. The majority want two, two and a half children, actually, I'm not quite sure how that works. So what we're seeing is that expectations and realities are being mismatched. I think that that's a really big issue for our society to come to terms with.

Why is that people are going into the child-rearing years wanting a certain outcome and that's not being delivered. So why is that mismatch occurring? There's a whole lot of reasons for that in terms of late relationship formation, the fertility rate dropping in the under 30 age group, et cetera. But nonetheless I think as a society we should be asking ourselves is that a good outcome if people actually genuinely want larger families and yet our rate is round about 1.8. So that's around the aspect of women as social input.

The second area we want to talk about is women's economic input, and I think the AI Group was pretty clear on some of these issues, but we also are interested in those as well. They are around clearly labour is a scarce commodity in our economy at the moment, and women are actually one of the best untapped sources in a sense, and that's why I think this issue is now on the agenda. We've got an ageing

population. We've also got the productivity losses that hopefully employers are starting to see when they lose women out of the workforce. So what we're now seeing is a range of piecemeal responses through bargaining and through the employer support for some forms of maternity leave, et cetera.

I guess the fundamental question is raised though is how elastic are fertility rates and how elastic are participation rates, because if we're going to address the economic issue they're the two drivers. Can we actually put in place measures that might increase fertility rates, if that is a significant issue, and that has implications both for and as a by-product of income support for birthing mothers. But also the real question is what does it mean for participation? Are there measures that can be put in place that actually increase participation?

We would argue for both young women and older women, because I think Sharon's story is very illuminating in that virtually all the surveys show that about a third of care, informal care, is provided by grandparents, and I would read "grandmothers". So what we're seeing actually is a lack of participation from older women in the paid workforce as well because they're actually filling the need in the family unit to provide informal care. So if we're going to address women's participation rate what are the issues that would encourage women to work and increase potential fertility rates?

The third area I think is also a significant one, and it tends to get a little lost in a range of these debates. The third area is what is the economic output for women? How do we address women's equity issues? If women do not have some access to a lifelong uninterrupted stream of income how do they ever reach parity with males that do actually have a fairly seamless work life or income stream? Whenever you're going to have broken plan for child-bearing and child-rearing, whenever those things are predominantly in the preserve of women how do we address those issues?

So when we think about this I guess where that leads us to say is this is not about a leave situation because leave is a very narrow perspective and it's only focused on women in the paid workforce already. This really is something that needs to address some form of income support that provide opportunities for women to interact at all those levels: in the social cohesion argument in terms of childhood development and the health and wellbeing of mother, child and spouse or family; it's in the economic area in terms of women's participation, and it's in terms of women's own economic reward and lifelong earnings.

So just to rewind a little, what we would say is we need to understand the demographics of the workforce to then address whatever the scheme is that we come up with addresses those three areas. 21 million population, 10.5 million women, 10.5 million workers and nearly half of those, 4.7 million, are women. So a

significant number of women in the paid workforce. The majority of those are in part-time employment and one third of them are in non-permanent work situations, either casual or contract, predominantly casual, and their average weekly earnings are significantly lower than equivalent males.

What we find is, and certainly in our area what we find is, that predominantly award reliant. So if we're going to talk about bargained outcomes already you've shrunk the pool from workers to all women, and then you've shrunk it again to bargain only. So our experience in this area is that bargaining works, or what you'll see is the play-out of paid maternity leave schemes as a solution working for the public sector, for large workplaces, for highly skilled areas, and really that tends not to be where a very large chunk of women in the workforce are situated. So within our own union we have paid maternity leave in a few areas like manufacturing, that we cover, where there aren't many women working and they're our best schemes, and then we've got the public sector, and then we've got some oddities like Star City Casino where Sharon works. But they're very much the exception not the rule. So in child care, in aged care, in hospitality we've got significant numbers of minimum wage workers for whom bargaining is not a solution.

So what we just want to do then is have a look at who gets access to paid leave now, and so even if you enhance the scheme is that enough? We know that there's about 250,000 births a year, it's about 2 per cent of women have a child each year, and about two-thirds of those pregnant women are actually in the paid workforce. About 90 per cent of the permanent workers get access to the 12 months unpaid leave. But what we find is that, and this is a recurring theme in all our analysis, there's about a third of the female workforce that are excluded from rights, whatever they might be, even the right to unpaid leave. So we've got about a third that aren't eligible for leave, and in fact in the research there's 12 per cent of people who are in continuous 12 months employment who are still excluded from unpaid leave. So for a whole range of reasons although there's supposed rights the actual take-up or accessibility is I think largely questionable.

So what we find is that constantly women with low hours, low income in the private sector and in casual employment situations are excluded from even the limited rights and entitlements available today. So in terms of what we then look at what we find is that a number of that chunk of women, about 1.5 million women, a significant number of those in the paid workforce actually leave before the birth because they know there's no entitlements coming afterwards. So already they're dropping out of the workforce, and what most of the data shows is that once they withdraw from the labour market it's much harder to get them back in at a later date. So already disengagement is occurring.

So what we find is, what is it that drives women back? What we find is that

about one in 10 women come back to work within three months, about 25 per cent within six months. What we found is that for those - about half of those coming back within three months all say that they wouldn't do it if they had access to paid maternity leave or some form of payment, and all of them expressed worries about money. It's even higher, around 60 per cent, basically up to 12 months leave with a young infant, that say they would not return to work if they had some form of access to better reimbursement.

So what we see is women either coping in situations by coming back to work earlier than they would prefer, or the other scenario we see in our membership a lot is Sharon's example, and it's tag parenting. A lot of the surveys actually show that the hours that women work in part-time employment in lower socioeconomic groups is matched by exactly the same hours that fathers or spouses say they care for the child primarily. So what we see is we actually see the drop-off and the pick-up. One goes to work, drops the kids, the other takes over the primary care role. So really in terms of handling care it's a very stressful environment for the family, but also it's not particularly good for child or relationships. So that's the sort of way, I guess the patchwork quilt type approach, that seems to be people's way out.

I think the other point, and I'll finish on this, is in terms of perceived prosperity about a third of parents with infant children think that they're doing it pretty tough. In fact there's a hardship survey done recently of parents with young children which asked them, "Have you not been able to pay an electricity bill recently? Have you not been able to pay your mortgage?" There's a whole series of criteria, six of them, and quite significant and quite reflective of real financial difficulty, and the survey found that a third of the parents actually had experienced at least one if not more of those issues in recent times.

So what it shows, I think, is that there's this sort of underclass of women in the community that is significantly disadvantaged by a whole range of aspects of their circumstances in terms of their place in the labour market. That's exacerbated by child-bearing and child-rearing. So it's a sort of a chicken and egg cause as well. But certainly low paid, part-time work, casual employment and private sector employment, that combination is really a pretty toxic combination for a lot of women, for round about a third of women in the workforce.

So our question is how can a scheme based on bargaining address that? We don't think it does. How can a scheme based on leave address that? We don't think that does either because a lot of women, particularly with multiple children, exit the workforce, and particularly those with no attachment. You don't have an attachment if you've got no leave, you've left your job, getting back into the workforce seems to be a lot higher barrier than those who have maintained an attachment through leave, whether it be unpaid or paid. So what we're thinking is there's almost this

perpetuating cycle that women are never going to be able to get out of, or their families to get out of. So how do you break that? We think that there's no a silver bullet.

So whilst this inquiry is going to address one aspect of it, unless we address a whole lot of other issues in terms of decreasing casualisation in the workforce, looking at tax incentives - the tax disincentives for the second wage-earner part-time to re-enter the workforce is so significant as to be a barrier. We think student debt is a key criteria as to why there's a deferment of child-rearing to the later years, and there's also now increasing age of people staying home. For males it's now up to I think 27, and females 25. So that's all impacting relationship formation, fertility rates, et cetera. So student debt, revaluing female work has got to be significant, and also starting to get employers to take some responsibility for improving these industries so that we're not confronted with low skilled, low waged, casual, insecure attachments.

So it's a big-picture problem and there's a lot of solutions. I guess we're very welcoming of the commission's inquiry into this area. We don't think there is a silver bullet that will fix all of that. But unless we think about what are the objectives, and we think they're multiple: it is about women's role in the family unit and in child-rearing; it is about as an economic participant in the economy; but it's also individually about their own personal economic wellbeing. Unless those three things can somehow be catered by some scheme then I think we've missed the boat and really done a disservice to a significant pool of women in the workforce.

**MR FITZGERALD:** Thanks very much, Louise and Sharon. Angela?

**MS MacRAE:** Where to begin? I guess one of the issues, if I could just pick out one of the issues that you talked about, was that having one third of those women being non-permanent and the problems that represents, you talked around the issues around eligibility for unpaid leave. Would you see then that any scheme that was to come out of this inquiry should look at a differential between the eligibility for unpaid leave and paid leave? If so would you then be looking to try to bring the unpaid leave eligibility in line with whatever the paid leave eligibility might be?

**MS TARRANT (LHMU):** I guess where our thinking is going is that there's almost a scheme where there's an income support regime for mothers having babies that's independent of their work circumstances. So presumably then, if that's the case, if that's independent and that's universally available then for women in a work situation you do want some form of a leave arrangement so that there's an ongoing attachment from both the employer and the woman as a worker. That needs to be in place, I think, otherwise you lose all the workforce participation benefits that that's shown to deliver. Then if there's an option for bargaining on top of that that may be

specific to that area that gives other entitlements in that leave period then that's still available, I guess. But I think what we're trying to argue is a separation, really, of some income support for women in child-bearing situations which is independent of the workplace.

**MS MacRAE:** Okay. So a universal entitlement in the sense of something for those that have some attachment to work and those that don't, so truly universal. But then you might have something separate and over and above that for people in the paid workforce for - - -

**MS TARRANT (LHMU):** You would still need something for women in the paid workforce.

**MS MacRAE:** To differentiate that, yes.

**MS TARRANT (LHMU):** Yes.

**MS MacRAE:** You also talked a little bit about employers needing to take responsibility in this area. So would your view be then that we should be looking at something where the employer does make a direct contribution of some kind or is that less of a - - -

**MS TARRANT (LHMU):** Well, I was very interested by the AI Group's comments at the end of their presentation when they argued that it was actually a community issue, that this needs to be addressed, but actually the real driver was workforce participation, which I would have thought is actually an economic benefit for employers. So I actually think employers should bear some responsibility for the issue. Now, how that's done, whether that's done through a levy scheme or how that's done, we're open to options around that. The problem with just doing it through a bargained approach assumes that women are in a powerful organised position, whether it be high union density or whatever. But I don't see why it should be just taxpayer funded when there's such a corollary to economic affect. But it also needs to be spread, because women do predominate in certain industries, so should those employers alone bear the brunt when in fact it's a social good and an economic good that women are actually participating in the economy more broadly.

**MR FITZGERALD:** Can I just clarify, just following on from that, you're talking about a base level from government, and are you talking about a mandatory top-up to full wage replacement or not, because it's clear that there are a number of models that are emerging, but one that seems to dominate at the moment is that the government would contribute up to a certain level, minimum wage or whatever - - -

**MS TARRANT (LHMU):** Listen, if we got minimum wage that would be top-up

for us, you know. That's the problem.

**MR FITZGERALD:** Well, that raises an interesting question. The AI Group, in a position which I think they'll give greater consideration to in their final submission, made a comment that it would be up to the minimum wage or pro rata, whichever was less, and the AI Group has indicated they're going to have another look at that. But I was wondering what your view about the pro rata'ing of any payment based on the hours worked, averaged over the last 12 months or so.

**MS TARRANT (LHMU):** Well, I guess we're talking about two schemes. One is a universal pool of money that is sufficient, and we would argue that it's got to be at least minimum wage. Then the question is, is there something over and above that for people that have actually been in the workforce, and then is that then through some sort of a top-up and to what rate? I think that that's got to be considered.

I guess we haven't got an absolute position on that but so many people in so many circumstances have their whole financial outgoings geared to a certain income stream, that how do you actually support your mortgage payments, how do you support all those commitments if you're used to experiencing a particular wage and then it goes down to minimum wage. So if we're going to be genuine about trying to really address women's participation we've got to look at can you actually do full replacement and is that where some sort of employer levy comes into play.

**MR FITZGERALD:** The second related question relates to Sharon's position and your comments about those that are most vulnerable. Should the scheme - and I think I know the answer because you've just said it. Should there be an argument to say if it's government funding, ignoring the baby bonus for the moment, put that on the side, this scheme should be targeted to those that are least likely to benefit from bargaining, and that's a particular group of women or a particular group of families. So the question might be that this should be targeted to that group, either based on a wage level or based on some other level. So I suppose the question I'd raise is if it's a government funded scheme to at least a minimum level should that be universal to all workers or, given it's good public policy, should it be targeted to those least likely or unable to access reasonable levels of maternity leave through normal arrangements?

**MS TARRANT (LHMU):** It's a good question. My basic response would be it should be universal. But I'm also conscious that by making it universal it depends on how you then layer some sort of top-up above that, because the concern we would have is that a whole lot of employers who do bargain now for paid maternity leave might just say, "Well, the heat is off us, we don't have to pay that any more," if suddenly the government has picked up the tab. How do we ensure that the dollar that is already invested in this area doesn't get lost but in fact gets enhanced?



So I think it should be a universal right because I think the difficulty is there is still implicit and explicit discrimination in the labour market and I think that how you define for public good reasons who might be therefore eligible for that might well then shape back the labour market. It might impede reforming the labour market if we actually stigmatise and then marginalise a particular group of workers as being the needy group. We'll never be able to break women out of that cycle. So I think unless it's a universal right then that becomes a problem. But I don't think we should be letting employers off the hook. There's already a relatively significant investment in the area now that then should be provided and enhanced rather than seen as an opportunity to withdraw that.

**MS MacRAE:** Just in terms, Sharon, of your particular experience, income is obviously a critical factor for you, but was the flexibility that you were able to get with hours and those sorts of things - could you give us an idea of the order of magnitude? I guess because you did have access to informal care that's been obviously very helpful for you, but had you not had access, say your parents weren't around, how significant an issue would child care have been, for example, in that picture? Would that have changed the - what sort of factors most influenced your return to work is the question I'm really asking in terms of income, child care, flexibility of return to work, those sort of things.

**MS EURLINGS (LHMU):** We weighed up the options that we had with child care and I think the cheapest we could find was \$65 per child a day, and that would, before tax, have given me 50 per cent of my wage. So the only option for us was the parents. If we didn't have the parents I'd probably have to move away from the workforce and not return to work. With me I had long service already, so that's why we optioned for me to go back to work, so I can get my long service, otherwise I'll just forfeit it and it's pretty useless, having to work for eight years before then and then I'd just lose it.

**MS MacRAE:** Do you think even though it was a very short period that you had the paid leave, six weeks, do you think that that did make a difference to the period that you did actually take as leave?

**MS EURLINGS (LHMU):** Yes, it extended it.

**MS MacRAE:** Right, it did, okay. Would you say that that's common practice for people that are under the sort of conditions you have in your workplace? Is that generally - - -

**MS EURLINGS (LHMU):** It's very common practice, but I think I'm one of the unusual ones that have come back for full-time. The most common scenario at work is people come back part-time.

**MS MacRAE:** Is that flexibility to come back part-time, is that something that is an entitlement for you or do you have to negotiate that on an individual basis?

**MS EURLINGS (LHMU):** We have to negotiate on an individual basis. On top of that I had to forgo career progression as well. I've been there for 13 years and for 12 years I've been on the same position because I know if go for a promotion I'd lose my arrangements with them. So I've just stayed with that so I can get my permanent days off and the shift that I have access to.

**MS MacRAE:** But in terms of the job that you returned to, was that everything that you were hoping for? Was it equivalent of your previous position? We've heard quite a lot from the inquiry from some women who said, "We got some paid leave but when we returned to work the quality of the job we were doing was so much less than what we were doing before," and that seemed to be a real problem for them.

**MS EURLINGS (LHMU):** Not really, I haven't had any problem.

**MR FITZGERALD:** I know you're wanting to talk about the general objectives that you're trying to achieve rather than the detail of the scheme, but can I just ask you a little bit about the period of time that you think is most appropriate for a paid parental leave scheme. What is it? I mean, we hear a lot of arguments about 12 weeks and 14 weeks, and 26, and 52. But from your position and that of the union what's your view about the length of time that is desirable?

**MS TARRANT (LHMU):** I think if you step back and have a look at what workers are doing at the moment what research seems to indicate is that where workers are able to access paid maternity leave they're taking around about 11 weeks paid leave and then they're topping that up with about seven weeks annual leave. So basically they're using as many reserves as possible. That still only gets them to 18 weeks, and at least half to 60 per cent are saying that they're coming back sooner than they want, so it's not adequate. So I just think that it compels you to say on the one hand, for economic reasons, workers can't survive on less than something that's well beyond just 12 weeks, but on the other hand all the health and medical and sociological argument is there for 26 weeks. So I think we would be saying that it's got to be around that 26 week period.

But we would argue that there's also got to be a period before birth for women in particular circumstances as well. So in a lot of our areas we'd be looking at some form of entitlement to access paid income support prior to birth as well just because of the physical nature of work and the difficulties that a range of women in different industries have actually being able to work right up to the 40-week period. So I guess we would fall around that 26-week period mainly because what we see is that

even those workers accessing up to 18, 20 weeks' paid leave now are finding they can't cope. So if that's not going to work then why put in a system we already know has failed.

**MR FITZGERALD:** Given that one of the objectives is to increase the level of time that a mother spends at home, or is able to spend at home, that increases the level of disruption to employers and so on. There's a bit of a view, as you've heard this morning, that if it's a universal scheme then the discrimination effects against the employment of women of that age would be lessened but not necessarily eliminated. I'm just wondering what your view is that if you introduced a scheme where the end result was the ability of women to stay home longer what would the effect be on employers and their attitude to women, assuming for a moment that they don't have to pay the full cost of that.

**MS TARRANT (LHMU):** Start with your premise that women will stay home longer. They will stay home longer in those early periods but they may well then return earlier after the six-month period and for greater hours. One of the things that we see is that because women get into a cycle of economic disadvantage, it means that they can't then afford child care, that means then a whole lot of factors come into play that impede their access back into the workforce at a later stage of their child's rearing. So although you might argue for a system that give six months' leave up-front, it may actually be - if you've got the right pre-conditions in place, it may well trigger a better return to work after that. So in fact the pool of labour may not diminish, it may actually be enhanced which is, I think, part of the women's participation argument.

In terms of discrimination, our labour market is so gender segregated now I'm not sure what more you can do, although I must admit we've got hospitality employers at the moment waxing lyrical to us that they have now discovered women after child rearing and they are now looking at a whole range of schemes to bring older women back into the workforce to displace young women and we would argue that that's just to avoid training and skilling issues. So I think, yes, discrimination is alive and well and it is a factor that will be there which is why anything that has to be done has to have some universality to it, I think. But basically a lot of our industries are very gendered. Child care is still going to be predominantly female workers and so what we have to do is how do we do it in a way that doesn't create undue disruption to the life cycle of that industry but still provides appropriate life opportunities for the women working there.

We would argue that in fact in child care if you provided six months' appropriate leave with all the right supports, the right access affordability of child care et cetera that in fact you'll get a workforce that comes back probably earlier ultimately than they do at the moment.

**MR FITZGERALD:** Have you got any research or survey results that indicate what you've said about people returning in a more fulsome way after the period of paid maternity leave, because we've heard that a few times and it's a very attractive proposition if it's so and I don't doubt that it's so. But I'm just wondering whether you had any survey results or workplace evidence?

**MS TARRANT (LHMU):** It's probably more by implication and certainly there's something we can go back and have a closer look at. Basically what we find is that a lot of people get - what you see is that particularly in that group of bottom third of women workers a lot of them get into a cycle that they're unable to break out of and so the cycle of informal care, reliance on not working at all is actually more attractive financially than actually coming back into the workforce. That's a combination of the tax system and other sorts of issues as well, so I'm not saying that an income support stream alone is going to fix that. You can see demonstrable factors that could be addressed that would alleviate perhaps the reasons why women now don't participate more fully.

**MR FITZGERALD:** Just on that last point, we heard from one of the participants the other day exactly the point you've raised there which was interesting to us and that is that the dangers of the current arrangement are that by not providing paid parental leave or paid parental support you actually do encourage people to actually completely dissociate from the workforce and stay there. Somebody put it as almost people learn to survive without that income support and then never return at all which was a bit counter-intuitive in the sense that you would have that's not the case, but you've just made the point as well.

**MS TARRANT (LHMU):** But the research actually shows that for women that either haven't worked in their pregnancy or left before the birth and didn't have any leave arrangements their participation rates are much lower than those that were employed at the time of birth and had a leave arrangement. So already that empirical evidence is there. But I think the other thing about women's longer term detachment from the labour market is also about loss of confidence, loss of skills, how do you get back into work and the jobs that are available generally for women re-entering the workforce very often are those same cycle low paid, low skill, casual - it's probably not worth their while to pay the transport to come to work to do the three-hour cleaning shift because it's going to cost them one and half hours of that shift, so there are those sorts of realities.

**MS MacRAE:** The other factor which you haven't addressed directly is whether there's a place in all this for paternity leave and in fact whether you would say that kind of support for the family unit - do you see that as important in terms of making it easy for women to return to work? Again, the paternity leave arrangements are

generally relatively short so the impacts might be small, but I just wondered if you had a view about that as well.

**MS TARRANT (LHMU):** I feel a bit sorry we haven't talked about the blokes at all. Clearly that is important and again, if you look at most of the research around, men do tend to take annual leave and various forms of leave around the time of birth, usually for a period of around two to three weeks most of the data would reflect. That is a real crisis time in any family unit, whether it's a male partner or female partner but that's certainly a stage of real need in a relationship, often even just to look after other siblings or whatever. I think there is certainly an argument for that. Whilst we're saying we're not embedded in a specific model, we also think there could be flexibility within models that actually do allow some transference and Sharon's experience is very positive in that regard of how her and her partner have been able to take leave at different times to be able to provide continuity of care.

I think the breastfeeding argument is compelling in terms of giving women the predominant share of leave, but we've got examples where we do know that males are the major carer and do bring the baby to the workplace for feeds et cetera. It's very tough logistically but those can be done. I guess we're not specific as to what our call would be, but it has to be factored in, what is the carer or partner's circumstances and certainly again look at the research and anecdotally talk to any of our members that are in single-parenting circumstances, it is really tough, so why wouldn't we use the benefit.

It is happening de facto. Sharon's example is absolutely right. In a lot of our areas it's basically, "You do one shift and I'll do a later. You do the weekends, I'll do the week days." So it really is happening and that's a really hard stretch on a family unit. If we're talking about creating the best years of a young person's life, that's too tough.

**MR FITZGERALD:** Are there any other final questions? Any other final comments that Sharon or Louise would like to make? No.

**MS TARRANT (LHMU):** I think we just welcome the opportunity. We will be putting a submission in and we will be very keen to see where we go in September and come back with a response.

**MR FITZGERALD:** You will have a chance to tell us how we got it wrong all over again. Thank you very much for that. We will now break for about 15 minutes and return at 10.45 with Senator Stott Despoja and Unions New South Wales.

**MR FITZGERALD:** We might resume. Senator, if you could give your full name and any organisation you'd care to represent, you can list them all.

**SENATOR STOTT DESPOJA (AD):** Good morning. My name is Senator Natasha Jessica Stott Despoja. I'm a senator for South Australia until 30 June. I'm representing myself and also the Australian Democrats.

**MR FITZGERALD:** If you would like to give some opening comments, that would be terrific.

**SENATOR STOTT DESPOJA (AD):** Good morning, it's a privilege and a pleasure to give evidence to this inquiry into paid maternity, paternity and parental leave. It's been a long time coming. It's an issue about which I feel particularly strongly. In 2002, 16 May, I introduced Australia's first, and my understanding only, piece of legislation for paid maternity leave in Australia. Essentially the model - which I am happy to take questions on or elaborate in more detail - is based on a government-funded national scheme for 14 weeks at the minimum wage.

In September of 2003, a Senate inquiry reported on that legislation, so we've had one of a number of investigations into that model and into the broader issue of paid maternity leave specifically.

Six months after I introduced my bill, under the then sex discrimination commissioner, Pru Goward, the Human Rights and Equal Opportunity Commission of course had their inquiry and endorsed a comparable model. I'm happy to elaborate on the model in question but just a brief outline of the bill, if that's helpful. My written submission of course to the commission explains in detail how the bill would operate.

Essentially, the bill, which has since been reintroduced to the Senate in September of last year, is now the Workplace Relations (Guaranteeing Paid Maternity Leave) Amendment Bill 2007. It builds upon existing provisions in legislation for unpaid parental leave, to provide for a system of specifically paid maternity leave that assists all eligible working women who take time off from employment at the time of or around the birth of a child. The bill provides 14 weeks' paid leave by the government at or around the birth, or of course the adoption of a child; that was a very important component that we ensured, particularly after the Senate inquiry in 2003, and of course that includes women who are full-time workers, part-time workers and casuals.

14 weeks, as you will have heard, I'm sure, and I've been talking to people today is of course a minimal standard. It is recommended by international agencies, a number of whom include the International Labour Organisation's Maternity

Protection Convention 183. I realise this may not necessarily be considered optimum and I do commend those organisations and submissions and other groups who are arguing for additional weeks. I think that's a desirable outcome. I'm not sure if it will necessarily be the first stage of the process but as you can understand, from 2002 onwards, I have maintained 14 weeks is at the minimum of what should be provided for a whole range of biological, economic and other reasons. I think this bill ensures that women's labour force participation is recognised; for example, it ensures that superannuation payments can continue during the period of leave.

In relation to costings, preliminary costings indicate that the scheme would cost around \$591.6 million per annum. That's not including offsets, and I'm happy to go into some of that detail, if you would like. It's based of course on the current minimum wage of \$522.12. The baby bonus, it's worth noting, and I'm sure this has been drawn to your attention, commissioners, on a number of occasions, in this financial year alone costs taxpayers \$1.23 billion per annum, so in comparison to that, this scheme, although minimalist, is certainly economically and otherwise feasible.

You've heard a lot of course - and indeed the witnesses before me outlined I thought very convincingly - why women should have leave on the birth of a child or indeed adoptive parents entitled to leave when they adopt a child. There are some very obvious biological imperatives, recovery from birth of course, the bonding period, the need to breastfeed which probably explains why I'm feeling a little puffed right now, but there are many reasons that women need that time off. Please don't think for a moment that I'm not in favour of parental leave; indeed, it's something I've also campaigned for. Just because my bill doesn't reflect that broader aspiration is specifically because for the last six, seven, eight years now, I've felt there's an immediate and urgent need to enshrine in legislation a right for women to take time off when they have a child and for that time off to be paid time off. As I say, this builds on existing unpaid conditions.

I think this is the first step. I welcome the commission's deliberations. I really believe that paid leave for women on the birth of a child is important. Paid leave to enable a woman to have a child, to nurture it through its most needy days and then resume her career seems pretty basic and appropriate to me. What could be more sensible economically and humanely sound? Indeed, that our society has been so recalcitrant in implementing it is an indictment on our workplaces, on certainly decision-makers and some law-makers and indeed governments, and I include state, territory and federal governments in that. If you believe in family, which governments are so good at extolling, then you should support it and we should be supporting it at a minimum in this way.

We've been tinkering around the edges of policy for so long. We've been

tinkering around the edges of an idea whose time has come. Baby bonuses and other makeshift policies are simply no substitute for paid parental leave and specifically paid maternity leave. I look forward to the commission's deliberations and I hope that I can answer some of your questions.

**MR FITZGERALD:** Good, thanks very much, senator.

**MS MACRAE:** Thank you. There's quite a few questions I guess that come to mind but if I start at the sort of top end, where you did talk about the cost of your proposal against the baby bonus.

**SENATOR STOTT DESPOJA (AD):** Yes.

**MS MACRAE:** The reason I guess for almost double the cost of the baby bonus is that it is currently paid to women who don't have workplace attachment.

