



SPARK AND CANNON

Telephone:

**TRANSCRIPT
OF PROCEEDINGS**

Adelaide	(08) 8110 8999
Hobart	(03) 6220 3000
Melbourne	(03) 9248 5678
Perth	(08) 6210 9999
Sydney	(02) 9217 0999

PRODUCTIVITY COMMISSION

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

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

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON WEDNESDAY, 26 NOVEMBER 2008, AT 9.02 AM

MR FITZGERALD: Good morning, and welcome to the fourth day of public hearings following the release of the draft report of the inquiry into paid parental leave. So far we've had hearings in Canberra, Brisbane and Melbourne and we conclude tomorrow here in Sydney. As with all other public hearings, they're relatively informal in nature, although participants are reminded that they are required to be truthful in the submissions and the evidence that they provide to the commission. Media is entitled to be here at all times and to take notes and to use visual aids, but are not able to have sound recordings for the purpose of rebroadcast without the consent of the participants. Otherwise, it's the same as it was before.

If you would like to give your full names and the positions in the organisations you represent and then a brief opening comment and we will have a discussion.

MR JONES (CPSU): Stephen Jones, national secretary, Community and Public Sector Union.

DR van BARNEVELD (CPSU): Kristin van Barneveld, director of policy and research, Community and Public Sector Union.

MS CARTER (CPSU): Rhiannon Carter, research officer, Community and Public Sector Union.

MR FITZGERALD: Over to you, Stephen.

MR JONES (CPSU): Thank you, commissioner. Firstly, we welcome the report and we welcome the opportunity to respond to the draft recommendations. Commissioners, if there's commonality between the submissions that we've put back in reply and those that you've received from other organisations, particularly those representing employees in public sector employment, there is no accident. We took the time to talk amongst ourselves about the various issues that would arise, particularly in public sector employment between the relationship between the scheme which was proposed by the Productivity Commission's interim report and those which currently exist within public sector employment and those that currently exist as a matter of national welfare arrangements. So there is a commonality in the issues that we've put back in our response.

Just the first things that I wanted to cover off, and I'll be very brief because we have put in a written report. The first thing that I want to cover off is that we're most concerned to ensure that there is a seamless inter-operability between the existing industrial and statutory arrangements and the new general scheme that is proposed and introduced into federal law. We welcome the recommendation for 18 weeks paid maternity leave. We welcome the recommendation for 18 weeks paid maternity leave. You will recall that our primary submission is that 26 weeks is the right level of which the payment should exist. We took some comfort for some of the

observations in your report that said, and I paraphrase, that there were robust arguments in support of such an arrangement and we'll be pursuing that in every forum available to us.

We are very keen to ensure that a scheme that is introduced at the federal level has its principal characteristic as an industrial or a workplace arrangement. I think that reflects the underlying theme within the draft report. We think that is consistent with the observation in the report that one of the benefits of such a scheme, that it would enhance workforce participation by women, particularly return-to-work by women after a period of maternity leave. We think it's crucial that this retain its workplace and industrial characterisation.

We think the scheme should provide for payments at full replacement wages. We note that the proposition from the Productivity Commission does not support that, although we think there should be the capacity for employers to fund top-up replacement wages and that we should be able to introduce such arrangements. We're also proposing for a range of reasons that the superannuation contributions which in the draft report would be paid for by employers at the SGL level, be paid at the normal superannuation entitlement level. We think in our submission we've put some robust reasons why that's a minor additional cost that is a more equitable arrangement.

We have some recommendations which don't so much effect employees within our industries but we adopt and support them regarding the qualifying period, particularly as they apply to casual employees. We are also finally concerned to ensure - and this gets to the inter-operability issue - that paid parental leave through the new scheme should enable leave to be taken within six months of the birth or after the existing entitlements have expired. What we're concerned to ensure is that if an employee has an existing industrial entitlement to paid maternity leave and they take that first that they don't then lose access to the general statutory scheme because of access requirements in that scheme. There are a range of other recommendations that we've made within our summary, but I think I'll leave our opening comments there.

MR FITZGERALD: Good, thanks very much.

MS MacRAE: There's a few issues that I guess I'd just like to tease out a little bit more, and you've raised them in your opening comments. In relation to superannuation, I think there has been a bit of a misunderstanding about our recommendation there, that while we were recommending that the mandatory requirement for super be 9 per cent, we weren't in any way suggesting that employers shouldn't be able to top that up to other rates if that's what they were currently paying. So all we were looking to do was to replicate the SG in saying that there's the mandatory requirement, and here is what's mandatory under the SG, but if

employers choose to provide more super - and they may be doing that on other super entitlements for employees - then we're not saying they shouldn't be allowed to do that, so just to make that point clear at the start. I think that in general - I'm just trying to think in terms of the employer submissions we've had. There has been I think generally a feeling that they would pay at that higher rate if they were currently paying it. But I just wanted to clear that up. So cap didn't mean you can't go beyond it if you choose to.

MR JONES (CPSU): Perhaps it means it's a floor; when you said a floor, it's a minimum entitlement to contribution.

MS MacRAE: Yes. Yes, and we were really just saying that the reason we used the word "cap" was more in relation to the fact that we were saying it would be paid not on your pre-birth earnings but on the - or that we had a minimum wage.

DR van BARNEVELD (CPSU): On that superannuation issue, I suppose it is almost a question for you in terms of what the employers have been suggesting that you've heard from so far. Are they suggesting that the nine per cent, they would be paying it on the minimum wage entitlement, or have you heard employers suggest that in fact the cost to them of fiddling around with their administrative functions to drop what is their current super entitlement back to the minimum wage for nine per cent or 15.4 per cent as it is in most public service?

MS MacRAE: Generally they've been arguing that to change it would be an additional admin burden, but the financial cost of it is such that they're busy arguing they don't want to pay anything at all. So it's very secondary, I suppose, in terms of is it an administrative ask to change that rate and the base that they're paying it on; yes, it is, but we're not focusing on that for now. We're saying that what we really want is to not have to pay this at all. So some of the employer submissions have gone to a little bit more detail, but it's rare. I have to say, from our point of view it's been slightly frustrating that, "Well, if you were to agree, is there a better administrative arrangement that you could tell us about?" We'd be interested in exploring some of that but we haven't had a lot of feedback in those terms beyond just saying, "We don't want to pay it."

DR van BARNEVELD (CPSU): Because it is only about three per cent of - employers are bearing 3 per cent of the cost of the scheme.

MS MacRAE: Per cent of salary.

MR FITZGERALD: Yes. Although I must say that it strikes us that the largest point of contention in the whole scheme is in fact the superannuation; well, not surprisingly. They have become quite robust in their opposition to paying any super on this particular entitlement. The other path of course is acting as paymaster, and

that's also been of a considerable concern. But I think in terms of pure cost, it's the super. That is the point of contention at the moment.

MS MacRAE: Just in relation to your ongoing preference for 26 weeks at replacement wages, I'd just be interested to know whether you think that that's a reasonable ask of a publicly-funded scheme, and if not whether you think it's a reasonable position to say that as long as the government is providing a base level that the extent to which you get top-ups to replacement wages is a reasonable bargaining area for employers and employees or whether there should be a more mandatory arrangement around those, the employer/employee top-ups, if you like.

MR JONES (CPSU): Of course for the majority of the people we represent it's rather a moot point. But in our submission we would be willing to support, and indeed we do support the proposition advanced by the Productivity Commission that an 18 week scheme at federal minimum wage is the right way to go, so long as there is a corollary requirement for top-up by the employer. Now, I say that noting full well and hearing the same responses that you have had in relation to the superannuation contribution, but I think that is a barrier that has to be bridged.

DR van BARNEVELD (CPSU): To add to that, we see this as very much a crucial, very important first step in terms of getting a paid maternity leave entitlement for all Australian working women. The other thing that we're really keen to see some proper review mechanisms so that we can continue to catch up to what the international standard is and it is increasingly becoming higher than 18 weeks of minimum wage, for example. So that is also in our submission, that there needs to be some proper review mechanisms in order to ensure that the entitlement does keep up.

MR FITZGERALD: Although it's true to say that overseas where you've got a higher rate of pay a lot of that is coming through social insurance arrangements and even if you were to say that employees should fund the full replacement wage or the top-up, you then have to consider whether or not it's fair to ask individual employers to pay that or whether you need to go to one of the other funding arrangements, payroll tax or some other form of shared payment. So whilst I think the top-up is attractive, there are issues around its equity if you're going to mandate that, particularly for industries where there is a very high female percentage of the workforce which is already an issue even for our scheme.

MR JONES (CPSU): It is worth nothing, commissioner, that some of those industries with highly feminised workforces are the very industries where paid maternity leave schemes of between nine and 14 weeks have already been introduced at replacement wages and indeed the Productivity Commission's proposed scheme, as it stands, would amount to a subsidy for those employers for doing exactly what they're doing right now. I guess that's an argument advancing the fact that there is already a willingness amongst some employers at least with highly feminised

workforces to meet that requirement and we would like to see that extended.

MR FITZGERALD: For a lot of paid workers, of course, I suppose for many the minimum wage will in fact be the full replacement wage, particularly those that are casual and part-time, but also low paid. The question for us is whether or not you need to do it to achieve the objectives of the scheme and it's a slightly different issue. Our assessment wasn't simply about the costs that a business would have to bear, in fact that's a secondary concern. Our issue was that you actually meet the objectives of the scheme with 18 weeks or close thereto and the minimum wage. To get most women, in fact the vast majority, to be able to stay at home for six months and longer, you don't necessarily need to have a more extensive scheme. That was an assessment we've made. So to actually reach the objectives, the 18 weeks at minimum wage gets you to the six months. For higher income earners, it gets you to probably nine months.

So it wasn't just that there was a cost to business, but we actually queried whether or not you need to have full wage replacement to achieve the objectives of the scheme.

MR JONES (CPSU): I must say, commissioner, when I read those chapters within the report - and perhaps I read it wrongly - I understood that the introduction of an 18-week scheme may in part create the momentum for a range of other leave arrangements, however so provided, to allow the mother to effectively access 26 weeks for a range of other leave entitlements. I thought I read within the report some acknowledgment that creating a statutory scheme would create momentum to create a compound access of leave arrangements to get to 26 weeks. Perhaps I have misunderstood what you were saying.

MR FITZGERALD: I suppose the point is we say that there's a pattern of behaviour already there which says that for the vast majority, 85 per cent of women are still at home after three months and that drops to about 70 per cent at home by six months. So you've already got a pattern of behaviour, the 18 weeks at minimum wages adds to that and is designed to in fact change behaviour. So you're not starting from zero, you're starting from effectively a three-month base. It's just a point and I think it's worth considering whether or not you need to go as far as you're proposing to achieve the objective.

MR JONES (CPSU): The objective of the scheme surely is not to force women to stay away from the workforce for six, it's to enable them. There are far more effective ways to ensure people stay away from the workforce for six months. You could legislate for the very same. The objective of the scheme surely is that they can afford to be away from work for six months.

MS MacRAE: I guess then, turning that around, the point is that we think, looking

at existing behaviour patterns 70 per cent of women are indicating by the patterns of returning to work at the moment that they can afford it because that's what they're doing. So in the absence of any legislated government scheme 70 per cent are still at home, or at least there's a primary caregiver at home for the first six months of a child's life and what we're looking at then is the 30 per cent that don't. Some of that, we know, is financial constraint in probably a good proportion of it, but there is an element of that 30 per cent that it's not financial constraint to go back early, they like their work and they want to return and regardless of whatever financial position we were to put in place they wouldn't choose to stay at home. So we're certainly not saying everyone must, but we don't want financial constraint to be the concern and people returning early for that reason.

There is probably among the submissions a difference of view around how much of a financial constraint there is and how much of an added incentive you need, so we'll be hearing from the Australian Industry Group later and they'll be arguing that we've been too generous in what we've recommended. On the other hand, your submission and others like have said, "Well, to get to that six months many of these women are using other kinds of leave that weren't intended as maternity leave and so is it reasonable to call on employees to make that contribution." Implicit in our work is saying, "Well, look, if they can get there, however they cobble it together that's the prime aim of the scheme," and we're relying on that access to other leave to fund that gap.

MR JONES (CPSU): In discussions with our members, those who don't have access to the more generous 12 and 14 weeks' schemes et cetera the way they cobble together the leave to enable them to have between three, four and five months is by combining annual leave; sometimes long service leave, but not always because they don't have access to it; the baby bonus; then dipping into savings and then going into credit. That's how they do it for normal household expenditures by going into credit.

DR van BARNEVELD (CPSU): The problem with that is that they return to work with a young child who's possibly put into child care where you know that people pick up all sorts of things once they're in child care and these women, besides perhaps having some accrued sick leave, have no other leave and no ability then to take paid time off to actually look after their child because they've exhausted all their leave entitlements to try to take as much time as possible off. Certainly I don't think as an industrial entitlement annual leave is actually designed as a maternity payment. It's a very separate entitlement and why should there be this inequity in entitlements where women are required to take their annual leave entitlement for the purposes of childbirth or child rearing?

MS MacRAE: I guess that takes back even further if we're looking at the whole scheme of how much is this is a private choice and a couple should fund that and how much of it is there a public benefit. We haven't been too explicit about some of

those things in the report because it's very difficult to measure some of those community benefits from having healthy families, health children and healthy family units but that's ultimately where some of that falls, that what's reasonable and what's not varies depending on the eye of the beholder, but we've tried to manage those things with our scheme in the best way we can from a community-wide perspective as we see it. Anyway, useful discussions, so thank you.

MR FITZGERALD: Related to that, I suppose, is the issue of the existing schemes. I remember in your earlier submission and presentation you were strong that the current schemes would exist and this would simply be additional to that. As you will note in our report, we've not been prescriptive about that particular issue and the basis for that is that we have assessed that employers would retain the current commitment to voluntary or collectively bargained arrangements, firstly, because they're probably required by the industrial instruments but, secondly, because they want to continue to be an employer of choice. Whilst when you introduce this scheme everything becomes a level playing field, those ambitions to be an employer of choice remain.

One of the reasons we weren't prescriptive is that we do, however, believe that in some of the schemes they will be reshaped as part of the collective bargaining processes. Some will actually top up the 18 weeks, some will extend it and some of those resources might be used for other family life arrangements which employees may well appreciate and support. I just wanted to seek your view again, we don't think it's helpful to be prescriptive to say exactly what is today must stay but based on the assumptions that we've made. I would imagine for your workers in particular that our assumption is likely to be the case, the employers are not about to use this as the subsidisation of their existing schemes.

MR JONES (CPSU): We actually embarked upon this project prior to the then opposition advising us and announcing that they intended to set up this inquiry. We embarked on this process over 12 months ago where we said that this year was going to be the 35th anniversary of the introduction of 12 weeks' paid maternity leave and there's been little if any movement since then. 12 weeks isn't enough. We think 26 weeks should be the objective that we achieve, however so we achieve it. That's our industrial objective. So I guess we're starting from a slightly different position. We find the Productivity Commission's inquiry and report a welcome intervention into a process that we started 12 months ago which said we wanted to get to 26 weeks. That forms the approach we will take to all the industrial and legislative arrangements that we have an influence on. However so we put these things together, however so a general scheme is introduced, we'll be seeking to ensure that the full complement reaches our objective of 26 weeks.

MR FITZGERALD: Yes.

MR JONES (CPSU): That carries with it the assumption that absorption is not a palatable response.

MR FITZGERALD: But a rejigging of voluntary arrangements or collectively bargained arrangements is, over time?

MR JONES (CPSU): There may be some rejigging in some sectors, absolutely. We understood that there would be some rejigging but from our perspective, where we will be coming from in terms of rejigging those arrangements is how do we reach an arrangement for 26 weeks - - -

MR FITZGERALD: Sure.

MR JONES (CPSU): - - - plus pick up some of the other things that are very welcome in your report as well around paternity leave and around keeping in touch at work et cetera.

DR van BARNEVELD (CPSU): Just to add to that, it's also important to keep in mind that in lots of cases, paid maternity leave has actually been gained in industrial entitlements through negotiation and through a cost to those employees because they have given up something in order to get paid maternity leave. There has been a cost incurred already and we certainly wouldn't want to see a new scheme put on top of that that then completely destroys those bargained arrangements.

MR JONES (CPSU): We don't want to pay twice for the one benefit.

MR FITZGERALD: For this one, you're not being asked for anything, so it's not - - -

DR van BARNEVELD (CPSU): Yes.

MR FITZGERALD: There's no productivity trade-off for this particular one. Can I just ask a question in relation to the issue concerning when the leave can be taken. You've indicated that it should commence either prior to the six months or after existing leave entitlements have been used. The way in which we've expressed the recommendation is in fact very poor and doesn't work as we've expressed it, largely because the way it's been interpreted is that you have to take the other leave first and then if that runs beyond six months, you'll lose this entitlement. That wasn't what we wanted to have occur. But I suppose the question for us is the reason we wanted to put in something about using up existing entitlements was to gain additionality; that is, the whole aim of this scheme is to allow women or parents to be able to take more time off, additional to that which they would already take off, so it's about additionality.

But I suppose in thinking about this issue, the question we now face is whether or not we should bother about being concerned about concurrence. In other words, should we simply say nothing more than you have to take, commence the statutory scheme within six months, or whatever time, and simply ignore all the other entitlement issues. In other words, don't worry about concurrence. If people wish to take concurrent leave, that's their entitlement. So it's just a question: should we be concerned with concurrence or not?

MS MacRAE: One of the other unions that we're talking to later has made the suggestion that you would have to take the government component first and then you could take any other leave and that would be administratively simple, and that's true, but the problem would be that this is not full replacement wage, so you might prefer to take your full replacement wage leave first which is why initially we tried to build in some flexibility about being able to take other leave first if you wanted to.

MR JONES (CPSU): Kristin has just reminded me that many, if not all of the industrial arrangements allow for a portion of the leave to be taken pre-birth. That is relevant.

MS MacRAE: Yes.

MR JONES (CPSU): Secondly, the issue of additionality rather answers the question you asked me the one before this one. We're coming from the same proposition, that any new arrangement is additional. Thirdly, in relation to concurrence, we would favour a more flexible arrangement. From a practical point of view, workers will generally arrange their leave and leave payments in a way that maximises the benefit and has the money flowing to them when they need it and minimises the tax impost upon them, so that means as many of the current schemes enable them to take leave at half pay, to spread that period over a period of six months as opposed to three months, then they will do that, not just for tax benefits, for cash flow benefits as well. Others will want the entire benefit up-front. So I think concurrency is of little concern really.

MR FITZGERALD: The only thing is if we put in a limit - and there's a reason why one would put a limit in and that's for the administrative issues relating to the government who administers this scheme - if we said that you had to commence this within six months, that would mean that when you negotiate the voluntary arrangements, you would have to have a situation where that can be broken by the statutory scheme. In other words, at the moment, in most of the voluntary schemes, once you start it, you have to take in block. In order to maximise flexibility, you would have to have an arrangement that facilitates the statutory scheme sitting in the middle of that. We think that that's very achievable as you renegotiate these voluntary arrangements. You might want to think about it because it's an administrative issue but it's actually quite a significant one which we need to

address.

DR van BARNEVELD (CPSU): The question for us would be when our agreements expire, for example, and when the paid maternity leave comes in in this coming budget, on 1 July, it would cause difficulty for some of our members who do have 14 weeks and do take it at half pay and it would push them to 28 weeks if they didn't take any of that leave prior to the birth. So the six-month limitation does constrain women and how they can get the most out of their entitlements.

MS MacRAE: Unless we said you could take it concurrently. That's the other thing.

DR van BARNEVELD (CPSU): Yes.

MS MacRAE: There's pluses and minuses with all these things. We still feel we haven't come up with an ideal solution to how to make the existing schemes and now the government scheme mesh well, so if you had some ideas on that, that would be useful. The only other question I was going to ask was about how important you saw - I see that you have suggested here that the entitlement be able to be taken at half pay and I guess the reason that we at the moment had suggested you not do it is probably for just precisely the reason you've told us people want it; one is the tax planning that can go on and the other is merely an administrative one, that it's a longer pay period that the payment would be spread over. Our contention was that as long as you made the money available to families, if they chose to take some of that and save it for a period and then use it further down the track, we're not saying they would be any - in fact they would be slightly better off from a cash flow point of view but maybe not after tax, but it would reduce the administrative cost and potentially the tax gain that could go on. So we haven't at the moment talked about allowing that at half pay. Again, one of the employer groups later today were welcoming that and saying they thought that was the right approach. Is there anything extra you want to add? How important a feature is that from your point of view of being able to have a half-pay option?