**SENATOR STOTT DESPOJA (AD):** Yes.

**MS MACRAE:** Would you see a replacement of the baby bonus by your scheme or how would you see the arrangements for the people that don't have that workforce attachment?

**SENATOR STOTT DESPOJA (AD):** As you would know, my bill was introduced before the baby bonus. My bill of course was updated last year to reflect changes to the Workplace Relations Act 1996. Of course the baby bonus was in place then, so I didn't actually grapple with whether or not a government should remove the baby bonus and I suspect there may be some political issues, certainly from the last government, in replacing it with paid parental leave and of course that will be a question for the now government of the day when they act on your deliberations next year.

My preference has always been for an in-built scheme of paid leave for obvious reasons, ensuring that workplace attachment, maintaining superannuation benefits being paid and of course the continuation of taxation. There's almost comparable amounts paid now, of course. If you look at the amount that women would have before tax, I think it's around \$7310, so compare that with the one-off lump sum payment now of \$5000 from 1 July, they're fairly comparable.

The reason I addressed the issue of working women in particular was partly because there were benefits in place and I include the baby bonus, but secondly, there were opportunities for women, particularly those in low-income arrangements or single-parent arrangements to access, say, family tax payment B, for example. But I think that arguably a scheme of paid leave could coexist with the baby bonus,



you could give a choice in relation to the baby bonus, but clearly I haven't tackled that in the legislation because I thought - that's obviously a political decision but I think the imperative is that women do have access to paid leave. Again, the reason I'm quite happy for this to be a universal scheme, it was just in my legislation, I tackled those women who were in the workforce who didn't have necessarily any access to paid leave, including those who are not in the public sector and that's why my bill doesn't deal with those.

**MS MACRAE:** Okay. Why did you choose to exclude the federal, state and territory governments? Is that a constitutional thing?

**SENATOR STOTT DESPOJA (AD):** It was primarily because I think, first of all, this should be done at a national level and provided by the federal government and because in the case of those federal/state public servant arrangements, they were already catered for and indeed were appropriate, so this was to build on that, not necessarily to assume or subsume the role of state and territory governments. Having said that, my home state of South Australia, as you may know, has just brought down a very impressive, I think, report into work and family commitments where they actually talk about the possibility of state-funded and indeed state-legislated paid maternity leave. So I would imagine that any government could pick up this proposal. I've focused obviously on the federal, perhaps for obvious reasons as well.

**MS MACRAE:** But for other women in the workforce who currently have access to paid maternity leave, they wouldn't be excluded from the legislation. I'm just going a little bit further down the track. If your intention was to say that you weren't looking to necessarily add on to the benefits that were already being supplied, why differentiate between the government employees and those in the private sector that currently have an entitlement?

**SENATOR STOTT DESPOJA (AD):** Simply because they were already catered for and the bill was in an attempt to address a gap that we identified in the current payment arrangements, be they through workplaces such as the public sector on any level, federal, state or territory, and secondly, for those women who were in the workforce, not necessarily at home with children, who were not; that is, women in the workforce who had no access to other leave. The bill was designed to address that gap. That's not to say that it couldn't be added on or expanded to be an umbrella scheme that took into account all of those people and models. That was just the way that we identified the niche, if you like, or the gap at the time.

**MS MacRAE:** I mean it's certainly been the public sector union's view, when we've had submissions from them, that if the government was to do anything here, they would see that as an addition. So to have it as a separate thing here that it's expected

that they would provide it - anyway. I won't labour that point any further. The other interesting thing that I understand from your bill is that you were proposing that the Workplace Relations Minister have a review, looking at the effectiveness of a scheme, if your scheme went ahead, and I was just interested in the things that you'd ask that that review look at, and it seemed to imply - and this is one of the reasons I'm asking you this - if I've got the implication incorrect, that whether there was voluntary top-ups as a result of this coming in, as being one of the major sort of yardsticks of whether or not the scheme was successful, and I guess if I could ask you to comment on how you would measure the success of this scheme, and if that is one of the prime yardsticks, why you've chosen that one in particular.

**SENATOR STOTT DESPOJA (AD):** Well, the reporting date or the date for the review was proposed both initially and then in the updated legislation for three years after the implementation of the scheme. Of course, that's totally negotiable.

**MS MacRAE:** Yes.

**SENATOR STOTT DESPOJA (AD):** The reason that I focussed on the voluntary payments or the issue of employer top-ups was as a clear measure of the effectiveness of the scheme. That is, the bill provides for that minimum wage, 14-week entitlement paid for by government, but the bill also provides for negotiation for top-up by employers, and I think that's an important part of this process. You've heard various models, I realise, and various sides of the argument as to whether or not employers should or should not pay. This legislation, when crafted in 2002, was very much aimed at ensuring that there were no on costs or difficulties or disadvantages, particularly for small businesses, and we've heard their stories and I'm convinced that there will be difficulties for some small businesses, even arguably medium-sized businesses.

We know that those organisations or those companies and businesses that are more likely to provide some form of paid leave now for women on the birth of a child tend to be larger organisations; that is those that have more than 100 employees. So it was important to me to allow for that possibility, and indeed, to encourage it. I think that any examination of the 14-week model to determine its success has to include an analysis of how many businesses are contributing, and I think there's good reason, economic and otherwise, for those businesses to provide some kind of top-up for the employees, whether it's maintaining a competitive advantage, or those that already do provide it, I would assume would accept the government-funded model and then want to improve on it, in order to retain their productive employees, more and more of whom are women.

**MS MacRAE:** So do you see then that this, if I can call it a minimalist scheme, as I think this is how you would describe it yourself, would be a sort of a signalling

mechanism to say that it's normalising paid maternity leave, and that as a result of that signalling, that that's what would encourage the employer take up, because the alternative view might be, well, the employers might say that, well, now that governments are taking care of that responsibility I can actually step back and do less, rather than do more. So how do you weigh those arguments?

**SENATOR STOTT DESPOJA (AD):** Well, it's an interesting point. Obviously it's signalling. I'd like to think it's more than symbolic, because for the first time it does enshrine a commitment by government and workplaces to paid leave on the birth of a child. Indeed, it is minimalist in the sense that - certainly in relation to models that have been put forward since, and I again reiterate that I think 26 weeks is wonderful.

**MS MacRAE:** Yes.

**SENATOR STOTT DESPOJA (AD):** I think 39 weeks in the United Kingdom is a good flag-bearer as well, a good standard. But I recognise that we have to enshrine something and something soon. In relation to how businesses or industries or other workplaces would react, I heard an example the other day of a woman who had just had a child, was working for a French company based in Australia, and couldn't get paid maternity leave, and of course I thought this - European standards and France I don't understand. They actually put forward the argument to her that because they had government assistance, therefore it wasn't the responsibility of that parent or private company. It was the responsibility of government. So I can see the bind that some businesses and more particularly, the individual women may be placed in as a consequence of enshrining government-funded leave.

Having said that, I'd like to think that there will be businesses, particularly those who can afford it, that won't skimp, that will invest in their employees, and particularly those that already provide it. What have they got to lose, economically and otherwise, by topping up what is, yes, a minimalist payment, but a minimalist payment - and it's important to put this on record - that would cover around 40 per cent. I think 37 per cent of women currently earn less than average weekly earnings. So those women would have, you know, a full income replacement as a consequence of this scheme, and they're the women that I've been most concerned with, not high income professional women necessarily, although, as your earlier witnesses today, certainly many of the witnesses before me explained, you know - I believe in universality because I believe the principle should apply to all women.

**MR FITZGERALD:** Could we just explore that a little bit? I mean, I think it is an issue, and now that the government has in fact means tested the baby bonus and extended it over a 26-week period, 13 instalments, the context within which we have

this discussion has changed just a little bit. One is that there is a bonus, and second, that the nature of that bonus has just been recently changed. Some might say to us that there is a recognition that for some women, they will not be able to negotiate paid maternity leave, but there is a group of women for which that, they already receive or will receive paid maternity leave. So a government scheme should be targeted at those most at risk of not receiving paid maternity leave. So I was just wondering whether you could explore a little bit further why you believe that if it is a government-funded scheme, an approach of better targeting, rather than universality is appropriate, when - you're right - a fair percentage of women are already covered by some form of paid maternity leave, and particularly those on higher income seem to be able to negotiate that. So why should the community pay the universal arrangement, covering those people that already access this benefit?

**SENATOR STOTT DESPOJA(AD):** Okay. There are a number of issues there.

**MR FITZGERALD:** Sure.

**SENATOR STOTT DESPOJA(AD):** I guess, returning to my last comment in relation to universality and the fact that I do believe this is the principle - I actually believe this is a workplace entitlement for all women, regardless of their income. But I do believe that the model that I put forward in 2002 actually in some ways addresses that "at risk" group to whom you refer. They are catered for and looked after, certainly to the best extent possible. That is full income replacement for around 37 per cent of those women by this model. So I would argue that this model, while universal, perhaps deals with some of those at risk issues. Yes, I realise that higher income women would have access to paid money from the government as a consequence of this legislation, and admittedly, I don't have a problem with that.

Again, I think that there's a role for employee negotiations and employer top-ups, and you're right - we know from stark evidence that women in more high skilled positions or high pay positions or positions of power are going to be in a better position to negotiate. Arguably, they're the women who would, as you've outlined, would have access to paid leave anyway. So my main concern has been those women who are below average earnings. In relation to the baby bonus, I think that it's a good government move in the budget to means test - well, both family tax being, and indeed the baby bonus, and the rationale for that - I mean, obviously they've got an economic, and other rationale perhaps - but apart from the economic one, with which I agree, I also think that when you don't have a scheme that does ensure that workplace continuation and workplace attachment for women and doesn't ensure continuation of, say, superannuation benefits or taxation for that matter, that it should be means tested. I think that's appropriate. Just on the costings, I might add that in relation to the model that I've given you in the costings, that I've given you of

around \$591 million per annum. That doesn't include offsets as well, because, of course, many women now have got childcare and other costs, including maybe other benefits to which they may be entitled as a consequence of ever having to leave the workforce or whatever it may be.

**MR FITZGERALD:** There's a couple of other questions then just related to that. It is identified that a small business has continued to say to us as it obviously has to you that it would find any imposition of mandatory parental leave that it had to pay for as an unreasonable burden. An argument might well be then again the same thing; that is you can quarantine any government support to businesses of certain sizes, to small businesses, but not to other businesses, and we've done that under various industrial relations and we're doing that in terms of unfair dismissal laws. So, again, the issue is, if the concern for not imposing any cost on the employers is small business, is there any argument in favour or saying, "Well, let's quarantine that," or again do we say, as we have for all women workers, we keep it universal in terms of employers?

**SENATOR STOTT DESPOJA (AD):** I do acknowledge that argument and of course I believe there's a role for employers, businesses and industries, particularly those at the upper end of the scale, to make some form of contribution. I haven't provided for that in the model, partly for administrative reasons, partly because of, particularly six, seven years ago, the sheer urgency that I believed required a model to be implemented as soon as possible. I can also answer that as not just a policy person or a law-maker but as a politician, and that is, you've heard some of the concerns that have been expressed by business and industry groups and I was initially and still remain wary of their willingness to contribute to such a scheme.

We do know though that there's been administrative arrangements in place, as you say, to deal with other workplace relations issues; we also know that women in small businesses, the latest statistics that I've seen, suggest around 28 per cent of women in businesses of fewer than 10 employees have some access to paid maternity leave, whereas at the upper end of the scale, businesses with more than a hundred employees, for example, there's around 61 per cent I think, if not take-up rate but access to paid leave. So there's certainly strong arguments for that but my model, I think, demonstrates the fact that I prefer that this is a government responsibility and then those businesses and industries that are able and willing will make top-ups accordingly.

**MR FITZGERALD:** Just a couple of other questions. They're outside of your model but obviously they've been proposals and you may or may not have a view on them. One is that if you want to go beyond the basic, an approach could be to introduce a social insurance-type model, where both employers and employees over time contribute, as is the case in many other countries. The alternative model we

heard the other day was from Bruce Chapman and colleagues in relation to the introduction of a HECS-style arrangement for maternity leave.

**SENATOR STOTT DESPOJA (AD):** What hasn't Dr Chapman suggested HECS for, the Sports Institute, paid maternity leave - sorry, I put you off the question.

**MR FITZGERALD:** But the point - and I noticed one of the commentators today was sort of endorsing that model - I might actually make the point, the way that model was presented was that once government had determined the maximum level to which it wished to contribute, it was an additionality that would only apply over and above.

**SENATOR STOTT DESPOJA (AD):** Yes.

**MR FITZGERALD:** So I was just wondering whether you have a view on those. They're not in your model obviously and they weren't contemplated when you had this bill developed, but I was just wondering whether you had a view on either of those.

**SENATOR STOTT DESPOJA (AD):** Maybe I will start with Dr Bruce Chapman's model. I think anyone who knows me will understand my wariness of HECS specifically and that is the income-contingent deferred payment arrangement. While arguably it's fairer than other user-pays models, it's not something with which I agree when I believe something should be publicly funded and accessible. So my arguments would apply equally to paid maternity leave as they would to higher education in that specific circumstance. I think it draws too heavily on a user-pays model but I don't think it's appropriate for certain issues and principles. Obviously the issue of paid leave on the birth of a child, drawing on the comments that have been made by organisations from the AIG to the unions before me, there is a community responsibility undoubtedly.

I guess that comes back then to the first model to which you referred. Clearly, I still believe my preference for policy as well as economic but also for political reasons has been for a government-funded model. That's not to say that there aren't models in other countries that have some desirable features, that contribution by employees, employers and government, but the last thing I would suggest is any on-costs, not just only on some of those businesses to which I refer, such as small business, but also employees, particularly those who are not in a position to deal with it, to afford it. So I guess I've gone for - people may call it - a minimalist approach, but I do believe that there are some very strong administrative benefits in terms of the financial impact, bearing in mind this would be paid to employers to pay to their employees, in the same way that - and so their salary would be reflected or maintained. I honestly believe that this is a government responsibility first and

foremost and while I've allowed for negotiations and top-ups, I think individuals, unless they feel very strongly that they should contribute in some way regardless of income, I don't think that's an appropriate on-cost at this point.

**MS MacRAE:** Just in relation then to the way that the bill suggests the payments be made, it's suggesting that the employer would pay - I mean, make the admin payment; I understand not actually physically funding it.

**SENATOR STOTT DESPOJA (AD):** Yes.

**MS MacRAE:** But what were your reasons for that, because obviously there is a bit of an admin cost there for employers and obviously you've said in some of your previous comments that that admin concern is a real one for you. What were the benefits you saw in having the employer actually make the payment rather than it coming from the government?

**SENATOR STOTT DESPOJA (AD):** You can imagine this as being an interesting debate, particularly at the time of the Senate inquiry into the legislation and indeed leading up to the drafting - and I know that there are a range of views as to whether or not it should be considered a welfare payment and some organisations argued then and I'm sure do now that it should be paid through a Centrelink arrangement and thus either direct to the employee, but considered part of the welfare payments. My rationale was first and foremost to recognise this was a workplace entitlement for women, recognising - and I clarify this and qualify it clearly as well - that this is about what's in the interests of the child, the best interests of the child, and I know that a lot of people have argued along those lines, but I feel very strongly too that this is also about women's access to and participation in and continuation in the workforce. I saw it as a workforce entitlement and that's why, through the legislation, it's handled through the appropriate department. Whether or not that adds to an administrative burden, it's a very hard one to do costings on, but that was the rationale, that it would be paid through the department to the employer to the employee in a way that reflected an ongoing payment arrangement, so it could be paid fortnightly, monthly, weekly, whatever the salary arrangement was.

Again, it doesn't necessarily have to be - I'm not wedded to that particular model, but it did reflect some policy considerations as well as administrative ones, and I would argue that perhaps the administrative burden generally would be comparable through a Centrelink or a social security type arrangement. The last thing I wanted to do was add to employers' costs, but having said that, if it's in lieu of the salary, it shouldn't necessarily add too much administrative or economic burden.

**MR FITZGERALD:** Just on this, the workplace attachment is an interesting issue that's central to this inquiry. Some would say to us that in fact the really significant

change that would have made a difference is in fact unpaid parental leave, the right to return to work after 52 weeks, and as you're well aware, that is likely to go for a longer period of time, subject to the current negotiations that are under way. The question that we're confronted with is in a sense, what is the additional benefit that this scheme brings? Where are those benefits? Going back to a point that Angela raised before, if we were looking at this in a couple of years' time, we talked about top-ups as being one sort of indicator of what's happening post the bill, but what would be the workplace changes that you would want to have seen in terms of is it that female employees would be staying at home longer? Is it that they would be returning to the workforce with greater intensity? What are the sorts of measures that this scheme and most of the other schemes are trying to achieve in practice that we don't already get, either through voluntary schemes and/or through the most significant scheme which is the right to return to work, so it's that additionality argument.

**SENATOR STOTT DESPOJA (AD):** Summed up most simply: choice, choice for women, choice that most women don't have now, the fact that two-thirds approximately of Australia's working women don't have access to some form of paid leave. I acknowledge that there's leave arrangements when you have a child, but the fact that two-thirds of Australia's working women don't have access to paid leave on the birth of a child, I think that's an indictment. If we gave women the choice, so it's not about me or other policy and law-makers deciding, "Okay, this will be our assessment, this will be our judgment as to whether or not it's successful," because remember, when I introduced the legislation in 2002, everyone was decrying the fact that our fertility rate had slowed or indeed was declining long before one for mum, one for dad, one for the country.

But it's not about necessarily charting a fertility increase or being responsible for one; that can be a good or a happy by-product but that's not how it should be judged and I didn't want the bill judged in that way at the time. Yes, it is about, for some people, the issue of skill shortages or as the witnesses before me pointed out, the issue of this is happening in a tight labour market at the moment, "I wonder if that's one of the reasons," and I suspect it might be one of the reasons for some business and industry groups to back a model, but that shouldn't necessarily be the judgment. Having said that, again if a by-product is that Australia's participation rate of women, currently eighth lowest in the OECD, around 72.4 per cent - if the increases that's good for the country, yes, and theoretically good for women and their families. So it's not just about skill shortages, it is about, yes, maintaining that workplace attachment. But it's about giving women the choice so that if you do want to access the paid leave and then go back into the workplace, you can do so without a detrimental impact to your family, your child, your income. If you want to access the unpaid parental leave provisions upon which this bill builds, then that's good too. If you want to leave the workplace, that should be your choice too. But at the



moment, women shouldn't have to leave because they have no choice, partly because they don't have access. I know that may be a nebulous concept but it's about choice which women still don't have in the workplace, in the same way that their male counterparts do.

**MR FITZGERALD:** The choice is never nebulous but I just ask, before I ask Angela for some final questions, some would say to us you could achieve maximum choice by simply increasing the baby bonus. In other words, if it was genuine choice - not a lump sum payment because they have now gone on to an instalment based payment, but a payment of sufficient quantum would in fact achieve that. So the question is, why do you need to establish a paid leave scheme vis-a-vis simply increasing the level of income support. In a sense, why I raise that is that there has been some commentary on the New Zealand scheme and one of those reviewers has actually said that our scheme is better because you end up with long periods of unpaid leave but you also end up with a non-discriminatory, universal payment without any complexity.

A question has arisen in this inquiry that if choice is one of the key objectives, you might simply achieve that by increasing the payment and not introduce a leave scheme. I'm sure there are other reasons why you would introduce a leave scheme but I'm just wondering whether you have a view about that.

**SENATOR STOTT DESPOJA (AD):** Well, clearly my preference is for an enshrined entitlement to paid leave, partly because that reflects a workplace entitlement. I know that not all models reflect that but I do think you build in that notion that this is part of your workplace and conditions and guarantees a right to return to work after the birth of the child. In terms of the lump sum one-off payment, the baby bonus, as I referred to earlier, the idea that it doesn't ensure workplace attachment. Yes, granted, I acknowledge that you could have the money and then combine that with your unpaid leave. We all know that there will be different businesses and industries that view that in certain ways, but from my perspective I think that superannuation and those kind of continued payments - as well as taxation - those payments and those deductions should be continued.

I think that is a better way of enshrining and ensuring a woman's attachment to her workplace, as opposed to the one-off payment with the unpaid leave. Surely women have the right to paid leave when they have a child. That's not just from a workplace perspective, it's from the community perspective as well. That again was the pressing need which led to the drafting of this legislation.

**MR FITZGERALD:** Good, thanks.

**MS MacRAE:** Can I perhaps just ask one final question, because I know we're on a

time limit here, but I was just interested in eligibility. One of the issues that comes up regularly - and I've asked it of other participants - is that unpaid leave is subject to a certain level of attachment to the workforce. As I read your bill it talks about all women in the workforce, whether employed on a full-time, part-time or casual basis should have funding for this. That's one of the objects.

**SENATOR STOTT DESPOJA (AD):** Yes.

**MS MacRAE:** Would you see that being defined in the same way that it's defined for unpaid leave or would you see it being potentially more comprehensive than that?

**SENATOR STOTT DESPOJA (AD):** I think this is going to be an interesting area with which you can grapple. I prefer - in the legislation obviously it defines eligibility in terms of all working women, again to address that need, so not meant to discriminate against women who were not in the paid workforce, so full-time, part-time and casual workers, but with a stipulation of 12 months' continuous service.

**MS MacRAE:** With the one employer or just in the workforce?

**SENATOR STOTT DESPOJA (AD):** The first time around this was actually brought up in the Senate inquiry and the legislation reflects the one employer but that was an area with which the Senate grappled and is one that again I think if you were talking about multiple employers, I think there is an argument for that. In terms of the issue of pro rata'ing that also is enshrined in the legislation. You have tested me on that last one. 2002 is a long time ago.

**MR FITZGERALD:** Eligibility is a very critical issue for us. Anything else, Angela?

**MS MacRAE:** No, that's fine.

**MR FITZGERALD:** Any other comments you would like to make, senator, before we conclude?

**SENATOR STOTT DESPOJA (AD):** I think through you, commissioners, if I can make a plea to the federal government to act on your deliberations. I'm glad to see that the momentum has built around this issue. Can I just acknowledge, the witnesses before me talked about a tight labour market perhaps spurring along this issue. I would suggest that there are many organisations - and that includes businesses and industries, but of course organisations like unions, women's groups, academics, many of whom have worked very hard over perhaps 30 years now really to get this issue not only on the agenda and implemented - and I'm not suggesting that other models don't have worth.

I think I introduced a model that I believe was economically feasible and desirable, but I do believe that one day this country should be talking more than 14 weeks' paid leave for women, and indeed for parents on the birth of a child. Thank you.

**MR FITZGERALD:** Thank you very much.

**MR FITZGERALD:** We might start with our next participant, Unions New South Wales. If you could give your name and the organisation you represent.

**MS TATTERSALL (UNSW) :** Amanda Tattersall. I am the deputy assistant secretary of Unions New South Wales and the spokesperson on women's issues.

**MR FITZGERALD:** Good. Amanda, if you just want to give us your opening comments and then we'll have a chat.

**MS TATTERSALL (UNSW) :** Sure. I'm here on behalf of 600,000 union members in New South Wales and we are here today to talk about the need for Australia to fall in line with other OECD nations and adopt a universal policy of paid maternity leave, paid primary carer leave for all women and primary carers. The fundamentals of the system that we're proposing - and we do have some detail which we followed up with a more detailed submission - is that we think a system needs to be at minimum for 28 weeks, so that is two weeks in advance of birth and six months' paid support after birth. We think that the system needs to be universal and we think there needs to be a mechanism for the system to be offered to all working women - casuals, full-time workers, shouldn't be discriminated between just because of different types of employment - through a base rate from government available to all mums. We also think this should be provided to contractors, for self-employed and stay-at-home mums.

We also think for employees and for workers that there should be an additional provision where there is full wage replacement accessible to working women, even if they change jobs. We also think that a system of paid maternity leave should be where the family requires it or wants it - made accessible to fathers and partners if they're acting as the primary carers of the child. We're also investigating a specific role for paid parental leave. I know there has been a discussion on that this morning. We haven't finalised our position on this but are very interested in the idea of a separate four weeks' paid parental leave as well.

In terms of the rationale underpinning the system, we see paid maternity leave and a system of paid maternity leave - the philosophy behind it - as being informed and sitting at the intersection of two policy worlds: firstly, the domain of work; and, secondly, the domain of health care. In each of those worlds it is first and foremost about women but it's about society as a whole, it's about families. In a sense our policy framework and the philosophy that we've developed crosses between those key principles, and I want to outline them for you.

So the basis of the system we see really needs to look to the welfare of the child and the pressures of child birth for women and we're really instructed and enlivened by the Rudd government's discussion of the importance of wellness as a

system that underpins health care and so we too have adopted a scientific basis, a health care basis for the system that we're presenting and we look to the consensus of health experts symbolised by the World Health Organisation recommendations that to maximise the health of the child, where possible, it's advised that children are breastfed for six months. So we very much take our policy at some levels from this question of wellness and welfare for children.

Even beyond that there's additional scientific evidence that talks about the continuity of care, the importance of one-to-one care, the importance of attachment. I guess our aim is to ensure that by having a system of paid maternity leave we can remove financial disincentive to provide for these important rights for children and because of this, because of the idea of wellness and the health benefits it's from that that there should be a contribution from government. That is the rationale from why there should be a contribution from government and we think that the system for that contribution should be consistent with how other elements of our health system are funded which is through a health insurance system such as Medicare. That has been the philosophy and practice of the Australian system for a long time now and we actually think that those principles and philosophy can help instruct how we fund and pay for a system of paid maternity leave.

The second philosophy for paid maternity leave - and it is this intersection of these two spaces is that we also see paid maternity leave as a right at work. By the term "right" we mean a universal entitlement to all workers, something that all workers are entitled to. We really think that this right is not an abstract one, but actually really speaks as a key ingredient to building an industrial relations system in this country that addresses the balances of work and family life and the pressures of work and family life. For that we also think it's important that it's a system for all workers and not simply employees. Types and forms of employment have become increasingly complex and we think that casuals and contractors should be as equally entitled to a system of paid maternity leave as full-time and part-time workers.

We also believe that as it is a right at work then what we should also be talking about is a system where there is full wage replacement for all workers. There is never any question when it comes to sick leave or annual leave that workers are entitled to nothing short of full wage replacement and we think that that same philosophy, give that this policy in part is about work and work life, should be instructed by the same principles and provide for a system of wage replacement. We think that it should be a system for all women workers. We don't think that it is possible to means test or find an arbitrary line, it needs to be a universal system that's paid.

Indeed, we fear that a means testing system rather than a universal system could threaten to distort the labour market, it could create income brackets where

discrimination against women is more pronounced or certain forms of employment where discrimination against women is more pronounced. We actually think a universal system is the best way to ensure that all women remain equal before the law and before a paid maternity leave standard. We think that the way in which this right at work needs to be paid is from contribution from employers and I will go into that in a little bit more detail. But we think that Australia has been a long time running with systems that allow for contributions for employers: our superannuation system, our workers compensation systems, as discussed earlier the system that provides for rights for long-service leave and severance pay in the construction industry all provide useful models for what is possible for paid maternity leave that ensures that these questions of discrimination are not likely to rise.

Just to give you a little bit more detail, Unions New South Wales represent 600,000 workers and over 270,000 working women. We have 64 affiliated unions. Our policy program and the policies we take are rooted in the most diverse experiences of working women and we have many of those women here today. We have finance workers, factory workers, construction workers, hospitality workers - incredibly diverse across the workforce. Really we are the largest member based organisation for women and women workers in New South Wales. All of our policies are developed in response to these experiences and I think that what we bring here today is a really an experiential understanding of what's going on for working women and we hope that is of use to the Productivity Commission.

The policy that I have outlined was endorsed by a mass meeting of all Unions New South Wales' affiliates. But most importantly, the actual policy came from and was based in working women's experience. We had a conference of 245 predominantly rank and file delegates that was held to celebrate the centenary of International Women's Day and over two days women working in small group sessions and discussions to discuss and identify issues of importance to them based on their own experiences and their lives in the workplace and outside of work. This was identified as one of two key priorities, this, and in general dealing with work/family balance issues. It's of immense concern. It comes up over and over again. We see that paid maternity leave is a very concrete way of mending the fissure between work and family life, given it's built from the beginnings of family life with the birth of a child.

I think it's important to understand the context in which this discussion is taking place because we do have a new government and we do have a new political climate and from our perspective at Unions New South Wales we saw the election in November last year as a referendum on rights at work and the needs and concerns of working mums and dads were paramount and central to what happened in that election. We also saw during that period the discussion and the debates about the pressures of work and family, the pressures on working families, the pressures of

costs of living becoming central debating points on television. Working families is now a very popular phrase amongst our political leaders.

I guess what we think is that we stand at the precipice of a very significant moment in our history. We are at the beginning of the 21st century and we and you have the role of being able to help develop a system of work, as well as other rights that speaks to what an industrial relations system for the 21st century needs to look like. We did this 100 years ago. In the 20th century the standard for work was the harvester man who had a dependent wife at home and we had an entire industrial relations system based around that model. But the harvester man is not the workers of today. Instead, to use Kevin Rudd's favourite phrasing, we have industrious working family where men and women both work.

The income of a family unit relies both on the wages of women and the wages of men and that means that child rearing directly enters into considerations around working rights because working mums and working dads are also taking care of their children while maintaining an income. It is a fundamental shift from what we saw a hundred years ago, and because of that shift in work and family roles, we actually see that our industrial relations system needs to take this new reality on board and we welcome the opportunity to be able to talk about that today with the Productivity Commission.

In setting this standard we also look around the world and you have already done a lot of that research. But when we look around the world we know with dismay that Australia lags behind other nations. Tragically we lag firstly behind other developing nations. Tanzania in Africa provides 14 weeks' paid maternity leave. The Republic of Congo provides 15 weeks paid maternity leave. Chile provides 18 weeks' paid maternity leave. Then we can go to the industrialised world, Estonia provides 18 months' paid maternity leave. In countries that look and feel very similar to Australia, the United Kingdom provides 39 weeks' paid maternity, six weeks at 90 per cent full wage replacement. In Canada there's 15 weeks' maternity leave, plus 35 weeks parental leave adding up to a 50 weeks' system of maternity/parental leave. We think that Australia needs to see itself as a leader internationally on this issue rather than a fellow of some of our developing nations.

In terms of the details of the model that we're presenting, firstly, in terms of length, as I've outlined we're talking about six months. Importantly to say we're referring to 28 weeks, two weeks before and six months after. On this we're instructed by the health and scientific evidence of the World Health Organisation. As the commission, I'm sure, is already aware, breastfeeding rates in Australia lag behind the rest of the industrialised world and that is a significant problem for the health standards and our health budget. We will be putting into our submission the millions of dollars of costs that are incurred by the Australian government as a

consequence of not being able to have more women being able to access breastfeeding and provide breastfeeding to their children. We're talking millions of dollars in prescription costs and additional visits to hospital that would help be averted if there was more access to breastfeeding and not a financial disincentive that hurts women who choose to breastfeed. There's evidence - and I'm sure you have seen this - that if people are in work, before the six-month period, they're 10 per cent less likely to breastfeed. The United States has the lowest rate of breastfeeding and it's no surprise that the United States also has the worst system for maternity conditions in the world. They don't have a system of maternity leave that's universal.

If there is a standard that's adopted that's less than six months, we also particularly have a concern that there will be no assurances for breastfeeding amongst many of the workers that we represent. This is the silent story about maternity leave, there's plenty of vocal women who work in offices who possibly could be able to breastfeed at work. There's plenty of other women who work in factories, in hospitality, on the railways - testimonies that we've received - where it is physically impossible for breastfeeding to occur in that workplace. If we're really serious about ensuring that these health benefits are as critical as we all know them to be, then we really do need a system that can allow for - when it comes to the first six months of life, then we need to ensure that there is no financial disincentive for allowing that breastfeeding to be able to be possible.

In terms of who should be eligible for the system, we think there should be a universal system, as I outlined. Similarly, universal standards exist in both the health care system and the workplace system. We see Medicare as a universal payment in the health care system. We see superannuation, workers compensation as universal payments in work, and we see that those universal standards and principles could very much brought to bear on paid maternity leave. Furthermore, in terms of the universal system, the reason why we emphasise the role of universal - and we'll talk a bit more about the base rate from government and the top-up from employers - we need to recognise that women and men, but in particular women, move jobs a lot. The current system of paid maternity leave which is an ad hoc system which provides, depending on the statistics you use, access to paid maternity leave for 44 per cent of women or 18 per cent of women.

There's a lack of consensus about exactly what's going on, I think a lack of knowledge. The statistics certainly seem to be different. 25 per cent of those women miss out because they shift jobs in the previous 12 months. We don't think that is going to be useful, again for an industrial relations system in the 21st century where people are expected to work five different full-time jobs in their lives. In terms of the benefits provided, there are two parts to the system: the first is a universal base paid to all mothers. As I said, this flows because of the health philosophy that one level underpins this model. We going to explore different options in the written



submission. It seems to be evolving as a consensus as minimum rates of pay, but we'll explore a variety of different options, including average male wages and so forth in the submission. We'll investigate options which I think is probably the most useful thing we can do. But we think that minimum rates of pay is possibly something to explore there.

We're going to put evidence in our submission that there is a level of not cost neutrality but cost offset that comes from savings that will be maintained from a health budget on this issue. As I outlined earlier, the innumerate costs that come from having people not being able to breastfeed will actually assist the base level of pay that can be provided in this system, as well as rolling in the baby bonus that currently exists.

In terms of the second element of the system, as we said, because it's a work right we think there should be full wage replacement for workers. We think this should be provided to full-time employees, as well as part-time employees, and in casual employees at pro rata rates. Costing models, we will provide to the commission fully for when submissions are due. In investigating that model we really are instructed by the New South Wales construction industry levy around long service leave and we'll be outlining details about that in the submission. We think that system works quite well.

That system does do things, such as provide - you know, the nature of the construction industry, there's a lot of movement in and out of work, movement from different workplaces. It provides a mechanism to sort of review work over a longer period of time and provide rights, and I think that such a similar system is what we can adopt here. We note the challenges for potentially some small businesses in terms of, this is a cost of employment. We will investigate this in the model. We want this to be something that is able to be built into our system. Possibly if a company is too small to be paying payroll tax potentially it should also be exempt, but we're not finalised on that model.

We do think the best way to have the system of full wage replacement is contributions from all employers on the basis of all employees, not just women employees. We need to avoid discrimination in industries where we sent up a standard where if it's on the basis of only women employees then will there be discrimination against women? I hope not. But given the discussion this morning I'm not confident that that's not possible. We also don't want discrimination between sizes of business because if you have a system that is not all employers, larger businesses who have the advantage of economies of scale may be in a better position to provide the paid maternity leave than smaller employers that do not.

In this tight labour market we're in a situation where people are probably going

to be trying to attract women to work, this would be inappropriate for there to be that sort of discrimination between size of employers. We think the best way to overcome questions of discrimination is through universal general standards and that's why we've adopted a system of full wage replacement with collective responsibilities for all employers.

In terms of the amount of leave, the amount of money being paid, it may be easiest for the amount of money being paid to be based on women's earnings. As I said earlier, if a family elects or needs the husband or primary carer to take on that responsibility, the question becomes, "Is it based on a woman's rate of pay or the husband's rate of pay?" I have to be honest with you, I think this is a complex question because of the pay equity gap between men and women and their 84 per cent differential. We don't want to set up a situation where there's a disincentive for men to be able to play a role in looking after their children. I actually think that what we want is to be able to create a system where people can have choices because they actually have genuine options that don't incur financial disincentive.

But we're also conscious that we want a system that is easier to understand, so we'll be canvassing possibilities in our submission. In terms of when does the system kick in, we'll investigate this in the submission but we think that possibly there should be some time served in a workforce but it certainly shouldn't be a system, as it exists at the moment, for paid maternity leave where you have to have 12 months' continuous service at the current employer to be able to be entitled, because 25 per cent of people miss out because of that.

I want to hand over to Sariah Giblin. Sariah is really one of the reasons why we need a system of paid maternity leave. I want to tell her story for you but she has had some experiences that I would like her to share.

**MR FITZGERALD:** If you could just give your full name and anyone you represent other than yourself, for the record.

**MS GIBLIN (UNSW):** My name is Sariah Giblin. My son was born at 25 weeks. He weighed 650 grams. Neither me or my husband were prepared for the arrival of our son. But now that he is here we cannot be any more grateful. We're grateful that he lived and thankful that he's still with us today. My son is in Nepean Neo-Natal Intensive Care Unit being looked after by the wonderful nurses and doctors that work there. As you may not know, I returned to work full-time, 40 hours a week, seven weeks after having Wiremu because of financial difficulties and the worry of losing our house.

If I had had six months' paid maternity leave that would have taken a lot of stress

and burden off us because of the expense we're having to reduce to one car. My day starts at 6.00 in the morning, I drop my husband off at work, then go to work myself. After work I go and pick my husband up and then we go to the hospital. I breastfeed my son and then express milk before I leave. We then go home, prepare our dinner and I would return to the hospital again to feed Wiremu and then return home again to express more milk. This happens every day I work and by the end of it all I am exhausted. On my days off I spend the whole day in hospital with my son. He's only allowed his parents and grandparents to visit, no-one else has seen him yet. I hate the fact that he's there alone and I feel really guilty leaving him there alone, but the reality is I have to work.

My husband went back to work the day after I had my son and he hasn't had a day off since. Having a premature baby means that the child normally stays in the hospital up to full term, depending on the situation, and because my son has chronic lung disease and at 25 weeks this means that he would have to stay in hospital for 15 weeks. Going back to work has been tough because you can never stop thinking about your child. I have to express every three hours so that I don't lose my milk for when my baby gets home. My work doesn't have the facilities for me to breastfeed. I am expressing milk in a crew room. Sometimes it's hard because I feel uncomfortable and think someone might walk in. The majority of our staff are under the age of 18 so I guess they don't see the need of supplying a more comfortable room. The added stress of returning to work causes difficulties with my breast milk and it has started to dry up so my doctor had to prescribe me with medication so that my milk would come back.

The World Health Organisation recommends that all babies should be breastfed for at least six months because breast milk has the nutrients and antibodies that a baby needs in order to grow and fight infections. For Wiremu this is more important because of his undeveloped organs and he is more prone to infections. Wiremu's arrival along with increasing living costs has meant that it's impossible for me to take six months' unpaid leave. Every mother wants what's best for her child. The first six months of a child's life is crucial for a mother to be able to bond with her child. Other than worrying about the ongoing health of my son, I worry about how we will be able to cope financially. My son's eyes have not developed very well yet so he may have to come home on oxygen, so I have to take unpaid annual leave again.

While this is just one story, I know that there are other mum's whose baby's are also at Nepean Hospital who have similar stories. It is critical that Australia introduces paid maternity leave so that families are not overburdened financial and babies get the best start in life by being able to be breastfed for the first six months.

**MS TATTERSALL (UNSW):** So I will just touch on a couple of final issues, not thing the time. The first is in terms of return to work. I know you've asked about

this issue. The evidence, particularly from the United Kingdom suggests that in general the greater level of financial compensation offered to women - the longer the leave time offered to women the more likely women will return to work and to the same job and we think that that is an important element for understanding women's participation and the system for paid maternity leave. In a sense, is it a carrot or stick that's going to ensure the women's participation is maximised is another way of looking at it and the evidence seems to say that the carrot, ensuring that women can have adequate time at home as well as a transition back to work is the best system for this.

We think that the right to return to work into the same job needs to extend for up to two years. We think there are genuine challenges for early childhood care, not just for under six months or under 12 months but up until two years with waitlists - I know I'm on a waitlist that doesn't see my child getting into childcare up until 18 months and two years, this is a pressure that all families face. If a system of paid maternity leave in this policy is going to incorporate issues around right to work, we really need to understand the inadequacies of our child care system as part of that. We also think that it's important that the right around paid maternity leave also be connected to rights around flexible work hours, not simply about the right to request flexible hours, but actually rights around flexible work hours. The issue of care and how care is balanced after the six-month period is critical.

I know an issue has been raised about whether a universal system mitigates employers being employers of choice. I just want to take that issue head on before we can have further discussion around it. We think that given the health and work implications of this system that Australia needs to be in a position where we have a universal standard of six months. We think if employers want to distinguish themselves and become employers of choice there is plenty of space to do so after the six-month period where the health implications are less dangerous for children. So on that, in particular passages in terms of return to work, the right for flexible work, the right to flexible work hours and also broader issues around pay equity and so forth are more than able mechanisms to ensure that employers can distinguish themselves as employers of choice paid maternity, given its health implications is too vulnerable a system in the first six months of a child's life to be used to simply distinguish employers between good employers and bad employers.

All employers need to provide this to ensure all children get the best possible care, as well as all working families, particularly working mums can balance work and family life. So I guess the challenge that we put today and the challenge that you're investigating is what society do want Australia to become in the 21st century. Are we the peer of Tanzania who has 14 weeks' paid maternity leave and a life expectancy of 51 or are we like Canada who has a system of 50 weeks of leave? We think that the testimony and the stories of the hundreds of women we have heard,

current mums, mums to be, future mums really speaks to the need that if we're going to have a system that respects health and work, social responsibility, political responsibility and employer responsibility needs to be held out to provide a system of six months universal paid maternity leave. I will leave it there.

**MR FITZGERALD:** Good, thanks very much, Amanda. Thanks very much, Sariah. We are very grateful for your personal experience, Sariah. We have had the privilege of hearing from a number of women in various places we have attended who have given us their stories and there are very important to us because at the end of the day these policies have a very personal dimension in your case and your husband's and obviously the case of Wiremu.

If I could just start with a more general question. Clearly your position for a 28-week paid parental leave scheme is significantly more substantial than some of your other union colleagues, including the ACTU, whose formal position we will hear in the next few days. But I was just wondering why you have come to a view that 26 or 28 weeks is the appropriate point at this time, as distinct from some of the more modest schemes or minimalist schemes that we've heard of so far.

**MS TATTERSALL (UNSW):** I guess there are two things. Firstly, the ACTU policy was decided and determined in 2004. We, given the centenary of International Women's Day we thought that it was an incredibly important time to reflect on the industrial relations policy that we needed and we asked women who came to that, hundreds of women who came to that to talk about what issues they needed and what policies they needed. The consensus that developed at that was six months. As I said, the philosophy behind that was the health implications around breastfeeding as the philosophy. I guess it's also because at Unions New South Wales we see that whatever the findings of this inquiry are going to determine the system of paid maternity leave for the foreseeable future. We see that this is probably the one chance in a generation that we have to be able to talk, to build a national debate and discussion around paid maternity leave. On that basis, it's important for us to aim for the system that can maximise health benefits and the pressures of costs of living and the need to balance work and family the first time, rather than do that incrementally and we feel that's important for that mixture to be presented to the Productivity Commission. That's the reason for the position.

**MR FITZGERALD:** Is the aim to actually allow women to be able to stay away for 26 weeks or is the aim to be able to allow - -

**MS TATTERSALL (UNSW):** 28.

**MR FITZGERALD:** Two weeks and 26 - or is the aim to allow people to stay away much longer? My point for that is that so far, what's very clear to us is that if

people receive paid maternity leave, for example, for, say, 12 weeks, it's very likely they will extend that on half pay or whatever for a much longer period of time. So in a sense you can argue that you might be able to have an arrangement that gets you to 26 weeks or 28 weeks but in fact you don't need to fund for that length of time, so you can get the achievement of women being able to stay at home with the new child without actually having to pay in totality for that period of time. I was just wondering whether you have a view about that. I might ask Sariah, if you were to get a period of paid leave, how do you think that would have impacted on your decisions? In other words, how long do you think you would like to be able to stay away from work, given your child's circumstances and so on?

**MS TATTERSALL (UNSW):** Do you want me to answer first?

**MR FITZGERALD:** Yes, please.

**MS TATTERSALL (UNSW):** I think that we need to really understand the cost of living pressures that people are under. Certain women in certain conditions would be able to be in a position, for sure, to receive 26 weeks', 28 weeks' pay and take off a year. That is not the case for many of our members. Many of our members are very low-wage people and the financial burdens imposed by taking time off mean that they're not in a position to take anything more than what is full wage replacement. We don't need to look further than the housing foreclosures that are happening in western Sydney, the incredible increasing price of petrol, the increasing prices of food and groceries, these are national issues and part of a national debate. There's a national emergency around cost of living pressures.

I think it's too hard a burden to put on to people to expect women to have half pay for this work entitlement. When it comes to sick leave and annual leave and long service leave, there's a general social expectation that people should be entitled to full wage replacement. Why should women have to only have half pay in contrast to other work entitlements? Furthermore, this is not a light issue. It's not just a work entitlement, it's also about the health and wellbeing of the child. We would like a system that ensures and maximises and improves Australia's standing in taking away the financial disincentives, to the rate of breastfeeding, and when it comes to the six months - we could have come here and presented the Canadian model which is an even more expansive model than what we're talking about, but because of the intersection of health and work policies, we think that six months is the right amount, but no amount of half pay during that period.

We don't want to set a prescriptive model. If a family is in a financial position where they can take leave over a longer period of time, let them choose that, but let them not be under a financial disincentive and financial cost of living pressure to have to return to work earlier if their situation requires it.

**MR FITZGERALD:** Sariah, if you can, if you were to receive the 28 weeks paid, what decisions do you think you would make in terms of how long you would be out of the workforce? Obviously your son has particular circumstances which would impact on that, but just generally, what would you desire? What would be the desirable period to stay out of the workforce if you were paid for, say, 26 weeks?

**MS GIBLIN (UNSW):** If I was paid for the 26 weeks, then I would probably take the whole 26 weeks, only because spending time with my son would be more important to me, and also that my pay or whatever would go into our mortgage, but spending time with my son would be the most important thing that I'd want. I know that my husband would feel the same, but at least one of us spending time with him, we could help him with his development and also with me breastfeeding him every single day, that's also helping him as well. So just being with him and spending that quality time with him would be a good help.

**MR FITZGERALD:** Do you think you would take more than the 26 weeks? These are hypotheticals. It's not a commitment.

**MS GIBLIN (UNSW):** If he wasn't premature, maybe, because he's already been in hospital for 13 weeks, so that's like three months of the six months - - -

**MR FITZGERALD:** Sure.

**MS GIBLIN (UNSW):** - - - meaning the other three months would be just him coming out of hospital and spending time with him. So I'd probably want to spend more time with him if I could. But if it was just the six months, then obviously I would just take the six months and then go back to work.

**MS MacRAE:** I guess my question for people in situations like you are, Sariah, how much of the problem you are facing might be addressed by making changes to the income support system generally, rather than having a paid leave arrangement, because it seems to me that it's the income pressures that's really giving you the very hard time and I guess not necessarily seeing these things as a trade-off, but ultimately it's the income issue for you more than the leave issue in a sense, that if the income supports were stronger, as long as you had that return to work available to you still, I guess that's the issue for you as well.

**MS GIBLIN (UNSW):** It depends also on how much - because they base your income on what your partner earns if you're, say, a stay-at-home mother - so depending on what your husband earns - well, I've already asked for, like, payments and stuff, and they base it on if you earn over \$140,000, then you don't come under the - you don't qualify for it. So me and my husband have already been there and

done that and that also hasn't helped us. We've asked for three payments, carers, carer's allowance, family payment, and they say that we don't qualify.

**MS MacRAE:** The biggest ongoing financial stress, if I understood you, was that you've got a mortgage that's basically - - -

**MS GIBLIN (UNSW):** Yes.

**MS MacRAE:** I guess in Sydney that's a very big issue.

**MS GIBLIN (UNSW):** Yes, because we've got a mortgage - and it's not an extravagant mortgage, you know, we're not living in a mansion or nothing like that, it's just like a normal house - but we're still struggling to pay our house off.

**MS MacRAE:** Right.

**MR FITZGERALD:** The issue of a top-up, if I can come back to it, Amanda, just for a couple of things and this whole issue about discrimination against particularly female workers, I was just wondering what your view about that is. Employer groups have universally said to us so far that they would support a paid parental leave scheme, provided the government pays for it.

**MS TATTERSALL (UNSW):** Very generous.

**MR FITZGERALD:** And people say, "Well, of course they would," but the additional comment is that that support changes dramatically if there was to be a mandatory top-up. You've already identified that for small business, there are concerns which we want to look at, as you have as well. But a more general concern I suppose is that if you have mandatory top-up, even if firms were able to afford it, they may in fact choose not to do so; in other words, that you will heighten the discrimination against women of a particular age once you make mandatory top-ups and I just wondered what your view about that was. Obviously there are a lot of top-ups that are already in the system through voluntary or collective bargaining arrangements but is it true to say that there would be no increase in discrimination against women if you were to make top-up mandatory?

**MS TATTERSALL (UNSW):** I think the important thing is to ensure that the top-up is based on a calculation of all employees.

**MR FITZGERALD:** Which is at the broader scale.

**MS TATTERSALL (UNSW):** If you can go as broad as possible, the financial penalty on any individual employer is minimised. The truth is that there are plenty



of good employers at the moment who actually are taking what I would describe as almost an unfair burden for the costs of this compared to other employers who do not. If you're in a female-dominated industry in the private sector and you're paying a large amount of paid maternity leave, you'd be paying much more at the moment than you'd be paying under a full collective employer contribution system. So it's almost about evening out the responsibility across society or across the employer community rather than just to good employers, which I think makes it critically important.

**MR FITZGERALD:** Just on that, there's a number of models which you're aware of, and Julie Perry who is here with us proposed that it be funded by a levy both on wages and on payrolls, whether that would in fact be able to be sustained, but what is the union's position in relation to employees contributing a portion of the costs either of the top-up or of the whole scheme, but just say the top-up for the moment.

**MS TATTERSALL (UNSW):** Two things: we're interested in a model that can be simple and understood. A simple model of a base rate from government and a small percentage employer contribution is a very simple, accessible, streamlined, manageable system which we think is critical for being able to get this up and get it supported, using existing systems such as payroll tax. When we had superannuation - and superannuation came about because employees made a collective decision across the country to forgo pay in order to be able to create the system of superannuation - we had quite a different industrial relations environment where there was wage fixation and so forth. Now, that environment doesn't exist any more. I guess I'm only concerned that I think it's very difficult operationally to be able to have an employee and employer contribution in this industrial relations environment.

In this industrial relations environment where there's much more decentralisation, where there's much more different classifications of employees and workers and contractors and so forth. I think the simplest system is with employer contributions because of the payroll systems that already exist. So I don't want this system to not receive support through complication, that's why we've presented something that is relatively streamlined for the commission to consider.

**MR FITZGERALD:** Could I put another proposition too: we met with a government employer recently who put it to us that in their wage negotiations with the unions that the issue of paid parental leave in fact rated not very highly. I just want to qualify that; that is, that they already have I think 12 or 14 weeks' paid parental leave and by other standards, that's reasonable in the degree of flexibility. But they were saying that now that that minimum has been reached, the negotiations that they have had tend to concentrate on other issues of flexibility, some of which you've already raised. I was just wondering whether or not, again going back to the length of time and what have you, one needs to go to 26 weeks and beyond to

achieve the objectives you're setting out or whether or not workers may in fact, after a minimum has been set, whatever that is, be looking for other alternative arrangements in the workforce, rather than paid maternity leave. Their point was they were happy to have the negotiations but they thought that maybe the workers would trade off additional paid leave for other items of flexibility.

**MS TATTERSALL (UNSW):** I guess for us, because it's not just about work, because of the intersection with health issues, this is a really difficult one to trade off because you're trading off standards that are very clear from health organisations around breastfeeding. I would suggest that if we're talking trade-offs, they should be done at a time where there's less detrimental consequence to the health of a child. What is interesting to me around this issue is that the conversation around six months' breastfeeding in Australia is a relatively recent one and I actually think has enlivened the discussion around paid maternity leave in a way that it wasn't particularly excited for the 10 years under the previous government.

Over the last 10 years when there's been discussions about the International Labour Organisation and 14 weeks' minimum and that being a new standard, there wasn't a lot of discussion. It was a minimum and people were settling - an important minimum in this country. I sort of feel like with six months, it's actually about taking really seriously women's rights but also about building an entire system around that. I think you're right, this is not the only right and the only change that needs to occur. We need to rethink how we fund child care. We need to rethink how we use the welfare system. As Sariah noted, the difficulties of means testing in this space are raw with problems and complexities. Where is the arbitrary line that the child is deserving, or the mother is deserving and the child is not, and how is that not going to discriminate against women in terms of different forms of paid employment? We think the reason for six months and the difficulty around trade-offs very much comes back to - it's not just about work, it's about work and health.

**MR FITZGERALD:** That's fair comment. Just a couple of other things in relation to the pro rata'ing: when you mention pro rata'ing, that's only in relation to the top-up?

**MS TATTERSALL (UNSW):** Yes.

**MR FITZGERALD:** Obviously not in relation to the base pay.

**MS TATTERSALL (UNSW):** That's right.

**MR FITZGERALD:** That differs from some of the proposals we've seen where the whole thing could be pro rata'd. I was just wondering whether you might comment on that.

**MS TATTERSALL (UNSW):** Again it's that intersection of health and work, so when it comes to the base pay and the minimum rate of pay, that's not just about recognising people's work entitlements because we're talking about this actually being provided to stay-at-home mums as well. We're saying that's a minimum requirement that's about financial security that's to ensure that children are in the position to be breastfed and then above that though, when it comes - we're more talking about as a work based entitlement, we think that pro rata makes more sense. So we think it's important to have that intersection of the base, universal, with the pro rata'ing for when it relates to work.

**MR FITZGERALD:** Some of the implications of that relate to how that intersects with both tax and social security measures which you will take on board as well.

**MS TATTERSALL (UNSW):** Yes.

**MR FITZGERALD:** One of the issues is if that occurs, is it taxable in the hands of the employee? The answer is probably yes. What then happens to the baby bonus that goes to women outside the paid workforce and how does that all interplay, because would that now become a taxable item, so those are some of the other issues.

**MS TATTERSALL (UNSW):** Just to comment on that - and again we'll flesh it out in more detail and finalise it - but given the philosophy around work, we do see this as something that can be taxable because it's a work entitlement.

**MR FITZGERALD:** Could I just conclude by saying - we've asked other people - you've identified that this is an intersection between two areas, both workers' rights and health and wellbeing, or wellness, as you've indicated. What do you think would be the change in the workplace environment if your scheme was to be introduced? In other words, what would we actually see change as a consequence of this scheme if it was a couple of years from now? What would be the changes, in other words, additional to that which we already have in place?

**MS TATTERSALL (UNSW):** I think that one of the most significant changes is that you'd have people more capable and able to breastfeed their children which I think is an incredibly important thing, given Australia lags so far behind that we have blow-outs in our health budget as a consequence of not having security around that right. I think that you would - with security and an adequate mechanism for balancing work participation as well as respecting women's roles as mothers - like in England, you would potentially see worker return rates and attachment to the workforce in a way that we lose in Australia, where if you move out of the workforce here because you're in a financial position that you can, you could be out of the workforce for many years and the costs in terms of that, in terms of retaining skills

and continuity to work are significant, especially in this period. Certainly the evidence in England would affirm this, that if you have a system which respects the dual roles, not expecting a women to play just one role, either worker or mother but both, that you could actually start to see changes in behaviour at work which I think is critical.

Similarly - and we will talk further about paternity leave in the small business - but I would hope we would actually see this sort of system be able to allow for men and women to play an important role in the care and nurturing of their children. The statistics on this again are varied, but the ones I've seen is of men that have access to paid parental leave, only 7 per cent take it. That's a very, very low figure. If we can work out a system that has a cultural change, that allows for men and women to be respected in terms of workers and also as carers and parents, that would be a great step forward for all of us, I think.