MR JONES (CPSU): Perhaps I'm going out on a limb here but I'd be interested in knowing how the Commonwealth scheme could actually prohibit it, the way it's currently designed, whereby the employer is the paymaster. How could you actually stop it?

MR FITZGERALD: It's really from the government's point of view as to how many payments they're prepared to make to the employer.

MR JONES (CPSU): Does that just then become an issue for how the employer manages their cash flow?

MR FITZGERALD: Not necessarily. If we dictate that it has to be over 18 weeks - - -

MR JONES (CPSU): There would be an acquittal arrangement.

MR FITZGERALD: Yes, it depends on how you - - -

MR JONES (CPSU): It depends on the acquittal arrangements.

MR FITZGERALD: Yes, all right. Have a think about that, okay. Any other final points?

DR van BARNEVELD (CPSU): The only other point we have is about the accrual of service and I think it was in our submission and is reflected in, interestingly, the new Fair Work Bill and by you, that an industrial entitlement, which you are constructing this government scheme to look like does normally attract accrual of service when it's paid. We would impress upon the commission to have due consideration to the fact that that is actually how it generally works and that it's our view that in fact accrual does occur for the 18 weeks' paid leave.

MR FITZGERALD: Good. Thank you very much, that's terrific.

MS MacRAE: Thank you.

MR FITZGERALD: If you could give your full names and positions and organisation you represent, and as with other participants your opening comments and then we'll have a chance for a discussion.

MS BRODERICK (AHRC): Liz Broderick, Sex Discrimination Commissioner from the Australian Human Rights Commission.

MS SQUIRE (AHRC): Sarah Squire, Senior Policy and Research Officer from the Australian Human Rights Commission.

MS BRODERICK (AHRC): Thanks very much, Commissioners Fitzgerald and MacRae, for having us along again to speak about the second submission on the issue of paid parental and paid maternity leave. As you know, the Australian Human Rights Commission is Australia's national human rights institution. We have legislative responsibility for promotion and independent monitoring of human rights in Australia. On that basis our work is underpinned by international human rights standards, including the Convention on the Elimination of All Forms of Discrimination Against Women, the Conventions on the Rights of A Child and the ILO conventions.

We're really pleased to see the inquiry's draft report acknowledges as a dimension the international human rights obligations that Australia has. We're even more pleased to see that the model that you've proposed would allow Australia to meet its international human rights obligations and relevant international labour standards, particularly when we look at the duration and the making of payment to mothers. So the draft report is a welcome stage in our country's progress towards a comprehensive national scheme of paid entitlements for parents. In an uncertain global financial environment, a national scheme of paid leave for parents is even more essential in maintaining productivity and building a strong and sustainable economy for Australia. As you know, we've had a long-standing commitment to that.

The case for a national paid leave scheme has been well made by the numerous people that you have had here before you. I think your draft report draws on the major arguments that have been put forward by the Australian community and acknowledges the benefits and the breadth of proposals that have come before you, and that's been the terrific thing about this process, I think. So I'm not going to repeat the issues that we outlined in our previous evidence. Instead I just want to focus for a few minutes on some of the advantages of the draft scheme that you have proposed and just touch on a few of the areas that we see could be improved.

I think the starting point is that the model you have proposed is both sensible and affordable. It's a scheme of paid leave which takes into account those policy

objectives that you set, which is meeting our international human rights obligations, enhancing maternal and child wellbeing, facilitating workforce participation by addressing women's disadvantage in the workplace and of course promoting gender equality and work and family balance. So there's a whole host of things that we liked about the model.

Just to touch on a few things: I think firstly the two weeks of paid parental leave which is also available to same sex supporting partners is a real advantage of our model that we have here in Australia. It provides recognition of the role of fathers. It will help partners both support mothers, but will provide health and wellbeing benefits for the family as a whole. I think it's an important signalling device. It's saying that fatherhood matters, that fathers are carers as well as bread-winners and we know that's so important in terms of changing workplace culture. So I think that's a really good element.

Secondly, the broad coverage that the scheme has takes into account the reality of women's working lives, particularly women who are over-represented in part-time/casual work who have numerous jobs and whatever. So that works well. We think the model's funding source works well, but it's largely government funded and that's appropriate given the national benefits of the scheme. It's appropriate because of the absence of social insurance infrastructure in this country. I think it's appropriate because of the limited capacity of particularly small business to be able to pay themselves and that may become a disincentive to the employment of women and we know that small business are a large employer of women. So the funding source is good. It's affordable. A particular advantage of the model is that in absorbing current government outlays on family payments, the model is relatively inexpensive when we compare it to current expenditure. The fact is, you say it's only a 2 per cent increase in existing family assistance outlays by government. So there's no doubt that paid leave is an affordable policy.

Fifthly, we really like the fact it's got superannuation contributions as part of the scheme. Continuing superannuation contributions for women while they're receiving paid leave is important in closing the gap between men and women when we look at retirement incomes. I know that there's been some discussion about that and we'd like to just talk a little bit about that. But I think that actually having superannuation in a scheme is very important. We recognise that some business groups have expressed concern about the capacity of business to pay, as well as some disquiet about being the paymasters of the scheme. We'll say a little bit more about the paymasters as we go into it.

The last two things that we really like about the scheme is that the proposed model strengthens workforce attachment by providing for business to act as paymasters for the scheme. We actually think that's really important, that when you look at the fact that it is a workforce entitlement similar to other forms of leave,

therefore employers should be the paymaster. Finally, the way you have set it up encourages employers to continue their existing provisions for paid leave in addition to this new statutory paid leave. I think the idea that there's reasonable flexibility there, that they could extend the duration of leave, they could top it up or they could invest that money in other family-friendly, such as job redesign in terms of workplace flexibility. I think that's a really good part of the scheme. So in short we think that the model that you have put together and proposed as a draft model is a very good start on building a comprehensive paid leave scheme for this country.

Just to touch on a few of the improvements that we would suggest. One of them is around the fact that the model doesn't allow women to take paid leave prior to the birth. We think that that introduces a level of inflexibility that may be problematic for women. I know there's some arguments there around poor additionality if you do that. But we still think that it's important that women have some flexibility to begin taking leave earlier and we'd like to chat with you a little bit about that in a minute.

A second disadvantage we saw is that there wasn't an intent to extend the scheme over time. There were two good processes that you had there which was a two-year evaluation of the administrative aspects of the scheme, and then of course the five year evaluation of the scheme's operation. I think that would provide scope for progressively realising a world class scheme of leave that, as you know in our second stage, we actually had an additional 38 weeks of paid leave. But I think if we had the two-year review process legislated, that should be undertaken not just to review the impact of the scheme but to look at extending it over time because we know that a longer scheme, if we look at the child health and development objectives, but also more importantly for us is the gender equality objectives: how do we get men as involved as we possibly can, and a longer scheme would allow us to do that.

Thirdly, that there needs to be consideration of the implementation of the scheme in terms of monitoring the capacity of the scheme through the review process, but we're suggesting the establishment of a dedicated policy unit that could be responsible for doing that. Fourthly, it would be great if we could have some comprehensive longitudinal research program, such as we heard the other day on the paid parental leave survey. So we think that that one is one thing that's absent from the proposal, that we need, that we need a comprehensive research program to inform ongoing monitoring and evaluation of a scheme and that there is a particular need for research in Australia in this particular area. Then finally when we look at the provision of an education and community awareness campaign, including targeted education strategies for groups that are less likely to have information about the scheme.

I know you have put in there about some guidelines for employers, but, as we

heard earlier in the week from our colleague in California, the fact is if there's not a targeted education campaign, particularly to those people who are actually going to use the scheme, then the take-up rate will be decreased, and I think there in 2007 only 28.1 per cent of Californians were actually aware of their right to the form of leave, which was a six-week scheme that they had introduced in 2004. So that was three years on. So I think educational materials, which would include tools and support for business, are particularly important, and we see a role actually for the commission in possibly updating some of the guidelines in the area of pregnancy and family responsibilities there.

We would need to be funded to undertake that work. So we think education is an important campaign. The other thing is we imagine that there probably will be an increased number of complaints to the commission that come as a result of an introduction to a scheme such as this, because with any new policy there often is confusion and that leads to an increase in complaints. So that's one of the things we'd recommend as well, that the commission be continued to be funded properly to actually respond to those increased complaints.

So to conclude, a national statutory scheme of paid leave for parents is well overdue and is an urgent policy priority for Australia. We have been consistently criticised in the international forum for our failure to provide such a scheme. Concerns about the global financial crisis don't diminish the need for a national paid scheme of paid leave. It is essential if we are to get a return on our investment in the education of women to increase the low workforce participation of Australian mothers, to enhance productivity and to improve our international competitiveness. Thanks very much.

MR FITZGERALD: Good. Thank you very much. We might have to start with Angela.

MS MacRAE: It might be unfair to start with a curly one, but you might be aware that we have had some submissions from certain women's groups that have criticised the model on the basis of having an employment eligibility arrangement and that by having separate - if you like, suggesting that we maintain two separate streams of assistance, one for families where the mother is staying at home to look after their own children and the other where the mother has a previous workplace attachment. We feel we have defended that quite strongly, but, especially given your role as the Human Rights Commission, what would your view be about that?

MS BRODERICK (AHRC): We have been quite vocal in our view. Look, we do think that every baby should be able to be born into a family where there is an adequate standard of living, that's the starting view. One of the key objectives of this scheme is women's workforce participation and if women don't have an attachment to the workplace prior to actually giving birth then we think it undermines really

what the scheme is about. The scheme isn't about a social payment, this is about keeping women attached to the workplace, it's about building a strong and sustainable economy. So our view is clearly that it should have a workforce attachment element, it should.

Otherwise, we could lead to an outcome where, particularly if they are at exactly the same level, treated at exactly the same level, then we potentially could have women leave the workforce rather than stay in and try and balance all the things that balancing work and families is about. The other thing I'd say is this is about equity between people in the workplace, it's about equity between men and women and redressing women's disadvantage because of our childbearing role. I think it makes sense to treat women differently in that circumstance, depending on whether they're attached to the workplace or not.

DR SQUIRE (AHRC): In our written submission that we lodged on Monday we have made a distinction between paid leave as income replacement, the income that women forego, and family assistance measures that are about income supplementations. We have made that distinction recognising, as Liz has said, that families are entitled to an adequate standard of living and also recognising, as the draft report points out, that Australia does, by comparison with other OECD countries, provide a very generous level of support, in terms of family assistance payment.

MS MacRAE: Just in relation to the eligibility test itself, we have had quite a lot of comment in various submissions about our suggested average of 10 hours a week over the previous 12 months, and I see, from your earlier submission and the sort of model that you had, that you were looking at being employed for 40 weeks of the previous 52. Do you have a view on the appropriateness of that rule? I guess the most common alternative view we have heard is that 10 hours might be a bit long for women that are just coming back to work one day a week, and maybe the 11 months is too long and we should be looking at something more like six months.

MS BRODERICK (AHRC): We'd be interested I suppose to understand on the hours per week, if it was dropped back to eight hours - - -

MS MacRAE: How much difference it would make.

MS BRODERICK (AHRC): How much difference it would make and what are the characteristics of the people that would be picked up on that. So I suppose without having that information before us, it would be hard to see. Having said that, we are keen that it is as kind of as broad as it can be, to the extent that it should pick up all people who have a workforce attachment, and we have said 40 weeks, that came out of our - - -

DR SQUIRE (AHRC): It came out of the 2002 work that we did that you've looked at.

MS MacRAE: Yes, right.

MS BRODERICK (AHRC): In our written submission, what we have said about that is one of the things we looked at was the evaluation of the New Zealand paid parental leave scheme, and I note from looking at that evaluation that the 10-hour work test that they have there wasn't really seen as a problem, it was more the duration. So I guess the 10-hour work test seemed reasonable to us, but not in that we would be interested, and you may have that information around which groups of employees might miss out in relation to that. So I guess we'll be curious about the decision that you make.

MS MacRAE: I mean, it's certainly something we are looking at. The problem is that sometimes the data is clumped and so it's hard to differentiate, you know, who is missing out if you change from eight to 10, because the data is often not that refined to that level of hours. But no, that's helpful anyway.

DR SQUIRE (AHRC): Obviously that's something that could be picked up as part of a review process as well.

MS MacRAE: Yes. It most would be, I think.

MR FITZGERALD: One of the comments that you've made is in relation to being able to take the leave prior to birth. We thought long and hard about that and still are and we have had lots of representations about it. We are concerned to ensure that the public scheme promotes additionality after birth. There is no question that that's our primary objective. But one of the other reasons we decided not to go with pre-birth, which is very common in most international schemes, is that in Australia we didn't see any evidence that women were not being able to deal with the pre-birth period reasonably well.

That's not to say that it works well for every woman, but the evidence was very light to say that in Australia that is a significant problem; largely because people were accessing sick leave or other entitlements, I suspect. So it wasn't just the additionality, it was that the evidence is pretty much that women are able to manage that pre-birth arrangement with the current set of entitlements that exist. Now, that may be a wrong assessment. So that was the first thing I'd like to comment. The second is if you were to have pre-birth entitlement, would it be additional to the 18 weeks or would you simply allow the 18 weeks to be used two, four, six weeks prior to birth, because the further back you go to six weeks or four weeks the less additionality you get after birth if it's the same 18-week period.

MS BRODERICK (AHRC): We would see that it wouldn't be additional to, that it would be part of that 18 weeks. We understand the reasons that the Productivity Commission suggested that it needed to be all taken post-birth. We would say though that that possibly is introducing a level of inflexibility which will make it difficult for some women and that there should be some flexibility which would allow women to take we think up to four to six weeks. We think there needs to be a minimum of 14 weeks, for a number of reasons, one of which is the international obligations, human rights obligations. So we wouldn't want to see that post-birth 14 weeks decreased but we would see that there should be some flexibility in taking pre-birth leave.

DR SQUIRE (AHRC): I mean, one of the reasons why we wanted to have that flexibility was particularly considering low-income women workers, especially casual workers, who may not have sufficient accrued paid leave to cover that pre-birth period. So that was one of those reasons. Another reason was really around women with second and subsequent births, given that many women would have already drawn on their paid leave entitlements, in order to have time away from work, for example, to provide care for a sick child or cover school holiday periods. So we're really thinking about particular groups of women that might be disadvantaged by having inflexibility there, so that was our thinking, yes.

MS BRODERICK (AHRC): You note that there is a current entitlement to unpaid leave of six weeks prior to the birth date anyway.

MS MacRAE: Yes. Obviously that hooks up with - - -

MS BRODERICK (AHRC): And that would remain?

MS MacRAE: Yes, of course.

MR FITZGERALD: We're also aware that there's some entitlement to sick leave that takes place, but we have just got to work that out. There's some additional entitlement that exists prior to birth at the moment.

MS MacRAE: And the fact that there's no safe job protection under the NES in another thing, although, having said that, I think there's a lot of ignorance about the fact that that entitlement is there - - -

MS BRODERICK (AHRC): Yes, I think you're right.

MS MacRAE: - - - and I think again, from some of the other submissions, a reluctance for employees in some industries to ask for it because of the problems that it creates, the fear factor. One of the other things that you've raised that was a feature of your original model was that where there was a sole parent mother that they would

be entitled to the period of paternity leave, because there obviously wouldn't be a partner there that could take that. Would that still be your view? Because that's not what we have proposed at the moment in our draft. Well, we have been a bit silent on it, I suppose; we haven't taken that issue on one way or the other.

MS BRODERICK (AHRC): That would still be our view, that that two-week paternity leave would revert to the mother. Yes, that's pretty much it.

MR FITZGERALD: One other issue that has arisen since the draft has come out is the issue of relative care, particularly grandparents, and there's a number of different scenarios. One is where there has been a transference of responsibility for the raising of the child to the grandparent, and we had submissions the other day in Victoria from that group. One is in relation to the kinship arrangements that exist with indigenous families and a view that we should allow the transfer of parental leave to other relatives within the kin group.

Then there is the more general issue that a lot of families use grandmothers and grandparents as the primary child carer if they return to work, just generally. We have been reluctant to extend the ability of the mother to transfer her leave beyond her partner, and that in most cases is in fact the father. I just wonder whether you have a view about extending the capacity of the parental leave to be shared with non-parents or non-partners, because there are some complexities in doing so. I just make the qualification, one of the things is that this scheme is not about subsidising child care, that's not its purpose.

MS BRODERICK (AHRC): No, that's right.

MR FITZGERALD: So we don't to get into the realm where we're simply saying, "Well, we have other carers, therefore they get the entitlement," that extends it too far.

DR SQUIRE (AHRC): I guess the first point we'd want to make is that paid leave is one policy among many that are needed to address women's disadvantage in the workforce and indeed disadvantage because of a range of various public and private - like, including provision for child care and early education. In relation to the first part of your question, we do consider that paid parental leave should be able to be transferred to another relative who is to be the primary carer of that child in circumstances where the mother or partner is unable to care for the child

So that answers that first part. The second part I think is more complex than what my initial comment goes to around those who may take on caring responsibilities, but obviously if they're the primary carer we think they should get this leave and obviously in terms of looking at who would qualify as a relative we'd want that to be inclusive of the broader kinship networks that indigenous families have.

MS MacRAE: I guess the key nexus there is would that person only have the leave available to them if the biological mother and father weren't available to do that, otherwise - - -

MS BRODERICK (AHRC): Yes, that's our view. But if the mother or the mother's partner cannot care for the child and someone steps in to be the primary caregiver, then in that circumstance the paid parental leave should be able to transfer to that relative.

DR SQUIRE (AHRC): We would also see that that paid parental leave would need to be paid to the birth mother as well for health and wellbeing reasons, so there would be a doubling-up there as well.

MR FITZGERALD: Yes, okay. We have agreed that adoption would be covered by this scheme where the child is of any age, we have brought that category in. So the next question is, when you talk about the birth mother receiving the payment and the other primary carer, would that have to be where there has been a formal transference of primary care or just an informal arrangement? Because what we were hearing in Melbourne, and we had presentations from two grandparents who have now through very tragic circumstances taken on the responsibility of the children, but none of them are actually formal, there has been on formal adoption or court orders taking place in those arrangements. It's just a question.

MS BRODERICK (AHRC): The test really comes down to whether they have taken over the primary care role. Don't you think? Yes, and whether the mother is still available for caring. If she is not, then I think - because I speak to so many grandparents as I travel around Australia, so many older women, I can't believe the number of older women who are actually primary carers, most of them I suppose for kids who are a bit older, so it wouldn't come into that circumstance, but there would be a group for newborn babies. As you say, the other group, where they're formally adopted, will be picked up by your scheme anyway.

DR SQUIRE (AHRC): But I don't know that we have a view on how you would determine what, you know, in the absence of a - - -

MR FITZGERALD: All right, we'll have a look at it. I think there's merit in extending the scheme beyond where we have recommended. It's now a question of how far and how you do it.

MS BRODERICK (AHRC): Without, as you say, supporting people's other objectives, which is child care - - -

MR FITZGERALD: Yes, which I think is a significant issue when people ask for

this to be extended. I think some of that extends it too beyond. Can I just ask a question, I think you mentioned a policy unit. Can you explain to me why you would need an additional place within government to monitor these arrangements, as distinct from existing agencies that look after family policy more generally?

DR SQUIRE (AHRC): I think really we see a policy unit as being a coordination unit, the same way there is for example an office of work and family in the Department of the Prime Minister and Cabinet, and that unit wouldn't need to be a large unit but it would be a unit that would coordinate the ongoing evaluation of the scheme over time, monitoring of its impacts, including liaison with bodies such as us around what inquiries we might be getting or what complaints we're seeing. So it's really largely a coordination role, in that they would have perhaps some role in reviewing the scheme as well. We saw that policy unit as sitting within the Department of Education, Employment and Workplace Relations, given that we see this as - - -

MR FITZGERALD: Why could it not be the Office of Work and Family?

DR SQUIRE (AHRC): Possibly. But I guess what we're saying with recommendation around that is that there does need to be a dedicated unit; or it could be a section within that unit, we're not too fussed about what that would look like. But obviously we're aware that introducing a new scheme requires quite a bit of coordination work on behalf of public servants, so providing for a particular place that would do that coordination work would just ensure that it is resourced properly so that it can be done. We all know that the best policies can go awry if they're not accompanied by proper implementation measures, so this would be part of that implementation.

MS MacRAE: I just have one last question, because I'm aware we're on time. Again if we could just talk a little bit about the model that you'd originally proposed. Your scheme had suggested that the leave would be taken at or around the time of birth, so again you incorporated some pre-birth leave. I think you were here for our earlier discussion about the issues we're having now ourselves about considering whether or not concurrently it would be allowed. Do you have a view on that? It was sort of implied I think from your model that you would take other leave subsequent to that, the government-funded part. But do you have a view on how that would best be structured?