**MR FITZGERALD:** Thank you very much for that. Have you got any final comments before we conclude?

**MS TATTERSALL (UNSW):** No.

**MR FITZGERALD:** That's terrific. Thank you very much. We'll now take a lunch break and we'll start at 1.30. We have six participants this afternoon, so it's a full afternoon.

(Luncheon adjournment)

**MR FITZGERALD:** Welcome back everybody. It's a little less crowded this afternoon. This seems to happen, I've noticed, in the inquiries. If you could give your full name and the organisation that you represent and then some opening comments and we'll have a bit of a chat. Can you also confirm whether or not we've received any papers from you at this stage.

**MS YOUNG (DCA):** Yes, you have.

**MR FITZGERALD:** We have, good.

**MS YOUNG (DCA):** Okay. Nareen Young, I'm the chief executive officer of Diversity Council Australia. Our organisation is the independent, not-for-profit diversity adviser to business in Australia. We call ourselves DCA and I'll make it easier by giving that introduction in the first instance. DCA members are leading employers who value strategic diversity and the business benefits it brings and are engaged in active programs to maximise diversity and equal opportunity in employment in Australia.

**MR FITZGERALD:** Thank you. If you can now just give us your comments or thoughts, that would be great.

**MS YOUNG (DCA):** Certainly. DCA recommends government-funded 14 weeks' paid leave. DCA supports all women having access to 14 weeks' government-funded paid maternity leave. As you know this is consistent with the position of the Human Rights and Equal Opportunity Commission, the Australian Industry Group and the Australian Council of Trade Unions. As you also know, Australia is only one of two OECD countries who currently have no entitlement to paid maternity leave. DCA will argue that 14 weeks' paid maternity leave should be government funded. We believe that it should be partially funded by rolling the federal government's \$5000 baby bonus into the 14 weeks' paid maternity leave payment and provide paid leave for all workers as a workplace entitlement. This scheme would be government funded at the level of the minimum wage.

Employees working for larger private or public sector organisations will still be eligible for greater benefits funded by their employer, such as the National Australia Bank and Lend Lease, and I will go to those schemes that those organisations provide in their workplaces in a moment. Employees should be given the option of electing to receive payment for this leave, either as a lump sum in advance at the commencement of the leave, or spread it over the course of their leave.

The experience of DCA members, as I talked about before, our organisation is solely subscribed - it's a membership based organisation, so organisations such as the National Australia Bank and Lend Lease, for example, of the hundred that we have.

Our organisation is funded entirely by their membership and advisory services that we provide. The experience of those members is that employees appreciate being able to take the benefit in paid leave at a half rate, spread over a longer period of leave. DCA, of course, being the Diversity Council, recommends that same sex couples and adoption primary caregivers are also able to access the same leave entitlements.

Paid maternity leave delivers significant business benefits. Of course, our argument in this submission will be and continue to be on the basis of the business benefits that paid maternity leave offers in the Australian community. Leading employers have long recognised the benefits of paid maternity leave to productivity and business which include attracting and retaining talented employees; protecting the significant investment in training and developing employees; improving staff retention and reducing turnover; and supporting family-friendly practices in workplaces as crucial to keeping skilled workers.

Given Australia's ageing workforce, tight labour market and relatively low rates of workforce participation for women of child-bearing age, compared with other developed countries, retaining women in the workforce has never been more important. As I'm sure you'll hear from other people today, according to the Equal Opportunity for Women in the Workplace Agency, organisations with paid maternity leave have a higher average retention rate, 67 per cent, than organisations without paid maternity leave at 56 per cent - and these are obviously statistics that are cited in our submission.

The following leading employers and DCA members provide ample evidence, in our view, of the business benefits of paid maternity leave, specifically National Australia Bank. National Australia Bank's return to work rate has increased to 84 per cent at March 2008, up from 60 per cent in 2006. The NAB now offers 12 weeks' paid maternity leave, an increase from six weeks. That figure, the difference has been, six weeks extra in those two years. These are tangible, real benefits as a result of family-friendly initiatives and flexible work practices. The NAB 12 weeks' paid maternity leave provides real choice for employees and can be taken as either a lump sum, in fortnightly pay for 12 weeks or at half-pay for 24 weeks.

Concurrently, NAB also introduced two weeks' paid secondary carer's leave which must be used in either one or two-week blocks within the first four weeks of birth; paid leave for employees and their partners to attend medical appointments during the pregnancy; the ability for employees to extend their unpaid parental leave until the child turns two. NAB also has extensive flexible work options, including part-time job share split, compressed working weeks and pay averaging 48/52, and you will know what that means.

Lend Lease is another really good example. Paid parental leave was first introduced in Lend Lease in July 2004. The policy then allowed 14 weeks' paid leave and was offered for all types of parental leave, including maternity, paternity and adoption and was gender neutral. An employee had to be employed for 24 months before being eligible for the paid leave. Those with 12 to 24 months' service were eligible for a six-week payment. Further refinements to the policy were introduced in 2007, and in April 2008 the policy was amended to provide 14 weeks to all employees after 12 months of service. Lend Lease expects this to impact the number of employees taking leave over the 2008-2009 period, and of course those statistics will be available at the relevant time. The return-to-work rate has increased to 87 per cent in 2007 compared with 69 per cent in 2006.

My third and last example is the Cancer Council Queensland; unlike the other two, a not-for-profit organisation. We wanted to be able to illustrate to the commission today that it is possible in a not-for-profit environment. The Cancer Council Queensland who, I might add, was a winner of the national working family awards last year, offers six to 12 weeks' paid family - and that is maternity, paternity or adoption - leave for eligible staff with the option to take leave at half-pay. Employees are eligible for six weeks' paid leave after 12 months' service; eight weeks after 24 months, and 12 weeks after three or more years.

Other concurrent initiatives include up to two years of unpaid family - and that's defined as maternity, paternity or adoption - leave for the primary caregiver, flexible use of long service leave for employees on family leave; additional leave options available, such as cultural and community service leave; flexible start and finish times; part-time and job-share arrangements; working from home provisions; free access to child care and aged care referral services, as well as discounted leisure products and services; salary packaging and free financial planning and wealth creation seminars. The outcomes for the organisation from these initiatives have been, since the introduction of paid family leave in 2006, 16 staff have accessed paid family leave and only one staff member has not returned to work, a 94 per cent return-to-work rate. This compares 60 per cent in May 2005. A strong level of commitment and engagement from employees to achieve organisational goals; attraction and retention of quality staff and increased staff referrals, which is clearly the important thing in that organisation.

The outcomes for employees from these initiatives have been ability to manage work and family responsibilities with 85 per cent of employees reporting that they are very happy with their work-life balance; high job satisfaction and engagement with 88 per cent organisational commitment and 90 per cent job satisfaction. Anyone here who has ever done an employee survey will understand what an extraordinary result that is. There has been an increase in part-time positions across

the organisation from 7 per cent in 2004 to 21 per cent in 2008. In all cases where part-time was requested it was approved.

Our fourth submission is that business is unfairly shouldering the burden for paid maternity leave in Australia. Leading employers have been providing paid maternity leave for some time, but in doing so are unfairly shouldering the burden of the cost. Government has a role in providing a safety net for those businesses that can't afford the cost of paid parental leave. As we know, small to medium-size business could struggle to provide paid leave. This results in, from our perspective, unequal access to paid maternity leave which of course disadvantages many women.

As we know only around one-third of mothers - and again we do cite where this comes from and it's, of course, from Gillian Whitehouse, Marian Baird and Diamond, 2006 highlights from the Parental Leave in Australia Survey, only around one-third of mothers who were employed in the period leading up to the birth have access to some form of paid maternity leave. Mothers, of course, working in the public sector in very large workplaces - so greater than 500 employees which comprises the large majority of our organisation's membership - and earning high salaries, were more likely to use paid maternity leave, while those working part-time or on casual or fixed-term contracts were considerably less likely to utilise this form of leave. Most working women are entitled to a year's unpaid maternity leave, as you're aware, but paid maternity leave has always been at the discretion of the employer.

Essentially our submission says that people working for our members get it; other people don't. We think that there should be equal access to all families in Australia to paid maternity leave and that we want to see it applied consistently. We recognise and understand that it will be difficult for some businesses, therefore we support the fairly universal position of 14 weeks' paid and government-funded paid leave.

**MR FITZGERALD:** Thank you very much for that, Nareen. Can I just ask you a question. Obviously with your members already providing either voluntary or negotiated paid parental leave arrangements, if the government were to fund a scheme, which you've indicated 14 weeks at let's say minimum wage just at that point, what do you think will happen to the schemes that are currently in place by your member businesses?

**MS YOUNG (DCA):** I can't make any commitment on behalf of them but I would say given the level of sense that has been displayed by them up till now in responding to community expectation that my guess would be - and it's a guess - that it would be absorbed and the same levels would be continued to be paid. I think that's an important point to make and to emphasise because there is a bit of talk that



this would disadvantage people who currently get it. Those employers that I'm talking about and are among our members are very, very sensible when it comes to paid maternity leave. It is a point of leverage for them in terms of how they approach attraction and retention of employees. It's not done simply to look good. It is a very genuine commitment. The leading organisations I'm talking about are examining a whole range and a whole suite really of measures that would advance and progress women across the organisation.

It's often levelled at big organisations that it's all about women in senior positions. These things are offered at all level of the organisations and it certainly is the case that there are many schemes in place to attract, retain, progress and ensure that women in particular can flourish at all levels of organisations. So I think it would be the rare organisation among our membership that would take any punitive approach to a safety net approach by the government.

**MR FITZGERALD:** One of the other related issues there is that some have argued that if you introduce a government scheme that it will reduce the willingness or reduce the current momentum towards voluntary schemes; in other words, from now on, people would simply say, "There's a minimum scheme and that's good enough." So whilst some of the arrangements you've mentioned are quite generous by comparison to many of the other schemes, that momentum to more generous schemes would dry up.

**MS YOUNG (DCA):** Yes, I find it interesting because it seems to me that there is an imperative in market terms from those organisations to ensure - and they're doing it - that the make-up of their labour market looks like the community that they deal with. So banks, for example, have an imperative, they need to show their customers that the way their organisations look, mirrors the communities that they want to serve and sell their product to. I would be very surprised if any of the organisations I deal with - and admittedly those 100 to 120 at any given time organisations that I deal with, certainly are at the strategic and smart end in terms of workforce planning and in terms of business driven diversity programs, but it would surprise me if that were the case.

**MR FITZGERALD:** A related aspect is that some unions in their submissions to us already have indicated that there should be an arrangement that if the government were to introduce a scheme that all other arrangements, including the ones you've referred to, would be over and above that scheme. Those employees that have negotiated through collective bargaining, those arrangements would continue to receive those benefits, together with - in addition to - the government scheme, so rather than absorbing the government scheme into those schemes, they would be over and above that. I was wondering whether you would have a view about that.

**MS YOUNG (DCA):** I'm not an industrial relations practitioner in any of those organisations, and I would have thought if unions choose now to put that on the agenda and put that in their collective bargaining, in their logs of claims, then that's their business. The organisations that they're dealing with have been offering these things for many years.

**MR FITZGERALD:** Okay.

**MS MacRAE:** Thank you very much for the real life examples of schemes. That's very useful to us. I suppose some of the schemes we've seen, commonly it's been talked about that there be sort of a government minimum, much as you're talking about, and then potentially a one size fits all top-up, in that often people are saying, "Look, there should be an income replacement level above that that employers would fund." We've had the little sketch for the three firms but how much diversity is there in the nature of the schemes that your companies have, and how different would it look from something that might say "We're looking at full income replacement as a top-up to the government minimum"?

**MS YOUNG (DCA):** Well, I have used Baird, Whitehouse and Diamond as the example. That survey is a very informative one in terms of what's paid across the board. Again I would have thought that the cultural exigencies in organisations at this given time would follow through. So if we have a different way of looking at it from a government perspective, it doesn't mean that suddenly everybody is going to say, "Gee, this is a good idea." I think what will occur naturally is that those organisations that have had these schemes in place as a workforce planning and strategic retention issue for a long time, will continue to take a long-term view of it. Those other ones - - -

**MS MacRAE:** I guess, what I was trying to get at with my question was, those organisations will have different characteristics within their workforces - - -

**MS YOUNG (DCA):** Yes.

**MS MacRAE:** - - - and as a result of that do you tend to get a great diversity in the range of voluntary schemes that have grown up, or is there such commonality between them that if government was to impose a mandated top-up, for example - - -

**MS YOUNG (DCA):** Yes, I understand your question now, sorry. Look, I think if we talk about differences within employment market make-ups in organisations, the banks are a really good example. Most people would say to you that it's very different being a teller in a branch to working in the head office. The same scheme applies, and they are universal. I think it would be interesting to look at take-up rates in the way that you're describing, different organisations. I would have thought that

different customer imperatives and different business imperatives in organisations like the ones that I'm referring to would have an impact on it. But I would have thought that - again referring back to the culture of organisations, and if organisations embraced these things and put it out there, as you say, in the real life example, then they're going to be taken up.

When I walk around the National Australia Bank in Melbourne, backs of toilet doors, everywhere is "Flexible working, come and ask". That has been, as I said, part of a suite of arrangements that the leadership of the organisation have encouraged discussion about, culture about, et cetera et cetera. I think one of the real challenges is - there's only a couple of organisations I really know about in what would be considered traditionalist workplaces that have offered this kind of scheme, because it's seen as all too hard to look at manufacturing and other ways. I think in those organisations where there hasn't been much thought given to this, there will be a lot of thought given to it, and particularly in workforce planning terms given that anyone will have to go.

**MS MacRAE:** You did mention the Cancer Council of Queensland is one of your examples. Could you just give us a bit more of an insight into the extra challenges that a not-for-profit might face in looking at these sorts of schemes?

**MS YOUNG (DCA):** I think the challenge for not-for-profits - and I'm fortunate to have run one for seven years that was government funded, both federal and state governments. I was director of the New South Wales Working Women's Centre for seven years before I went to the not-for-profit that I run now. Those environments are very difficult for planning, so if you don't have fixed funding over a long period it's very difficult to plan in workforce terms. I think that organisation is an extraordinary organisation with extraordinary leadership. Some of its philosophy is taken from a health point of view. "We're trying to prevent cancer. So in our workplace we need to promote work practices that allow our employees to be as healthy as they can."

A not-for-profit environment is very difficult. I think there has been a lot of discussion and debate over the last five or so years about the nature of funding and where funding comes from and whether it should be fixed or not. It's a difficult thing to do. But the Cancer Council Queensland has managed to do it, and I think other not-for-profits would be well served - particularly in the charity not-for-profit sector which is quite different from the government-funded not-for-profit sector - to take some lead on it.

**MS MacRAE:** Right.

**MR FITZGERALD:** Just in relation to the scheme itself, the 14 weeks would be

universally applied for women in the workforce, but one of the questions for us - and for everybody, of course - is what happens to those that are not in the paid workforce at the moment. I was just wondering what your view about that is. I understand the ACTU is promoting a universal scheme across the board. One of the prime issues in this scheme - and you've highlighted through the three independent or the private schemes that you've referred to - is workforce retention. One of the issues I wanted to raise is, let's assume for a moment you paid all mothers the same amount as a flat rate and that was it, that's the government scheme, there does seem to me in that proposal no recognition at all of the issues to deal with the workforce per se. What we've done is we've taken a child or maternal wellbeing approach. We've said we're going to give everybody X amount, that's it.

But I thought one of the reasons why we wanted to enter into this was to recognise particularly some of the workforce issues. The unions might say to us, "Well, the way you fix that up is by mandatory top-ups," and others would say no, and of course business is saying absolutely no to that. I was wondering how we unpack the costs associated with both child and maternal wellbeing, as distinct from the workforce issues.

**MS YOUNG (DCA):** I specifically represent an organisation that's about work, that's about business. So I can direct and address my comments to workforce participation. I think you know the view of business. I think from my perspective it has to be about work. We are talking about paid maternity leave as a work-related entitlement. It would be an entitlement that is directly linked to engagement and retention in the labour market. However, I would have thought that in terms of workforce participation, which is clearly an economic goal of ours, that these stats would only serve to back up increased workforce participation. I don't think there's any question about that, because the retention stats would seem to be indicative of what the community expects and therefore if you have organisations - and again in this tight labour market, and we all know it is a very tight labour market, if you are male, female, straight, gay, whatever of child-bearing age, you are going to choose somewhere to work that does offer that entitlement, rather than somewhere that doesn't.

So if the person who is job-seeking, which is what you may be talking about in this particular instance, is making a decision about where to work, "Do I work at NAB or do I work at X down the road that doesn't have any paid maternity or parental leave for either same sex couples or heterosexual couples, I'll work at NAB." I think that the workforce participation arguments are pretty compelling.

**MR FITZGERALD:** Do you have to pay differentially for that to be achieved as distinct from simply a payment that goes to all mothers?

**MS YOUNG (DCA):** Again my interest is in people who work.

**MR FITZGERALD:** Okay. That's fine.

**MS MacRAE:** I was just going to say that by the nature of the voluntary arrangements that are currently in place for your members you are looking at eligibility criteria that relate to the workplace rather than the workforce or generally, but for the eligibility for your government payment - if I can call it that - would you be trying to keep that workplace attachment or would you be happy to see the eligibility for that going to the workforce?

**MS YOUNG (DCA):** I think our submission goes to workforce attachment, to labour market attachment, to employment market attachment. My evidence here talks about attachment to a workplace. In the context of questions you've asked earlier, I would have thought that those employers that already understand workplace attachment would continue to pay on a very progressive basis because they understand that particular workplace attachment. But I think we have to be very, very clear about what this is. It is about an entitlement connected with work.

**MR FITZGERALD:** One of the questions I asked Unions New South Wales was a question which you would be familiar with, which is there seems to be two different parts of the market: firstly, in relation to large firms versus small firms. A question you would have heard me ask was, if the real problem in terms of affordability is with the small firms, why would the government funding be targeted to that group rather than applied to all businesses? The second one was, it seems that the greatest concern is for lower-paid female workers in particular, because for the other groups they're likely to be able to negotiate, albeit in organisations which will be able to provide these schemes. I'm just wanting your views about why a universal approach, both in terms of universality to employers and universality to employees.

**MS YOUNG (DCA):** In the long experience of employment market participation it's not always the case that we get to choose where we work. In terms of the arguments of this submission that specifically go to universality for working women, and therefore impacting on families in Australia where labour market attachment is of paramount importance, it goes to whether or not people always have a choice about where we work. We understand that in areas of recently increased population, in rural and regional Australia, for example, women - people - don't always have a choice about it. There isn't always a big manufacturer or a big bank to work in; the argument being that to provide equal access to all women who work, there needs to be this kind of scheme.

**MR FITZGERALD:** For all employers.

**MS YOUNG (DCA):** Yes.

**MR FITZGERALD:** Okay. An issue that arises in relation to these schemes - and you've talked about it - is how they should be structured. A couple of elements in yours which are different to some which we've heard: one is the ability to take it as a lump sum rather than over time. Given that the baby bonus has now just been changed to a 26-week payment arrangement payable in 13 equal instalments, I was wondering why you believe that choice should remain, rather than just treat it as a payment made fortnightly over whatever period of time.

**MS YOUNG (DCA):** It's about financial imperatives. I have to give a disclaimer which is, for some reason every time I personally had a baby I would miss out on the baby bonus by about two weeks, or three days in one particular case. However, my own experience and the experience of many, many thousands of Australian women and their families that I've talked to over many years is the same kind of argument that went into some of the arguments about the baby bonus which was the initial cost, the set-up cost, the start-up cost, if you like. I think in terms of financial planning, that option is a very good one because there is the start-up cost and then there are a whole lot of other things.

Other people I have talked to over many, many years and many people I've talked to do prefer every fortnight. I think what we've provided, tried to provide for here, is the options, the various number of options, based on the experience of our members - and you have to remember that these organisations have paid it over many years, so things have emerged and evolved and developed. It has been the case that at the beginning - certainly in the early days of paid maternity leave in organisations it was at the end, based on labour market attachment, as you would be aware. Now, there are all of these different options based on again community expectation and therefore their own employment market expectations.

**MR FITZGERALD:** In your model, if you take a lump sum payment - let's say it's a 14-week period - and you return early, do you lose that payment? Do you have to pay back that entitlement?

**MS YOUNG (DCA):** You may very well, I don't know. Returning to work early is often, in my experience, an imperative around - often it's about when pregnancies haven't come to term or there's been a tragedy. That's my experience of women coming back to work early. In my experience, employers have always dealt with that in a very compassionate kind of way, so I wouldn't have thought it would be dealt with in any other kind of way. I think rare is the person who comes back early.

**MR FITZGERALD:** Especially at 12, 14 weeks. It does happen.

**MS YOUNG (DCA):** Absolutely. It's been my experience over the years that is usually due to tragedy.

**MR FITZGERALD:** Okay. The groups that you're representing - and you've mentioned these very high workforce return-to-work rates or retention rates. Some might say to us, "But there would have been a number of factors that led to that, not just simply paid maternity or parental leave." Some have said to us that the really big change - and I made this comment to a couple of participants earlier - was in fact the right to return to work at all; in other words, the unpaid leave arrangements for 52 weeks. Some have said to us that paid maternity leave would add very little. The additionality would be very small. Your figures tend to indicate that as the parental leave scheme became more attractive in those three organisations, the retention rates went up. I was just wondering how robust that correlation is; in other words, that's the major contributing factor, or are there other factors that people could say, "Maybe these were more significant."

**MS YOUNG (DCA):** I would have to say business wouldn't pay more unless it had a return. Let's be really frank about it. That is the nature of the business. I was surprised by the robust indicators. I mean, I've known about them for a long time but every time I get the new ones I am really surprised by it. Again it's borne out by dealing in this area for a really long time, and that is that, as we know, families find it really difficult when there's a certain level of income that's been used to. I think in the employment market where we have got to is that people look for employers who will provide for their period of maternity leave. I really do.

I think that such planning and such intense organisation goes into the decision when to have a child in our contemporary environment and it is based on all kinds of factors, particularly how long you have owned a property for, what kind of commitments you have, where you are in your career - let's be really honest about it - and the criticism often is that's only at the top end, it's simply not, it's at all levels of employment, market participation. There are so many factors impacting on household budgets that for many years the women I spoke to as director of the New South Wales Working Women's Centre did what I did, which was save up annual leave, save up long service leave, so that there would be an income available. I think now a major contributing factor, both in terms of career and what a particular industry offers and what a particular workplace offers is a major contributing factor in choosing where to work. I really do. I think these statistics are absolutely evidentiary of that.

**MS MacRAE:** The arrangements with the companies that are your members, is there a common element of paternity leave with those as well or not, or is it just maternity leave?

**MS YOUNG (DCA):** Lend Lease is completely gender neutral.

**MS MACRAE:** Okay. That's helpful.

**MS YOUNG (DCA):** But, no, there hasn't been that culture permeated into - I think we're dealing with baby steps here. That hasn't entered into the culture. I think it will. I think in the legislative environment for a whole variety of reasons it will. Also I think as a community - and my colleague Elizabeth Broderick will be here later speaking - we are talking a lot about involving men in these formal processes because in our lives informally we understand that there's a lot more engagement in a different way by men in the parenting process. I think there will be a lot of discussion about universal application of these kind of entitlements over the next five or 10 years.

**MR FITZGERALD:** Some people have said to us that unless you have specified paternity leave - which would be broadly defined not only for fathers but other significant caring partners - neither the employer will encourage it nor will the male employee take it. One of the things about having a separate paternity leave, in addition to any shared arrangements you might have, is actually a signalling device, both to employers and to male employees in particular, to fathers. That has particularly been put to us in relation to some of the very male dominant industries. I was just wondering whether you had a view about that; you may not.

**MS YOUNG (DCA):** I haven't had a chance to form it but I think that we shouldn't make assumptions about male-dominated industries or men. I think often we make assumptions about male-dominated industries and what will transpire based on a bit of an antiquated view of how we view work and male attachment to it. I think we shouldn't make any assumptions about what might transpire over the next 20 years. I suppose we only have to look at the last 20 in terms of women's employment market participation, how rapidly that change has occurred. As I say I haven't particularly noticed it in my own house, however, I do believe that there is increased and significant participation by men in the parenting process.

**MR FITZGERALD:** It will come to your household. You just have to find the right incentive.

**MS YOUNG (DCA):** Yes, that's right.

**MR FITZGERALD:** Any other questions?

**MS MacRAE:** No, I think that's all.

**MR FITZGERALD:** Good. Any other final comments you'd like to leave us with?



**MS YOUNG (DCA):** It's a pleasure to be here and to be examining it after most of my grown-up career having been involved in women's employment market participation.

**MR FITZGERALD:** That's good. Thank you very much.

**MS YOUNG (DCA):** Thank you.

**MR FITZGERALD:** If you could give your full names, positions and the organisation that you represent and then some opening comments and then we'll have a chat. Elizabeth, over to you.

**MS BRODERICK (HREOC):** Thanks very much, Robert. Liz Broderick, sex discrimination commissioner. With me is?

**MS GOLDIE (HREOC):** Cassandra Goldie, I'm the director of the sex discrimination unit at HREOC.

**MS SQUIRE (HREOC):** I'm Sarah Squire, I'm the senior policy and research officer in the sex discrimination unit.

**MR FITZGERALD:** Good. Over to you.

**MS BRODERICK (HREOC):** Thanks very much, and thank you for the opportunity to appear here before the Productivity Commission inquiry today. The Human Rights and Equal Opportunity Commission - HREOC - is Australia's national human rights institution with legislative responsibility for the promotion and independent monitoring of human rights here in Australia. In promoting human rights, our work is underpinned by Australia's international obligations and standards, including international instruments which are relevant to the rights of working women and also relevant to people with caring or family responsibilities. Those obligations are CEDAW, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of a Child and also the ILO conventions.

As you well know, HREOC has had a longstanding record of being interested in paid maternity leave but really more than that, promoting the introduction of paid maternity leave for working parents in Australia and we have undertaken substantial public consultation, research and modelling of possible schemes.

In 1999, we had the then sex discrimination commissioner, who was Susan Halliday - yes, she was the first one - she recommended modelling an analysis of possible paid maternity leave schemes in this report which was *Pregnant and Productive, It's a Right, Not a Privilege to Work While Pregnant*. We then had Pru Goward in 2002. Pru did this: *A Time to Value, Proposal for a National Paid Maternity Leave Scheme*, and she reported overwhelming public support for a national scheme. She proposed as a basic minimum a fully costed scheme of 14 weeks to be paid by the government at the level of the federal minimum wage. Then in 2007 we had John von Doussa QC, who was the acting sex discrimination commissioner at the time, he released this report, *It's About Time, Women, Men, Work and Family*, which was a report once again arising out of extensive public

consultation. He again called for better support for the reconciliation of paid work and family. He reiterated the priority need for a national scheme and he also made it a bit broader. He talked about a set period of leave for supporting parents and a longer transferable period of paternity leave.

So here we are today in 2008 and as you know, I've just completed my national listening tour which involved over a hundred events, thousands of people in person but thousands more through our online blog and our diary. I found enormous support among the community for a scheme of paid maternity leave. I also found strong support for a broader scheme of leave for parents. So as you can see, I'm now the fourth sex discrimination commissioner to advocate for a national paid leave scheme and it's my great hope that I will be the last. I can always be optimistic. Our work over the last 10 years makes a compelling case for urgent action I think. In HREOC's view, it's not a question of if, but how we put a national scheme of paid leave for parents which best needs the needs of this country which is why we're so delighted to be here today.

I welcome the opportunity just to outline what we're proposing. We believe that there's a number of key national objectives which must be met, and the priority objectives for us being the human rights national institution is, firstly, ensuring the health and wellbeing of mothers, babies and families, so that's including providing time for women to recover physically and emotionally from childbirth, to establish and maintain breastfeeding and to support maternal and paternal bonding and attachment.

The second objective for us is about addressing the workplace disadvantage that women experience as a result of their maternal role. In order for women to participate in the labour market on an equal basis with men, there must be sufficient measures to support the combination of motherhood with employment. The third objective is a very important one for us as well and it's a gender equality objective, so both in the workplace and in the home. Paid leave is an essential means for achieving gender equality. It will enable a better sharing of family responsibilities between men and women, allowing women to participate more fully in paid work in public life and importantly, men to participate more fully in family life. So they're our three priorities.

The other objectives that we have are economic security for parents at the time of the birth of a child and over the life cycle; the social benefits, such as supporting the rearing of the next generation, valuing motherhood, fatherhood and children, and also valuing the dual role of men and women as both carers and workers, and very importantly, the benefits that such a scheme will bring to the economy and to employers through, for example - and you will have heard much about it, maintaining mothers' labour force attachment, particularly in the areas of skills

shortage and providing savings on the cost of recruiting and retraining new staff and increasing maternity work rates.

I'm convinced an appropriately designed national paid leave scheme for mothers and fathers will positively contribute to each of these objectives. However, I also believe that the scheme needs to be built in a progressive manner, informed by our experience over time, assessing the impact of the scheme in the light of our domestic conditions.

So in terms of our proposal then, we propose an incremental national scheme of paid leave which consists of two stages. The first is for immediate introduction, the second stage is to be introduced following an independent review in two years' time. So just if I can outline stage 1: stage 1 is a non-transferable national scheme of paid maternity leave of 14 weeks' duration at the rate of the federal minimum wage or the average of a woman's previous weekly earnings from all jobs, whichever is the lesser amount. The particular objectives for this period of leave are to ensure the health and wellbeing of mothers and babies and to address the workplace disadvantage that women experience as a result of their maternal role. But in addition to that, in stage 1 for immediate introduction is a non-transferable separate entitlement of two weeks' paid leave available for the supporting parent, calculated at the same basis as paid maternity leave. We're calling this supporting parent leave, although many people might refer to it as paternity leave, but it's to be inclusive of same-sex couples as well.

This period of leave is to be taken either concurrently with the mother's paid maternity leave at the time of the birth and the objective there is around the bonding between the supporting parent and their child and as a support for the birth mother or at the end of the period of paid maternity leave, as a way of transitioning to alternative care arrangements following the mother's return to paid work. We feel that's another period of stress, that transitioning. So that's basically stage 1. HREOC proposes that following implementation, this initial stage should be independently reviewed after two years, as I said, in order to measure the impacts of a new scheme, make any necessary improvements and to develop and implement a second stage of paid leave measures.

Stage 2, if I could just outline that, it introduces an additional 38 weeks of paid parental leave of which four weeks is to be reserved for the supporting parent on a use it or lose it basis. We're also asking the Productivity Commission to model now how we could achieve an increase in the payment level beyond the federal minimum wage to, for example, two-thirds replacement of income.

**MR FITZGERALD:** Sorry, what's the additional number of weeks?

**MS BRODERICK (HREOC):** It's an additional 38 weeks, four of which are reserved for the father or supporting parent on a use it or lose it. If I just maybe summarise the position here, that is, in summary, when both stage 1 and stage 2 are in place, we'll have a national paid leave scheme of one year's duration, but it will comprise 14 weeks' paid maternity leave, two weeks' paid supporting parent leave to be taken concurrently with paid maternity leave, so that's the change there, not at the end but concurrently, and then we have 38 weeks of paid parental leave to be shared between the parents, of which four weeks is reserved for the supporting parent on a use it or lose it basis.

Stage 2 would bring Australia into line with comparable countries and meet important health and wellbeing and, for us, gender equality objectives, such as facilitating the shared care of children by men and women, as well as meeting the urgent need for a baseline minimum entitlement which is essentially stage 1. We'll be lodging a full written submission in the next fortnight where we will outline our position in full and we do actually have just a table which sets it out.

**MR FITZGERALD:** Thanks very much.

**MS BRODERICK (HREOC):** Just to finish there, my mandate as the sex discrimination commissioner is grounded in human rights and it's about promoting the principles of equality between men and women. As I said, my work is informed by the international standards and as you know, we have been criticised before international committees for our failure to have paid maternity leave and their criticism is well founded.

As I went on my listening tour, I was disturbed that in 2008, we still have women who are being forced to go back to paid work just two days after giving birth because they can't afford to do otherwise, so paid maternity leave is urgent. It's an essential part of valuing the care provided by mothers. Where we sit today is that only 34 per cent of employed mothers access paid maternity leave while the rest miss out.

Just in conclusion there, I'm concerned also that parents right now who want to be able to give their children the best start in life simply can't afford to do it and so the supporting parent leave and paid parental leave is a priority. I want us to live in a country where all mothers can give their newborns the best start in life, where working women are not disadvantaged because they are mothers, where fathers and supporting partners can be actively involved and where decisions about how to share paid work and care are not just based on financial realities or financial considerations. So in 2008, it's about time.

**MR FITZGERALD:** Good, thank you very much. Before asking Angela to start

with the questions, can I just ask you the most obvious question: given that you've had four fairly colourful reports there, let me assure you the commission's will be less colourful, they always are, why is it do you think that those four reports have failed to achieve the objectives that you've set out? What has happened over the last period of time since the late 1990s to the present time that has forestalled the introduction of a paid maternity leave scheme, because in a sense, four reports is a lot.

**MS BRODERICK (HREOC):** It is a lot, yes.

**MR FITZGERALD:** I'm always curious as to why our reports don't get taken up, so I can ask of your reports the same question.

**MS BRODERICK (HREOC):** I think in 1999, there was probably a strong view from business that paid maternity leave - and that was around a 14-week scheme - was not acceptable from that perspective. I do think we've moved to a point now where we're seeing a commonality around a base-level scheme. I don't even think we saw that in 2007 with John von Doussa It's About Time, but I think we've moved to a place where there's a common view about what would be an acceptable starting point.

One of the things - and you will see it's progressively changed through each of these reports - is that we started just about paid maternity leave and it's one of the things on my listening tour, very much women wanted to talk to me about paid parental leave. Now, some of them didn't see the need for paid maternity leave quarantining at the beginning, we happen to differ on that, but they were very actively talking to me about shared care. We ran quite a number of men's only focus groups and they also talked to us about shared care, so I think we've seen an evolution. As to why it hasn't been introduced before now, I do think part of that is because there wasn't this commonality of view about where the starting point would be. We did see some movement around the baby bonus; for example, there were various welfare payments that came in but none of them had the workforce attachment elements that a paid maternity leave scheme will have.

**MR FITZGERALD:** Is it the case that Australia decided either by chance or by design to actually concentrate on the social transfer schemes, be they family tax benefits or child care rebates or baby bonuses rather than through the workforce? Why do you think that occurred or do you have a view as to why that occurred, because one of the things we are very conscious of is whilst you can go through the list of countries that have paid maternity leave schemes, the missing column is what they do in terms of social security and some have almost none, others are much more generous than ourselves, so that column, the missing column, tells us a bit of the story. In Australia we've taken other measures related to the having of children but

not through the workforce.

**MS BRODERICK (HREOC):** I think you're right, that we do have in terms of the social payments a more complex arrangement than most other countries but also there's more attention paid to that, but we're coming into a time of significant skills shortage as well and maybe that's another reason that we're actually looking at it now because the fact is, that pool of mothers, we can't afford to alienate that talent pool, the talent pool which represents mothers, and of course women represent 51 per cent of the population. Having said that, I think the time is right now because it's about opening up some of those potential talent pools. Of all the payments, this would probably be the only one or one of the only ones which would have a workforce attachment element.

**MR FITZGERALD:** Can I ask one last question then: some people have said to us that one of the reasons that's so critical in this is about the squeeze on income that is experienced by women and families when they have to take time off work if it's unpaid. A question that we've asked a couple of participants is you could achieve that, you could ease the income pressure through simply increasing the baby bonus to a more significant amount. One of the issues I suppose we're asking is why do you need to introduce a new scheme if you could simply increase some of the payments and the benefits that we already have that would ease that income pressure, if that's the most significant issue. Clearly, you've identified a number of issues, but some would say, "The simple thing is just simply increase effectively the baby bonus. You'll get more money into the hands of the family, particularly the woman, and you'll increase her capacity to make choice. We don't actually need a whole new scheme."

**MS BRODERICK (HREOC):** You will increase some of that financial pressure but what about keeping the woman attached to the labour market, because the fact is, we met so many older women as we went on our listening tour who talked about the fear of living in poverty later on in their life, and when you unpacked what that is, that was about not being attached to the labour market for a significant proportion of their life. So I think just to increase the baby bonus isn't actually the solution for women.

**MS MacRAE:** I'd just be interested, in terms of feedback from your listening tour, whether you had a backlash at all from those women who are outside the paid workforce and choose that as an option and have no desire to be inside the paid workforce but would feel potentially excluded by the sort of scheme that you've suggested here. Did you get the argument that if it's about human rights, "We're equally entitled," and, "Why wouldn't we get a similar sort of an arrangement?"

**MS BRODERICK (HREOC):** Actually it was a voice that was there but it was

very much of a minority voice; that's not to say it wasn't put to us because I remember down in Tasmania and elsewhere, it was. It's absolutely right. People are entitled to an adequate standard of living, particularly when the new baby comes along, it's a basic human right. But we didn't hear it extensively, did we?

**MS GOLDIE (HREOC):** No. We're aware that there's been I think some confusion generated by the different ways in which the baby bonus has been discussed in the public arena, that it actually is about compensation for being outside of the paid workforce and the reality is, the missing link here is that we don't have the paid leave that's directly related to the disadvantages that a woman experiences because she is the worker who will have to leave the workplace for that period of time because she is the birth mother. That's the part of the picture that just is still not in place at the current time.

**MS MacRAE:** Just in relation to some of the other sort of schemes that have been put to us, again you've raised the gender equity issue and a number of schemes that have come to us have suggested that it's imperative that you have a top-up that looks at income replacement sort of levels because without that, that gender equity goal is not going to be met and the problems that you have of long periods outside the workforce potentially and if you're only getting the minimum wage for that period, that that issue about people still being forced back to work earlier than they would choose to is still an issue. Now, you did mention before that you thought one of the reasons for the earlier reports not being taken up was that there was employer resistance and obviously there's continued employer resistance to an employer-mandated top-up, but what was your reasoning about income replacement and the level that you've struck? Was that a trade-off or what sort of trade-offs did you have in mind and how did you come to that conclusion?

**MS GOLDIE (HREOC):** We have a number of trade-offs, you're right, and in fact one of the international standards talks about two-thirds income replacement as a basic right.

**MS SQUIRE (HREOC):** That's the ILO maternity protection.

**MS GOLDIE (HREOC):** So you've got ILO Convention 183 which says that a minimum - it should reflect an adequate standard of living which is linked to the federal minimum wage but it also does say if the formula is based on weekly earnings then it should be at least two-thirds of the weekly earnings. They're the two elements in terms of the pay rate under the convention.

**MS BRODERICK (HREOC):** So I suppose for us though it was trading that off and showing that we put in our first stage in any event. We see stage 1 as a starting point. That's about something that has wide community acceptance as we sit here



today and I suppose that's the trade-off that we made there. But we don't see it as the end point.

**MS MacRAE:** In terms of that stage 2 you've talked about increasing the duration. You'd see that as more important than necessarily looking at the rate.

**MS BRODERICK (HREOC):** No, we'd look at both actually, at stage 2. That would be coming up to the two-thirds replacement level.

**MS MacRAE:** Right, okay. Replacement of income.

**MR FITZGERALD:** Even your stage 2, you haven't proposed a mandating of a top-up rate to full income replacement, nor any other scheme to achieve that. Is that right?

**MS BRODERICK (HREOC):** No, that's about standard bargaining mechanisms that it would be provided for that employers would be encouraged but it's not mandatory.

**MS MacRAE:** Just in relation to the length of leave that you see as being - - well, in the initial stages, concurrently or at the end of the leave - - -

**MS BRODERICK (HREOC):** At two weeks.

**MS MacRAE:** Yes, and then the four weeks. How did you settle on a period for that?

**MS BRODERICK (HREOC):** In relation to the two weeks there wasn't an ILO minimum standard on this but there is a benchmark of two weeks from the time of a birth, which has been set by comparable industrialised countries, such as Belgium, France, Sweden, Norway. They all seem to be going with two weeks. Then when we looked at the majority of employed Australian fathers who actually take time off at the birth, 74 per cent currently take two weeks or less actually of some kind of paid leave but it's ordinarily cobbling together parts of their annual leave and existing leave entitlements. Really that's a number of reasons as to why we came down in two weeks.

**MS SQUIRE (HREOC):** I was just going to say also if you look at the figures from the Equal Opportunity for Women in the Workplace Agency - that's employers with a hundred or more employees - 83 per cent of their businesses with a hundred or more employees who currently provide paid paternity leave - provide between one and two weeks leave. So it's really a mix of all of those three things we think which has set a bit of an informal standard already in Australia, so we're really building up

what's happening already.

**MS MacRAE:** What was your response to that - men's groups, in particular, that you spoke to. Did they feel that was a reasonable sort of - because the 38 could be shared.

**MS BRODERICK (HREOC):** Yes. Apart from the month, four weeks, which is reserved for the supporting - on a use it or lose it basis.

**MS SQUIRE (HREOC):** We heard quite a bit of support from our focus groups that we did with men as part of the listening tour, the one we had in Melbourne, I'm thinking of. In particular there was support for a period of 20 days that you could kind of take across that period. That's really building on what we've heard I guess from the Scandinavian countries around the use it or lose it paternity quota or "daddy months" as they're sometimes called. Certainly if you do reserve a period of leave specifically for men and it's paid, they will take it. There's been huge take-up rates progressively over the years in certain countries like Norway and Sweden where they have introduced those. We think that's pretty good evidence in terms of the gender equality objective of being able to share care more equitably between men and women.

**MS MacRAE:** Just in relation to the eligibility, I see from the papers you've given us that what you're proposing there in terms of eligibility for the paid maternity leave is different from what we currently have for the unpaid leave. Would your ideal world see the unpaid leave having that same eligibility rule or do you think it would - - -

**MS BRODERICK (HREOC):** You will see we have been quite inclusive there, so it includes casual employment, contract work and self-employment, but there is an attachment to the labour market of 40 weeks out of a previous 52-week period.

**MS SQUIRE (HREOC):** But in terms of the unpaid parental leave standard, I guess one of the things we wanted to make clear was that our proposal wouldn't be imposing any additional obligations on business beyond that but there would need to be a realignment given the eligibility is much broader than the current standard but recognising, of course, that with the National Employment Standards that there's movement there in other areas and that really our scheme has to be seen in the context of other work and family reconciliation proposals like the extension of unpaid parental leave, like the right to request.

**MS GOLDIE (HREOC):** This is the sort of issue that would need to be considered as part of the two-year review process.

**MS MacRAE:** Just on that review I guess you'd be looking for some markers of success at that stage, if I can call it that, to decide whether you would proceed with stage 2 in the form that you've proposed. What sort of benchmarks would you be looking for at that stage to see whether the behavioural outcomes and other changes that you were looking for, whether they had been made or not?

**MS BRODERICK (HREOC):** We looked at that in a bit of detail. We looked at each objective and then what our indicators of success would see. If we looked at improved health and wellbeing outcomes for mothers, babies and families, we're looking there at higher rates of breastfeeding, at improved maternal health outcomes, improved child health and development outcomes and improved family outcomes. I just query there a lower rate of relationship breakdown. I mean, those things are quite hard to measure. But if you look at the Australian longitudinal survey of women's health, for example, as one of maternal wellbeing, the longitudinal survey of Australian women, some of those statistics are available. If we looked at addressing the workplace disadvantage for women, then we'd want to see an increase in employment rates of mothers, an improved return-to-work rate which is how many private companies currently evaluate the success of their schemes.

Decreasing workplace discrimination, particularly maybe around pregnancy discrimination. In that situation we have complaints that come into HREOC where once a woman becomes pregnant, she's moved on. Part of that is sometimes - not all the time - that, "Oh, well, she's going to get up and leave anyway and not return, so I might as well do it now rather than later." Increase in women's earnings and increased number of women working at their skill level, because that's the other thing we see, a significant deskilling of women as we go around. Gender equality. We want better sharing of unpaid and paid work. If I could do one thing which would bring about gender equality in this country it would be that. More family-friendly workplaces. The signalling of men actually having a role, not just as the ideal worker but also as carers.

**MS GOLDIE (HREOC):** I think on that point in the listening tour we did hear a lot from men who participated in saying that the culture of the workplace remains a major barrier for them in terms of being seen as it's appropriate for them to be taking extended time when a child is born. We have still got a culture that kind of makes an assumption that it will be the mother that stays at home. There's a really strong message there of whatever we can do to shift that culture along, the better it will be in terms of long-term shared care and sustainability with families.

**MR FITZGERALD:** Could I just push you a little bit on one issue. When we're talking about child wellbeing, most people talk to us about the WHO standard in relation to exclusive breastfeeding up to the period of six months. When you start to propose a second-stage scheme taking you up to 52 weeks, the question that would

be in our mind is what additional benefits can you demonstrate that you would achieve by the government putting in that extra period of funding, because after the six-month period - and I'll put another proposition which others would have heard this morning. We met with a government employer a few days ago. They already offer 12 to 14 weeks. Their proposition to us was that in their wage negotiations with their employees, paid leave now no longer rated very highly because they had already reached a level. What people were saying, many other things were more important: flexible arrangements, child care arrangements and so on.

The question I've got for you is, why do you believe and how can you demonstrate that moving, say, even from 26 weeks to 52 actually produces significant additional benefits which should be funded by the government. I'm sure there are benefits but don't you start to get to a point where the cost benefits start to become closer or potentially. I was just wondering in your second stage particularly, in an employer-funded scheme you might be able to say there's benefits to the employer, but a government-funded scheme rightfully should say, "Well, what's the additional benefits from the cost?"

**MS BRODERICK (HREOC):** Can I just make one comment and then I'll hand over to Sarah.

**MR FITZGERALD:** Sure.

**MS BRODERICK (HREOC):** In terms of stage 2, stage 2 which is the total of 52 weeks, comes about after review of stage 1.

**MR FITZGERALD:** No, I understand that.

**MS BRODERICK (HREOC):** Also it's not necessarily at the federal minimum wage which means it may not just be government funded.

**MR FITZGERALD:** Okay.

**MS BRODERICK (HREOC):** I'd just make that point.

**MR FITZGERALD:** Putting those qualifications on it.

**MS SQUIRE (HREOC):** We had a number of thoughts behind the idea of extending it out. One is that we think it would bring us into line with our OECD counterparts, and I guess that's really thinking about the international human rights obligations that are underpinning our scheme and making sure we meet those. We think a longer scheme of around 12 months would actually match up with parental preferences for care. If you look at the parental leave in Australia survey, which I

know you have referred to in the issues paper, Australian mothers on average go back to work around 10 weeks after taking leave, and they're doing that currently through a combination of unpaid and parental leave.

**MR FITZGERALD:** Sure.

**MS SQUIRE (HREOC):** We've also noticed that's actually in some of the personal submissions already on your web site. That has been really interesting to look through those. In terms of health and wellbeing, I think a longer period of time, particularly, I guess, going from 14 weeks to say 26 weeks, would allow Australia to kind of meet the World Health Organisation recommendation in terms of breastfeeding for between four and possibly six months exclusively.

There's some evidence - and we're not child development experts obviously - that parental or personal care for the first six months to 12 months of a child's life is the best. We would probably leave that to other specialists to comment on that in any detail. I guess the main thing for us in terms of the gender equality objective which we keep coming back to is that a longer period of leave actually allows parents to share the leave in a way that they probably wouldn't if you just had a small amount of leave that was transferable in that with a longer period of leave, the mother for example could have six months for those key health and wellbeing things and then be happy to share that leave for that next six months with their partner should they want to. That's probably one of the strongest arguments we have for that longer period of leave, are those kind of broader objectives. That can be a hard thing to measure so obviously that's something you can consider in terms of writing a draft report.

Also we're going again on that evidence from the Scandinavian countries that if you do have a longer period of leave - and some of it is for the partner only - they will take that up.

**MR FITZGERALD:** Yes.

**MS MacRAE:** Just as a matter of detail, in relation to that use it or lose it element, if you had a single parent would that opportunity be there either for that single parent to take that leave themselves or have a grandparent or some other primary caregiver take that leave instead?

**MS BRODERICK (HREOC):** At the minimum how we've conceptualised it is, if you look at that first 14 weeks plus two, if it's a sole parent that two reverts to them. In effect it gives them 16, and similarly we've looked at that one month which is carved out for supporting parent would revert to them.

**MS MacRAE:** Administratively, who would make the payment? If it's a

government thing would it come from the government or would it come from an employer?

**MS BRODERICK (HREOC):** If the individual has been attached to one workplace for the 40 weeks out of a previous 52, then that workplace would make the payment. Part of that is the workplace attachment argument. If the individual has been at a number of workplaces in that 40 weeks, then the government would make the payment, except if there was an agreement between the last employer and that individual, that the last employer would make it. That's once again about continuing work if there's attachment there.

**MR FITZGERALD:** Can I just come to the funding of it. Your scheme proposes that it comes out of general revenue effectively. One of the submissions we received on the very first day of hearings the National Foundation for Australian Women presented a survey which indicated that based on that survey Australians had a view that the costs or the funding for these schemes should be shared by employers, employees and the government. Whilst right at the moment that may be difficult to achieve, I wonder whether you have a view - and again you may not - as to whether over time the funding for this scheme, particularly if you moved to your second-stage model - and I acknowledge that it is subject to a review - do you have a view as to whether or not you could move to almost a social insurance model to fund this?

**MS BRODERICK (HREOC):** That's exactly one of the reasons we put the two-year review in because we do see when you move it out to 52 weeks is it right that the government should be paying for this, or should we move to a model, such as the model that NFAW put to you. We haven't got a fixed view on how the funding should work in stage 2. We do in stage 1, we think it should government funded. But in stage 2 that would be one of the things that would be modelled about how best to fund, and particularly if you were looking at two-thirds income replacement level as opposed to federal minimum wage. But at this stage we don't have a fixed view on that.

**MS GOLDIE (HREOC):** We're keen to see the modelling that you will do in relation to this - - -

**MR FITZGERALD:** I must say I'm always keen to see the modelling the commission does. It's always very interesting. We have one of our better models down the back. I won't say anything offensive about our modelling capacity. But just on that, I suppose in part it's a waiver which you can be pragmatic and say, "Well, in order to fund more" - but the thing that interests me is almost a philosophical or an ideological perspective about where the sharing of responsibilities for these sorts of important new initiatives come from. One can say at the end of the day everybody contributes through taxation and therefore it's simply

a churning exercise, but targeted to those for whom the scheme is designed.

On the other hand there does seem to be a bit of a signalling that goes on with social insurance that acknowledges that we collectively, as employers, employees, and as community through government, want to support this. In a sense, are there any benefits to be achieved or issues to be considered in the funding mechanisms that go beyond simply a way of making it affordable?

**MS BRODERICK (HREOC):** I agree but potentially I couldn't sit here and say we have a fixed view on how stage 2 should be funded, but I would say that that's part of the work and modelling that would be done in a two-year review.

**MS GOLDIE (HREOC):** It was part of our thinking behind saying that where you've been attached to one employer that at least in the initial stage that it would be the employer that would make that payment, was to start to put in place some of the institutional arrangements within the employment relationship that would foster the top-ups that we hope will continue to be promoted and developed. In addition, in terms of looking at a base line payment that we may well be looking to a more complex arrangement in stage 2 that goes beyond general revenue and federal minimum wage. But we see that the initial stage is very urgent and we're keen to see that delivered as soon as possible.

**MS MacRAE:** Just in relation to the flexibility in taking that length of leave, do you see it as a requirement that it be taken as a single block or would you see, as in some of the Scandinavian countries, that you could take it in various blocks over a period of years?

**MS BRODERICK (HREOC):** This is stage 1 and stage 2?

**MS MacRAE:** If you've got views on both then, yes.

**MS BRODERICK (HREOC):** Well, in fact we would see the whole thing being taken within 52 weeks.

**MS MacRAE:** Right, okay.

**MS BRODERICK (HREOC):** So stage 1, 14 weeks, we would see as a continuous block. We've had long and detailed discussions about this. We would see that as a continuous block because without that we don't think it meets the maternal wellbeing objective. Two weeks' supporting parent leave would also be a block. Then in terms of adding in the 38 weeks' parental leave, we saw that as men and women sharing care, maybe in a flexible work arrangement. So I would maybe take three days' paid parental leave and my partner two days. We would never be

able to take it on the same day, but it would allow us both to be engaged in the life of our child for the first 12 months and would also hopefully send some signalling around flexible work which we heard a lot about flexible work as we went around; the fact that people were using it as a primary way of balancing work and family, but some of the limitations of flexible work because of the current cultural issues that exist in most workplaces.

**MS SQUIRE (HREOC):** We should just qualify that to say that that would only be by agreement with the employer.

**MS BRODERICK (HREOC):** Yes, the employer. Again this is talking about the alignment of this paid leave scheme with the right to request. That would be where the employee has the right to go back part-time and flexible.

**MS MacRAE:** Yes, okay. So in that sort of mature scheme, the only time that you would be allowed to take the leave concurrently would be in those two weeks in that first 14 weeks.

**MS BRODERICK (HREOC):** That's about supporting the birth mother at the time of the birth and bonding with the child.

**MS MacRAE:** Yes. I guess one of the other sets of issues that has come up is that if it's not the first child, it's the second child, and you had an extended confinement for any period that you may need a slightly longer period of parental leave to care for the other siblings that might be at home; it's just another issue that we've had come up, but I guess generally two weeks would probably be enough to cover that period.

**MR FITZGERALD:** Can I just clarify one thing in stage 1 and that is the payment of the baby bonus and other social security measures. Maybe this applies to both stages, but you're saying that any current social security entitlement including the baby bonus would be paid in addition to these arrangements or are you contemplating the baby bonus getting rolled in and reshaped as part of these arrangements - on your last page, page 9.

**MS BRODERICK (HREOC):** We looked at that in quite a bit of detail. What we're recommending currently is that there's no change to existing social security payments. Part of the reason for that is we didn't want a situation where a woman who was working under flexible work arrangements, so maybe two days a week, so therefore was earning less than the federal minimum wage, we didn't want her to be earning less than the current baby bonus because that would be a disincentive to her staying in the paid workforce.

**MR FITZGERALD:** So just clarifying that, all women who have children would



be entitled - just assume the baby bonus stays as it is - and over and above that, if you're in the workforce, you'd be entitled to parental leave. If you're a part-time or casual worker, under your proposal that payment is pro rata'd.

**MS GOLDIE (HREOC):** Yes, that's right. A person who receives paid leave entitlements under our scheme would continue to be entitled to social security and family assistance schemes.

**MS BRODERICK (HREOC):** Subject to existing things currently in place.

**MS MacRAE:** So you couldn't be worse of, in other words.

**MS BRODERICK (HREOC):** No, you couldn't be worse off because of a pro rata'ing.

**MR FITZGERALD:** Okay, good. Are there any other comments, Angela, or questions?

**MS MacRAE:** I don't think so.

**MR FITZGERALD:** Any other final comments that you'd like to make?

**MS BRODERICK (HREOC):** No, just thanks very much.

**MS GOLDIE (HREOC):** Good luck and we'll be back.

**MR FITZGERALD:** You'll have the chance on numerous occasions to come back to us. Thank you. We'll take a 15-minute break and then we'll have four participants, Kingsford Legal Centre, Women's Electoral Lobby, Angela Budai and Karleen Gribble.

**MR FITZGERALD:** We might resume with our next participants from the Kingsford Legal Centre. If you could give your names and the positions in the organisation that you represent, that would be terrific and then we'll hear your comments.