MS BRODERICK (AHRC): Having said that, we do see the issues being raised here - that is, you know if you take your own voluntary scheme, paid leave scheme, there that you may run past that six-month close-off time. I suppose we'd say two things. One is something that is simple to administer, so simplicity, not too complex; the other thing which would allow for a level of flexibility for parents. So in terms of concurrency, we haven't proffered a view.

MS SQUIRE (AHRC): I guess there would be some groups of women for whom the duration would be more important, so a longer period of leave, and there would be some groups for whom topping up that would be appropriate. So that's I guess why we don't have a strong view on that.

MS BRODERICK (AHRC): Yes.

MS SQUIRE (AHRC): It's a hard question.

MS MacRAE: But if we left it open basically it would have that flexibility and from your point of view that would be at least - - -

MS BRODERICK (AHRC): We'd be in favour of that.

MS SQUIRE (AHRC): We'd be in favour of it. We can't see a problem with it.

MR FITZGERALD: All right. Any other final comments?

MS BRODERICK (AHRC): No, thank you very much. We're hopeful and optimistic.

MR FITZGERALD: If you could give your full names, the position and the organisation you represent and then some opening comments, and we'll have a discussion.

MS BRYANT (SDA): Thank you. My name is Therese Bryant. I'm the National Women's Officer for the Shop Distributive and Allied Employees Association.

MR BLANDTHORN (SDA): I'm Ian Blandthorn and I'm the National Assistant Secretary of the Shop Distributive and Allied Employees Association.

MR FITZGERALD: Good, thank you very much.

MS BRYANT (SDA): Right. Thank you for the opportunity to speak to with you today and we direct you to our submission for an expansion of the points that we intend to make. Firstly, let me say that the STA welcomes the recognition by the Productivity Commission of the need for a paid parental leave scheme for Australian parents and the proposal for 18 weeks' paid leave for the mother and two weeks for her partner and the proposed payment being the rate of the federal minimum wage paid by the government. But the STA does not agree however, with the eligibility criteria proposed by the commission because we believe very strongly that the payment should go to all women regardless of their workforce participation in the 12 months before giving birth and regardless of their age or their hourly rate of pay.

There are several points to make about this. Firstly, all mothers work. Some are recognised for this by being paid by an employer and some are not. The basic expenses in having a child are the same no matter what the parents' employment status or age. We don't think government should be in the business of social engineering where one group of parents is compared to another. Entry and exits and re-entry into the workforce around the delivery and care of children should be at the discretion of the parents taking all their family's needs into account. We believe the role of government should be to provide equitable support for whatever choices the family makes.

The commission's premise that recipients of paid parental leave must have a connectedness to work has led to the arbitrary criteria to meet this requirement, and that is obviously the 12 months' continuous employment and the minimum average of 10 hours' work per week. Of our members who are aged 21 to 45 years of age, approximately 16,000 women would have less than 12 months' service and approximately 6500 would work less than 10 hours per week. So these are significant numbers who would potentially negatively be affected by these criteria. So the result of the proposal would deliberately provide greater assistance to parents who meet the work test and would effectively penalise 51.2 per cent of new mothers and 20.8 per cent of new fathers who would not meet the criteria. This would be

discrimination and there is no justification for it, especially because many of those who would be excluded will have low family incomes.

The commission's argument that paid parental leave is a payment for leave from work and those that are not in paid employment at that particular time are therefore not in that category, does not take into account the reality that before the birth of her first child nearly all women are in paid employment. Many would choose to be in paid employment, especially on a part-time basis, at some time after the birth of their baby. This becomes increasingly difficult the more children there are and depends greatly on the availability of suitable work with flexible work provisions and favourable employer attitudes.

Nonetheless the fact is that women are much less likely to be in stable paid employment after the birth of their first child, which is acknowledged in your report. There are many reasons for this, some of which are outlined in our submission. But a major reason is that children become their top priority and work must be around their child's needs. Many women choose not to be in paid employment for a period of time. This period of time varies greatly but usually, except for very few women, the overwhelming majority of women return to the paid workforce at some time. Therefore, although it doesn't fit within a neat standard time frame they do have an ongoing attachment to the labour market and therefore they should not be excluded from receiving the payment.

The report says that the scheme is designed to provide net benefits to the community that would otherwise not be forthcoming and the major benefit identified is the increased participation of mothers in the workforce before and after the birth. But enhanced maternal and child health and wellbeing is also a major benefit to the community and this is applicable to all parents regardless of employment status.

The commission's model also effectively excludes payment to those under 21 as well as trainees and apprentices and others with hourly wages below the adult minimum because the proposed 60 per cent of the federal minimum wage equates to just under the current level of the baby bonus. The STA has approximately 37,000 women members under 21 years and this proposal effectively amounts to age discrimination against them. The cost of having a baby is the same for a 20-year-old as it is for a 21-year-old and there should be no difference in the taxpayer-funded component each receives.

In regard to top-up payments we also think that serious consideration should be given to requiring employers to top up the government payment for wage replacement where the mother's earnings are more than the federal minimum wage. This is required to ensure a financially secure period out of the workforce. It is only then that families will have genuine choice between the woman returning to work or

remaining at home for at least a satisfactory period. Since employers are the beneficiaries of women returning to their workplace then we think they should pay for the incentive for them to do so. As you know, a range of employers now provide paid maternity leave to their employees and cite a strong business case for doing so.

Staff turnover is a cost issue for all employers and retail companies have estimated that the cost of replacing a low-skilled casual employee after only three months of employment to be in the vicinity of \$4000. This is twice as much as what it would cost to top up the wage of such a person for 18 weeks. So a net benefit, obviously, to the employer. For higher-paid employees the costs of replacement are obviously much higher and so the relative costs and benefits would remain. In addition, many women's wages are not higher than the federal minimum wage and so their employer would not be required to pay the top-up.

In regard to superannuation the STA supports the inclusion of superannuation payments as part of paid parental leave but we think it should be at the rate of the superannuation guarantee or the industrial entitlement if that is higher and it should be for all employees, not just those who have been with the employer for 12 months. We note that some employers are objecting to the commission's model which would require them to pay the superannuation on the government payment because they say the government payment is not earnings. We think that employers are being let off lightly and it seems that the ones who are complaining want the benefits of having valued employees return to work but are not prepared to make a contribution towards this.

The additional cost to employers is not onerous, given the short period of time and the tax deductibility of the contributions. Also under the commission's model, mothers not in paid employment would not be paid superannuation for the 18-week period and a matter of equity the SDA recommends that women not in paid employment should receive a government-provided superannuation payment on top of the paid maternity leave payment equivalent to the superannuation guarantee contribution.

On the subject of accrued entitlements, apparently some employers are also complaining at the prospect of employees accruing leave entitlements while on paid parental leave. Accrual of entitlements while on paid leave is a longstanding industrial entitlement or principle and should apply in regard to paid parental leave, no matter what proportion is paid by the government or by the employer. Their response is just plain mean-spirited. Employers are effectively being heavily subsidised by the government paying the base rate of this leave. Again this is not an onerous requirement for employers, especially given the short duration of the leave.

I heard before you were talking about the six weeks before the birth. We would say that the current provisions for taking maternity leave involved the

employee at least 10 weeks before the expected birth to notify their employer that they are pregnant and the expected date of the birth by providing a medical certificate, etcetera, and then at least four weeks before the expected date the employee must provide written notification to the employer of the period of leave she wishes to take. The employee may commence maternity leave at any time from six weeks before the expected date of birth and also the employer may require the employee to take leave in that six-week period if the employee is deemed by a medical practitioner to be not fit for work.

This then is mandatory leave, there is no discretion by the employee as to whether they leave work at that time or not, and they're not entitled to paid sick leave during that time. Given that the commission is recommending that the paid parental leave payment not be payable until after the birth, we're concerned that that potentially leaves the family without her income for that period. In terms of the cap of six months after the birth, the proposed model requires statutory paid parental leave to be commenced after any period of privately-negotiated paid parental leave available at the birth of the child and to be completed before the six months after the birth.

We would recommend that the statutory paid parental leave should be paid before privately-negotiated paid parental leave or other forms of paid leave and to all women at the commencement of maternity leave and subject to the recommendation that I have just mentioned. Any additional time then would become a matter between the employee and the employer and that would also seem administratively simpler. So in conclusion the SDA believes the introduction of paid parental leave in Australia is long overdue.

It is important to get the fundamental principles right so that it will be fair to all Australian parents, be affordable and will provide a basis on which to build. We believe that a paid parental leave including the recommendations that we have just made would do this. In the event that not all of our recommendations are taken up in the first instance, we advocate that there be a staged extension of the provisions of paid parental leave within a scheduled time frame. So thank you, and we welcome any questions or comments.

MS MacRAE: Thank you.

MR FITZGERALD: Thanks very much. I might just start obviously with your key contention. Nowhere else in the world is a paid parental leave scheme treated as a payment of equality to all mothers, because they're fundamentally different in character. Parental leave in and of itself is a leave scheme. It's not a welfare scheme, in the sense of trying to meet the costs of parenting, which are dealt with through a whole range of other means. So I'm just intrigued as to why you'd believe that this is not a workplace entitlement.

Australia has already the baby bonus and \$15 billion worth of annual expenditure on family assistance, which the community believes is important to support parents. The leave scheme by its very nature is a workplace-related entitlement, whoever funds it, doesn't matter, just putting that aside. The fact the government decides to subsidise part of it or the employers, under your case, subsidise part of it doesn't change the innate characteristic. You've merged those two. I just wonder why you're doing that, because nowhere else in the world is that being done.

It has been advocated here, but you're merging a pure welfare payment which looks at the costs of parenting, which we do already through a number of streams, with something that in every other jurisdiction has always been seen as workplace-related, irrespective of who pays for it; whether it's a social insurance scheme or a payroll tax levy or whatever have you, and I wonder why you have done that.

MS BRYANT (SDA): Because we believe in equity for parents across whatever their employment status is, and I guess the argument that it hasn't ever been done anywhere else before - and I'm not sure that Finland doesn't have something similar anyway - is not a reason for not looking at those equity arguments. I understand what you're talking about in terms of leave and I think I addressed that in regard to the fact that if you're looking at something very confined, if you want things to be within a very neat time frame and linked to industrial legislation, well, yes, if we're looking at leave, I can understand what you're saying. But we're looking at a much broader picture of the fact that women are in employment and through a whole range of reasons then may not return within that very short time frame because of other family needs.

MR FITZGERALD: But I have to say to you, if your view is that the key to this is putting more money into the hands of families with newborn children, why would you go to the expense of having a leave scheme at all? Why don't we simply increase the baby bonus and tax it? Because in a sense that achieves your key objective. There is very little benefit in having a leave scheme if the key target of that scheme is simply to put more money in the hands of all mothers with babies. If that were the objective - which could be a legitimate objective, and clearly we as a nation have decided that it - why would you simply not enhance the baby bonus and tax it?

MS BRYANT (SDA): Look, there may well be benefits in doing exactly that, but there are also benefits for women who are in employment to have those other ancillary issues addressed in regard to the other issues that have been raised that are connected with their workplace. So it's creating a framework which will then enable those other workplace-type issues to be tacked on too.

MR FITZGERALD: We see three critical objectives in this scheme: one is about paternal and child health and wellbeing; one is about workforce attachment and participation; and one is about enhancing work/life balance within the workplace and gender equity. The last two are part of why the scheme is designed as a workplace entitlement and a workforce attachment is there.

If it's only about child health and wellbeing, you might well argue that all you'd have to do is increase the amount of income into the family, in which case it's simply a welfare payment; and that's not a problem, welfare is a good term, not a bad term. But if you want achieve the other objectives, then we would believe that you have to impact, say, that there are differences, that yes, it is true that mothers who have newborn children have something in common, that's the having of a child; but to achieve those two other objectives, they need to be dealt with differently.

MS MacRAE: I think even with the first objective I would say that if you have a prime carer that's already at home and intends to stay home and care for the children - and we're not saying that's not a valid choice, it's an absolutely valid choice, but all the research that we have been able to gather for our report says that it's critical for that first six-month period that families have the option of having a prime caregiver at home for that period. If you're already at home, we don't need to do anything to induce that sort of behavioural response.

But even on the maternal and child health, we're trying to give those women - in fact many of them would be your members who are lower-income people that might not have the financial capacity to be able to stay home - that opportunity.

So particularly where we're looking at a primarily government-funded scheme, we're looking to try and get more weeks at home for women, usually women, but a prime caregiver, to be home with their children for that critical first six months, we're really saying, "Well, let's direct that money where we can get the best additional weeks at home between mothers and babies," and again that's a prime difference between those who already have a parent at home. So that's another reason we have designed it the way we have.

MS BRYANT (SDA): I guess we don't think that it's mutually exclusive, and we're certainly supportive of providing choice to parents, and in fact that's the key I think, that if we're going to be providing choice to parents as to what they're going to be able to continue to do, whether in terms of how long they might choose to be at home and meet their family needs or if they're a situation of where financially after the 18 weeks they really do need to be back in employment, at least there's that payment. We're obviously as a union very supportive of the work and family balance type issues and see value and the need for those to be enhanced. But we don't see that it is necessary to create incentives for people, in terms of going back to work or not going

back to work and we believe that it should be a matter of equity and therefore true choice for parents, in terms of what they choose to do.

MR FITZGERALD: Can I just challenge you on this basis. Equity is never about equality of payment, equity is about meeting the different needs and circumstances of different groups in our community. All of us that have been involved in these discussions know that equity is never equality, because at the end of the day people's needs are different.

So when you're looking at a scheme, the fact that there's a differential in payment is to achieve different outcomes, that's its whole purpose, and that may in fact be much more equitable, so that low-income workers in particular in your industries are benefited, not as a discrimination against those that have made the choice to stay at home but in order to induce a particular behaviour; that is, to be able to stay at home longer and, yes, to be able to return to work more easily, to remove those barriers that currently exist.

The incentives at the moment work in the other way, the incentives for low-income women work to ensure that they stay out of the workforce, which has very significant long-term disadvantage for women, particularly on low incomes. So the current system actually does that. Our system actually encourages and allows them to make a different choice - that is, longer time off and a return to work. So in trying to meet their particular needs - and our scheme is targeted to low-income workers, that's why it's capped at the minimum wage - we think we actually positively support that group who are currently in fact disadvantaged and the incentives work in exactly the reverse way that they should.

So I would just question whether or not it is fact true equity simply to make the same payment, when different groups have different needs; and, from a society point of view, you're trying to allow different outcomes. We have had this discussion before with other groups. So clearly we hold a different view about equity. But I would make the point that I think it's an absolute flaw to say that equity is about equal payment when the groups have in fact different needs. I think that's very difficult.

MS BRYANT (SDA): There's several points to be made. But many of our members, because they're in low-income families, especially after having the first child and very often after having the second child, are in a situation of where they may well like to return to work but because of the husbands' rosters, because of the lack of flexibility in the workplace, because of lack of child care available - you know, nights and weekends when there might be work available for them or when they would be expected to attend by their employer - for a whole range of reasons, may not be able to re-enter the workforce and so therefore would be disadvantaged.

In terms of equal pay across the groups, we don't advocate that women or families who have one parent at home full-time should be favoured over women or families where both parents are in the workforce, so we would see that there should be an equitable outcome. The difficulty with having a work criteria, which you've obviously been having to address, is the fact that you then need to make arbitrary decisions about who has workplace conceitedness or not, and often that means, and would certainly mean for our members, that a number of them would be disadvantaged.

MR FITZGERALD: I acknowledge absolutely that the difficulty for a scheme that is work-related is that at some point you have to bite the bullet about who is going to be eligible; and there has to be some test, and you're right, it's arbitrary, based on as much evidence as we can adduce. We looked at the NES, the National Employment Standard as a starting point, which is, you know, 12 months and substantial attachment, we simply converted substantial attachment to a number of hours. But then we said, "Well, that would exclude all of this group that work for multiple employers," so we went beyond that. You're right, whether the 10 hours or the 12 months is right is an issue we're currently looking at.

But to say no workforce attachment at all seems to me to lead to the point of, from a government point of view, little benefit in introducing such a scheme if there's absolutely no workforce attachment at all, because the main benefit comes from changes of behaviour of those within the workforce, that's its main benefit. I want to be very clear, we're not making any commentary about women who have chosen to stay at home nor the adequacy of the current baby bonus, that's up to government to decide whether it's adequate. We recognise that you do in fact need to support parents because of the costs of having children, and we do that through a whole range of mechanisms, many of which I have advocated strongly in the past, so I'm supportive of that.

When you come to this group it's just slightly different, so to have no workforce attachment issues at all. The other thing is, I find difficult to understand why you would attach a superannuation payment to people that are not in the workforce, because surely, whatever you think about superannuation, superannuation came about directly as related to employment, and in fact when it first came out there were some trade-offs in terms of wages and what have you, although that subsequently changed. So to say, and others have said so as well, that super should also be paid to those that are not in the workforce at all, and may not be for many years, again how do you justify that, other than it's simply another payment?

MS BRYANT (SDA): It's justified again on an equity principle and especially looking at the fact that those parents are contributing to the community by providing the care that they're providing. You may be interested to know that the prime minister in fact was voicing support for the concept when he was launching carer's

week on 21 October, he was reported in the Australian, if you wanted to sort of check that, in response to NATSEM research that was identifying that people who spend substantial amounts of time caring, whether for disabled or whoever, injured, family members or not, are disadvantaged in regard to their superannuation and retirement savings and was undertaking that the government would consider how superannuation payments might be made to those people.

MR FITZGERALD: There's no question at all they're disadvantaged, there's no question about that. Whether or not superannuation, as distinct from other lifetime savings or retirement arrangement is more appropriate I think is an issue. But right at the moment the other thing is it's for 18 weeks only. So in truth it makes very little difference to the lifetime savings of anybody.

MS BRYANT (SDA): It may, but it still makes a difference to those people. So as a principle - - -

MS MacRAE: Well, it might. It would be a very small amount that might sit there for very many years, so at the end of it all you mightn't have much left; I mean, if you're taking admin fees and things. I know there's the minimum account, so you can't charge fees on certain accounts, but even so it's going to be a fairly small sum at the end of the period.

MS BRYANT (SDA): Again really that's not acknowledging probably in not so long a period of time, it might be five years, but probably at some point, that woman or that man is likely to return to the paid workforce in some way and so it would be additional to whatever superannuation payments are being paid at that time and any super payments that have been paid previously obviously.

MR FITZGERALD: Just assume for a moment that this scheme does have a workforce attachment, just assume that for a moment. We have got 12 months with any employer or employers at 10 hours, you're right, a number of your members would not be entitled, and we're conscious of that, in fact we have been doing more and more calculations since the draft, so we're trying to get a real handle on that. Do you have another view as to what a reasonable test might be, if there is to be a test, and I acknowledge that you'll say there isn't, because you're at the coalface of this? You have the members that are directly affected; they're either in or they're going to rely on the baby bonus and the Family Tax Benefit B. So everybody gets something, but it's just a question as to whether you've given any contemplation - - -

MS BRYANT (SAD): We certainly haven't addressed that because that's not where we're starting from.

MR FITZGERALD: That's fair enough.

MS BRYANT (SDA): But I might just tell you a story in regard to even eligibility for unpaid parental leave.

MR FITZGERALD: Yes.

MS BRYANT (SDA): The NES obviously has these provisions and the Workplace Relations Act has in the past too. But in our negotiations with retailers, we have for some time had arrangements where people with less than 12 months but more than six months were entitled to a certain amount and people with less than six months' service were entitled to another amount. But the Coles group of companies, for example, made a policy decision not so long ago that they wouldn't even worry about having a service requirement for up to 12 weeks' leave because they believed that if they had an employee that, even if they'd only been with them one day, that they believed that they were a good prospective employee and they left the next day pregnant that they should provide them with unpaid leave because they've obviously made the decision that they think that they will be valuable to their organisation and would return after a certain period of time.

MR BLANDTHORN (SDA): I think it's useful to note that there are a very large number of people who work in industries like retail who work small numbers of hours per week. So there will be a lot of people who would not work 10 hours a week. Also in industries like retail you have huge turnover, particularly in say Western Australia, if I can give you one example. The membership of the union in that state alone has a 70 per cent turnover per year. Now, that's related to the nature of the labour market in Western Australia, obviously. But clearly what it means is that a lot of people don't ever clock up the 12 months with one employer, or even a succession of employers because of the nature of casual and being intermittent, in and out of the workforce. So I think those factors are relevant when you're looking at time frames.