**MS CODY (KLC):** Certainly. My name is Anna Cody. I'm the director at the Kingsford Legal Centre.

**MS KRISHNAN (KLC):** I'm Shana Krishnan and I'm a student law clerk at the Kingsford Legal Centre.

**MR FITZGERALD:** Okay, fine, thank you.

**MS CODY (KLC):** Before beginning, I'd just like to acknowledge the traditional owners of the land on which we meet today and recognise their elders, the Gadigal people of the Eora nation. So Kingsford Legal Centre, we're a community legal centre along with 39 other community legal centres in New South Wales, so we provide free legal advice and representation to people in a range of issues, but including employment law and discrimination law. We in fact have a specialist service in both employment law and discrimination law. We've advised over a thousand people in the last five years and the issues are relating to employment, unfair dismissal, unpaid entitlements, as well as advising a large number of women in relation to pregnancy discrimination and also rights after returning from maternity leave.

One of the issues that we've seen recur is the large number of women who have had difficulties and who have been discriminated against during their pregnancy and also those who have had difficulty returning to work after a period of maternity leave, some of it paid, some of it unpaid. With that introduction, I'm just going to hand over to Sharna, who is going to talk about some of those instances that we've dealt with.

**MR FITZGERALD:** Good.

**MS KRISHNAN (KLC):** I'm an employment law student at the legal centre and so I've been working on two cases at the moment which relate to women who have returned to work and then have been made redundant. The first case is of Mary, and it's annexed to the written submission that we've given. Mary worked as an accountant for over five years in a company. She informed the employer that she was pregnant and immediately she was demoted and a replacement was hired behind her back without her knowing. This replacement in the end turned out to be incompetent, and as a result of her incompetency, Mary, who was in her last trimester, was working until 12 and 2 am in the night in order to rectify the mistakes

that were made. Her baby actually lost weight in the last trimester as a result of the stress she was suffering at work.

On returning from maternity leave, she was told to go home and she received an email a week later, telling her that she was made redundant. The thing that really worries her - I've had a lot of contact with Mary and her complaint has been lodged in the Anti-Discrimination Board - but it's taking some time and she's suffering quite a lot of emotional and financial stress, so she's put in a position where she's forced to settle the matter. Furthermore, she's been attending interviews but she's told me, as a result of her having to be up-front about the commitment she has to her new child, she hasn't been able to get another job because she's finding it hard with employers and her husband is overseas at the moment, so she has quite a big responsibility.

The other case is very, very similar. This woman was made redundant as well after returning from maternity leave. She had already negotiated with her employer about flexible working conditions. Her replacement that had been hired was actually afforded flexible working conditions but when she asked her employer for the same conditions, she said no. She said, "All right, it doesn't matter, I'll still come to work," but when it was time for her to come back, he made her redundant or he informed her that she was redundant and her replacement now fills her position.

The last example I'm going to bring up is not actually a case where they'd gone on maternity leave but it's more an example of some of the employer attitudes that we've seen from some of the cases that we've been given. It involved a young girl who was working in a small business of about seven employees, I think, and she was dating a co-worker and she had discussions with her employer to the effect that he said, "Well, if something happens, we find something is going on, it's going to be you, not him that loses the job because you're the woman and your place is at home anyway." Also, when she was eating a lot, he'd comment that she had been gaining a lot of weight and he'd say, "You'd better not be pregnant because that means you'd lost your job," so she was quite distressed and she ended up quitting, along with another woman, because they were facing harassment, not just from the employer but from another male employee who wasn't rebuked at all.

So I just suggest that in terms of coming to some sort of parental leave scheme, I've got some issues that I think should be considered when you're coming to a decision, and that is to ensure that employers are not to be given any additional motivation for discriminating against women, creating some sort of security for women when returning on maternity leave, to widen the ambit of eligibility for women to get maternity leave as well, and to encourage some sort of systemic change to ensure that in the future, fathers, mothers and other carers distribute care work so it's not always seen as the woman's role to be at home and care for children.

To this end, I'd just like to summarise the key recommendations that we've made and that is that a government-funded parental leave scheme be established with payments being matched to an individual's normal weekly payment but capped at full-time hours at the federal minimum wage for 26 weeks - at the current rate, it would be \$431 per week - and that parents have the option of returning to work part-time or with flexible working arrangements as are negotiated with the employer, and that a period of parental leave be reserved for a partner or other carer on a use it or lose it basis to encourage other carers to use parental leave so the burden doesn't always fall on women. So at that point, if Anna doesn't have anything to add?

**MS CODY (KLC):** No, just that the employer have the option to top up, if it be a government-funded scheme, then the employer clearly has the option to top up to the woman's existing wage.

**MR FITZGERALD:** Good. Thank you very much for that. Can I just go back to the cases that you've referred to. At the present time, the laws against discrimination have been in place for a long time and are relatively well known - or we think so - and yet you've identified a couple of current cases that you have. Have you had the opportunity to go back to the employers yet at this stage and confront them with this position?

**MS KRISHNAN (KLC):** Yes. One of the cases - so we've already - and they have had a negotiation with the employer and nothing has been solved and it's gone to the ADB because she didn't make an unfair dismissal claim. But the other case of Lakshmi it's gone through the unfair dismissal avenue, so it is set to be heard at the Federal Magistrates Court.

**MR FITZGERALD:** Without going into the actual cases themselves, what's the employer's response to the allegation that the female employees have been discriminated against on the basis of having a child?

**MS KRISHNAN (KLC):** Yes, it's basically about the position no longer exists that they have been made redundant.

**MR FITZGERALD:** Operational reasons.

**MS KRISHNAN (KLC):** Exactly.

**MS CODY (KLC):** Which I think is an issue that recurs regularly in our work is that frequently women are told, "Your position has been restructured or has now been made redundant," and it's very difficult for women to gather evidence that in fact that's not the case and particularly if they're returning from a period of maternity leave. It's very difficult for them to actually argue against genuine operational

reasons or restructuring. That's certainly a concern of ours is that there be greater scrutiny when there has been a position that's been made redundant after a period of maternity leave.

**MR FITZGERALD:** You make a point just in conclusion that said, "Whatever we do, one shouldn't increase the incentive to discriminate against women who may become pregnant." Do you have a fear that if you introduced a paid parental leave scheme, that in fact increases the incentives for less than scrupulous employers to discriminate against female workers of child-bearing age? Is that a concern that you have and if you do, how would you moderate that concern?

**MS CODY (KLC):** I think that's a complex question because currently there are some employers who do offer paid maternity leave and they still discriminate against employees who are pregnant. There are already entrenched attitudes around women - pregnancy, maternity leave, care, responsibility. So I think it is going to be a process but I certainly don't think that we're at some ideal stage with unpaid maternity leave where employers aren't discriminating, so I don't really see how it could get much worse is the bottom line of that one.

**MR FITZGERALD:** The bottom line, fair enough. I understand that. On the other hand, of course, your scheme, I presume, is a government-funded scheme. Is that correct?

**MS CODY (KLC):** That's correct.

**MR FITZGERALD:** With no compulsory top-up by employers at this stage.

**MS CODY (KLC):** Not a compulsory but an optional one, and hopefully there would be industry pressures - in an arena of skill shortage - then to attract good employees that they would then be compelled by competition to offer that top-up wage. It would be another reason for why you would want to work with that employer if you have good conditions - - -

**MR FITZGERALD:** What are the issues, just in terms of the length of time? Correct me if I'm wrong but I think you said 26 weeks is your proposal. There seems to be two views around at the moment: one is that a very short period of time allows the employer to backfill to some degree without seeking a permanent replacement for the individual; on the other hand, people have said to us that very short periods of time like even 10 or 12 weeks is more disruptive to employers, and in fact a longer period of time away from the workforce would actually help employers, apart from the benefits it might have to the parent and the child.

Just your experience, because in both cases they were backfilled with

replacement workers, and in both cases your assertion is that your clients suffer as a consequence of that. Does making it 26 weeks as distinct from 12 or 14 weeks, change the dynamics within the employment arrangement at all or not really?

**MS CODY (KLC):** I would say probably not. An additional part of that recommendation is that it be payable over 52 weeks so that it may in fact extend out to the full year that is unpaid. I think that women make the choice around return to work based on a number of factors, including money, but also including their desire to spend time with the child, you know, where they're at. I don't know that it would have such a direct impact to have it as a 14 week in terms of different businesses have different demands about what can be done without for a shorter amount of time and what you would need to then fill.

**MR FITZGERALD:** Yes. Angela.

**MS MacRAE:** The paper that we've had from you talks about what would happen for people that are in paid employment, and you do talk about either being currently in paid employment or recently engaged in paid employment. Do you see that your potentially adequately cover sort of contractors and self-employed? Would you have them qualify? For those who are outside the paid workforce, what sort of arrangement would you see for those people?

**MS CODY (KLC):** I guess it's paid employment in a very broad sense, including the self-employed and the contractors which aren't technically employment, but certainly anyone who is currently working in some form should be eligible for that government scheme and that there shouldn't be an eligibility period imposed. So it shouldn't be that you have to work for an employer for six months or for 12 months before you are then eligible for that scheme. I guess the other part of it, the recently engaged in paid employment is to recognise that there will be some instances where someone who has just left work but who has been in work for the last four years, so they shouldn't be unfairly disadvantaged, although we haven't given any great detail to that - recently engaged in paid employment.

**MS MacRAE:** What do you think would be the position for those outside of paid employment? Would you just see a continuation of the baby bonus or - - -

**MS CODY (KLC):** Our recommendation is - as has happened - the baby bonus extended or paid over a period of weeks and then being able to move on to supporting parent - - -

**MS MacRAE:** So for those in the workforce, they would also continue to get the baby bonus, subject to the income test, presumably, that this would be on top of that, the paid scheme? It's okay if you haven't thought about it.

**MS CODY (KLC):** We haven't really directed our minds to that.

**MS MacRAE:** Okay. Just in relation then to your choice of 26 weeks, what were the key factors that gave you that duration?

**MS CODY (KLC):** Firstly, the World Health Organisation recommendation around breastfeeding and the importance of that bonding period, and also that it is a decent slab of time that then allows that relationship to cement and to grow, and also that it can then be given at a half rate, so it would then fit with our current - I think the idea in Australia has become quite current, 12 months unpaid maternity leave, so it could be taken over a 12-month period as well.

**MS MacRAE:** Just in relation to the recommendation you had for partner leave, have you had any thoughts about how much of that might be available to a partner and/or would that be different from the use it or lose it element that you might have for that?

**MS KRISHNAN (KLC):** Some of the research I've done on the Scandinavian countries suggests that they've got up to three months on the use it or lose it basis. I think Sweden has one month, so it ranges between that period. Is that what you're referring to?

**MS MacRAE:** Yes, yes.

**MS KRISHNAN (KLC):** I think one month would be - - -

**MR FITZGERALD:** You will just have to speak up a little bit.

**MS KRISHNAN (KLC):** Sorry. I think one month would be a decent amount of time at least to involve the other partner in the life of the child at an early stage.

**MS MacRAE:** But would that be the use it or lose it part - - -

**MS KRISHNAN (KLC):** Yes.

**MS MacRAE:** - - - or if you were, say, having the 26 weeks, would you say that they could take - would you have a part quarantined for the maternity leave and then would you have a part that might be that they could choose? I mean, as part of that you might have a sub-part that's use it or lose it. Do you see what I mean?

**MS KRISHNAN (KLC):** Yes. So it would be 26 weeks, plus an additional month, that would be reserved for the other carer or the father, and if they don't use it they

would lose that extra month.

**MS MacRAE:** Right. But that first 26 weeks then would be just for the mother or you could share that, or would your proposal be that 26 weeks would be just for the mother?

**MS KRISHNAN (KLC):** I'd suggest that, especially early on, that it would be more recommendable for the mother, just for the physical aspects. I don't know at what point it would be that the father or the other carer could then switch. I'm not sure - maybe after that time.

**MR FITZGERALD:** Can we go back to the discrimination issues, if I can. Do you actually think the introduction of a paid maternity, paternity or parental leave scheme will have any significant effect at all on the discrimination of women generally? I think I asked that question before, but the discrimination is with us and that's why we have anti-discrimination laws, both at the Commonwealth and the state level. I just want to explore whether you think this acts as a signalling device. Some people have said to us that the importance of this scheme is not only in relation to easing the income pressures on mothers and families, but that it's a signalling device - a powerful signalling device - that motherhood and working are compatible and desirable, the same with fatherhood and so on. I'm just wondering whether you have a view about that or really people that will discriminate will discriminate and we just have to continue to use other mechanisms to reduce that?

**MS CODY (KLC):** I think one of the problems with our current anti-discrimination legislation is that it is an individual complaint based system, so it is all about one person who has been discriminated against making a complaint, and that's a real disadvantage and a huge weight on the individuals who have to bring legal cases. By introducing a system of paid maternity leave you're trying to deal with it at a more structural level and definitely sending a message that we are valuing women employees and we are valuing the role as carer within society and the role of parenting within society. Therefore it's addressing the same issues but at a structural level, rather than putting the weight of having to deal with that discrimination on an individual's shoulders.

**MR FITZGERALD:** Okay.

**MS KRISHNAN (KLC):** I think that the take it or leave it for the additional spouse would help in a way as well to suggest that. It's not only women that have to share the burden of that as well. I think recent ABS statistics showed that full-time working women were doing twice the amount of care work that full-time working men were doing. It shows that there needs to be some shift in the burden of care work as well.



**MR FITZGERALD:** Can I ask this question: are you aware of any discrimination cases in relation to men taking leave under the unpaid parental leave requirements that currently exist? At the moment the 52 weeks, as I understand, is available to either parent. Have you heard of any cases against males?

**MS KRISHNAN (KLC):** None that I'm aware of.

**MS CODY (KLC):** Not that I remember, and I've been at the centre for some time. I certainly haven't advised any men in relation to discrimination for taking leave, although we have advised men who have had carer responsibilities for children and who have been discriminated against by their employers; not in relation to very young children but certainly when they have got carer responsibilities, yes.

**MR FITZGERALD:** Later on, yes. Okay. Any other questions?

**MS CODY (KLC):** Sorry, could I just add one point to that other issue of structural change, to point out as well the message to the Australian community that Australia is rare in not providing some sort of paid maternity leave. It's one - along with the United States - of two OECD countries that don't provide a paid maternity leave scheme. I think again it is educating the community about our responsibilities for bearing the cost of parenting socially.

**MR FITZGERALD:** That's true, and that point has been made many times. It's no less valid being made again, I might say, although I might just make the comment that again, as I did to the sex discrimination commissioner, one has got to look at the totality of social security supports and other things as well, but we take that point. Were there any other questions or comments? Thanks for that, and thanks for that insight about the discrimination case because we haven't heard much about that. We've heard about it in the theoretical but to have a couple of cases where you've actually got it is quite informative. You've referred to those in the written submissions, so that's very helpful. Thank you very much for that.

**MS CODY (KLC):** Thank you.

**MR FITZGERALD:** Thank you very much. If you could give your full names and the organisation you represent and then your opening comments.

**MS COX (WEL):** I'm Eva Cox, I am the chair of Women's Electoral Lobby Australia and we're doing this on behalf of Women's Electoral Lobby Australia.

**MS SOBSKI (WEL):** My name is Jozefa Sobski and I'm the convener of WEL New South Wales.

**MR BARBER (WEL):** My name is Anne Barber and I'm with WEL New South Wales.

**MR FITZGERALD:** Okay. Over to you.

**MS COX (WEL):** Just a few points - picking up on that last point. I think one of the reasons that we're quite clear about what we want is because it is about cultural change. It is about the assumptions underpinning the introduction of a paid maternity/parental leave scheme. One of the things that strikes me - and I've sort of been muttering it to various people over the day - is there is not a single payment that this current government does - or the past government - that is actually aimed at women in the workforce. You were bang-on about the child care rebate but that's actually also paid to women not in the workforce. Therefore, there is no acknowledgment anywhere in the system that there is a sort of strict connection between parenting and workforce participation. If we get this one up, in a sense it will be a first. It will be a first for the government.

I think you were asked a question earlier - and you'll get this in more detail in our submission - about why we had had a whole lot of reports that had been ignored in the first place. Well, I think, because I've been around for a very long time now, I've been involved in most of the lobbying for most of those reports. I think we keep losing it because male politicians go to water at the idea of the actual acknowledgment of the fact that there is a nexus between working women and that whole issue around care and things like that. I mean, Keating did it when we had the original maternity payment, it suddenly turned into a welfare payment. Howard did exactly the same. So it cuts across both parties. But there's still this thing - and, I mean, you asked the same question of Elizabeth Broderick and whether she picked it up in her listening tour, the issue about women at home.

You keep getting - the media plays that issue about "the woman at home" and that they are "real women" and somehow or other the rest of us who actually try and combine workforce and non-workforce stuff are not real women like they are. Yet if you look at them there's an incredibly small proportion that actually stay out of the workforce long-term. I've just run across a few of them in a piece of research we've

done on welfare to work, where there are some on the sole parent pension who say, "I haven't worked for 20-odd years. It was an agreement I had with my husband. Now I'm being pushed into the workforce because of the changes there." I would support very strongly that they should have that sort of choice.

On the other side you've got things like family tax benefit B which is very clearly designed to reward those women who push the traditional roles. It sits rather oddly, just as a side comment, with the welfare to work, where if you're a single parent you get pushed into the workforce but if you're supported by a husband you get extra money to bribe you to stay at home. The logic of that, I must say, completely defeats me but that's another question.

I think we're still stuck with the fact that - and it goes back to the point that the last speaker made - there is still a sort of discriminating view about women in the workforce. I know there's women at home that complain they are discriminated against but still there's a lot of guilt and a lot of tensions still around the workforce stuff. I'm not going to give much detail because this will be recorded but I am a grandmother, I have a two-year-old grandson. My daughter who worked for a very large company did not get paid maternity leave, and when she came back her job, which was a fairly senior one, had been given to somebody else. She's still working for them but she does not have the security of the original job that she had. Now, a year after she's returned she's still hanging on the edges. It's a question, yes, she could have taken it to court but do you fight one of the very large companies in that particular way?

Years ago I did a survey of people that were actually HREOC clients and what's really interesting is if you take a case to the anti-discrimination board or to HREOC, very often you end up as the loser. You might end up technically winning but your chances then of getting employment in your field are less. So there's still that within the system. That's why I think we're very strong in the fact that this has to be a payment which is industrially based. It has to acknowledge that there's a strong relationship because it does send very strong signals between the workplace and caring.

The double-sided thing is if you legitimate the fact that care and workplaces mix and you legitimate it for women, you also legitimate it for men. That's why it has to be an industrial leave condition. If they put this in as another welfare payment - I'm not quite sure whether I have to ride naked around Parliament House or what you'd have to do. But the point about it is that it would indicate that we are just still so far behind the idea of accepting the changes in the workforce that have occurred. Therefore we are very insistent that this has to be a payment which is a leave payment which is paid through the employer. We think there's a very strong justification for it to be publicly funded.

I want to make a point about this which I don't think has been made before in relation to this: if you take a look at the amount of public money that goes into the funding of superannuation through the tax concessions - I think I've pulled out the tax expenditures thing - something like 22 billion in tax forgone, that primarily goes to high-income males. That is the public funding of super. We don't fund our own super. I get really bored with people who tell me they're self-funded retirees, they're not, because in most cases they've been funded by very generous tax concessions. We are talking about putting less than a billion dollars in the hands of the women who are basically not going to benefit in most cases by that because of the time they take out of their work and because generally women are lower paid.

We're recommending a scheme which basically - we're still bickering about the sorts of things there but at the moment we're looking at a scheme which is basically replacement up to the minimum wage as publicly funded and that would cost I think somewhere around 500, 600 million - some of the estimates, depending on what you're going to do - totally separate from the baby bonus. Any attempt to combine them I think has been stuffed by the government actually means testing that rather than taxing it which has made them almost impossible to combine, so that's something the government can deal with it. Anyhow, at the moment you get both if you happen to be getting paid maternity leave, so we're recommending continuing the baby bonus in whatever form the government decides it's going to continue it, as currently designed, and paying a replacement of income up to the minimum wage for those women who have a workforce attachment - probably we're still bickering around that - of at least six months in the past 12 months and also making sure that anybody who gets paid that leave, that it is connected with the fact they're entitled to leave, because one of the flaws of the baby bonus is it's never been connected with any leave payment, so therefore if you weren't entitled to get any leave, you could be forced back to work by your employer within a couple of weeks anyhow without any recourse, so that whole issue has to be dealt with, with maybe a sliding scale for people who have a lesser attachment to the workforce over the previous 12 months.

We would then like to see that it gets topped up and I think at this stage we're still sort of thinking about that, but employers should top it up to the level - you were asking questions beforehand about maybe you should only fund the lower income employers or the lower income people; that takes it away from the idea that it's a leave thing, but also you can't rely on it because some low-income groups - like, they just passed it for the Aldi workers - are getting at least six weeks or whatever it is. Some high income workers like my daughter didn't get any paid maternity leave. She can't get it because there's been a change of ownership of the company, so you can't sort of assume that. But generally, paying it up to replacement level at the minimum wage covers I think - you know, there's different figures coming out but probably 60 to 70 per cent of women because a lot of them are part-time and a lot of

them are around the minimum wage level, so they will get back what they wanted to and if they get the baby bonus payment on top, that should be all right for those that are at the lowest income level.

Those at the higher income level, I mean, hopefully those are still getting it; there should be some way of rewarding employers who are prepared to continue paying what they've been paying so far, and maybe with a sort of threat hanging over it, a levy will be put on those employers who don't sort of top up at some later stage into a common pool which might have similar characteristics to the type of stuff that Julia has been putting, so that you do get an employer contribution as well.

It's not a question of money. I mean, people keep saying it's a question of money and people focus on the money but what's really interesting, if you go back to the baby bonus history, they could have got away with 600 million; they ended up paying 1.2 billion last year because they chose to fund everybody rather than fund a paid maternity leave process. So in a sense, it's not an issue of something a government sometimes hides behind, any more than the means testing of the current things as a case of saving money because the percentage of people that have been caught up in the means test is less than 10 per cent on both of the current payments on income testing. So it's really an ideological issue, and the government keeps revealing its ideological things by playing around with those things. The money stuff has always been the minority-type stuff.

You've raised the objective of gender equity in the home and in the workforce and that's our starting point. We think that if you actually make these cross-connections between care and paid work, it will change attitudes. Hopefully men will do more caring and hopefully there will be much more of an acknowledgment that there is a work/care nexus in the workplace as well as in the home place and it will do that.

Of course one of the problems is, if you're trying to look at what the immediate benefits are, unless you get more child care and more flexible working hours, it's going to be hard to track exactly what the benefits of this one is, but people have been talking a lot about the benefits for children and I think they are important but one of the things that needs to be pointed out is that the costs of quality care for children under the age of 12 months are extraordinarily high. At the moment, the care ratios for children of that age group are not good. In New South Wales they're 1 to 5; they should be at least 1 to 3 if they're going to be run according to the recommendations. It's not good having small babies in group care. It is expensive. So there's some very real benefits of allowing women to take the 12 months out, and what we would like to see are moves towards that, with the husbands and the wives or the partners, if they happen to be same-sex partners or whatever they are. We want to see them switched across because I think for a lot of younger people, that's

really important. Yes, it's important to establish breastfeeding but some people decide they don't breastfeed, so I think one has to keep some flexibility into that. Sometimes the person involved will not be the birth mother, so that raises other sorts of issues. So I think we want a little bit of flexibility around that, rather than trying to rigidly say it has to be all health related because people have very different reactions. But there should be the possibility of taking up to 26 weeks if you need them for the health-related things for the birth mother if that happens to be the primary carer.

I think we need to be really clear about the fact that this is a payment through employment. It should be paid by the employer. They've just managed to make the baby bonus a fortnightly payment and that solves the problem of a lump sum versus a payment thing but I mean, very often if you do go off on leave, like long service leave and so on, you actually get a lump sum, so I don't know how far, if you're going to pay it through the employer, you tie them to having to make a fortnightly payment. I think that has to be looked at in terms of what the costs involved are. I mean, you can claim long service leave as a lump sum or have it paid over the period.

Another point, just one that Anne raised with me earlier, that if it's not a leave payment, it also affects people's eligibility for things like long service leave, so again if it is a leave payment paid through the employer, that means that people would still accrue their long service leave.

**MS SOBSKI (WEL) :** They would have continuous service instead of disrupting their - - -

**MS COX (WEL):** That's actually important, and also if there's a superannuation payment, that's also important. So I think there's a whole lot of arguments as to why it should be paid through the employer, and it also encourages the employer to maintain contact with the employee and vice versa. I think the evidence that was produced by the Diversity Council et cetera indicates that the more contact there is between the employer and the employees in the period of leave, the more likely it is that there's a good relationship built and that the people will go back.

It needs to be publicly funded because we have a highly gender-segregated workforce which I don't think has been raised as much as it should have been. If you actually demand that employers pay it of their own account to any high degree, it would actually penalise those areas which have a high level of women workers and that becomes another problem, certainly in areas like aged care and so on. We still end up doing those grotty, low-paid, feminised occupations because men are not silly, they don't do them. Somebody once complained to me about why did child care discriminate against male teachers and I said they're not stupid enough to work

that hard for that sort of money. That sort of thing is actually part of the process, true they just don't enrol in the area.

So I think we've got to assume we've still got unequal pay because feminised occupations, despite ACCI's best effort, there are still a lot of jobs which are primarily done by women which are lower paid, and so missing out on some months of pay is actually going to be more damaging to longer-term things like super and so on if that happens.

We'd like to see it introduced. That's the other thing, we're worried about the time line. You're not reporting until February next year and that's bloody close to next year's budget, and the budget after is the pre-election budget, so we would like you to urge the government to try and make sure that this at least comes in in next year's budget, because if they start delaying it, it will end up as a second-term offer and that's far too far away. I think that's really important.

It needs to be written into an act in a way that does ensure that the leave entitlements are clearly connected with the pay because that means that it does become a workplace thing. We just need to make sure that it is actually promoted as something that is important because there's quite a bit of evidence that even taking time out of the workforce and dealing with children actually makes you a better manager when you come back; you know, there's skills you learn and it's not a blank period. You get that from women, "What are you doing at the moment?" "Nothing." "What do you mean you're doing nothing?" "Well, I'm at home with the children," so there's still this sort of viewpoint that nothing is gained with that, but you certainly learn to do multitasking which is very useful when you get back into the workforce. I'm not saying it's only women who have had kids that do that but it certainly hones your capacities to do that, as I think most of us would know.

The amount of weeks, we're still sort of arguing; I mean, ideally I think it should come in at the 26 weeks' level with the capacity, like the last person said, to split it down so it can go for the 52 weeks. If they don't bring in something that's at least 14 to 16 weeks, I think they're going to find themselves with a large amount of egg on their face. To some degree, something has to come in and has to come in very soon. I think we've got to recognise that the women that basically are missing out at the moment, despite the fact there are some high-income earners, are low-income earners and the people who don't have bargaining power. However, trying to fix that by making it a welfare payment fails to make the connections with the workplace and also stigmatises people in a way as having become welfare people. It also allows people to fudge their income to try and claim things because if they are low income, that's what's going to happen no doubt with the baby bonus. So it just has to be a payment which is related. If it's work related, it is work related. We don't say to high-income earners, "You can't have holiday pay because you can

afford to pay for it." I think that's got to be a very clear principle, that it is work related and not sort of fiddled around with.

I've made the point that we want to change workplace cultures, so it is about signalling a change in workplace cultures and I think it is very important and if you tie this back together with maybe more flexible workplaces and better child care and maybe things like some of the other sorts of issues that women who are back in the workforce raise or men who are going to provide the care, it becomes a package which is much more useful in its entirety, but this has to be the baseline of the package. I've already said I think either should be able to take it, unless there are strong health reasons for that.