MR FITZGERALD: Yes. We're conscious of those thing and we're very conscious of those circumstances, hence I suppose we're looking at the moment. The other issue you raise which we are also looking at again is the junior wages.

MS BRYANT (SDA): Yes.

MR FITZGERALD: We hear your point on that. I suspect we've come to a bit of a view that our original position does need to be re-evaluated.

MS BRYANT (SDA): Good.

MR FITZGERALD: But just from your point of view, the rationale for doing so - apart from discrimination, the reasons why we contemplated a differential payment

of 60 per cent of minimum wage was to ensure there were no perverse outcomes in relation to the behaviours of very young people. I think research indicates that that concern is probably not justified. The baby bonus had particularly designed features which were quite different to what we're talking about which may or may not have led to some strange outcomes. But what would be the rationale beyond the discrimination that we could use to re-look at this issue?

MS BRYANT (SDA): I think the design features that you're talking about in terms of the lump sum payment of the baby bonus was probably a trigger to voicing some concerns about irresponsible behaviour perhaps by teenagers to get pregnant for money, and the fact that those payments are now going to be fortnightly was introduced I think especially for them to address that. But what you're proposing is a weekly, fortnightly payment, so the design features are not the same so you wouldn't expect that there would be those sorts of outcomes. So again I think for us it's really an equity issue, that the costs for parents of having a child are going to be the same and they need that financial support.

I could well see that also in some instances where a young woman may become pregnant and possibly not have planned the pregnancy, who may have been living at home and therefore able to survive on that lower income that she may have had before may not be in that same position once she's had the baby and be required to leave home and so would definitely need a higher wage for rent and food et cetera. So I could see that there would be circumstances where you would need that at full.

MR BLANDTHORN (SDA): In fact it could actually be a very positive thing to provide an equitable payment. One of the problems you have in areas like apprenticeships and traineeships is the huge attrition rate. A lesser payment might lead people to make decisions not to continue with their apprenticeship or traineeship. Actually making the full payment might encourage them to persevere and get the skills that will help them obviously in their own futures.

MR FITZGERALD: The other issue before we conclude: you have made the comment about full wage replacement by the employers and the top-up. You will be well aware that many of the employers have welcomed the scheme except opposed any requirement on them to pay anything, including superannuation or paymaster. I think they breathed a heavy sigh of relief when there wasn't full wage replacement or compulsory top-ups there.

MS BRYANT (SDA): Yes.

MR FITZGERALD: I suppose the question I have is a pragmatic one: that is that in order to introduce a scheme of this character, do you think it's reasonable that to get the scheme in in the form that we propose or some variation of that form that not requiring employer top-ups is not an unreasonable position at this stage? The form

we have is I suppose that it increases the cost to business beyond the \$70 million that we have proposed to some much higher figure, and we have some numbers on that. So I'm just wondering in a very pragmatic world we live in whether or not the requirement on businesses to pay full wage replacement is necessarily a good element at this stage.

MR BLANDTHORN (SDA): Look, we would like to see top-up, but we also acknowledged in our own submission that if everything we ask for isn't delivered in the first instance, hopefully a model will be built so that over time other things can be delivered. Really, I suppose the critical issue is to get paid maternity leave up in whatever form we can and then to move forward from there.

MR FITZGERALD: It's true to say, do you have an idea of the employees in your particular industries that would be at the minimum wage level or around that? Do you have a sense of how many employees are at that figure?

MR BLANDTHORN (SDA): Most employees in the retail industry are on awards or agreements that are above the minimum wage, but you also then have to take into account that the vast majority of them are non full-time workers.

MR FITZGERALD: Yes.

MR BLANDTHORN (SDA): So their actual take-home pay is obviously less than the minimum wage.

MR FITZGERALD: Yes.

MS BRYANT (SDA): I think it's about two-thirds of our membership of 210, 215,000 are part-time or casual, so whatever that works out to be.

MR FITZGERALD: Yes, that's fine. Thank you very much for that.

MS BRYANT (SDA): Thank you.

MR FITZGERALD: John, if you could give your full name and position and the organisation you represent and then some opening comments and then we can have a brief chat.

MR SUTTON (CFMEU): John Sutton. I'm the National Secretary of the Construction, Forestry, Mining and Energy Union. Thank you for the opportunity to appear for the Productivity Commission today. Let me congratulate the commission on the work it has done thus far in respect to this very important issue. I have a few notes here that will help encapsulate our organisation's thoughts on where this issue is up to, so I might just read from these notes.

The Productivity Commission report is a good first step towards its two main aims: enhancing maternal and child health through acknowledging the benefits of six months' paid parental leave, and facilitating workforce participation by women. Secondly, our key concerns about the recommendations thus far are as follows: that requiring women to use their annual leave to make up the difference to six months is inappropriate, in our view, and it means that for 58 per cent of casual workers who are women and particularly for low-paid women, that the proposed scheme would not achieve its aims in an equitable fashion, in our view. We are concerned about the cap at 18 weeks with no recommendation for any increase beyond that. Lastly, we are concerned about the fact there is no make-up pay requirement from employers to ensure that women are paid the going rate. I should, of course, be adding here that we are concerned that the recommendation in respect to parental leave is two weeks rather than the four weeks that we put in our original submission.

The construction, forestry, mining and energy industries that we cover, like many other male-dominated industries, face a demographic crisis with the retirement of male baby boomers in the coming years. One of the best ways to close the gender pay gap will be through increased women's participation in our generally highly-remunerated jobs; not always, but generally highly-remunerated jobs thanks to the efforts of unions like the CFMEU.

To help facilitate this we need a phased approach that will boost paid parental leave to a full six months as per the WHO minimum recommendations for breastfeeding, as breastfeeding is the best way to establish the child's immune system for life, reducing future health costs, stress levels for parents et cetera. Also to this end employers should be expected to contribute to the paid parental leave entitlement by being required to top up the leave payment to full wage replacement and pay super contributions at the relevant rate.

(4) we urge that it is time to bite the bullet on this issue now and not be distracted by the inevitable voices that will urge that economic times are tough and the matter should be put off to another day. It's a very familiar cry that one often

hears when an issue is on the table concerning an important societal breakthrough. We say that if it's good enough each year for \$2 billion to be spent on FBT tax concessions on employer-provided vehicles, if it's good enough for \$900 million to be spent from our budget on concessional tax rates on aviation fuel, if it's good enough for 2.4 billion to be given to private schools in New South Wales alone annually - we say if it's good enough for these kinds of public expenditures then it's good enough to spend the money required here. Australia's mothers, fathers and the country's future, namely its children, are more than worth the roughly \$500 million annually that this scheme would cost our federal budget.

(5) we support the federal health minister's recent comments that:

Giving mothers time off to recover from the birth and giving newborns time with their mothers -

and I might add their fathers or partners -

is an important health issue.

So said the minister. We say it's an important economic issue too, beyond the health issue. We point to the fact that in 2003 Treasury said that - they estimated in 2003 that a 2.5 per cent increase in labour participation rates would produce an additional 9 per cent increase in economic output by 2022. Even a modest 1.5 per cent increase in female participation in the 25 to 45 age range would grow GDP by up to 1.25 per cent over the next 20 years. If Treasury said it, it has got to be true, naturally.

The last point I would make, the sixth and final point, is that our burning national infrastructure deficit needs mean that we need increased participation by Australian women in the skilled jobs that are so necessary to be building or economic base. By addressing issues such as paid parental leave and child care arrangements, which we stressed on the previous occasion - by addressing these key issues we can attract and retain Australian women in the key roles in which they are needed in our workforce. So they're my few comments to open.

MR FITZGERALD: Good. Thanks very much, John. Angela, do you want to start?

MS MacRAE: There's quite a lot there. But I guess the focus in your earlier presentations to us prior to this was in relation to paternity leave. I would just like to explore that a little bit more. I understand your concerns about ongoing extension for families, I guess, if I call it that, for the general leave. But in terms of the evidence base that we look for in terms of paternity leave I think you'd probably agree with me that it's hard to find a lot of hard evidence because it's an area that is sort of

emerging. But was there anything specific that led you to the four weeks suggestion? It's quite common where such paternity leave arrangements are in place around the world that it's one or two weeks. What has led you to a suggestion of four weeks in that regard?

MR SUTTON (CFMEU): I've got to confess, I haven't done sufficient homework to go back and look at why and how we put that proposal together initially. So I can't today point you to any particular empirical sort of material. Could I take that on notice and come back to you on that?

MS MacRAE: Yes, sure. Just in relation to the general priority of that issue among your membership are you able to enlighten us on that? Would you say it's a high priority for them?

MR SUTTON (CFMEU): I think it is. I said on the last occasion that unlike the sort of stereotype and the sort of caricature in the media that in my experience Australian men today are interested in being around at the point of childbirth and in the weeks - the period immediately thereafter, which is the period when the woman needs a hell of a lot of support. The last thing that the family needs at that moment is concerns about - economic concerns that are coming down upon them that the male can't take any time off work, he desperately - he can't be around at that moment.

I have raised this on building projects when I have spoken at mass meetings and I have always got a very good reception and not too many jokes that I can remember. I think the overwhelming view is that, "That is a critical time in the life of my family and I want to be around. I want to play a supportive role at that time." You can't dismiss the economic question because if there's no paid leave there, if there's no economic entitlement, it almost by necessity means that you can only spend a very limited time away from work. You've got to be back at work.

MS MacRAE: Under the proposal as we have it in our model we'd be looking at a payment at the minimum wage. As you've said in your opening comments many of your members are on quite good incomes, so the minimum wage would be a substantial cut for that period, albeit it for four weeks, if we were to adopt your model. Do you think at that level that many men would take it or would that financial differential be enough for them to say, "Look, nice idea but we wouldn't be interested in taking it at that rate"?

MR SUTTON (CFMEU): It's hard to say. Certainly, you know, there's a truism out there that one's expenses and mortgage and everything tends to correspond with one's income. So a lot of our members are - they work six days, you know, they're skilled, they're getting quite high money - when you put to them that they'll get \$500 or whatever the amount is, that would not be attractive. But I guess that some of them would grin and bear that because they know the importance of being at home

with the partner. Others would - well, the family economic unit may necessitate they can only take limited time off.

MS MacRAE: Yes.

MR SUTTON (CFMEU): They've got, as I was just saying, their expenses and the cost structure of their family means they can only take limited time off.

MR FITZGERALD: One of your comments both previously and today was about trying to enhance the level of female employment in the industries or sectors that you represent. This inquiry can look beyond just simply the presentation of leave to other measures. I just wanted to canvass with you when we were over in Western Australia talking to some of the mining industry representatives about female employment they shared your view that it would be good to increase female participation. In fact, they have a preference to employ female truck drivers, so they tell us, rather than males.

MR SUTTON (CFMEU): I've had that story, yes.

MR FITZGERALD: They're much easier on the trucks. But the question then arises but in a way - the way in which the mining industry currently operates with fly in and fly out and so on, that in fact these seem to be almost insurmountable barriers to the employment of women, particularly those of child-bearing age or those that are looking at having children or having children. I was wondering whether you've been able to give any more thought to other measures that need to be in place to support, particularly women, in those sorts of industries; because it seems to me that while - there are many other factors that mitigate against the employment of women at that age. The parental leave may assist but it seems there are other structural impediments that are at play.

MR SUTTON (CFMEU): Yes, well, we did canvass this territory on the previous occasion. I think some of the so-called cultural issues of the industry where, you know, men don't want to be working alongside women or these are not roles for women. I really think that is falling away rapidly, particularly the kind of projects you're talking about. It is becoming very common to see women not just in the office on those sites but women decked out in the gear because they are driving equipment or they are operating machinery. I wouldn't say that they're a dominant group but they're starting to - a sprinkling of women are starting to appear in those occupations. I think there is some evidence in mining that there is a small trend. The trend line is going up - only in a moderate fashion, there's not a dramatic increase - but there is a moderate increase in women going into those high-paid manual jobs operating machinery of one kind or another.

Certainly in more low-paid jobs that we cover in building materials

factories - I've been to a number of work sites and saw quite high concentrations of women working in industries like producing timber products, you know, mass production of timber products and pulp and paper - we're the main union in that area. So there's women in those kind of - they're not high-paid jobs but they're appearing in those jobs in a way they wouldn't have 20 years ago as well. But I think the cultural things are dropping away, you know, chauvinism, sexism, all that sort of stuff is tending to drop away, particularly on the bigger projects. It might be a bit different on your suburban block of flats or something where you've got other issues at play, smaller subcontracting firms and - there's a whole different mentality there than there is a big infrastructure project et cetera or a big mine development or something.

But I am of a view, we're of a view, that with some of the structural changes such as better paid parental leave; the government addressing the child care issue, which is something that badly needs addressing; those structural changes can bring a comfort factor to women. I don't think there's that much resistance from employers. I think they know that many women, most women, make good employees. They're diligent in their job. I think there is an interest in employing women in those roles.

One thing I don't know if I stressed on the last occasion that does concern me, and it is an issue that I am quite vocal about in the public domain, and that is there is this enormous growth in temporary overseas workers. Now, whenever you can go and pluck off the shelf temporary overseas workers at a lower rate of pay much below a market rate, then some employers will definitely prefer that model than taking what might be regarded as a small risk about employing a woman because she might fall pregnant within a year or two. So whenever you've got another model which is cheap and easy and is sort of uncapped and you can go and pluck workers from externally at a below-market rate, then that's a deterrent. That's a deterrent.

I know it's another policy area and it's a policy area that government says it's going to address and lift the pay to market rates. But there's a lot of that other - a lot of those workers, external workers, coming in and working on mine projects and infrastructure projects. I would like to see Australian women taking up those high-paid jobs in preference to that other - that 457 visa option.

MS MacRAE: We've heard from a range of union groups already this morning and in our previous hearings post the draft. We have seen a range of views about the differential that the commission has put in place between women that have what we call a meaningful attachment to the workplace and those women who are outside the workforce. How does your union see that? Do you think we've got that balance about right or do you see that they should be more equal in terms of actual payment?

MR SUTTON (CFMEU): Well, we haven't really turned our mind to that issue in a big way. I know there is an issue there. We've been emphasising sort of the

industrial leave entitlement characteristic rather than should the stay at home mother or the non-working mother get exactly the same entitlement. I think I'll pass.

MS MacRAE: Sure.

MR SUTTON (CFMEU): It's probably not my area of expertise, to be frank.

MR FITZGERALD: One of the issues you've raised which has been a constant theme in the inquiry has been the issue of employer top-up to full rates. Obviously there is a substantial disagreement between the unions and business in relation to that. Now, we haven't recommended that but if it were to apply in your sector that would be a significant cost to business in the sense that you have relatively higher-paid workers. On the other hand you have very relatively low numbers of female workers that would be affected in any one year. So it's a bit of a trade-off.

But I suppose from our point of view whilst I understand absolutely the logic of seeking employer top-up I just wonder whether or not it's worth pursuing that given the objections that already exist to the other costs that we have imposed such as super and what have you?

MR SUTTON (CFMEU): Well, you could never get the employer lobby to ever proclaim they are happy with anything that adds an additional dollar to their cost structure. But I think in truth they were rather happy when they saw the outcome of your recommendations of some months ago in that they, in our view, got off very lightly and probably did substantially better than they originally thought they were going to do with the vast bulk of the cost just simply being transferred to government.

This is about the employment relationship. This is about the workplace. This is about productivity in the workplace. This is about women being committed to their jobs, loyal to the employer. Loyalty, commitment; these are things that are very valuable, I would have thought, to an employer interested in productivity. There are employers already who know that and understand that and pay the going rate. But of course the employer lobby, if they can get out of it cheap they'll be delighted. I'd urge that you not let them out cheap with a little bit of superannuation money. I don't know if you've looked at profit levels in this country in recent years but most of them have been doing handsomely. They will all complain now that there's an economic slow-down on how tough life is but there have been some pretty remarkable profits, some pretty remarkable corporate salaries, pretty remarkable things happening in the corporate world for the last 10 or more years, so I would urge that you not let them off as lightly as they're presently getting out of this.

MR FITZGERALD: Just in relation to another issue you raised, we understand that you're pushing for 26 weeks, I suppose the only comment I've got is that we

recognise that currently, most women are able to take three months, so what we're seeking is additionality over and above that, and on our calculation you get to 26 weeks. You've made the point that for low paid and casuals, that would necessitate them taking other leave entitlements if they had it, and some casuals of course have very little other entitlements. But I was just wondering whether or not there's an acknowledgment that women today are able to, through a range of means, get to several weeks or at least 12 weeks. So I suppose from a public policy point of view, our view is that we agreed that getting 26 weeks is the issue; the question is whether government needs to pay to in fact get you there. I suppose that's the issue. Our assessment differs from yours, in the sense we think you can get there not without a struggle, but can you get there without having to actually pay the full 26 weeks?

MR SUTTON (CFMEU): To go over the point I made originally, I think we understand it's accepted that there's been a growing casualisation of the workforce, a lot of workers on part-time, a lot of casual arrangements, part-time arrangements, bogus subcontracting arrangements. All this sort of casualised stuff that has increased in our workforce, women are over-represented in that, right through that whole area of the casualised workforce, so while it's true that some women who are in stable, full-time jobs may well be able to pluck other bits of leave and tack it all together and get to their 26 weeks, there is a very large number of women who simply won't be able to do that. I think that's a real policy issue because if the prescription you come down with aids 40 per cent of working women and doesn't aid the other 60 per cent, have you really delivered the goal that you're setting out to achieve? That's one way of answering it. Whether women have to store up their annual leave, their rostered days, in the anticipation of childbirth down the track, it doesn't sound entirely satisfactory to me to have to not take your annual leave and your RDOs or your sick leave because you want to store it all up for what may - you know, one is never quite certain about when childbirth is going to come in, is one? Some people are very good at family planning and others are not so good, so it all sounds a little bit unrealistic to me actually.

MR FITZGERALD: Good. Thanks very much for that, John. That's terrific.

MR SUTTON (CFMEU): Okay.

MR FITZGERALD: If we could just have your full names and your position and the organisation you represent, that would be terrific.

MR SMITH (AIG): Stephen Smith, director of national workplace relations for the Australian Industry Group.

MS EDWARDS (AIG): Samantha Edwards, policy adviser, national workplace relations policy.

MR FITZGERALD: Good. If you would just give us your opening comments, that would be terrific.

MS EDWARDS (AIG): Thank you again for the opportunity to provide further input into your inquiry and to comment on the draft inquiry report. We've carefully considered the commission's draft model and we particularly welcome the proposal for the scheme to be taxpayer funded, which won't surprise you. We support the commission's conclusion that this is the most efficient and equitable way to spread the cost across the community, including business. Clearly, however, the draft model does entail cost for business and these require close scrutiny.

Through its draft report, the commission has clearly recognised the need to take into account three important themes. The first of these is the integration with existing workplace rights and entitlements and that includes the National Employment Standards. Secondly, the business impacts of any scheme, both direct and indirect, need to be fully explored and acknowledged and thirdly and of equal importance in AI Group's view is the need to maximise the cost-effectiveness of the scheme and to limit its fiscal impact.

Along with the three primary objectives of the scheme that the commission has identified, these principles should inform the final design of the scheme. AI Group supports the further refinement of the draft model to reflect these issues and we acknowledge the many and often competing priorities at play in this area and the difficult task the commission has before it. We have every confidence that through the consultation process, the commission will arrive at a robust final model.

I would like to first discuss some of the issues associated with the cost of the scheme. As I've said, we've identified fiscal responsibility as a key principle which needs to inform the design, given that it will be publicly funded. Ideally, a paid parental leave scheme would be financed so far as possible through reconfiguring existing family and welfare payments to better achieve the objectives. Any additional new spending needs to be confined to what is necessary to achieve those objectives. There are a number of aspects of the scheme which would benefit in our view from further consideration in regards to whether they are necessary and whether

they are cost-effective elements of the scheme. Three of these are, firstly, the payment rate for those earning less than the federal minimum weekly wage and as you would be aware, this does affect a fairly significant number of people, given the number of part-time low wage earners. On average, a person who earns as little as \$143.10 a week will receive the federal minimum weekly wage of \$544, which amounts to something like 68 weeks of their replacement income.

The second issue that we've identified is the continued availability of what the commission has recommended be called the "maternity allowance" and that's the current baby bonus, and on the commission's model, it would be retained at \$5000 untaxed, and the means testing which is yet to take effect, will come into effect next year, would be reintroduced. The third element which we think needs some further consideration is the two weeks' paid parental leave for the non-primary carer and the impact of that is to bring the total number of weeks available to a family to 20.