I think contractors and casuals need to be covered and it should be done on the basis of having maybe 26 weeks out of the previous 52 within the workforce entitles you to the full range of it, unless - and that can be done pro rata'd in a way which makes sense, so that if you've only done two weeks' worth in the last 12 months, you can't very well claim the full maternity leave and expect the employer to keep the job, because it should relate also to the fact that you have the right to return to your own job. I think they were the main points. Have I left anything out you can think of?

**MS SOBSKI (WEL) :** I think you've done really well.

**MR FITZGERALD:** Good, thank you very much for that. Angela.

**MS MacRAE:** Can I just be clear, because I'm not sure I got the scheme that you're proposing correct. The 26 at full pay or 52 weeks at half pay, that is the government-funded element you're thinking of?

**MS COX (WEL):** Yes, that's replacement up to minimum wage.

**MS MacRAE:** Up to minimum wage?

**MS COX (WEL):** Yes.

**MS MacRAE:** That's all right. When you said "full pay", I thought maybe I've misunderstood when you talk about - - -

**MS COX (WEL):** The full paid minimum - and for a high majority of the women who are not covered at the moment, that would be full pay.

**MS MacRAE:** Yes. I guess to the extent - and we have had some people talk about replacement, going up to income replacement and that if we want to make that link



to, "This is a form of leave like those other kinds of leave," that it strengthens that argument.

**MS COX (WEL):** It does.

**MS MacRAE:** Do you see that there's a bit of a problem there in arguing it's a form of leave but we aren't actually linking it to a - - -

**MS COX (WEL):** No, because I think the pressure should be on - and maybe one should set a two-year limit to take it up to replacement level and then threaten them with a levy on employers if they don't actually bring it in, a bit like the old training levy they had at one stage. "You show you're bringing it up to genuine replacement level. You don't pay the levy, you fail to do it and we'll introduce a levy;" I think that might be the way to do it, sort of have a soft option to start off with and validate the employers that will do it and then drag the recalcitrants in at a later stage by a pooled fund because that may well be the only way that you deal with the fact that some areas have very high female employment and some areas are nearly all male, so get them all to pay. Males should be able to take it too then.

**MS MacRAE:** That was going to be my next question, because you raised gender equity as the major issue about what sort of arrangements would you see in place for paternity leave and - - -

**MS COX (WEL):** I would see that you should have probably at least some part quarantined for women and I'd say they should have an option of taking that up to maybe nine to 12 weeks as recovery-type stuff. After that, maybe they can share, but there ought to be a quarantined, at least, four weeks for men, and when we get past 26 weeks, then we can start looking at the Scandinavian model which actually has a much more extensive male thing which they had to make compulsory to make the bastards take it.

**MS MacRAE:** It's not quite how I would have expressed it.

**MR FITZGERALD:** Yes, I'm aware of Eva's technical terms.

**MS COX (WEL):** A lot of men just wouldn't take it unless it was a useable option because - - -

**MR FITZGERALD:** No, it's very true.

**MS BARBER (WEL):** I think our focus at this stage is primarily on women. We are talking maternity leave. There is this community change towards parental leave but at this stage, we acknowledge that that is happening and some women are

wanting to share, but the focus at this stage is on maternity leave.

**MS SOBSKI (WEL) :** We would say, and we welcome the comments from the Kingsford Legal Centre, that the symbolic impact of this will be quite considerable - I don't know, you didn't use the words "quite symbolic" - but it's going to have a structural impact and no other form of payment at this stage - you can say a baby bonus, but it doesn't actually address the structural issues in the workplace and the systemic discrimination that's still out there.

**MR FITZGERALD:** It may account for why this has taken on such almost iconic status because there are many ways to improve both child and maternal wellbeing; this is but one. But it is interesting that over a period of time, largely I suppose because of the many reports that have preceded this one, it does have a status which goes beyond the actual benefits that would be derived from - - -

**MS COX (WEL):** It's not money and it's not necessarily just time out, it's actually making the strong connection between the workplace and caring which has always been a sort of male/female division. So if you actually want to change cultures at workplaces, you have to make caring a legitimate reason for not being there, and this is part - - -

**MS SOBSKI (WEL) :** Valuing caring.

**MS COX (WEL):** Yes.

**MS SOBSKI (WEL) :** It's valuing caring for children.

**MS COX (WEL):** In the same way that paid work has been valued and it's one of the things that creates a balance between them and we've never had that. So yes, it has a huge - - -

**MS SOBSKI (WEL) :** I was just going to historically and even currently, the comment is still made: women choose to have babies. You know, "You choose to have a child, therefore some of the costly expenses, the burdens of having a child must rest with you, therefore you've got broken employment, you don't have the long service leave entitlements because you're choosing to have a child."

**MS COX (WEL):** Which ignores the public benefit of children.

**MR FITZGERALD:** Yes, that's right. Let me just make the comment there are some people who still believe that having children is a choice and it is largely a private good with some public benefit but not much. Now, that hasn't come through the participants we've had but let me assure you, that's a view that's out there and you

know it.

**MS SOBSKI (WEL) :** Hopefully not in the commission.

**MR FITZGERALD:** You never know. It's an eclectic body.

**MS SOBSKI (WEL) :** I know that one is there, but - - -

**MR FITZGERALD:** But putting that aside for a moment, there is an issue here: one of the employer groups indicated to us very strongly that they believed the payment should come from the government, not from the employer, irrespective of who pays for it, but I mean, they were assuming. One of the things we said to them is why is this different from any other leave, because you would expect to pay it, ignoring the actual cost. In a sense, I suspect they said, "This in a sense is a choice, it's a choice by the employee or it's a choice by the woman, and that that's a community good and therefore the government should pay it and it should pay it directly." They were distinguishing it very clearly in a very different way than you are. They were saying, "This is really in the form of a leave but it's actually about community support." Now, that's diametrically opposed to your - - -

**MS COX (WEL):** That's exactly what we've had for the last few years and it has not been satisfactory. Workplaces continue to discriminate against women. The connections between the workplace and the home have remained attenuated and there's not the sort of recognition that a lot of men want, about the fact that they want to take some time off too, so there's still a very clear, "Males are seriously committed to the workplace," and I'm sure the people you were talking to would see that, "and the trouble with women is that they're not serious."

I mean, yes, women are physically geared to having children. You actually have to look at how many women, including my daughter, delayed having children and are delaying having children because of the sort of difficulties that are involved, with all of the sort of costs that are engaged. It shouldn't be like that. There's no reason for that. That's why we're saying we need to change those sorts of attitudes. Yes, of course you're going to find people that say having a baby is a private choice and it comes somewhere between the overseas trip and the second car and the holiday thing, I've heard that, but I talk to students - I've just finished teaching - and the students I talked to say things like, "Well, before I have a child, I've got to sort of get all of these other things out of the way, my postgrad study, my overseas trip," and they get the deposit down on the house, save up enough in order to pay off the mortgage and that sort of stuff and so on.

**MS SOBSKI:** Pay off the HECS.

**MS COX (WEL):** Pay off the HECS, because they have been drilled in that particular model of choice.

**MS SOBSKI (WEL) :** Absolutely.

**MS COX (WEL):** I mean, if we're going to look at the fact that all these people that bang on about choice are going to actually want somebody around to take care of them in their ageing if they haven't made the choice to have children - you know, that there is a reason that we should have - we're below replacement level. We're not arguing a pronatalist policy at this stage but we are saying the choices about having children are actually choices that have strong public benefit. The choices about going back to work also have strong public benefit. The choices of being a good happy worker with a good relationship with your employer also have public benefits, so I think we're trying to get away from the view that there is the workplace which has this sort of masculine attribute - I won't actually use the ruder words - and there is the home which is this warm, fuzzy, feminine sort of area. I mean, that's what we're trying to get past and that's why this has got such a symbolic value. I know there's people that say that but I just think that they actually ignore, if you like, the broader benefits for both the workplace and the community and the interconnections between them. They try and pretend they don't exist.

**MR FITZGERALD:** By the government funding it, in a sense - notwithstanding yours is about paid by the employer - - -

**MS COX (WEL):** Through the employer.

**MR FITZGERALD:** Yes, through the employer, which is the UK model, although that's got a social insurance underbelly to it - - -

**MS COX (WEL):** We don't have a social insurance system.

**MR FITZGERALD:** - - - you could actually say that you're still doing the same thing. I mean, why should we not say that this should be a mandated employer responsibility? Clearly, there are businesses that would be adversely affected by that. We understand that.

**MS COX (WEL):** Absolutely.

**MR FITZGERALD:** But we move from that position to a universal position and in a sense, it is government subsidised, but I wonder why are we not, as other nations have done to some degree, said, "Hang on, this is an employment arrangement, the employer should contribute, either wholly or in part." We're not doing that. Why do you think that is?

**MS COX (WEL):** Because we haven't got a social insurance system. We're one of only a couple of countries in the world that have a pay-as-you-go welfare system. We've never had a social insurance system. We cancelled the one we started after the Second World War which some of the older pensioners are still remembering. We had a chance of doing this when we introduced compulsory superannuation and it's interesting to draw parallels with compulsory super; they could have at that stage expanded that process and added in some social insurance things. They chose not to. They chose to make it a sort of individually based process, with an extraordinary amount of public subsidy. I mean, why are we subsidising rich men's retirement? I think that's a really interesting question. It's certainly not going to save us the pension because they wouldn't have got the pension anyhow. So the government made a decision to push employers into doing that. At that stage, they didn't, and I can remember at the time raising the issue, why didn't they sort of tag in some of these leave-type things. We don't have a social insurance system. We missed that opportunity when we introduced compulsory - - -

**MS SOBSKI (WEL) :** Accepting that, where there are differences of view within women's organisations about that and even our own, my personal view is that employers should be funding a proportion of it, 50 per cent in fact, and that should be mandated, not "maybe I'll do it, maybe I won't". We're talking here about the art of what might be politically possible and palatable.

**MR FITZGERALD:** Sure.

**MS SOBSKI (WEL) :** I cannot see this government taking on a huge brawl with many employers and alienating the entire small business community. The small business community, even if you had tax breaks for them which would somewhat alleviate the impact of such an impost, I just can't see that - I can't see this government buying that battle.

**MR FITZGERALD:** No, that's fine. Just a related one, going back to the baby bonus, because it is interesting, you say that you can't roll it in. Of course the ACTU and other proposals are that it is rolled in. Putting aside the income test that's just been brought in, just put that aside for one moment, the means test, if it weren't for that change, could you roll it in?

**MS COX (WEL):** It's interesting, the proposals like the ACTU ones and I think some of the other ones that have rolled it in, have actually set a minimum payment of the minimum wage - - -

**MR FITZGERALD:** To everybody.

**MS COX (WEL):** - - - to everybody. I've just got some problems with that if you're trying to make this a genuine leave payment. I think that that's sort of actually paying somebody more than they would have been paid than the period when they're getting maternity leave seems to me to undermine that. I think they worked that out when the baby bonus was just this universal lump sum and they had to pull together a submission that was attractive. I think the income testing - of course not means tested, income tested - and the payment by fortnight has actually changed that, but I'm just not sure whether the ACTU - - -

**MR FITZGERALD:** No, we'll no doubt ask them about that.

**MS COX (WEL):** I just think this is cleaner, to say, "Hang on to the baby bonus in its current form," because it covers all the people out of the workforce, "and add this in," because I don't see a problem in giving women who have given up income a replacement for some of that income. I just can't see why somehow or other - I mean, if you are at work and you are sick, you get your income replaced. If you're on holidays, you get your income replaced, and if you're having a baby, you should have your income replaced. In fact if you're doing military service, you have your income replaced.

**MR FITZGERALD:** Sure.

**MS COX (WEL):** So it strikes me that within the sort of context of that and at the same time, if you go back to the superannuation thing, every time you put some money in to super, the government gives you a whacking great concession, so there's a lot of public interventions around those sorts of processes and this one fits in very neatly with that. I know the ACTU and a few of the other things have sort of bent over backwards to try and find something that was compatible with the baby bonus and things like that but I just think it's cleaner to split them apart, then if the government wants to change the baby bonus and if they want to use that to partially fund that, then solve the problems of the fact that one of these should be taxed. You know, obviously any payment that you get that's a work-related payment is taxed and - - -

**MR FITZGERALD:** That raises the issue that you raised - we've already contemplated it - the payment that's received through the employer is obviously taxed.

**MS COX (WEL):** Yes.

**MR FITZGERALD:** Would therefore the payment, the baby bonus in whatever form, continue to be - should be taxed? I think your point is it should be taxed rather than have an income test applied to it.

**MS COX (WEL):** I think it would be much more sensible to actually have taxed it rather than do an income test. The government got themselves some really hairy-chested sort of headlines over the fact that they were being tough on rich women, but on the other hand, the actual savings are minute, whereas if you taxed it, it would just mean that higher income people would actually lose some of the baby bonus in tax and lower income women wouldn't, so you'd get a much better equity outcome than you do in the current system.

**MS BARBER (WEL):** The other dilemma we have is that we already have 30 per cent of the workforce who are getting paid maternity leave and the baby bonus, so we don't want to introduce a plan which is going to reduce everyone down to a minimum level because we've already got 30 per cent of women who are eligible for both, so that's not our aim, to do a Robin Hood, to take from one part of the community to give to another.

**MS COX (WEL):** It's not necessarily the high-income ones because there will be some low-income ones that get hit. Look, the government needs to wear the fact that the baby bonus was an extraordinarily bad piece of policy in the first place.

**MS BARBER (WEL):** And they can blame it on the previous government.

**MS COX (WEL):** And they can sort that out, but I want to get this paid maternity leave in regardless.

**MS BARBER (WEL):** Absolutely.

**MR FITZGERALD:** Sure, a separation.

**MS COX (WEL):** I think it's their problem now.

**MR FITZGERALD:** Yes, okay. It's very important because one of the things we are looking at is whatever proposals are finally put forward by the commission, we do have to look at the interplay between it, the tax system and the social transfer schemes.

**MS COX (WEL):** I mean, there's interesting questions around that also because of things like family tax benefits A and B and all of those other sorts of things.

**MS MacRAE:** One of the other comments - and again I'm not sure I got the context of it correct - I think I understood you to say that you were, if I can say, indifferent between whether it was a lump sum or an instalment based arrangement and whether you had one or the other should be driven primarily by the administrative costs. Is

that right?

**MS COX (WEL):** What the employer normally does in terms of their payments of leave payments. I mean, if you find an employer that pays all their leave payments out in a lump sum because they've got their system set up to do that, then you sort of demand that they pay it as a fortnightly payment. You might get some resistance but I'm saying basically if it's an employer based payment, it should be negotiated with the employer on the basis of how they normally would pay leave. I think it would be better to have it on a fortnightly basis to maintain the contact but I'm also aware of the fact that employers might feel resentful if they're being told that they have to pay things out in a way that's different to other ways that they're paying.

**MR FITZGERALD:** Just on this employer contact, because as we said before, you've had others pay it through the employer, when we've raised that with a number of employer groups - and I'm sure they have different views about this - we've talked about this issue of attachment between the employer and employee. Many have so far put very low value on that, not the reattachment to the workforce. When we've said - and we've asked many of them - should the payment be made through the employer, many have been quite indifferent about it or opposed to it. To what extent the final submissions from those groups reflects that position, I'm not sure just yet, but I'm just wondering, how strong do you think that ongoing relationship by way of payment and that from the employer to the employee is?

**MS COX (WEL):** I think it should be very strong because I just think it actually reminds the employer that there is a continuing relationship.

**MS SOBSKI (WEL):** It doesn't surprise me that they would take that position because to me it's testament to the fact that they actually don't want this kind of payment to be seen as a leave payment and they want somebody else to be responsible for it, not them.

**MS COX (WEL):** Interestingly, when I raised this at a seminar that the Centre for Policy Development had with somebody from the small business thing and I said, "But in England, they pay you 107 per cent of the thing there," he suddenly looked a lot more interested. So I suspect this is partly financial and partly, as Jozefa said, it's the employers who don't give a stuff about this stuff, "We don't want to actually have anything to do with it," so I think it might be a good move to actually make them take some responsibility for it and then they might actually realise that having ongoing contact is a good thing, which I suspect the responsible employers who are already paying out some form of additional payments are not going to have any problem with that, so it's educative, let's say. I've got no problems, at least in the first year or so, that there should be a bonus, you know, an additional payment to sort of allow them to set up their systems, so that there's no cost to - - -



**MR FITZGERALD:** A number of proposals have indicated that there could be additional payments of that and other - - -

**MS COX (WEL):** It's also easier than to lobby. Once you've got the system set up, it's easier then to lobby the employer to add to it because you've got a system that's there. At the moment, if you haven't got a system that's there, they can run away.

**MS MacRAE:** So would you see value in putting something about maternity leave in the national employment standards?

**MS COX (WEL):** Definitely.

**MS SOBSKI (WEL):** Absolutely.

**MS COX (WEL):** Maternity, parental leave, yes, I think that should definition be there because if it's not there, you then get back to that issue about what's the leave entitlement, because it's all covered in I think the 1976 Maternity Leave Act which only has the specifications of 12 months' unpaid leave, so I think it should be in there. It needs to be enforceable through the industrial relations system.

**MR FITZGERALD:** Although it can be separately legislated.

**MS COX (WEL):** Yes. There's the interesting question of - which I don't know whether the commission has actually looked at - as to whether or not it's going to cover 100 per cent of employees or whether it would only cover those that are covered by the current federal Industrial Relations Act.

**MS SOBSKI (WEL):** The maternity leave provisions in New South Wales covered under the Industrial Relations Act, I wouldn't be separately legislating for it. I would make it quite clear that it's a leave - it's an entitlement of work.

**MS COX (WEL):** It's getting it nationally for those areas that are not covered by the current federal industrial relations.

**MR FITZGERALD:** I think at the moment, without committing any of the state governments, there's a strong commitment to ensure that whatever happens happens nationally.

**MS COX (WEL):** But it would have to be written in such a way to make it - - -

**MR FITZGERALD:** Sure.

**MS COX (WEL):** Just in case we have a change of government which might actually decide that they don't want to do this.

**MR FITZGERALD:** Sure. That just raises one issue: where there have been voluntary schemes already negotiated, some have simply said what you do is you absorb the government contribution into those arrangements, so people are no worse off. One or two of the union groups that have presented or will present have taken a view that in fact any government scheme is additional to whatever has been in place, so whilst it's not absorbed, it actually is over and above, so you retain the baby bonus, you retain the voluntary or collectively agreed position and everything else is on top. Others have said you absorb it, as long as you're not worse off. You don't downgrade what you've negotiated but it's - - -

**MS COX (WEL):** I think realistically we would have to absorb it, you know, I think trying to actually ensure that they kept it. I think the unions and the collective bargaining people can have strong pressure on them hopefully to extend the time lines or extend the levels because a lot of those private schemes are quite a lot shorter than this and use it to sort of top up at a further level. Unless you're going to offer something - I mean, I was toying at one stage with the idea that maybe you could allow 125 per cent tax return on voluntary additional - you know, for people over a period of a couple of years to encourage people to hang on to it, but I think trying to mandate some method by which they would actually - you know, that they would have to improve it I think would become incredibly complicated. So I think you do better to say if they're good employers, they'll use this to keep their position as employers of choice by offering something better, and they're already offering something better than what's generally available, so if they want to retain their capacity to be a better employer than the average, they will retain it.

**MS BARBER (WEL):** To say that we're really going into new ground in Australia and the only models that we've got are overseas models, it possibly then is best if the commission would recommend that there is a review, as HREOC mentioned, within two years, that once we do get some real experience, then questions such as the one you've just raised could well be covered in the review.

**MR FITZGERALD:** The point raised however to both the HREOC and others is what would be the criteria or the benchmarks that you'd want to see in such a review; in other words, what would the review be evaluating against?

**MS COX (WEL):** As somebody whose basic skills is as a researcher and evaluator and all of those things, I think within a two-year period you'd be bloody lucky if you actually found any indicators that did response because they do relate to other things like the availability of child care, flexible things, time et cetera.

**MR FITZGERALD:** Sure.

**MS COX (WEL):** I think what you'd be looking at at the end of two years is what is the - maybe you could probably trace some employment effects because we do have - unless they manage to screw ABS entirely in the latest budget. There are some fairly good employment figures that you can monitor, levels of employment and time off and the various things like that, so there would be monitoring things like that. But I think, seriously, if you're going to - - -

**MS BARBER (WEL):** And discrimination.

**MS COX (WEL):** Well, complaints maybe. I mean, I'd be surprised if you had any clear outcome monitoring type things in a two-year period, maybe around five years. But I think what you would actually hopefully be looking for is some attitude change amongst employers and also whether it's bedded itself down comfortably and who's getting what. So I think I'd support Anne's point, that because we have a particularly different welfare system to almost everywhere else, it will take a bit of shaking down to work out how this sits because we don't have a contributory scheme, looking at how much voluntary stuff comes through, those sorts of things. I think a two-year review and a five-year review built into the legislation would give us a chance of tidying up anomalies, sorting out any sorts of problems and by five years, we probably hopefully will have some clear indicators, but I think two years if very optimistic.

**MR FITZGERALD:** One of the indicators you haven't mentioned is where a number of the wellbeing or health groups would say to us the key indicator is the length of time that one is staying at home. I presume that's an assumption that you've made in that, but those that place child wellbeing at the centre of this would say that the key indicator would be length of time at home and associated increases in breastfeeding. They're not indicators that you've mentioned.

**MS COX (WEL):** I think it's very hard to push the breastfeeding one. Basically, yes, it's good for kids to breastfeed; yes, it's something that basically middle-class mothers tend to do. The breastfeeding rates amongst the lower income groups has always been lower than the ones amongst the higher income groups. You then have to make the connections between those that are in the workforce and those not in the workforce. You could probably get an indicator of whether people are still going back to work in a hurry and that would be one thing that you could draw - providing you've got a proper survey. Sometimes that's quite hard to gather - I think if you're looking at it, yes, you can say that it's good for the baby and the health. I think possibly a drop in demand for child care places for the under 12-month-old ones would be a very good sort of indicator. There are things about the times going back to work, but I don't think you can decide that you're going to increase the

breastfeeding rates or those things because there's lots of - there was a recent survey and it did show that there was a lesser breastfeeding rate that had gone back to work, but the difference, if I remember rightly, was not huge. It was significant but it wasn't huge and I'm just not sure, as somebody who deals with statistics, whether you're going to get that sort of response. I think there are some indicators there that you could do better on, but you've have to have a very big - - -

**MR FITZGERALD:** We'll be having a look at some of that.

**MS BARBER (WEL):** I think the other indicator of people going back to work early is the financial need. People are not going back to work necessarily because it's a neat thing to do, they're going back to work because they need to pay all their bills. Irrespective of all the other concerns about breastfeeding and child care is the need for an income and to keep the skill levels up.

**MS COX (WEL):** Presumably if some of them have more paid leave and the guarantee of going back to their job, that should actually reduce some of the anxieties because I think at the moment there's a lot of people who go back to work because they have no leave entitlements.

**MR FITZGERALD:** Certainly, yes, I think that's right. I think that's certainly something you would expect to happen. Any other final comments you'd like to make before we wrap up?

**MS SOBSKI (WEL):** We just don't want this last productivity report to be another paving stone in the pathway to nowhere.

**MS SOBSKI (WEL):** Absolutely.

**MR FITZGERALD:** I was saying on radio the other day, we have a fairly high hit rate with our recommendations.

**MS SOBSKI (WEL):** I just think if the government fluffs this one, it really does indicate that the government just cannot get its head around the fact that working women and caring men are two sort of things it's time we sort of pulled up with. I really do think that there's this huge gender block in that sort of area and hopefully the government will recognise it this time and not sort of go to water on it.

**MR FITZGERALD:** All right. Thank you very much for that.

**MS COX (WEL):** Thank you very much.

**MR FITZGERALD:** Okay, thanks very much. Angela, if you could give your full name and if you're representing an organisation, the organisation as well.

**MS BUDAI:** Angela Budai, and I'm representing me.

**MR FITZGERALD:** "Me" is a very important person. Over to you, if you'd speak up a little.

**MS BUDAI:** Sure. My oral submission today, I wanted to talk on three separate things and I do risk repeating some of the things that have already been said today so I apologise if I'm repeating things you've already heard. Firstly, I wanted to talk about why I think we need a system of paid maternity leave. Secondly, I have an 11-month-old son and this is my fourth week back at work, so I wanted to talk a little bit about my own personal experience, and then finally what I think the system should look like and having heard what I've heard today, maybe that needs some tweaking, what I originally thought.

Why I think we need a system of paid maternity leave is, as has been stated already, we are the only OECD nation apart from the US that doesn't have a system of paid maternity leave and that doesn't make me terribly proud. We have a declining birth rate in Australia as well and I know that I'm 31 years old and my friends are only just starting to have kids. I don't know many friends that have got toddlers or going on to their second or third child, so I'm certainly seeing that as well. I've got friends who are just thinking about having families and finding that they have got some difficulties and had they found that out five years ago, their capacity to have a family might be a little bit different. I think that's something we need to address.

Families need certainty of income and that's something that I'll talk about, my own personal experience as well and I think it's as much for me about the sort of society that we want to live in and what sort of country we want to have and also what sort of country we want our kids to have. I think that I'm in the unenviable position I was, during the last decade anyway, of living my kids worse working conditions than I had left to me by my parents and so I think it's one of the things that as a society we need to really look at, trying to improve things for future generations, rather than going backwards and this is something that certainly we can do. Finally, I think it's also about access to paid work and ease of access and equity of access to paid work for women and men and families in general. That's kind of why I think we need to have a system of paid maternity leave.

In terms of my own experience, I am in one of those fortunate groups that I had access to 14 weeks of paid maternity leave. I don't think it's enough, and hearing some of the questions this morning you had for some of the groups who were

advocating 26 weeks' paid leave made me happy that I actually made the commitment to speak today because I think that 14 weeks wasn't enough. I am fortunate in that I have been with my employer since I finished university, so that's eight years, and my employer allows us to access our long service leave after five years. So with my annual leave and my long service leave, I was actually able to access 26 weeks on full pay which I took at half pay and took 12 months off. I think that was ideal, I really do, but I'm in the unfortunate position now that I don't have any more long service leave left, I've used it all up. So I'm doing the maths with my husband about having more children and how many weeks do I have to work without taking leave to accrue the amount of time I need to accrue to be able to have another 12 months off.

I had quite a difficult birth and my physical recovery took 13 weeks. So 14 weeks of paid leave, even if I'd taken that at half pay, would have only given me 14 weeks at full health to enjoy bonding with my son. I breastfed my son until he was eight months old exclusively until he was six months when he started solids. My partner, my husband, had one week of paid parental leave or paternity leave but it was incredibly difficult to access. His employer stipulates that in order for a man to access paternity leave, his wife has to be a full-time worker. If she's part-time, a contractor, self-employed, studying or unemployed, they cannot access that single week of paid parental leave which is incredible. I don't know how they would enforce it. In fact I said to my husband before I went back to work that he was to tell his boss, regardless of when I went back to work, that I was going to go back to work full-time so that when we have more children that he'd be able to access it. Fortunately, his supervisor - he works for a large company - has had a children herself in the past two years and gives it to all the men in her team and doesn't ask any questions. So I think that that's also something to look at.

My husband actually took three weeks off at the birth of our son, so he had the one week of paid paternity leave and then two weeks of annual leave and that was essential. Because I had a difficult birth, I was still only in hospital for five days, but I went into labour on a Monday night and went home on Friday, and that was his week of paid leave, so I would have got home Friday, we would have had the weekend to try and establish a routine and me feeling comfortable, home alone with the baby, and he would have had to go back to work, so he did take that extra two weeks and I can't tell you how fantastic it was to have him there. He had the bonding with our son. It helped me to get a little bit of sleep in those first few weeks when you're really struggling with breastfeeding and trying to sort everything out, so that was fantastic.

My husband and I share equally our income and we have quite a large mortgage. We live in the north shore of Sydney; we have a large mortgage and we share the burden of that income. So me being on half pay for 12 months, we were

able to meet our obligations, but we were ready for me to come back to work and I have returned to full-time work because at the end of that 12 months, there were debts that we had incurred that we needed me to go back to work full-time in order for that to happen. I would have liked to go back to work part-time on the same sort of income I had on half pay but that just wasn't viable for us financially.