Now, a particular issue I'd like to deal with is the payment rate for those earning less than the weekly federal minimum wage. There are two groups here; there's the part-time low wage earners and there's those on special wage arrangements and juniors, apprentices, trainees and cadets have been identified, and quite clearly, not all of these are young people. As I've said previously, a significant number of potential recipients will fall into one of these categories.

The commission proposes that the first group, the part-time low wage earners, would receive the federal minimum weekly wage, whereas the second would receive some lesser amount which it proposes would be fixed administratively through some other means. AI Group is not convinced at this stage that it is necessary for any employee to receive payments well in excess of weekly income under the scheme. For both groups, consideration could be given to setting the payment rate at a level reflecting actual wages and that would possibly be subject to a floor, to ensure the important rationale of ensuring adequate incentives exist for low wage earners to meet the eligibility criteria.

AI Group would encourage the commission to cost a scheme in which payment rates reflect actual incomes, where the income is below the federal minimum weekly wage. It may be that the cost or complexity to government of administering a scheme in this way would not justify the cost savings. However, in AI Group's view, the issue should at least be explored.

I would now like to turn to consider the employer obligations under the scheme. It won't surprise you that two particular aspects of the scheme which we're concerned about are the requirement on a subset of employers to make super contributions and the requirement for the same employers to act as paymasters before being reimbursed. We do appreciate that the commission has sought to lessen the burden placed on employers by limiting the obligations to cases where the employee

is entitled to unpaid parental leave as well as in other ways. However, AI Group is not convinced that these obligations are practical or cost-effective. In the case of the super obligation, while women's inequitable retirement savings are of course a legitimately concern in this area, the greatest role the scheme can play is in keeping women linked to the workforce over time. It is anomalous, in our view, to place this burden on employers in the context of an otherwise taxpayer-funded scheme. It is a direct cost on employers which the commission has otherwise rejected. I'd just like to finally address the issue of the accrual of entitlements during paid parental leave, which the commission has specifically sought feedback on.

AI Group's view, a period of paid parental leave should be treated in the same way as unpaid parental leave because it is the simplest and fairest means of managing what is often an extended period of absence from the workplace and it is unlike other forms of labour absence. It would not be feasible for any other leave entitlement to accrue at the rate of the federal minimum wage during the period, which the commission in its report seems to contemplate as the only acceptable outcome. They're the only comments I have at this stage.

MR FITZGERALD: Any others?

MR SMITH (AIG): No.

MR FITZGERALD: Good. I might ask Angela to start.

MS MacRAE: I guess the first issue that you raised was about payment rates and I guess questioning why we had gone for a flat rate. In your suggestion that we look at these things, you did say that the administrative cost might overwhelm it. I guess we had two key issues in mind, one was the administrative cost, the other was that the alternatives that the woman is facing at the time of birth changed dramatically because of the other welfare payments that she would become entitled to if she was to resign.

So once you look at the alternatives between resigning, what she could get under that sort of arrangement, compared to her paid parental leave, that's really the comparator you've got to look at, not what they were earning beforehand and what they'd be earning afterwards but what they might qualify for from the welfare system afterwards. That changes a lot, because there's the baby bonus to consider, Family Tax Benefit A and for some - well, not all families would get Family Tax Benefit A and B, and some may not get either.

I think once you look at the welfare arrangements, it's hard, for example the suggestion that you've got of cutting the floor to maybe 50 per cent, I think you'd find that in those cases, it is was purely a financial decision, women would generally be better off resigning, because they'll get more welfare by resigning than they would

by staying attached. So I can say we have looked at that issue and, given your suggestions here, we're quite happy to look at that again. But it was primarily that incentive effect, or, if you like, the disincentives I suppose of returning to work and staying in employment, out of the existing welfare system, that led us to that floor.

There was a little bit of relative financial assistance for those also that we knew were least likely to currently be paid voluntary arrangements. Because we haven't gone for a top-up and we haven't suggested any mandatory extension to employers providing paid leave, we know that the people that are least likely to get that voluntary coverage was another reason that we thought that, providing, if you like, a little bit more to those people that were least likely to get voluntary coverage under the existing arrangements was also a reasonable position. So I guess I'm just giving you a little bit of background about where we have come out on that. But we're certainly happy to have another look at the numbers that you've provided there.

MR FITZGERALD: Can I just ask this?

MS MacRAE: Yes, sure.

MR FITZGERALD: You raised the issue of the baby bonus and asked us to look at it. What precisely do you think we should do with the baby bonus? Because clearly we have said that the baby bonus won't be available to parents that access the parental leave scheme, so you're obviously talking about those that are not in the workforce.

MS EDWARDS (AIG): Yes, as we have said in our written submissions, there seems to be two issues. The first is the quantum, obviously a major factor that's well known in the public domain, that it's five grand, as it is, is because it has been increasingly adjusted to reflect the fact we don't have a paid maternity leave scheme. If such a scheme was to be introduced, it sort of calls into question the whole existence of this other payment, which was sort of propped up at various points in the absence of that payment. So I guess we think it should be re-evaluated, in terms of how much this payment should be.

Is it purely financial assistance? Well, it seems to be. On that basis, what is a sort of reasonable amount that a person could be expected - if it's not trying to meet the needs of a maternity leave system, if it's just trying to provide financial assistance, what is a reasonable amount that a person could be expected to need at the birth of a child for immediate financial additional payments, that sort of thing. The second issue is whether it should be means-tested.

IA Group supported the means-testing of the current baby bonus, and obviously it's a fairly generous means test that us being introduced next year. But we just think if it's to be maintained at a level of five grand, which to a lot of people is a

fairly large untaxed lump sum of money, then it probably should be means-tested and that it would be incongruous to go back to a non-means-testing of this payment, given that nothing else about it will be changing. So there's those concerns.

MR FITZGERALD: Sure, and we are looking at that. I mean, the rationale there I think fairly simply put was that we were not going to means-test or cap the payments under the parental leave arrangement. There was an issue of horizontal equity in this argument. They can be treated separately, but I think our first blush at this was to say, "Is there a justification for capping or means-testing one and not the other?" A number of people have raised this issue in different ways with us, so we will be looking at the issue of means-testing. But it really was simply about the horizontal equity between the two.

MS EDWARDS (AIG): We understand that's a very complex issue and it's hard, because no-one wants to come out and say, "Well, let's take money away from new mothers," but, by the same token, we think it's important to fine-tune what the policy objectives are of this other payment if we're going to have a paid maternity leave scheme. The clearest role we think it could probably take is as a fairly modest payment to new mothers on a means-tested basis; that seems to be where it would fit in, given these other objectives that would be met by a paid maternity leave scheme.

MS MacRAE: Going back to your other point about the floor, if I can call it that, on the parental leave payment, obviously if we were to adjust more of the existing welfare system then you would have more flexibility on that too, and that's really I guess part of the point you're making. As you appreciate in your submission, we took the view that we weren't really being asked to have a major redesign of the welfare system, and we know that someone else is actually doing that at the moment as well.

So we really looked to try and make as small an adjustment on those payments as we thought we could make, whilst still making the parental leave model work, because we knew these other reviews were in place. Again that's just a bit more of the background, of where we're coming from. But I think all those points you've raised are legitimate ones. Just in relation to the junior wages, we have been rethinking that in any case, partly because I think our understanding again of what was available in those cases for many of those people, in relation to the welfare system, our concern about perverse incentives are probably very misplaced, because the existing welfare arrangements are much more generous for many of these people than they would have got had we gone for the sort of ceilings we were talking about, 60 per cent of wage, or whatever.

So I guess our kind of interim feeling on that is on review, that we may actually remove that sort of special treatment for juniors and traineeships and whatever. That's probably contrary I think to where you'd be urging us now as a

result of this submission. So again we can take that away and have another look at it. Is there anything more you'd want to say about that? I mean, as I understand from your opening comments, you were saying that you felt that was a good thing and that we should be retaining it. So I just want to give you an opportunity to canvass that, because we have been getting contrary views in other submissions.

MS EDWARDS (AIG): We don't have a strong view that juniors, as opposed to anyone else earning less than the federal minimum wage on a weekly basis should be getting less. In fact there doesn't seem to be a strong case for saying there would be a perverse incentive, as you suggest, and to many it would be discriminatory to single out juniors who by a lot of accounts would be the ones needing the most encouragement to go back into work if they're teenage mothers. We think basically all employees earning less than the federal minimum wage should be given a payment rate that is more linked to the actual wage, so it's not a matter of singling out juniors or young people, it's a general issue.

MS MacRAE: Just moving on to super then, and I think you were here for John Sutton's presentation, but also from a number of the other unions I guess it's fair to say that their view would generally be that employers have got off lightly, if I can put it as bluntly as that. I think you're making a case here that you don't really see a strong case for a super contribution from employers.

I can appreciate that it's the financial cost of that, but I guess my question to you would be, if the employer is getting some benefits out of this scheme, is it not reasonable that we ask for a contribution beyond that which we appreciate is being made through the unpaid leave, and is part of your concern around the fact that it's super or is just that it's the financial cost that's the issue and whether it's super or something else doesn't make much difference to you?

MS EDWARDS (AIG): To be honest, I think if there was a really strong case made out as to why this particular payment was going to add some real value to the scheme, then it may be something employers can live with. But the way we're looking at it at the moment is we're talking about \$800-odd, it's going into super, a woman having a baby would rather have that \$800. I'm indirectly making out a case as to why the employer should just give them \$800, but what I'm trying to say is it seems from the report that that aspect of the scheme is put forward as, "Well, employers should do something and here is a bit of money, so we'll carve out that." It seems a little bit like an add-on - as you mentioned it's a quid pro quo - but we see employers are contributing and in a lot of senses, they provide a return-to-work guarantee, and where an employee hasn't been there 12 months, that's more common than you probably think. Obviously there's replacement costs of the employee involved, and there's other ways they're contributing, and we're contributing by saying, "Look, this is a good use of taxpayers' money," when we could easily say, "No, we'd really like something else."

So we see that there are benefits and the reason that we see those benefits is things like retention benefits and that's why we're saying we think this is a good use of public money, but then to turn around and say, "No, we think you should pay directly," is another angle that doesn't sort of line up with where we're coming from.

MR FITZGERALD: Although the union movement and women's groups have been very supportive of - irrespective of the payment by business - this issue that superannuation be acknowledged. I mean, many have actually said we need to go much further, as you would be aware. So it's not just saying we think there should be a contribution by business, but superannuation seems to be extremely important in recognising the lifelong disadvantage that women have suffered and do suffer in retirement, so it's more than just at the \$800. You're right, we would think that there are many families that in a sense would rather have the \$800 in the pocket rather than on super, that is true, but nevertheless Australia has made a very clear and long-term commitment to advancing the retirement position of employees generally, but in particular women. So I think it's more than just, "Well, here is one to add on." There just seem to be clearly in the submissions we're getting a real desire and now an acceptance that this is an important measure in and of itself.

MR SMITH (AIG): We can understand those arguments and there are some similarities with other types of leave, like annual leave and other forms of paid leave, but just in terms of the direct cost, we just don't think it's a valid argument that employers aren't contributing to this scheme. Employers obviously provide a very significant percentage of the total taxation that's paid, so any taxpayer-funded scheme is by its nature significantly funded by employers. We see this, as we've said all along, as a community issue and the issue of additional costs on employers comes with a lot of negative aspects, so we do acknowledge to some extent this issue about superannuation treating paid leave in a similar way, and some of the issues that have been raised in the report about the nature of superannuation and the benefits of it, on balance, we think this is not a cost that should be imposed on the employers.

MS EDWARDS (AIG): If I could just add to that: to the extent that there is a value in the super contributions being made as opposed to the payment being directly to the employee, I don't think a case has been made out why the payment can't just be challenged through the employer. I mean, there's obviously huge administrative problems with the government making the payment to super, as super on behalf of the employee, but there's no reason the employer couldn't be reimbursed for that amount, if there was a strong case that this super contribution should be a part of the scheme.

MS MacRAE: One of the arguments that's around that is in relation to the general sharing of the burden, if you like, and our argument has been that while we see a very strong case for women having the opportunity to stay home for six months,

we're asking employees to effectively fund a good part of that leave from their existing entitlements or taking unpaid leave, so that's the payment we're asking of the employee, to make up to that six months. We're asking the community in general to make a contribution through taxes and what have you to fund the government contribution and it's just a question I suppose of where you actually decide what's enough in terms of the contribution from business. I take your point that, yes, they're funding through general taxation - as employees are though - and those questions, so again it's a balancing act and it's a pretty fine one, but a bit of a background again on where we've come out.

In relation to the paymaster function, we have talked a little bit about why we saw super as important in being a payment that makes this paid leave, although funded from government in terms of the cash component, looking more like other leave. We thought it was very important that this should be seen as a workplace entitlement and not welfare, and as a result of that, we also saw value in the employer actually making the payment. We have suggestions in relation to UK-type arrangements where there might be more than a hundred per cent reimbursement. We had considered that, but I must say when we looked at the actual impost that we thought would be borne by business in terms of cash flow, it's very small, not more than \$5 per week per employee, and given the relative rarity of an employee taking this kind of leave, we wondered if it was worth that extra bit of reimbursement. But I'd be interested in your comments on that.

Then from reading your submission, given that if you were asked to do the paymaster function, even though you would probably prefer not to have it, if you did, you seem to support the mechanism we've proposed through the pay-as-you-go withholding arrangements. Again, I'd just be interested if you've got any further comment on that.

MS EDWARDS (AIG): In the mechanism by which it would be done, I think another idea which I don't think has been raised yet is whether it could be done in advance, particularly for smaller businesses, where either the direct payment or even a pay-as-you-go withholding could be in advance. That would overcome the cash flow problem. If that was done, there's a possibility it would not be a huge problem, particularly for some of our bigger members. We think in practice there's going to be issues; you just don't want a private entity making payments on behalf of government when it doesn't want to. Whatever issues may arise - and I think we identified this in our submissions - there could be an issue where a woman is really tossing up whether or not to come back to work and has an incentive not to advise the employer because of the disruption in payments if she did. I think as well, if it's going to be taxpayer funded, we may as well be up-front about it and channelling it through the employer, while it would signal as a workplace benefit, there's a lot of confusion that could result in terms of employees not really aware of their rights, in terms of what are their obligations, given that they're being given this payment through an employer. It

could give rise to some uncertainty about where that makes the employees stand. We do envisage in a lot of cases bigger companies would have no problem with making the payment, but there's quite a few that would not - - -

MR FITZGERALD: It seems to us, if I can just read it correctly, that the cash flow is an issue for people, and we think that can be overcome. Even on our current proposal, the period of time that an employer would have to wait before they can deduct the amount from the payment to government is in fact very small, and the administrative costs, yes, they are there, but relative to the extraordinary administrative arrangements that exist around payrolls, that seems to be less of an issue. So if that's right, I think if it's the cash flow that is the major issue, then I'm sure there are some mechanisms that can in fact reduce that burden, even though on our assessment it is very minor, on a firm-by-firm basis.

MR SMITH (AIG): I think that there will actually be a higher or significant percentage of employers that would choose this option anyway because those that are topping up, and there's a significant number of them, will probably want to just pay the pay to the employee and then will get the reimbursement. But by forcing it, it changes the whole tone associated with this aspect of the scheme, and if it were just left the way that we envisaged it as being an option, then I think you would find that a very significant percentage, and increasingly over time an increasing percentage of employers will choose this option anyway.

MS MacRAE: Your point, and I guess it's interesting because I haven't noticed it anywhere else, but the perceptions that could arise around the scheme could potentially become problematic, in that if there's even a misconception that the employee might feel that there is then some obligation for them to return when they are not intending to and things like that, which obviously we're not saying is part of the scheme, you don't have to return to get that, but the perceptions around those things could be of concern, so that's an issue that we haven't really had raised directly before.

The other point about the accruals and the other leave that might accrue in relation to this period, we have identified some of the problems with that in relation to our draft and it's one of the reasons we haven't put it forward as a definite proposal at this stage and again I suppose one of the benefits of going for super over saying that other accruals should apply is that we were very concerned about the administrative burden for employers and that at least super seemed to be a relatively easily defined - only apply when the person is on leave so that when you've got someone on that period of leave you've got a bit extra to do but otherwise nothing else. But if we have accrued leave entitlements and those sorts of things you're going to be carrying this potentially odd-looking liability on your books that doesn't really fit into existing frameworks and systems. So one of the reasons we've gone for super over other kinds of accrued leave which might have been, in some senses, a more

attractive proposition was that administrative burden. So I wonder if you had any thoughts on that?

MR SMITH (AIG): It's not just the administrative burden, it's a significant cost, of course, particularly with annual leave - - -

MS MacRAE: Of course, sorry, the accruals is. I guess looking at the relative - if we were looking for a direct employer contribution then I guess what I'm saying is it seemed like the leave accruals might have been a - what looked like a need to sort of fit from a philosophical - "philosophical" is not the word but from a making it look like other pay kind of perspective. But it seems like the administrative side of that would be much more complicated.

MS EDWARDS (AIG): To be honest the only way it could be done is by accruing at the employee's usual rate.

MS MacRAE: Yes.

MS EDWARDS (AIG): I mean you don't really accrue it at a rate, anyway.

MS MacRAE: No, that's right.

MS EDWARDS (AIG): You take it at the time - - -

MS MacRAE: At the point you take it is the - yes.

MS EDWARDS (AIG): So if we accept that then what we're doing is we're looking at, well, how much would you accrue within that 18 weeks? Obviously some things are highly contingent, like long service leave. You may never stay there for 10 years or however long.

MS MacRAE: Yes.

MS EDWARDS (AIG): But if you look at things like annual leave, with 18 weeks you would accrue over a week of annual leave pretty much at your pre-birth income, as we sort of looked at.

MS MacRAE: Well, probably your post-birth or quite potentially your post-birth income which could be higher.

MS EDWARDS (AIG): Sorry, precisely, exactly, at whichever wage you're at at the time.

MS MacRAE: Yes, it is when - the time you take it.

MS EDWARDS (AIG): So really, at least in the case of annual leave which is - you're always going to get it because you get it paid out when you leave in any case, it's basically asking an employer to pay, I think, another 10 days of wages. That's going to work out as more than the eight hundred-odd dollars for the super, and that's just annual leave. So it's true that the super obligation would probably financially end up being less and that it would administratively in a lot of ways be simpler. But we'd prefer not to - - -

MS MacRAE: I'm not asking you to make a choice, I suppose.

MS EDWARDS (AIG): Yes.

MS MacRAE: I'm not saying I want you to commit to one over the other.

MS EDWARDS (AIG): Yes.

MS MacRAE: But I guess that's one of the - just looking for your confirmation that yes, our understanding is that the accruals of leave would be more complicated from an employer point of view and probably more costly in most cases as well.

MS EDWARDS (AIG): We have to agree with that, yes.

MR FITZGERALD: Just in relation to the actual minimum wage rate itself, notwithstanding your comments previously about whether or not that should be - you know, pro rataed based on actual income - do you see any problems with using that as a benchmark?

MR SMITH (AIG): No, it's what we've been suggesting since five or six years ago and we still have that view that that is the appropriate benchmark.

MS EDWARDS (AIG): There's a couple of reasons for that. I mean the first is that it's - you wouldn't call it generous but compared to other countries it's a fairly reasonable level. But secondly, just due to the number of women who that actually will represent a replacement wage or higher. So it's sort of - it works out equitable and not ungenerous.

MS MacRAE: Yes.

MR FITZGERALD: Just a final question, if I can, from me - Angela may have others. Going back to the NES, we've raised this several times throughout this inquiry and I'm still unsure as to whether or not these arrangements should be dovetailed into the NES or not. Now, of course the NES is being rejigged as we talk and it won't include issues to do with paid parental leave. But I must say that I am

still perplexed as to whether or not the NES is the appropriate way for these to be dealt with, largely because I understand that the NES in relation to unpaid parental leave applies to all employees because it was brought through the external affairs powers as distinct from other parts of the NES that came through the corporations power. Now, without going into a legal dance around this I've just got a - I can't quite understand why putting it in the NES wouldn't be the most appropriate way to deal with this. We don't have a view at this stage.

MS EDWARDS (AIG): I can handle this one because I thought you'd ask that.

MR FITZGERALD: Yes, I suppose we're still unsure, to be honest.

MS EDWARDS (AIG): It's not a coverage issue. It's an issue of where it makes sense for it to go. The standards are about rights and obligations between an individual employee and an individual employer.

MR FITZGERALD: Yes.

MS EDWARDS (AIG): The scheme, particularly on your model, is about workforce participation as eligibility, it's about super, which is not an aspect of the standards at all. It would be incongruous for it to fit in there. In some cases an employee will be - in a lot of places an employee will be being paid by government, that's anomalous, there's no other government involvement in the standards. It doesn't go there and it would give rise to really problematic interaction. Everything else would need to be thought through in terms of how it interacts with it. We just see it sitting separately through social security legislation.

MR FITZGERALD: Or through just Commonwealth legislation.

MR SMITH (AIG): In a way we do see the two linking though, is as we've said from the start in the inquiry is we think the scheme should be linked to the unpaid parental leave entitlements in terms of eligibility and that it doesn't necessarily need that direct link to be inserted in the NES. In fact, we don't think it should be in there. Obviously this latest version of the NES that was released yesterday has all of the interaction rules with workplace agreements which when we were last before you were not in that version that we had all seen. So that is not a useful aspect to consider.

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

MS MacRAE: I think that's all.

MR FITZGERALD: Any other final comments from yourselves?

MR SMITH (AIG): Perhaps just one final point. That issue that came up at the start about the adjustment of social security, for want of a better word, payments, it hadn't leapt out to us that that was where you were pitching your recommendations, that you were assuming that largely that was going to remain the same and someone else was reviewing it. Perhaps we just didn't - or personally I didn't study it enough. But we think it would be important to specify that, because as we were looking at it in a more holistic way we saw that those definitely did need to be reviewed.

MR FITZGERALD: Yes.

MR SMITH (AIG): If the findings of the Productivity Commission and this inquiry was that it was starting from that starting point, then we think that should be quite clear.

MR FITZGERALD: Yes. Well, can make clear what our position is. I have to say we did make an assumption that the baby bonus would continue in place and the family tax benefit A and B and everything else would be as it is. But it is all going to be reviewed. The problem is nobody has any idea whether or not the review will be significant and even if it were, when it would be implemented. So we did take the status quo position on those. We have in fact done a very extensive analysis of the interaction between our proposal and the existing social security system which sits in one of our appendices. We will continue to reflect on that because it's quite complex. So we have looked at how it works. What we haven't done is said, "This is how it should change."

MS MacRAE: Sorry, there was just one final thing. I was just having a quick look at the comments I had made on your submission, that you're suggesting that the paternity leave element is not going to be cost effective and as a result we should drop that element of the scheme. I guess from a - maybe it's not surprising from an employer group point of view but in terms of the wider sort of social norms, you know, father should be taking a role, importance of the family unit and father being a part of that, or at least supporting partner, not necessarily the father, would you see some benefit in that but not being sufficient with the cost that it imposes or are you saying, "Look, really, we just don't see that as an important issue in this, in the scheme of things"?

MS EDWARDS (AIG): We certainly see it as an important issue that fathers take a role in the child's life, or the supporting parent. We just see the role of the scheme being as it's about supporting the primary carer and incidentally hopefully supporting the father or the secondary carer by enabling them to have more time off because the primary carer is being supported through the scheme. I guess it's a thing about what to concentrate the scheme on and we just see it as concentrating on the primary carer and trying to get the maximum value out of that component rather than doing bits

and pieces.

As, I think, a number of people have raised, there was an interesting point made by the last speaker that you made in relation to some comments which was whether men on higher incomes - and let's face it, most do earn more than the minimum wage - are actually going to be tempted by this to take more time. So while they - at the moment I think the average they take is about a week. Are they still going to take a week but have the extra payment, in which case it's just a financial assistance measure really, or are they going to take more time? It's hard to see that they are going to be tempted to take more time. It's possible but there's a lot of unknowns.

MR SMITH (AIG): The points made in the report about what the likely consequences will be and the significant cost associated with this, given that there is such a larger number of males that will be able to access that entitlement versus females accessing the paid parental entitlement, we think, particularly given that it's all very much a cost-benefit analysis at the end of the day and a need to have a responsible scheme that this is not the biggest priority. Given that it imposes a very significant cost for, on the evidence, probably little benefit other than this idea that males should - and we certainly agree they should take a significant role. Apart from that sort of marketing aspect, the actual tangible benefits that will flow, we just don't think are there. We think people will take annual leave rather than access this payment. Therefore that's the way it should stay.

MR FITZGERALD: All right, thanks for that.

MS MacRAE: Okay, thank you.

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

MR FITZGERALD: If we could now have Unions New South Wales please. If you could give your full names, positions in the organisation you represent and just sort of opening comments and just sort of opening comments and then we'll have a discussion.

MR LENNON (UNSW): Thank you. I'm Mark Lennon. I'm the secretary of Unions New South Wales.

MS GARDNER (UNSW): I'm Sarah Gardner. I'm the campaign coordinator for Unions New South Wales.

MS BYRNE: I'm Josie Byrne and I'm a member of the New South Wales Nurses Association and a mother.

MR FITZGERALD: Okay, great. Over to you.

MR LENNON (UNSW): Thanks, commissioners. I have the opportunity to present our submission to the draft report, in response to the draft report, on behalf of Unions New South Wales. As you know or may know Unions New South Wales represents around 600,000 workers in New South Wales of whom about 270,000 are working women. We have 64 unions who are affiliated to us and we cover working people and working women in a number of diverse industries including finance, factories, construction area, transport and of course health.

We are the largest-based organisation for women and workers in New South Wales. The policies that we have put before you previously and want to talk more about today are ones that have been developed in response to the experiences of our members as working mums and dads. It's one that has been through - or policies that have been through a thorough process we conducted at Unions New South Wales and has been endorsed by all of our 64 affiliates.

Before I go into the detail, we've got Josie Byrne here, who is a working mum, as you heard, and a nurse in the New South Wales health system. With the commission's indulgence we'd ask Josie just to make a few remarks about her personal circumstances to start with.

MR FITZGERALD: Yes, by all means.

MS BYRNE: Well, I have two children, a four-year-old and a two-year-old who you probably heard making a lot of racket. But with my first child I was entitled to, at the time, nine weeks' paid maternity leave under my state award. With my second I had - we had moved away to Newcastle to try and get ahead and didn't have much support so we came back to Sydney. I was back in my job for only about 36 weeks,

37 weeks, so I didn't qualify for maternity leave. So I had to go back to work when my son was only sort of 10 weeks old. We just couldn't stretch things any further.

I just found it a really traumatic experience having to leave him when he was so little. It just felt very unnatural and I found too I wasn't very productive at work, because - I was fortunate, I had child care on site, so I was able to go up and feed him while I was working. But yes, when I wasn't up there feeding him I was pining for him. I was ringing up to see how he was. I felt fortunate the first time round to have some leave but I know there's nurses in the private sector that aren't entitled to the same benefits.

Yes, it would have - you know, it was a very stressful time post-natally: a new baby, a lot of pressure on the relationship in terms of change of family dynamics, and you're sleep deprived, you're hormonal. I think the financial pressure is really - can be the straw that breaks the camel's back. It really makes things so much tougher. It would be great if there was some system in place to help mums and help babies.

MS MacRAE: Could I just ask a couple of questions about that?

MS BYRNE: Sure.

MS MacRAE: Have you finished your opening remarks otherwise or was there - - -

MR LENNON (UNSW): No.

MS MacRAE: Okay, sorry. Could I just ask just a couple of small things about your personal situation? When you had the nine weeks' paid leave for your first child, how much time were you actually able - did you take off - - -

MS BYRNE: I could take it as 18 weeks' half pay, which is what I did.

MS MacRAE: Right.

MS BYRNE: Then I went back after that.

MS MacRAE: You went back after that.

MS BYRNE: Yes.

MS MacRAE: Was your partner entitled to any paternity leave?

MS BYRNE: He's a nurse as well and he got, I think, a week; a week's leave, yes, which - yes, it would have been nice to have him round a bit longer just to - I mean it's just such a tumultuous time. It's just such a huge change. I think in terms of sort

of emotional health, and with the feeding I found that hard a second time round, the fact that I did have to go back to work sooner - and I had had a great breastfeeding relationship the first time round. The second time round I just felt this pressure to get into a routine, get back to work and he didn't feed for as long as she did.

MS MacRAE: Right.

MS BYRNE: I feel guilty about that, as I did about leaving him so early and about everything else. I do feel like that.

MR LENNON (UNSW): As the commission is aware, our original submission was for a six-month universal paid parental leave scheme at full wage replacement. Clearly our position in that regard has not changed. However, having said that, we recognise that what is in the draft report in terms of the proposal from the commission is a significant step forward. You may come up with a different final conclusion; we hope so. But we believe whatever the case it is important that the government go forward with a paid parental scheme next year in its budget and we want to reinforce that point to the commission today.

We acknowledge that since the last time we gathered in this forum that the economic climate has changed. However, we don't believe that implementing this scheme will have a significant impact on the economy. Indeed, we suggest that, as the commission suggested, about \$450 million would be spent by the government on this particular scheme. We see, given the nature of the people who would access that payment - that is, that they are from households with low net worth who don't have a lot of discretionary income, therefore would have to spend as a matter of necessity - that in fact the introduction of the scheme would be a stimulus to the economy. For that reason we don't believe that the economic downturn in itself is a reason to avoid implementing the scheme at the budget next year.

Whatever time this scheme is proposed to be introduced there will always be some reason why it shouldn't be. There will always be some, you know, "Now is not the time." But we say, in particular after 30 years that this idea has been around in this community, the time is now. There has never been a better time given that the commission is conducting this inquiry and has come forward with a suggestion for a paid parental scheme. So we would encourage the commission in your final report to suggest and recommend to the government they go forward with this scheme as a matter of necessity with the budget next year.

Having said that, we still put on the record that ultimately we see the goal as a six-month universal scheme with full wage replacement. Acknowledging what you had outlined in your draft report we think that therefore we should move to a system - and a recommendation from the commission that that six-month universal scheme on full wage replacement be phased in over, we're suggesting, a five-year

period. So we'd like to see a goal of 2013, the May budget in 2013, hopefully from our perspective still presented by the Rudd government, is the one that would introduce the universal scheme with full wage replacement.

We argue that case because - for a number of reasons. First of all, it has been acknowledged, I think, by the commission in your draft report that six months' paid leave or six months' time with - the primary carer with the child is the optimal time for all the health reasons that have been discussed. Therefore we acknowledge that that's where we should be moving towards. The commission has said in the report that we look at the fact that in fact will occur because people will use other forms of leave for the six months. We acknowledge that, but we don't think that's an appropriate path to go long-term. We think it disadvantages, in particular, groups such as casuals.

Casual workers won't have access to annual leave or leave entitlements to be able to make their period away from work up to that six months. As you know, casuals get a loading to compensate for the fact that they don't get annual leave or sick leave and they won't have the opportunity, for instance, to then have paid maternity leave - paid leave, in effect, up to the six months. You must remember that there are a significant number of the workforce who are now in that category. Up to 30 per cent of the workforce in this country are in what we call vicarious employment, part-time, temporary or casual employment. So that is a significant number of the workforce. The largest percentage, about 58 per cent of all casual workers of course are female workers, and also they are predominantly in the low-paid area. For those reasons they would have some difficulty in ensuring that they do get six months at home with the child if we just, long-term, stuck with the proposal for 18 weeks. There are also some issues with regard to part-time workers and their ability and how they accrue leave and therefore their opportunity to accrue leave. I think the example you heard from Josie is a good example of the problem for part-time workers.

The other thing is - and this will come as no surprise to any parent who is sitting around this room, including myself - that parenting is a long-term commitment and as a consequence through the life of the child we have to access leave, our annual leave and at times sick leave, there's carer's leave for various reasons to assist with child-raising. I myself, if I may put in a personal anecdote, a few weeks ago had a week off simply because with the three children all at school and they had various school functions and things that had to be attended to and the only way we could do that was for me to have a week off, and I actually went on excursion with my nine-year-old which meant that I had to have then a week off after that with sick leave for rest and stress.

The other point is that we have to ensure that this leave entitlement mirrors other entitlements. I think the commission said that in its report when it set a goal of

making statutory parental leave mirror as much as possible leave arrangements more generally. For that reason we don't see why parental leave should be treated any differently as opposed to annual leave and sick leave and things of that nature. Annual leave and sick leave are there for a set purpose: they're there for purposes of rest and recreation and should be treated as such. If there's a necessity for a working person to take parental leave, then they should have the ability and industrial right to take parental leave for the necessary period of time, and we say that is six months and therefore we believe that's a goal that we should be working towards.

A couple of other things I wanted to touch on is, who should take responsibility for the cost. We say that we note the proposal that the governments fund this scheme with some contribution from employers through superannuation contributions, but we do believe that the employer probably has to take more of a responsibility for the cost and therefore when we're talking about moving to a system of full wage cost replacement, we're happy to talk to various stakeholders about how that may be achieved. We believe that employers do have a role to play. They do benefit from this. All this talk about a higher female workforce participation and the lower cost for employers in not having to retrain new staff if they lose staff as a consequence of someone having a child, for all those reasons we think the employer make a contribution and we're prepared to work through that with employers.

The other point is, we don't believe that anyone should leave any conditions as a consequence of going on leave. We come back to the issue of superannuation. Our view is simply that if an employee who goes on paid maternity leave has an entitlement firstly to a higher amount than the nine per cent as a result of some industrial instrument they may be working under, they shouldn't lose that entitlement and should be paid the full amount. Secondly, when they are on maternity or parental leave they should be paid the 9 per cent SGC or the higher contribution if that's what applies to them on their average weekly earnings.

The other thing we wanted to make clear is that if we have this scheme where it differentiates in issues such as sick leave, annual leave and long service leave, then it starts to come back to well, why do we have these different conditions in the workplace and why do we have this difference between male and female conditions in the workplace? Part of this proposal, as I understand it, is to ensure that all working people in this country have genuine conditions and aren't discriminated against. There is some concern that we may end up with a system whereby we have discrimination between male and females with regards to these conditions.

The other point is that we don't want - and this is a personal issue again - we don't want a loss of income for working women when they come into taking leave. For all of us who are in this modern economy where both partners are working, be it full-time, part-time or some combination of both, you can't afford a loss of income in any regard, particularly in the present economic circumstances; but even so, once we

come out of this it's very difficult meeting mortgages and other costs. Therefore we think that a proposal that simply says that you will get parental leave at the federal minimum wage isn't appropriate and will not encourage a lot of people to take parental leave, in particular maternity leave, because they simply cannot afford the loss of income and the loss of spending capacity.

There is also this issue, whether it will - and I notice from the last speaker just at the end there, I think this issue came up - whether it will encourage males to be taking time off. I, personally with my three, would have liked to have been able to take more time off. But if there is a significant differentiation between the primary carer's and the secondary carer's income then clearly the secondary carer won't have the ability to take the time off to care for the child and be involved and share the child's upbringing in those first six months.

So in just concluding my opening remarks we welcome the commission's - what we believe is the first step forward with its proposal for 18 weeks at the federal minimum wage. We believe though, however, it is a first step and we would see us move towards a six-month paid parental scheme that has full wage replacement by 2013. But the key message, from us today in the union movement, is it's time to start. We have all been waiting too long for this. We are embarrassed as a nation, an industrialised nation, that we're only one of two nations that don't have it. So I think it's time that we start and the government should grab the mantle and start the scheme with next year's May budget. I thank you for the opportunity to address you.

MR FITZGERALD: Thanks very much, Mark and Josie. Can I just start? I suppose the full wage replacement issue, we understand the logic of your argument in relation to it. There's two issues. One is in terms of a meeting of our targets or our objectives. Given that the vast majority of women are able to take a period of time off from work already, up to about 85 per cent take off up to three months and 70 per cent take off up to six months, I suppose from a public policy point of view what you're interested in is additionality. That's the key thing you're looking at.

Our assessment was that for the group that are least likely to have access to voluntary arrangements, or collectively bargained arrangements, they're going to be low-income, casualised, part-timers and so on. But our scheme would significantly assist just about every woman to be able to get to that six-month mark. So we agree about the six months as an objective in terms of people taking time off. But we're not starting from zero. We're starting from a situation where the pattern of behaviour already is that women are able to get to a certain level. What we want to be - is for additional.

So I suppose our question really is, do you need to pay 26 to get to 26, which is a shorthand form. I suppose our assessment was well, in a public policy sense no, you don't. You have come to a view that yes, you do. But I wonder is that

absolutely right, whether or not you do actually have to pay 26 to get the 26, if that's the target.

MR LENNON (UNSW): Well, I think there's - there were two issues that are raised there. First of all, we say for low-income workers, particularly those who are in precarious employment, casual employees, for instance, the answer is definitely yes, because they wouldn't have access to other forms of leave to get to the six months. The second issue is that you either have a paid - you either recognise that people should have paid maternity leave for six months or you don't. If you do, then it should be an entitlement in its own right and therefore it should be for six months and not have to rely on other forms of leave to achieve that outcome.

MR FITZGERALD: A second issue which you may have missed, if you came in a little later to the AIG's, is that they were putting a proposition in their opening that in fact it shouldn't be at federal minimum wage, it in fact should be at the rate of pay up to the minimum wage, so therefore if you were earning less than the minimum wage, it would be pro rata. Now, as you know, we've said irrespective of your income up to that point, you get the minimum wage, but their proposition is that in fact the generosity of the scheme is too great, when you look at the difference between marginally attached casual workers and what they would receive under the scheme.

MR LENNON (UNSW): I would suggest that \$543 a week is just sufficient to raise a newborn child, so we would certainly not argue anything other than everyone should be entitled to the minimum wage. It's very difficult, as we know, with a young child and it's difficult without children to survive on \$543 a week or thereabouts and we certainly wouldn't be advocating anything other than workers should have access to the minimum wage to make sure that they can give the best possible care to the newborn child.

MR FITZGERALD: Just finishing off this set of questions, in our draft report, we had recommended that those on junior and trainee wages be treated differentially, up to 60 per cent of the minimum wage. We did that for a number of reasons, but one was to avoid perverse outcomes. We're reconsidering that issue obviously and I was wondering whether you have any comments in relation to that.

MR LENNON (UNSW): We have generally, as a point of industrial principle, not supported junior rates, so therefore if there's any review of the system with regard to those under 21 or thereabouts accessing the federal minimum wage, we'd support that, again for the same reasons I just stated as well, commissioner. But it's going to be very difficult, regardless of how old you are as a mother or father or single carer, in trying to cope with a young child if you're not achieving the minimum wage.

MS MacRAE: Just in relation to the suggestion we've made about the employer generally playing the role as paymaster, we've suggested that for a range of

workplace reasons and attachment reasons. From an employee perspective, do you see that as an important thing as a positive and if so, is it something that you think we should be retaining for the final report?

MR LENNON (UNSW): We do. I think it's got to be seen as a wage and related to work so it does relate to - it would be handy if it's coming via the employer. We have said in our submission, however, we recognise that small employers and those who don't pay payroll tax may have some difficulty with cash flow and therefore we've suggested the government might pay them up-front rather than having to recover it. But we don't have a problem with this system of it being actually paid by the employer.

MS MacRAE: You talk about the issue about people that are in paid employment and those that are not in paid employment. We've had a range of views this morning from different unions about what the relativity should be between those two groups. What position does Unions New South Wales take on that?

MS GARDNER (UNSW): We've taken the position that generally one of the drivers of this scheme is to recognise the importance of the community contribution that parents make and that the community should support parents, whether they are in work or not. Having said that, we do believe that paid parental leave is an industrial right, so there should be some way to differentiate between the support that parents outside the workforce should get and making it very clear that it is an industrial right. So what we've said is that we should be getting to full wage replacement for workers, and for those outside of the workforce, they should receive something akin to a social wage. That should be means tested and that type of thing, but still recognising the important contribution that both parents are making, just that it's not a workforce entitlement for them because they're not in the workforce.

MR FITZGERALD: The Shops, Distributive and Allied Employees Union took the strong view that in fact there should be no workforce eligibility attached to this at all, on the basis that women are at some stage generally likely to be attached to the workforce. Clearly, your view would be a bit different to that, but our view was that this did need to have a workforce attachment element to it for the reasons that we've articulated in our report.

The question, however, then comes to whether or not the eligibility or 12 months with any employer at 10 hours per week is a fair and reasonable criteria. We asked them particularly because they have a large number of members that are low paid and casualised in the retail sector but because their view is that there should be no tests, they weren't able to give us a view. You may well have put it in your submission but I just wanted to cover off our eligibility criteria.