The other thing is that while I have been in my job a long time, which is quite unusual - I know most of my friends haven't been working for the same people since they finished uni - it's quite unusual for women my age to have been with the same employer for long enough to be able to access long service leave and it's also reasonably unusual that an employer would allow you to access long service leave after five years, so I think that's something else that had I not had that, I probably would have gone back to work a whole lot earlier than I did.

A couple of things that I've just taken notes on from this morning was the lovely woman who got up and talked about her premature baby and brought me to tears this morning made me think that actually the first six months, I would say, I was prone to tears at the drop of a hat, and I just think in terms of going back to work and having to deal with being at work - I'm a team leader, I'm in a supervisory position - and I can just imagine in the middle of a meeting bursting into tears and how that would have gone down, so I think there's the emotional hormones that you go through after you've had a baby as well that actually make it a little bit difficult to get back into the paid workforce.

I'm also fortunate to be working full-time but I work four days a week, so I work four long days and my son is in child care three days a week and my parents have him for the fourth day. I was fortunate enough to be part of a mothers' group, and again this has come out after hearing the Kingsford Legal Centre stories, two of the women in my mothers' group work for large employers in the finance industry, both had access to paid maternity leave, both had their jobs made redundant while they were on maternity leave. One of them came back and was told, "We accidentally made the person who was doing your maternity relief permanent, so you're going to have to find another job in the restructure," and the other one also went through a period of two or three months after her return to work trying to find a permanent job. I just think that's incredible, of the 15 women in my mothers' group, that two would have gone through that with large employers who actually pay their paid maternity leave, so I thought that was a little bit interesting.

The other thing I should mention is that my husband is actually Canadian and hearing about the Canadian system, I can't say we weren't tempted to get on a plane and perhaps start our family in Canada, where we knew that there would be some sort of paid leave that we could access. Fortunately, my mother will be happy that we stayed, both my parents, so that they get to spend time with our son.

In terms of what I think the system will look like and after hearing stuff today, I think maybe I need to change this a little bit, but I think that there should be six months' paid leave at average weekly earnings or whatever the woman was earning before she went on maternity leave, whichever is lower, but I actually think it should be higher than the minimum wage. I think it should be average weekly earnings. I think that that would then cover off a lot of the low-paid, low-skilled workers who - you know, employers that have lots of low-skilled women working for them, they then wouldn't have to top up because average weekly earnings would be higher than what they pay their workers anyway and that there should be a top-up by the employer for people who earn more than average weekly earnings because that's generally employers who have got more of a capacity to pay anyway because they're paying people higher income, so you could assume they're more highly skilled, but this is not based on my research, it's just my kind of pie-in-the-sky, "This is what I think we should have."

I think it should be paid through the tax system instead of the baby bonus and I think it should be universal. Again, I know that that might need tweaking based on what I've heard this morning, but I think it should be guaranteed to all women who have a baby, regardless of employment status, again to cover people who are self-employed, contractors, casuals and people who have not returned to the workforce after having a previous child.

I think that non-primary caregivers should be entitled to three weeks' paid leave at the time of the birth which would reflect what we have in our family which I think was ideal and it would also allow the non-primary caregivers to establish a bond after you get home from hospital, not just at the time of the birth, particularly with the high rate of Caesareans in this country, where women are staying in hospital for five days; if they only have a total of one week of paid leave, then often that will coincide with coming back home from the hospital, and in terms of postnatal depression and the feelings of helplessness that come with, let me tell you, coming home with a brand new baby, "Oh, my god, how am I going to cope?" I think it was really important, particularly to me, to have that support.

My other concern is that if the government adopts a system of 14 weeks which seems to be a lot of agreement, even by AI Group which I was reasonably surprised by this morning, my concern is that if the government does adopt that, then they will see that maternity leave is fixed and that in maybe another generation before we see any review of this system, so I think if we are going to do something, we should do it right and do it properly, so that if we don't look at it for another generation, that's okay.

**MR FITZGERALD:** Thank you very much. That's terrific.



**MS MacRAE:** I guess I was most interested in the international mobility question. It's been raised a little bit with a couple of people we've seen but we haven't actually spoken to anyone yet who has raised it as something that's impacted on them personally. How big a factor do you think that was? To be honest, I don't know much about the Canadian scheme, although someone mentioned this morning about how generous it was - I'm sure we've got it somewhere in our papers - but I guess what are the issues around the general family payment system here that might have had an impact on you, and obviously there was the personal ties to family, but how realistic was it, a, "It went across my mind but we dismissed it pretty quickly," to a, "We were seriously considering it"?

**MS BUDAI:** I don't mean to sound flippant but my husband hates the cold and hates the snow and where he comes from, they are covered in snow for almost five months of the year, so without wanting to sound flippant, we did consider it, but I considered it more seriously than he did. He would not like to go back and live in Canada for an extended period of time because he hates the cold.

In terms of taxation and welfare, I know nothing about the Canadian system in terms of that. All I know is that if I were to go to Canada and to get a job and be three months pregnant when I started the job, I would still be entitled to a year off, like, paid leave, even if I was pregnant when I started working there. My husband was saying if he had been working for two days, he'd be entitled to it. So that was fairly attractive but we earn too much. We don't get any tax benefits, and because we share the burden of the income, so it's not like he earns two-thirds of the income, we share it almost evenly, we're not eligible for any of that stuff anyway, so we didn't even think about looking into it because we just assumed that given we're both highly skilled workers, we probably wouldn't be entitled to it.

**MS MacRAE:** How then do you see the income testing of the baby bonus?

**MS BUDAI:** I don't think that would affect my decision to have a baby. I have heard people I know of who will not be eligible after 1 January who are due in six or eight weeks saying, "Thank God for that." I would prefer to have a payment coming in regularly that I could rely on to pay my mortgage and my bills. Look, it was fantastic when we got it, it really helped us along the way, but I'm not going to make family planning decisions on the basis of whether I get a baby bonus or not. Timing, in terms of paid maternity leave, absolutely; we are doing the calculations, "How much time do I have to work before we can do it again?" but in terms of the baby bonus, we just see that as a bonus. It's not something we're counting on.

**MS MacRAE:** The timing of your first child was dictated to some extent by, if you like, getting yourself in a financial position that you felt confident with and you're

basically doing that again now?

**MS BUDAI:** Yes, financially we could meet what we had to pay without making too many sacrifices. Obviously we weren't eating out and doing the things we were doing before we had our son, but it was more about the paid maternity leave. I really wanted to have a year off and we knew we couldn't afford to have any of that unpaid, so the amount of time I had off was absolutely related to how much long service leave and annual leave I was able to access and while you can't decide when you're going to fall pregnant, we were careful until we were in a position that we - - -

**MS MacRAE:** So had you not had the paid leave, do you think you might have worked longer before the child was born and still would have kept that same period out of the workforce?

**MS BUDAI:** I think I would have gone back to work earlier which is unfortunate because my son was 10 and a half months old when I went back to work, and just the week before I went back to work, I was starting to think I'd like to go back to work. I was driving somewhere and he was screaming in the back seat and I thought, "What I'd do for a lunch break." So for me, it was absolutely perfect timing and I was ready to go back to work. He loves day care, absolutely adores it, so for me, it's been absolutely perfect timing which is why my model is kind of based on my own experience and how wonderful it's been for me to have that time off.

**MR FITZGERALD:** Just in terms of your model, you've talked about average weekly earnings. If you work part-time, you would only be paid up to the part-time rate; in other words, yours is a pro rata scheme.

**MS BUDAI:** Yes.

**MR FITZGERALD:** One of the difficulties I think we want to look at is the second and third child as well because what seems to be happening is a lot of people are not returning full-time but they're returning on a smaller number of hours, so I was just wondering how that impacts on people's incomes for the second and third child.

**MS BUDAI:** I haven't thought about the third child because I'm one of those people who wants two children, and part of the reason I'm at work full-time is precisely because when I have another baby, I want to be able to access maternity leave at the full-time rate, so that's absolutely part of the reason why I'm back at work full-time. It's a financial incentive as well as thinking about the future. I don't know what I'd do if I decided I wanted to have three children. I'd have to think about that.

**MR FITZGERALD:** It's all right, I wasn't encouraging you to a third, but if you

want to have one, that's fine. It's just that in terms of the model the people are putting forward, I think an issue - and you've just heard it, some of the schemes are - for example, the ACTU scheme is that everybody gets a minimum wage, irrespective of the number of hours that you've been working up to that point, as long as you're attached to the workforce. Others, as you hear, are saying leave the baby bonus in place but actually pro rata the wage. So I suppose one of the issues for us is how does that impact on the first child but how does that impact later on as well?

**MS BUDAI:** I wish I had an answer for you.

**MR FITZGERALD:** No, you don't have to, it's just an issue.

**MS BUDAI:** Yes, I don't know.

**MR FITZGERALD:** The other thing, you have your child in child care. We've heard a bit about the trade-offs, I suppose, that if the government is to fund a paid maternity or paternity leave scheme, to what extent that comes at the cost of child care for under 12 months children. In other words, is there a trade-off to be made? On the one hand, we want to encourage women to be able to stay at home longer; on the other hand, there's increasing pressure to have child care. It may not be that it's an either/or but it does seem to us to be an issue. If you had the period of time that you've indicated, 26 weeks, which you could convert into 52 weeks, do you think you would have accessed long day care or any form of day care during that period of time - - -

**MS BUDAI:** No.

**MR FITZGERALD:** - - - or would you have exclusively, together with your family - - -

**MS BUDAI:** Well, yes, when I've needed care, before I went to full-time work, it was my parents that helped out or my husband's parents who were here from Canada for a period of time. They helped out. But I wouldn't have used it at all if I wasn't working.

**MR FITZGERALD:** Right. Your view is that you wouldn't have worked within the first 52 weeks if you had that ability?

**MS BUDAI:** My son is only 11 months.

**MR FITZGERALD:** No, we haven't quite got there yet.

**MS BUDAI:** So I haven't quite got to the 12 months yet but that's because I had

five weeks before he was born because I was just too tired to work. I was happy with going back to work after he was 10 months old. I was ready. Probably a third of my mothers' group are back at work, the other third are not planning on gong back to work and a third I'm not quite sure about.

**MR FITZGERALD:** That's interesting. Thank you very much for that, Angela, that's terrific. Thank you very much for presenting.

**MS BUDAI:** Thank you.

**MR FITZGERALD:** Our last participant for the day, Karleen Gribble. If you could give your full name and if you represent an organisation, the name of the organisation.

**MS GRIBBLE (FCC):** My name is Karleen Gribble and I'm here to represent Families with Children from China-Australia.

**MR FITZGERALD:** Okay. Karleen, if you could just give some opening comments, that would be terrific.

**MS GRIBBLE (FCC):** Sure, okay. Just a little bit of background on FCC. It's a support group for families who have adopted children of Chinese ethnicity. There have been many hundreds of children adopted to Australia from China, Hong Kong and Taiwan over the past decade. We're a national parent support group and our aims are to support families who have adopted children of Chinese ethnicity through post-adoption and Chinese culture programs to encourage adoption of children of Chinese ethnicity and to support waiting families, to advocate for unsupported children remaining in orphanages in China.

I'd just like to give you a little bit of a summary of the situation with adoptions in Australia because we don't have very many of them. We've got about 270,000 births each year. In 2004-05, which is the latest year for which we've got data, there were 499 placement adoptions. A breakdown on the ages of these children, there were 216 who were under a year, there were 244 who were between one and four years, 38 children who were between five and nine years, and one child who was 10 years of age or older. 434 of these adoptions were inter-country adoptions and 65 were local adoptions.

I know this is about paid maternity or maternity leave but there are some issues for adoptive parents with unpaid leave entitlements because currently federal legislation and the relevant legislation in most states and territories distinguishes between the adoption of a child under the age of five years and the adoption of a child five years of age or older in determining eligibility for unpaid leave. In these cases, it's stated that to qualify for adoption leave, the child must be less than five years of age at placement. New South Wales or ACT are the only jurisdictions in which adoption leave is available to an employee adopting a child who is five years of age or older, plus in most of Australia, people who adopted children who adopted children who are five years of age or older are not protected by leave legislation and at risk of losing their jobs when they adopt. This is a real risk which is of great concern to families adopting older children.

Both the 2002 HREOC report into paid maternity leave, A Time to Value, and the 2005 House of Representatives standing committee on family and human

services report on their inquiry into adoption of children from overseas recommended that the age limit to qualify for maternity leave at the time of adoption be removed. However, this didn't happen. In fact the draft national employment standards released for comment earlier this year similarly stated that parents adopting a school-age child should not be eligible for unpaid paternity leave at the time of the adoption. I'll discuss later how this lack of access to unpaid leave for families adopting older children is in conflict with both the needs of the children placed for adoption and with state government requirements of adoptive parents.

The current situation with regards paid parental leave for adoptive parents: in addition to unpaid leave not being available to people adopting older children, there is nothing that protects adoptive parents from being discriminated against in comparison with biological parents with respect to paid leave. Thus, many awards and workplace agreements that have paid maternity leave do not have paid adoption leave or they have adoption leave entitlements that are much less than maternity entitlements. These are 2002 figures, I don't have any more recent: 29 per cent of workplace agreements had paid maternity leave but only 1 per cent had paid adoption leave. Figures aren't available on the proportion of awards that have paid maternity leave and paid adoption leave but according to the ACTU, the ratios are likely to be similar.

It's often very difficult for employees to have this situation changed, since they are often the only person in their workplace who has adopted a child and their employers and union representatives often have no knowledge of adoption or of the needs of adopted children. The HREOC and House of Representatives inquiries referred to earlier both recommended that paid parental leave should be available to adoptive parents in equity with biological parents, regardless of the age of the child at adoption.

In relation to a flexible return to work, some awards and workplace agreements contain flexible work return provisions for primary caregivers up until their child is a certain age and two years is common. In cases of adoption, it would be appropriate to have similar flexibility for adoptive parents with the length of time from placement rather than the age of the child being the determinant. Again, this is something that's difficult to change at the workplace level and adoptive families as a small group require legislative protection. The House of Representatives inquiry into adoption of children from overseas recommended that any legislation in relation to leave or flexible work arrangements in relation to adoption make reference to the length of time since placement for adoption rather than the age of the child.

So why should any paid parental leave apply to adoptive families, regardless of the age of their child? Adoptive mothers do not give birth and therefore do not require time to physically recover from an adoption and few of them breastfeed. The

children are usually not little babies. It's probably these facts that result in the questioning of the need for adoptive parents to have leave at the time of the adoption. However, leave from work is required for adoptive parents for a different reason. Adoption provides a family to a child that does not have one to care for them. It's a child-centred practice. It's the needs of the child rather than those of the mother or father that necessitate that one parent care full-time for a newly adopted child.

Most of the children adopted to Australia come from overseas and most of these children have spent considerable time in institutional care. The inadequacy on the institutional environment as a place for children to grow has been well documented and is the reason why orphanages no longer exist in Australia. The physical and emotional deprivation of institutionalisation result in damage to the child which is manifest in indiscriminate affection, extremely demanding or attention-seeking behaviours, social unrelatedness with peers, autistic-like behaviours, self-harm, sleep disturbance, hyperactivity, aggression, temper tantrums and other difficulties. It's known that a child who has been deprived during critical developmental stages through being institutionalised needs intensive, strong and consistent parenting in order to mitigate the damage.

Adoptive parents frequently find the first months and even years with their new child to be extremely mentally and physically taxing. It's also a very difficult time for the child who is adjusting to a completely new environment and type of care. It's uniformly recognised by adoption experts that the older the child at adoption, the more difficult their transition period and the more intensive the parental care that they require. In recognition of the increased needs of children adopted at older ages, the Departments of Community Services in each state and territory require families adopting older children to undergo additional relevant education and to have a higher level of skill support and commitment than families adopting infants.

In recognition of the special needs of newly adopted children, the state government Departments of Community Services that process adoptions have an expectation that one parent will remain home with the child for an extended period of time post-placement. In New South Wales and Victoria, adoptive parents are required to sign an undertaking that one parent will be at home full-time with a child from six to 12 months respectively. Parents in the ACT, Queensland and Tasmania are told that they are required to ensure that one parent will be home full-time for one year. In the Northern Territory, the expressed requirement is one parent home for six months. In South Australia and Western Australia, the department strongly encourage one parent to be a full-time carer for one year. These expectations apply to double and single-parent families.

While some adoptive parents may resent the compulsion that exists with regards to leave from work, most adoptive families believe that these requirements

are reasonable and in the best interests of the children involved. The idea of restricting paid and unpaid paternity leave at the time of adoption to families adopting a child over a particular age reveals an ignorance of the characteristics of children being adopted at this age and of current adoption practices and it reinforces the belief that older adopted children are independent, not in need of intensive care and would commence schooling immediately on placement in a family. This is simply not the case. Children being adopted at older ages have generally lived in one of two situations, sometimes a combination of both. Their situations are having lived in an institution in a third world country where it's likely they experienced emotional and physical deprivation or having lived in an abusive family environment in Australia and then being removed from the care of that family.

The majority of older children who have been adopted come from overseas and need additional help to adjust to a new language and culture when they come to Australia. As a result of their history, children placed in a family for adoption who are older are facing enormous challenges, as are their families. Parenting a newly adopted child, while incredibly rewarding, also requires a tremendous input of time and effort. Families adopting older children should be protected from the worry of losing their job or being demoted while caring for their newly adopted child by the provision of minimum legislated leave.

It's also important to note that many families find the adjustment period for their child extends well beyond one year and even when a child is school age, parents are often advised to delay sending the child to school or to home school. Thus, if adopted families are required to forgo one income regardless of the age of their child, they should be eligible for any paid parental leave entitlements, regardless of the age of their child. Paid paternity leave may also be assumed as having a role in assisting with the direct costs of the addition of a child in a family and this leads to the second reason why all adoptive families should be eligible for paid parental leave. The costs associated with the adoption of a child remain consistent, regardless of the age of the child. Adoptive parents have all of the same costs biological parents have when a new child joins their family. However, adoptive families also have additional costs associated with the adoption of their child, including state adoption processing fees, legal fees, visa fees and travel costs that families whose children join them by birth and not subject to.

While giving birth can be free, families adopting a child by inter-country adoption are subject to fees and costs of between 15 and 40 thousand dollars. Thus, the additional costs of the adoption itself mean that paid parental leave would be an even greater help to adoptive parents than biological parents and it's illogical to suggest that families adopting an older child should not receive similar support as biological families and families adopting an infant, and we've only just had in the budget a change to the baby bonus so that all families will be eligible for it.



There are very few adoptions in comparison to the number of births and it would cost the government very little to make any paid parental leave available to all adoptive families. It would be inconceivable that adoptive parents be compelled both by the needs of their child but also by their state government to spend considerable time absent from work and at home with their child and not be supported as biological parents in the provision of paid parental leave.

So our recommendations would be that any paid or unpaid paternity leave be made available should be equally applied to adoptive parents regardless of the age of their child at adoption and any other workplace legal flexibility entitlements should also apply equally to adoptive parents and should be calculated on the period that the child has been in the care of the parent rather than the age of the child.

If it's okay, I'd just like to make a personal little bit in here, because we haven't got a position on the length of leave and I know that that's something that you're looking at but from a personal standpoint, I'd like to point out that adoptive parents, probably more than any other group in the community, are very aware of the potential consequences of institutional child care on infants and children. We've seen the results of institutional care in her children and the minimum standards of caregiver ratios in child care centres in Australia are not very different from what you find in many orphanages, which then calls into question how expensive non-damaging child care for infants might be because the 1 to 5 ratio is not adequate. You won't find infant mental health experts who say that 1 to 5 is okay for a baby, and also questions whether it's more sensible for governments to provide income support to parents rather than businesses to care for the children of Australia.

Some would argue that it's important that mothers return to work soon after the birth of a child so as to continue to society. This assumes that a mother or father caring for their child is not contributing to society. I would also point out that it's bizarre to consider that a child care worker caring for the children of others is contributing to society because they are paid but a woman caring for her own children is not. I feel strongly that as a society we should value our children, strive to give them the care that they need and value the social capital that their caregivers provide to society as a whole.

**MR FITZGERALD:** Thanks very much for that. We were aware of the issue about adoptive parents and we have been trying to find a way forward on that. If you can just tell me, the baby bonus you've indicated which has been changed so it will be paid to adoptive parents, is that irrespective of the age of the child? How is that being defined?

**MS GRIBBLE (FCC):** When the first maternity allowance was brought in, it was

eligible to families adopting children who were 12 weeks or younger which was essentially no family. It was then increased to six months when the baby bonus came in; it was eligible to families adopting children under six months which again was perhaps a dozen families and was then increased to two years about two years ago. With the budget, it has effectively been removed altogether.

**MS MacRAE:** The age limit, you mean?

**MS GRIBBLE (FCC):** The age limit. It comes into force on 1 January.

**MR FITZGERALD:** Quite clearly that's your preference, that that should be applied to all leave?

**MS GRIBBLE (FCC):** Yes. The assumption that a child of whatever age would just go to school is just - I think that's the basis of those age restrictions.

**MR FITZGERALD:** Just taking that point, the fact that most of the government agencies - as you say, the DOCS equivalents - require you or expect you to be away from employment or be away from work, at least one partner, for varying periods between six months and 12 months is interesting and indicative of that recognition itself, isn't it?

**MS GRIBBLE (FCC):** Yes.

**MR FITZGERALD:** They've recognised that - - -

**MS GRIBBLE (FCC):** And the reality of many families is that it's much longer than that.

**MR FITZGERALD:** Much longer, yes.

**MS MacRAE:** I was just going to say are there factors that have made different states do things differently, because the other point that you raised, was it just in relation to the amount of time you had to take off that there was a difference in - - -

**MS GRIBBLE (FCC):** There are so many differences. Even in terms of fees, in New South Wales the adoption processing fees are \$9700; in Queensland, they are 2000; in Tasmania, it's 2000. The difference between states is quite large.

**MS MacRAE:** But a couple of the states have actually moved from where they were to something a bit more generous, if I understood you correctly.

**MS GRIBBLE (FCC):** In terms of what they require from families?

**MS MacRAE:** Yes. Is that right?

**MS GRIBBLE (FCC):** It's between six and 12 months that they require, just depending on the state.

**MS MacRAE:** Okay.

**MS GRIBBLE (FCC):** Some of them require you to sign an undertaking, a statutory declaration, some sort of legal document that says that you would stay home; others look upon it rather poorly and in cases where there's a period of supervision before the adoption is finalised, parents are certainly not going to go against it. But again, most parents understand why it's there and they know that they don't return to work, just because their child needs them.

**MR FITZGERALD:** The unpaid paternity leave cuts out at school age, does it?

**MS GRIBBLE (FCC):** No, currently in the places where the restriction exists, it says five years, but it's the national draft employment standards.

**MR FITZGERALD:** But in relation to the current unpaid leave entitlement, the right to return to work after 52 weeks which is going to be extended, my understanding was that that also applies as a national law to adoptive - - -

**MS GRIBBLE (FCC):** Only if the child is under five years of age.

**MR FITZGERALD:** Under five, yes, that's what I thought. Again, your view would be that needs to be changed on the same basis.

**MS GRIBBLE (FCC):** Just eliminated. It's in the definition of what a child is in the legislation, so you go to the definition and a child is defined as a child under the age of five years. It's also in place in some awards and there will be a ridiculous sort of situation where they will explain what's required, so if somebody adopts a child who is four and a half, as soon as their child turns five, then they no longer have leave entitlements.

**MR FITZGERALD:** The definition that you've talked about is placement option - well, the terminology is to distinguish it from family adoption where you - - -

**MS GRIBBLE (FCC):** Yes, a step-parent or a foster child who has been in care with the family.

**MR FITZGERALD:** And the legislation is clear in terms of defining the two

categories.

**MS MacRAE:** As far as the draft national employment standards go, the reason that that age limit is still there, do you feel that that's an oversight or do you feel that they're aware of it and still can't get past it?

**MS GRIBBLE (FCC):** I think they're completely unaware of it.

**MS MacRAE:** Okay.

**MS GRIBBLE (FCC):** Unfortunately stakeholders weren't made aware that this was addressed in the national employment standards until after the call for submissions had closed. We made a submission afterwards but whether it was taken into consideration, I don't know.

**MS MacRAE:** You did give us some numbers earlier on in the presentation but for the number of families affected, the point you're making - and it seems completely reasonable to me - is that the cost of this is very minimal.

**MS GRIBBLE (FCC):** Minute.

**MS MacRAE:** Minute, yes.

**MS GRIBBLE (FCC):** Yes.

**MS MacRAE:** A rounding error, even smaller than that.

**MS GRIBBLE (FCC):** Yes,

**MS MacRAE:** But obviously for the families affected, it's a huge impact.

**MS GRIBBLE (FCC):** It's huge.

**MS MacRAE:** So it's a huge impact but the cost is minute. I can imagine how frustrating it must be.

**MS GRIBBLE (FCC):** It's particularly difficult when we pay a fortune to the state and federal governments and then they say, "You don't need any financial support, do you?"

**MS MacRAE:** Yes. In that huge, long, drawn-out waiting period, I understand, for many people in this situation where they're waiting and then it looks like you might be getting a child and then it's put off again, all of that must be very emotional and

draining.

**MS GRIBBLE (FCC):** Not for the faint of heart.

**MR FITZGERALD:** No, none of this area is.

**MS GRIBBLE (FCC):** It's just as well too because the children who are in need of adoption are also not for the faint of heart in terms of parenting.

**MR FITZGERALD:** No. One of the things we're also looking at - and I don't know we'll be doing it or not - is in relation to foster care. A number of the parental leave schemes, particularly in universities, interestingly enough, have separate foster care as distinct from adoption care and they're different in their provisions as well.

**MS GRIBBLE (FCC):** Yes.

**MR FITZGERALD:** So it's a tangential issue but one that we're just having a look at as well.

**MS GRIBBLE (FCC):** I would encourage that; the needs of foster children in lots of ways are very similar to the needs of these children placed for adoption and they really do need one-on-one care.

**MR FITZGERALD:** Whether it should be treated through the same mechanism or not is an issue and we'll just have to look at that.

**MS GRIBBLE (FCC):** Yes, or whether perhaps it's in fact a responsibility of the Departments of Community Services.

**MR FITZGERALD:** It's a whole new area.

**MS MacRAE:** I was just going to ask one further thing: for those older children that come in, is the reason that some of them are older because they try and keep a family group together and they're coming to a family situation, as in a family that's taking more than one child, or is that not - - -

**MS GRIBBLE (FCC):** Sometimes it's a sibling group, yes, so sometimes there will be two, rarely three, most often it's two children, so there might be a two-year-old and a five-year-old or something like that, yes, keeping them together.

**MS MacRAE:** In those instances, with that requirement that you take the 52 weeks, do you then have to commit to two years or is it still just the one year?

**MS GRIBBLE (FCC):** No, it would still be the one.

**MS MacRAE:** Not that that reduces it very much, but I was just interested to know why you get - - -

**MS GRIBBLE (FCC):** No, I think two at once is difficult.

**MS MacRAE:** - - - that small proportion of older children, because I assume the pool of younger children is still sort of relatively massive to the number that - - -

**MS GRIBBLE (FCC):** The departments actually actively discourage adoption of older children, simply because it's that much more difficult and the risk of disruption of the adoption is greater.

**MR FITZGERALD:** Yes, I understand that.

**MS MacRAE:** Okay. Thank you.

**MR FITZGERALD:** Any other comments?

**MS GRIBBLE (FCC):** No.

**MR FITZGERALD:** Thank you very much for that. We'll now adjourn until 9 am tomorrow morning, when we have nine participants. Thank you. .

AT 5.08 PM THE INQUIRY WAS ADJOURNED UNTIL  
WEDNESDAY, 21 MAY 2008

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