MR LENNON (UNSW): I think we think the eligibility is too tough and I think

Josie is a case in point, where because of her breaks in work, she missed out on opportunities for further leave and therefore the argument is that eligibility should be after six months and seven hours a week, we would argue. I think we've got an example there of a worker called Jackie, a cleaner, working between two jobs and the difficulties that she had. So we think the eligibility criteria is a bit too tough.

MR FITZGERALD: Another position has been put that our criteria is too tough, particularly in relation to second and subsequent births which is what Josie was talking about.

MR LENNON (UNSW): Yes.

MR FITZGERALD: So some people have said you could leave the eligibility criteria at 12 months and 10 hours, but have a different criteria for second and subsequent births which could be six months and seven hours. So the real problem is not so much in the first child but it's with the second and third child, so you can have a differential. Others have said, "No, you should in fact change it," and others have said to us, "You should leave it as it is."

MR LENNON (UNSW): As a parent, I've been taught never to discriminate between the children, so I think the entitlements should be the same. Seriously though, I think we can see problems in that with the first child. Someone may have to enter the workforce - they have only just ended in the workforce, and then fall pregnant with their first child. It may be unplanned, but they're going to have their first child and so I see some problems with that to be honest.

MS MacRAE: I might just ask, in relation to your model and your ideal going forward, I understand that you want the employer - a full top-up to replacement wage. Would you see the government component of that remaining, as being linked to the minimum wage, and do you see that minimum wage as the right sort of benchmark to use for the government contribution to the scheme?

MR LENNON (UNSW): Our initial submission was along those grounds, commissioner, that the minimum wage would be the foundation of the scheme and then there would be top-up with employers. So as I say, we're prepared to talk to the various stakeholders about how we move to full wage replacement but there would definitely be a role for government to play in setting the foundation for the wage.

MS MacRAE: That minimum wage benchmark would seem the best available, do you think, for that?

MR LENNON (UNSW): That's what we suggested in our first submission to your original inquiry, yes.

MR FITZGERALD: A question that we asked of AIG and we've asked of lots of participants because it's unresolved in our minds is around the NES, the National Employment Standards. As you're aware - although I haven't seen them and they've been rejigged and released yesterday - paid parental leave is not part of the NES. We would seek your view as to whether or not the NES is the most appropriate place to deal with issues of parental leave, or as many people have said to us, it is best to keep it outside as separate legislation, but we are not sure, to be honest.

MR LENNON (UNSW): As we've argued, the scheme should be legislated and the phasing in that we're proposing to 2013 should be legislated. We haven't formalised a final position on whether it will sit in the NES but talking to my colleagues, we would suggest that probably would be the preferable way to go.

MR FITZGERALD: What's the advantage and disadvantage of doing that? What are the advantages of putting it in the NES from your point of view?

MR LENNON (UNSW): If we accept that we're going to have minimum standards in this country - and we do, fortunately, we now have 10, another 10 to be in the award system - and we accept that this is now a minimum standard, and we are saying that this is a minimum standard of course - that therefore it seems logical on the face of it that it should be in the National Employment Standards or now become a National Employment Standard.

MR FITZGERALD: The employers' position would be - correct me if I'm wrong - that by putting it in the NES, you not only allow it but absolutely ensure that it will become a bargaining point for all award conditions and other collective bargaining arrangements from this point forward. Is that the main objective to it?

MR LENNON (UNSW): It has been a bargaining point to date. It's in a number of collective agreements, as you know. A number of workers in the private sector access it, so I don't see that that is necessarily a problem.

MR FITZGERALD: All right. I know we're out of time now but are there any other comments that you would like to make as a conclusion.

MR LENNON (UNSW): I just need to raise that issue about the fact that we see this as minimum conditions, that there should be the rights for workers to continue to bargain above and beyond what is set as the minimum standard and that whatever scheme comes forward, both through your report and through whatever the government legislates, should be seen by employers as an opportunity for those who have now got better arrangements to try and reduce them.

(Luncheon adjournment)

MS SCURRY (ALCA): - - - Lactation Consultants Association. I'm a midwife and lactation consultant and I'm a mother of five children and a grandmother of one.

MR FITZGERALD: Okay. Over to you.

MS SCURRY (ALCA): Basically our submission is on behalf of the Australian Lactation Consultants Association. We're talking about attachment and the importance of attachment in those early years. Also we're talking about the World Health Organisation and UNICEF's recommendation of six months' exclusive breastfeeding and two years of complementary feeding and appropriate complimentary solids with breast milk, and literally the fall off in breastfeeding rates as mothers return to work.

MR FITZGERALD: Now, you were going to make some points to us.

MS SCURRY (ALCA): We're going to talk about the attachment cycle. You've got our document in front of you. It's fairly explanatory, but it just talks about the importance of the interaction between the parents and the establishment of that trust. We really think that for their mental and psychological wellbeing of both the mother and the infant and the baby's brain development that it's really important that parents are supported to stay at home and nurture their children. You have the attachment cycle. It's fairly self-explanatory really, but it's that positive reinforcement that when a baby has needs that they're met by their carer - mother, father, grandmother, whoever it is going to be, really - and they build up that trust and they have that constant feeling of safety. James McKenna talks about the stone age baby in the space age world. He's an anthropologist and basically he says in the 200 years since industrialisation that the baby's brain hasn't really had time to adapt to our changing world. Yes, it's still crying to be cared for by its parents.

MR FITZGERALD: I was going to ask, I think our report recognised the importance of mothers being able to breastfeed for an extensive period of time. As you would see from our report, our desire is to allow all mothers to be able to stay at home for at least 26 weeks. We recognise that there are some benefits beyond six months, but in the whole area of child health and child development, post six months the evidence becomes more equivocal, not so much about whether breastfeeding is beneficial or not, but the extent of that benefit. One of the issues that arises for us is, many women will return to work on a part-time basis after six months, even with our scheme; some will stay out longer.

MS SCURRY (ALCA): Sure.

MR FITZGERALD: I suppose one of the issues is to what extent there is any real evidence of detriment from people moving into part-time work and therefore I

suppose a combination of breastfeeding and other feeding means. It's that post six to 12 months area that I'd like you to explore for us a little bit.

MS BROWN (ALCA): I guess if the opportunity is for them to go back part-time, that's great, but often that opportunity for them to go part-time isn't available or negotiable. So I guess - you had something - - -

MS SCURRY (ALCA): We were talking about it earlier that - we work in health and basically we see the young female doctors, and there's a predominance of them, and they are aware of the benefits of breastfeeding but they can't get that part-time thing happening. They're literally going home and they're breastfeeding their babies all night, then they're expected to perform all day. We are seeing them constantly tired, exhausted, not able to make good decisions. But they're not being supported by management to job share or part-time. We hear the cases, like it's hard to have teaching programs in place for them and for them to get the experience. But you see these haggard young residents - and there is a predominance of them as women and nurses, teachers, all of those - and they are expected to perform at a good level.

MS BROWN (ALCA): I guess the detriment that you were saying too is more long-term effects that we're going to save - the baby breastfeeding for a longer period of time is going to be less money for the community long term. We're not going to see it in our time, but down the track we're going to see it. So in future, 10 or 15 years, we are going to be able to do a study of these babies today and know that they have been breastfed for that period of time and we are going to be able to see it. But we can't see it today. That's unfortunate that we can't measure that right now, today.

So in future - and I mean there's a huge amount of evidence that the benefits for the child, for the mother and certainly for the community - I mean saving governments on providing all sorts of things for parents is ultimately going to be our goal. There's an enormous amount of evidence there long term. Unfortunately we can't see it today but there will be in that relationship with the parents and the child as they get older.

MS MacRAE: We have, certainly in our report, tried to put - and we have actually. We had one of our staff members on the team look at almost nothing else in the course of the provision of the draft.

MS BROWN (ALCA): Wonderful.

MS MacRAE: While there's quite a substantial piece of work in our draft report there is an attachment also on our web which is dedicated solely to analysis of all of the literature that's available on breastfeeding. I think our conclusion was that while some of the benefits of breastfeeding have been somewhat overstated in the literature, nevertheless there's a very strong case for it, especially for that exclusive

breastfeeding in the first six months.

What I think has been less clear, and I think it was probably the point that Robert was partly getting to, is how much difference it makes to breastfeeding rates when women or if women do go back to work after the first six months. The fact that it's no longer exclusive obviously makes it a little bit easier to manage your job; obviously, if it's full-time it's still going to be difficult. We have suggested that - in one of our recommendations, which is still very bland at this stage - that the post-initiation phase of breastfeeding seems to be the most important in Australia because our initiation rates are actually quite good.

MS BROWN (ALCA): Very high.

MS MacRAE: But we're still not very clear about what's the - you know, could we put a little bit more meat on that recommendation in terms of what specifically could we do, potentially low-ish cost but not necessarily so, to really help with that post-initiation phase and continuing on with the breastfeeding beyond that initial period. We did hear evidence from a woman just before lunch saying that she knew that she'd only be able to off - or she was returning to work after 10 weeks and even though she had an on-site child care place that the pressure to try and get into a routine for breastfeeding made it harder for her to be able to - her first child had been very successfully breastfed. The second it was much harder because she had been stressing to try and get it into this routine that would fit around her work when she returned.

So are there any things that you know from your experience that you feel would be a useful way of trying to extend the support for parents that sort of most - I guess most cost efficiently but also in terms of the best sort of way that we could direct resources to help with that?

MS SCURRY (ALCA): Did you see the study that came out of Monash recently about the drop in breastfeeding rates when women went back to work part-time and then full-time? It dropped when they went back part-time and then further when they went back full-time.

MS MacRAE: Yes. Yes, I think there was - I'm pretty sure that's in our - - -

MR FITZGERALD: Yes.

MS SCURRY (ALCA): Yes. Well, that was quite clear and that was a very big study. But I think especially in places like schools and hospitals we need to get baby-friendly workplaces happening. We have introduced lactation rooms for all of our staff so they've got a fridge, they've got a clean area to pump. If they're fortunate enough to have someone who can bring the baby in they can feed. We are sending

information packs home when women go on maternity leave and say, "When you come back to work, these are your entitlements." We have got some here from sort of western Sydney, the maternity leave packs. So they know that there's - like our hospital almost goes along for a kilometre, so we've got three breastfeeding or pumping rooms with fridges and sinks and things like that. We are trying to show them that there's a supportive workplace.

MS MacRAE: In your view would that be something that should be mandatory?

MS SCURRY (ALCA): Yes.

MS MacRAE: Obviously I think you would need to make some variation for small and large employers. Obviously for very small employers it might not be practical.

MS SCURRY (ALCA): It's quite easy even for small employers, just a little room with - somewhere where they can wash their hands and store their milk.

MS BROWN (ALCA): AVA have got an accreditation: workplace breastfeeding, workplace accreditation going and - very good campaign. So maybe that is something that is put forward that money is allocated to, something like that to be accredited for the - I mean it doesn't need to be very big but it doesn't need to be the toilet, because that's actually what happens. They say, "Yes, we've got a room for you," but really it's, "You can change your baby in the toilet," but where are you going to feed your baby and, "No, you can't feed them in the waiting room."

MS MacRAE: Right.

MS BROWN (ALCA): It's about being friendly and it's about being real, that we don't expect to eat in the toilet either.

MS MacRAE: Yes.

MS BROWN (ALCA): We talked about where do we want this cost to be. Parents are getting \$5000 now for a new baby, which is fantastic. Do we keep a portion of that for child care long term? The bus passes, in the media just - now they're going to cancel for kids at school. Somewhere along the line do we keep that baby bonus - somewhere along the line down the track for some sort of child care for them or for them to keep at home? I'm not sure but I guess whatever it is it needs to be simple. Whatever it needs to be is probably a little bit more creative because the government has given a lot of money to parents but we still need to support them. We have got that evidence about saving the community and the government on all sorts of things, even landfill on formula packagings and whatever. But we just need to be a bit more creative.

I think it's fantastic you have given us this opportunity to talk at this commission because I think we do need to get out there. Breastfeeding is something that does happen naturally, however, we need a little bit more support there. For us, you know, we're pushing for Medicare levies for lactation consultants. I'm just throwing that one in there because that's really important to get parents to stay at home with their babies. We're not just talking about babies. We're talking about children for two years of age. I notice that you're both parents and I want you to think about how it was for you when you needed to possibly leave your children somewhere. It's not okay for us.

Susanna and I, we were both talking about what we did for our children. For me, I gave up my personal entitlements as a nurse. I gave up my long service leave. I decided that I wasn't going to go to work a routine shift that they said. I went to work at 5 o'clock when dad could come home and mind the baby. I'm sure you did something similar - I'm not sure but it is something we've got to think about.

MS MacRAE: Yes.

MS BROWN (ALCA): I'm making you think, aren't I, there, Robert? I can see that - - -

MR FITZGERALD: No, this inquiry is constantly bringing up the elements of my past.

MS BROWN (ALCA): You're right, it's not just about that breastfeeding period. We are lactation consultants.

MR FITZGERALD: Sure.

MS BROWN (ALCA): This is what we do and we have this idea that we want to feed these babies long term, but it is about parents being with their children.

MS SCURRY (ALCA): At the start of this year I had the terrible job of having to find a child care place for my precious only grand-daughter and I did do a big study of child care establishments. I would take her with me and I would have to do an hour or two to try and see if she liked the environment and things. I will have to say I was really torn. My instincts just were screaming at me, "Don't leave this baby here, don't leave this baby here," because I would be sitting on the floor and she would be holding me tight, "Don't leave me, nanna." But basically I would be reading a story and little babies would crawl up to me and sit on my knee and cuddle me because the child care workers were basically one child care worker to say four babies. They would be rocking the bassinette and they would be trying to feed them.

MS MacRAE: Yes.

MS SCURRY (ALCA): I saw babies laying on pillows with their bottles looking at ceilings. Well, these babies are sponges. They should be having their mothers saying - touching them and massaging them and giving that feeling of safety and security and singing them songs so they're learning. I came away and I said to my daughter, "You cannot put her in there." I said, "It's equivalent to an old people's home I used to work in, the smell of urine, the routine, nappy changing every two hours, all of that." I just said, "I could look after this child," and I have done for two days a week for two years. She goes to child care the other three days. So yes, it's just - it's too much to put a little child in for five days a week.

MS MacRAE: We have also got another appendix for our report that looks at all those child development issues as well. I note in the information that you've provided for us today that you talk about the importance of having the first two years of life being critical in relation to dependence on the mother and achieving this healthy independence.

Our reading of both the international and the Australian evidence is that we think that we can sustain a very strong case for the first six months, that possibly up to 12 months is important. But where we've got a primarily government-funded scheme we've got to think about the net cost and benefits to society as a whole. So while I think we've seen some of the literature that does suggest that the first two years is critical, we have taken it in terms of the relative sort of cost-benefit of a scheme, which ultimately you have to do here because it's resources we're talking about that can be used for any number of things.

So I just wondered if you had a view in relation to the sort of duration of leave that we've talked about in our proposal of 18 weeks and the level of payment that we have recommended and - I guess, importantly because you talk, I think, and you would regard it as important that the family unit is important. We have made some recommendations in relation to the father being entitled to at least two weeks' paternity leave as well, whether you've got a view on the recommendations we have made in that regard? So maybe not just in terms of breastfeeding but more generally, as it seems you're keen to talk about in terms of attachment and child development.

MS SCURRY (ALCA): I applaud you on the 16 weeks. I'm really delighted. But you probably saw we recommend 12 months because we use the World Health evidence; but we realise the practicalities of things.

MR FITZGERALD: I mean one of the issues that has arisen in this inquiry is that not all women are able to breastfeed.

MS SCURRY (ALCA): No.

MR FITZGERALD: Either by choice or by other circumstances. I was wondering whether or not from your research and that is - are there ways to support parents who don't breastfeed to achieve the maximum benefits? I mean in my own case we had three children, two of them came very, very prematurely and we stopped after that because any earlier would have been unacceptable. So they have had a mixture of bottle feeding, breastfeeding, everything you can think of because of the circumstances. But the point is there is obviously going to be a percentage of women who will not be breastfeeding.

MS SCURRY (ALCA): Absolutely.

MR FITZGERALD: I was wondering whether you have given thoughts to how one helps or supports those mothers to achieve the benefits that you claim - and when I say claim I say that in a genuine sense - that are attributable to breastfeeding; because in some sense part of it has got to do with the milk itself, the actual product. Obviously you've put a lot of emphasis on the attachment, the connectiveness, the physical attachment that takes place and the - that exists with all of those things, which is not necessarily dependent on the actual breastfeeding.

MS SCURRY (ALCA): No.

MR FITZGERALD: So I just wondering if you've given consideration - because the one thing we have avoided in this inquiry is setting up an adversarial position between the two views because we don't see it in those terms.

MS SCURRY (ALCA): We totally agree with you. We really want to support women who can't breastfeed for whatever reason.

MS BROWN (ALCA): We talk breast milk too. We talk breast milk - - -

MS SCURRY (ALCA): We are very much supporting the government's position on human milk banking. The World Health Organisation recommends as first option is donor milk. One of the recommendations of the parliamentary inquiry into breastfeeding is to set up a human milk bank across Australia. So we're really pushing that that happens. But if that can't be the case we really want mums to be able to bottle feed if they so choose or have to and be supported to stay at home, because it is that cuddling and nurturing while they're feeding and looking at their babies in their eyes and teaching them how to count and just singing and all of those things. It's that attachment and response.

MS BROWN (ALCA): The other things I'd just like to say is we are lactation consultants and we support mothers to have that experience of feeding their babies but we're really actually feeding nurses firstly. Babies need to feed. So regardless of how that is we're after what the mother and the father really want for their child. We

aren't - breast milk is what the mother produces for the baby but we realise that that's not always possible. What Susan is saying is exactly right, it's about that getting to know you. I mean the Institute of Psychiatry talk about that attachment - even the dads feeding their babies. I mean we have videos, DVDs and a whole thing about everybody doing it.

MS SCURRY (ALCA): Adopted babies.

MS BROWN (ALCA): So it's not just about breast milk and breastfeeding. For me it's about keeping it simple and it's about what those parents need and what they want and the opportunity to actually be there. They often won't know until the child goes to school and says, "Oh gee, I wish I'd done" - and I guess I want them not to have that too. I want them to have that opportunity to say, "I'm really glad I did this," not, "I wish I could have done this." It's too late after the fact, after the amount. So some people have got to go to work but if we can give them an opportunity to stay at home with their babies for that experience - - -

MS SCURRY (ALCA): Like we've seen women have said, "Oh, going off to have this baby and I'll be back at work in two weeks, I'm not staying home looking after the baby" - but had not realised the impact of the hormones and everything that has happened. Six years down the track they're still at home and saying, "I couldn't leave the baby."

MR FITZGERALD: Can I just ask this question, which I have never been able to actually understand is there was a dramatic fall in breastfeeding in Australia in the 70s and 80s. To this moment I'm not understanding why that occurred, because it was very dramatic and we have come back from that.

MS BROWN (ALCA): I was out there feeding.

MR FITZGERALD: We've come back from that. The percentage of women that weren't in the workforce was less than and yet all of the things you have said in terms of it being, one, natural and being something that most mothers would innately think is desirable - yet we saw this - we had this huge drop from which we are recovering, albeit slowly. So why did that happen?

MS BROWN (ALCA): Look, I think what has happened too is we have actually changed in our whole parenting. There was something there you have just said. It will come back to me for a minute. But we used to stay at home. We used to have grandma down the road or she used to be a couple of doors down.

MR FITZGERALD: Sure.

MS BROWN (ALCA): Now, that's changed. Mums have needed to go back to

work for many reasons. Our whole society has changed. So in the 70s - and I guess we could talk all afternoon about breastfeeding.

MR FITZGERALD: Sure.

MS BROWN (ALCA): We're trying to get it on the agenda. We're trying to - as our organisation, we're trying to amalgamate with New Zealand to have an Australian Lactation Consultants Association. We need breastfeeding to be out there. I know, I remember. You said it was natural. It is natural but it's actually a learnt thing.

MR FITZGERALD: Yes, sure.

MS BROWN: That's why some mothers don't feed their babies or don't have the opportunity to feed their babies. It's a process as well. So there's many things that impact on why a mother doesn't produce the milk or she doesn't breastfeed.

MR FITZGERALD: But do you think that in the 70s and the 80s - - -

MS SCURRY (ALCA): We had the scientification of breastfeeding, basically - - -

MS BROWN (ALCA): Yes.

MS SCURRY (ALCA): - - - because of feminism and women wanting to be freed up. We were led to believe by - you know, there's lovely pictures of Dr Spock formula feeding and we were told that bottled formula was as equal to breast milk and that freeing up - thinking that we were freeing up the babies. We didn't realise that formula actually wasn't as good as what we actually made ourselves. It has only been with time that we have realised the implications and the increase in diabetes type 1, all of those things. We realised that human milk is actually for human babies.

Mark Cregan, who is an expert in the make-up of breast milk over in Western Australia, he talks about human milk being very high in fat content. What he says is it's because the brain is predominantly fat. He said in cows milk it's predominantly protein because protein is muscle and the calf has to get up and walk as soon as it's born. But it's our babies' brains that have got to double in size in that first six months. That's what they think is why there's an increase in IQ with babies that are fed human milk.

MS MacRAE: Can I just ask a quick question about the milk banks because again, they're not - I'm quite happy to be corrected here but as I understand it milk banks used to be quite popular and people could use them - - -

MS SCURRY (ALCA): Yes, and wet nursing too.

MS MacRAE: I was a twin and I think I was fed out of a milk bank because my mother was otherwise engaged when there was two of us. But then I think they went out of favour because of the problems of screening for disease.

MS SCURRY (ALCA): AIDS in particular.

MS MacRAE: But now is it because they have found new ways of screening and things that it has become possible for milk banks to be established again? If that is the case is there still a financial problem that is preventing them to become more widely available and more widely used again?

MS BROWN (ALCA): Basically human milk banking is done in a lot of places around the world. AIDS was the thing. It is spread in breast milk but it can - the AIDS virus can be destroyed in pasteurisation. HTLV-1 is endemic in our indigenous population and it's a disease that causes leukemia-type illness. It can be destroyed in pasteurisation. Cytomegalovirus is the other one for premature babies, not for term babies. All that can be destroyed in pasteurisation. Literally with - because governments really thought formula was okay they haven't really pushed it. But now we're realising that because of necrotising enterocolitis and other diseases babies are much safer having donor milk rather than the formula.

MS MacRAE: So how widespread would you say the availability of donor milk now is in Australia?

MS BROWN (ALCA): We've got in Western Australia, and one in the Gold Coast.

MS SCURRY (ALCA): One on the Gold Coast.

MS BROWN (ALCA): One to come to Melbourne very soon.

MS SCURRY (ALCA): RPA is using donor milk at the moment. But really need the federal government to make it national rather than state run. It's very hodgepodge.

MS MacRAE: So it is a resourcing issue primarily?

MS SCURRY (ALCA): Yes.

MS MacRAE: Not a problem with getting the human donors or - - -

MS SCURRY (ALCA): We've got women ringing up all the time saying, "I've got an abundance of milk. How can I give this?"

MS MacRAE: Right.

MS SCURRY (ALCA): But basically - well, in New South Wales infection control have got hold of it and basically they see breast milk like another bodily fluid like sputum and urine and things.

MS MacRAE: Okay.

MS BROWN (ALCA): Instead of a food.

MS MacRAE: Right.

MS SCURRY (ALCA): Whereas the national government has put it onto the food safety regulations.

MS BROWN (ALCA): Around the world there's a lot of milk banks.

MS MacRAE: Yes. Yes, I thought that was the case. But that was - yes, primarily - - -

MS SCURRY (ALCA): We're working on that one.

MS BROWN (ALCA): Yes, we're working on it.

MS SCURRY (ALCA): In Brazil the firemen pick up the donor milk and they deliver it to the hospitals when they're not fighting fires.

MS MacRAE: Serious?

MS BROWN: Yes.

MS MacRAE: Put the fire out with milk.

MS BROWN (ALCA): Because that's the problem. It was accessing - getting it to the hospital.

MS MacRAE: Right.

MS SCURRY (ALCA): We've got the costs here. I'll leave these with you.

MS MacRAE: Yes, okay, thank you.

MR FITZGERALD: All right. Are there any other final comments you'd like to leave us with at this stage?

MS BROWN (ALCA): Again, I'd just like to say thank you. We're not talking pure breast milk here and breastfeeding, we're actually talking about a service for our parents. Parents are our bread and butter and our interest. These are our grandchildren now that we're going to be talking about, future grandchildren. It won't be our generation. It's certainly the generation now that's coming now and having their babies and leaving their babies. So we want a better future for the children that are coming through. If we can start chipping away at some solid resources for them - and it's going to be concrete for them. They're going to stay productive as well. We want a better future for our children.

MR FITZGERALD: All right. Thank you very much.

MR FITZGERALD: If we could have Zonta International, please. Okay, if you could give your full names and the organisation you represent that would be terrific, and then some opening comments and we'll have a discussion.

MS LACHEUR (ZI): Thank you. Sir, my name is Olivia Sarah-Le Lacheur, I am district 24 governor for Zonta International. My daughter Chloe Le Lacheur. She is just having a spit. She's making a contribution. Aren't you, darling?

MS EVANS (ZI): Carolyn Evans. I'm the lieutenant-governor for district 24.

MR FITZGERALD: Great. Okay, over to you.

MS LACHEUR (ZI): So with your permission, because you got our papers so late yesterday what I thought I might do is just walk through some background to our organisation and some of the thinking that our members have gone through in coming up with our response to the draft report. Then I'll hand over to Carolyn to talk through what we agree with in the draft report and then the items that we don't necessarily agree with but have some ideas on where we think they could go.

So just to give you an idea about Zonta International, we're a global organisation of businesswomen, executives and professionals around the world. There's about 33,000 members globally in more than 1000 clubs. We're in countries as diverse as Iceland, South Africa, Australia, the United Kingdom and so on. So we represent the views of women globally. Our primary aim is to improve the status of women, and that's across a range of factors, so the legal status, political, economic, professional and health status. So of course for this particular report we're very interested in a range of aspects there both on the professional and health side. In our membership list the age range is quite broad. So we have members who are grandmothers, mothers, daughters and we have all got a varying range of opinions and ideas.

We have also had very close links over the course of our organisation's existence with the United Nations. So we're most interested in CEDAW and Australia signing CEDAW and, as of yesterday, the optional protocol coming up for signature as well. What we're interested in is how Australia is complying with article 11, which has some commentary about having paid maternity leave arrangements available or similar types of entitlements to make sure that women have the right to go back to their roles in same or similar occupations.

So just to talk through some of the background thinking that our members have discussed, debated, disagreed on as well, because of course when you have got so many members they don't all agree on absolutely everything. Our primary agreement though was that we felt that having children shouldn't be a financial decision, that there would be a range of factors that would come into the decision to have children

but we wouldn't people to say, "Look, I can or can't have children because of the financial basis behind it."

So what we agreed amongst ourselves that we wanted for paid parental leave to be a fundamental entitlement for anybody who is working in Australia rather than needing to be negotiated by individual discussion with employers. We wanted to ensure that there was portability between employers. As you would know in today's workforce people rarely have long careers with one particular employer. They're more likely to move on a fairly regular basis and in fact may not even work for an employer. They may be a consultant to an employer. We wanted to try and introduce that element of portability where we could say if you're been working for a certain period of time then you would have the right to some entitlements to paid parental leave.

We also wanted to be sure to include our male friends because of course many people when they talk about paid entitlements focus purely on the women. But of course we have some wonderful fathers and husbands and grandparents, grandfathers, who also want to participate in bringing up their children. So we were very pleased to see that in the draft report there was recognition there of the role of men.

We have also - because we are an organisation of professional women we are most interested in how women can not only obtain employment, so they're not discriminated against because they may be in their child-bearing years, but also that we wanted to make sure that women could return to the workforce to make a significant contribution without being discriminated against because they are parents or needing to take time off; and, of course, to pick up on the previous speakers, to ensure that parents have got the opportunity to form that fantastic bond with their child and contribute to healthy children who become healthy adults, and hoping therefore to alleviate some of the costs on our health system and also on the present system, because we know that sometimes when things go really wrong with kids there's extra costs there.

We did quite firmly want to make the comment that we don't see any paid parental leave as a social welfare measure at all because we don't want to - social welfare to us would mean a poverty alleviation measure and really, we don't see paid parental leave as that kind of thing. We also didn't want it to be selectively available and of course to have any unintended consequences of discriminating against women's employment in their child-bearing years. That's why we have got some significant comments to make around the funding of any paid entitlements.

So what I might do is I might hand over to Carolyn to just walk through everything that we agree with in your report and make you feel fantastic about all the great work you've done and then just cover off on the things that we don't support.

MS EVANS (ZI): I didn't bring my children with me. One is having that last little quiet time of year nine before he has to get serious for the school certificate next year. The other one has made me very nervous this week by leaving on Monday to go overseas travelling for a couple of months as the tail end of his gap year before uni. So if my hands go like this you'll know I'm thinking of him unaccompanied in Hong Kong.

That actually brings to the character of what we have laid on to our thinking about this is the fundamental uncertainties of parenthood. As an overarching theme we were looking to allow for the uncertainties and individualities and the variations of people's working lives and private lives and not unduly constrain things nor unduly complicate them. So in looking at the things we agree with we think the commission has done a fine job of taking that on board with a number of things. One, for example, is the fundamental idea of a taxpayer-funded scheme.

There are a whole range of responsibilities that I have listed that accrue to parents. But there are benefits to the community of good parenting. You have made the connection in your report and we would absolutely endorse that. What I found interesting to note by its absence there was the role of the federal government particularly as possibly the largest employer of women in their child-bearing years anywhere in Australia and the fact that the taxpayer is already bearing the cost of all maternity leave paid by the federal government as an employer, which is non-trivial.

As you have already noted in your report it was the first provision of paid maternity leave in Australia for which we all saw off a round of applause. As a former member of the Royal Australian Airforce I luxuriated in three months' paid maternity leave at a time when most mothers had none. I can't underscore enough the importance of that responsibility by the federal government as an employer. But I think that's a non-trivial cost which has not been netted out of your calculations, so the marginal cost of the overall scheme to the taxpayer I think would be substantively impacted.

We very much support the idea of employees with a reasonable degree of attachment to the workforce, and the way in which that has been described in the report seems very workable to us for a range of women's working lives and arrangements, types of employers and so on. It's very helpfully expressed in that regard. The broad range of family types we also have resounding agreement with. Although we are concerned primarily as an organisation with advancing the status of women that doesn't advance without partners, friends, family and all the rest of it. So that very broad range of family types certainly agreed with our thinking.

Creating the separate policy issue of a maternity allowance - in far better terminology than the baby bonus - separating that out to a separate policy

consideration was a structure that we also endorsed for the simple fact that as far as we're concerned paid parental leave is a function of working life and some sort of maternity allowance ought to be a function of social welfare and other measures, but not of working life.

Businesses acting as paymasters - and let me lay on my own role there. I am a small business; I employ nearly 20 people, but have a background in large corporates and obviously earlier in the airforce. So I draw on a range of personal experience. I would have to say that there is no issue with businesses acting as paymasters, taking that broad experience into account. I think some of the representations that were made to you in your earlier deliberations gave a bit of the "woe is me" small business view, and I can understand and sympathise with that amongst my small business colleagues. But the fact of the matter is, small business in Australia has to meet BAS reporting requirements, some of them IAS reporting requirements and the scheme that you've laid out could be administered relatively readily with one or two extra lines in a BAS. So I think it's distracting and not necessarily informative to start fussing about how hard it would be to report when we've developed disciplines in the last eight years for reporting of BAS and so on and the vast majority of small business have proven quite capable of that and being relatively on time; relatively.

We also very strongly support the conceptual notion of sharing post-natal leave between the parents, in very broad terms. Where we started to kind of stub our toes on different bits and pieces was the quantum of pay for paid parental leave. We would point out that at the minimum wage, it's effectively welfare, I'm afraid, from our point of view. The average ordinary time earnings for women are in excess of \$1,000 by comparison to the 543.78 which is the minimum wage. Having regard to the fact that it's the statistical average ordinary time earnings, you can do the math and see the distribution as well as I can, I'm sure. It seems, for want of a better technical expression, very much under cooked. It would represent a significant reduction in income and nothing like the remuneration for which the family would normally plan. At that level of subsistence, it appears to many women wage earners in a contemporary setting as welfare, not as paid leave in the normal quantum of annual leave and long service leave and so on.

On the other side of that, taxing that minimum wage for anybody who has been earning reasonably before their confinement means that it will effectively be negated for a significant number of women who are, for example, the primary earners in their families. The taxation of even the minimum wage would mean that their net change in position would be very close to zero. However if the amount paid were much closer to their normal wage, it's not fundamentally an issue of taxation. Taxation is not in itself an object; it's the fact that if combined with being paid at the minimum wage it would negate it out that is the issue.

In terms of the recommendation that business would pay superannuation

contributions, the issue is one for small business, but I will come on to that in a bit more detail with other questions as to the quantum. But the fundamental point of superannuation contributions is that if the person is self-employed or very close to it in a very small organisation, the likelihood is that they simply won't have cash flow to pay it. If the person is the primary generator of income for that small business, if they're not generating income - and you've made some of those points yourself - it would underscore that even more.

Olivia referred to the potential for hidden or hard to detect discrimination to be introduced back into the workplace as a result of how this measure would be introduced. We see the greatest danger as being where direct funding of paid parental leave takes place from the employer to the employee with no stops in the middle, and no contribution in effect. But that said, there are issues to do with that of simple portability of the clarity of the arrangements and so on. I'm not under any illusions that all of my colleagues as employers in all sizes of organisations are as diligent in their administration as what I would be, but we don't really want to create circumstances in which the least diligent can easily avoid, without being held to account for it, employing women in their child-bearing years.

The issue on a broader scale is not so much women who have children, but women who might one day possibly if they feel like it have children, which takes in a much, much broader group. At one point in our lives every woman in this room would be looked at with those eyes, and only that woman later in her life knows how it turns out. It would obviously be a sad loss to the economy if all women were viewed like that and all of that productive capacity removed from the equation simply because some employers are a little less energetic about their choices.

On a more substantive issue, we would see 26 weeks or six months as a minimum paid period for the simple reasons that you yourselves have pointed out in the report, that that six months is the approximate turning point for many of the benefits which can be ascribed to early childhood relationships whether or not the child is breastfed. Having all possible respect to the ladies talking about breastfeeding, the only certain thing about parenthood, as we all know, is that it's uncertain. You're a twin; my brothers are triplets, these are interesting and different experiences, but every parent has interesting and different experiences. Whether or not one can breastfeed is in the lap of the gods or whatever supreme being takes your fancy. It is also subject to time and health, and those are all dice we roll.

The fact of the matter is that the relationship, however the child is fed, is established in that first six months. What impinges it from our viewpoint as working women is the uncertainty around what will happen after the return to work, much of which is also driven by feelings of self-esteem and connection to the workplace, again as your report covers. What is certain about the post-return-to-work period is, that won't be the end of the problems and that there is a need for the ability of both

workmates, employer and the parent to respond to those circumstances in a way that it doesn't unduly intrude on any party.

So if, for example, Olivia goes back to work next April having exhausted every day of every kind of leave that she has, she then has a 12-month period in which she's not entitled to any leave other than unpaid leave. Now, I can, without unduly intruding on Olivia, I'm sure I can say that the unpaid issue would not be an issue in her circumstances, but it would be for many other women a financial issue. The issue for the employer and the workmates is that unpredictability, that she may still take leave if she needs it because what parent is going to come to work, paid or unpaid, if their child is sick, day care suddenly is unavailable - like maybe a childcare centre goes out of business, although that would never happen, we know. All of those things need to be coped with, whether we like it or not. Employers need to provide circumstances in which they can be addressed.

The parent will take the leave. If it is unpaid leave, it's actually more unplanned. If a parent has a bank of annual leave, a bank of whatever leave they could use, their thinking is oriented to, "I have my annual leave, which I know I won't be taking a holiday because what new parent gets a holiday, but I will use that as best I can through the year and limit the liability of the workplace and the employers to support me." Unpaid leave, if the person can afford it, tends to be more unlimited in the way that it's taken, if I've made that clear.

So as we see it, forcing the exhausting of all types of leave in order to get to six months is actually counter-productive. The paid leave ought to extend to at least six months, however we would agree with your analysis and very well supported analysis that says there's diminishing returns thereafter in terms of what the community should fund.

Maternity allowance is a policy with which we have many issues, not least that it is treated as some alternative or substitute for paid parental leave when in fact it's a welfare measure and as women who work we don't really feel that welfare is something that ought to be applied to us in that way. It is a much more complex issue that we would assert, if the community sees a need to support parents with the costs of child-bearing, that ought to be a well thought through integrated policy on its own with clear reasoning and reasons, which our view would be does not exist at this time for the so-called baby bonus, and that that could do with a very thorough review. Now, I understand that to be a separate issue and being addressed elsewhere, but we would agree with that in saying that it should be severed from considerations about paid parental leave.

In terms of sharing of post-natal leave, our view is that there should not be mandatory sharing, that amounts taken by either parent ought to be subject to their own discretion. We have read the report thoroughly and understand the reasons why

you've recommended two weeks be quarantined to the father, or other partner in a same-sex couple. However, again it has the feeling of the dead hand of government coming out to reach into one's private life, and we would not agree with the rationale for it. That said, as Olivia said earlier, we very much endorse the consideration of not only fathers but other caregivers including grandparents. Some of our best examples of excellent arrangements for children's care have been with grandfathers in very recent times, and more power to their arms.

Coming onto one of the single most important issues for the entire policy, how to fund the scheme is clearly the big problem. Picking up two points that I've raised already, one is that we think recognition ought to be given to the funding already provided by government by the employment of their own employees, and the significant number of women that are already receiving that benefit funded by the public purse, if I can be a bit delicate. We think that's excellent employer decision-making, but it is a cost already borne by the taxpayer and ought to be identified.

On the other side of that, the ABS statistics tell us that about .6 million women are business operators in Australia, and on the numbers about two out of three are likely to be in their child-bearing years. I note with interest the numbers you've given for the relevant proportions of women who are mothers and that are self-employed and so on. But taking it at that high level, the issue is their funding of their own parental leave, or that for their husband if he is also in the business. It's an illusion to suggestion that that business can fund from its own resources cash flow to pay someone who's not generating the income. In businesses of one, two, three people clearly the direction is very direct. As we reached 20 or 100 people the connection is rather less direct.

I realise you in all likelihood don't need me to tell you that that's true, but the illusion that those women would actually have paid parental leave is one that we feel needs some highlighting. This entitlement needs to be created on a relatively equal footing for all parents, not dependent upon the employer. If it is genuinely an entitlement of working life its availability to self-employed women or women in very small businesses needs not to be compromised by the sheer cash flow and viability of the business. Many self-employed people don't effectively take annual leave for the same reason, they chose to work that. However, that is a freer choice. A good few parents don't take annual leave for the same reasons, but be that as it may. We are left concerned that that would be no effective leave for those parents who are self-employed or nearly self-employed, if I can use the shorthand.

MR FITZGERALD: Sorry, can I just get a clarification on that. We've included self-employed within the scheme, and they would receive the government entitlement, the paid parental leave entitlement. Just to clarify, to get to 26 weeks the rate of pay is insufficient?

MS EVANS (ZI): Indeed, if they are self-employed if they're paid at minimum wage they're not paying their bills with that. The vast majority of women who are self-employed are paid considerably more than the minimum wage on their own sweat. So only paying them the minimum wage will not really keep them out of the workplace. So if we want an effective availability of even 18, but we would recommend 26 weeks, it would need to be funded other than directly from that business. It's a pretty short step from two or three people generating an income for that business - - -

MR FITZGERALD: But I need to understand, if I can, more clearly what is your recommendation? Obviously the money is going to come from the government because it's not going to come from anywhere else. So what are you suggesting - - -

MS EVANS (ZI): It needs to all come from the government, not only the gap from - - -

MS MacRAE: So the wage and the superannuation should come from the government?

MS EVANS (ZI): Yes.

MR FITZGERALD: So you're talking about the full replacement wage?

MS EVANS (ZI): Yes. Now, our next point is that we think a majority of the ordinary-time earnings of the individual would be the appropriate amount. There are plenty examples from around the world with the tax left in place. So we've said ideally 100 per cent, but clearly with some of the other advanced economies working at 75 or two-thirds of ordinary-time earnings there's a good case to be made that says that's reasonable. Of course we've recommended the ideal of 100. However, we do accept that 75 would be a very meaningful level of the normal earnings of a person, and that rate should be taxed. To that extent, those things simplify administration in small businesses. It is one thing to have a different rate of pay altogether, it's another thing to put a multiplier in that says, "Times it by .75," if I can put it that way.

MR FITZGERALD: We're going to run out of time in five minutes, so I just want to be able to have some time for questions. So you might want to just make a couple of your concluding points then we'll have a brief discussion.

MS EVANS (ZI): The last point that we had is that obviously we would envisage a scheme funded from the pooled tax revenues of the community and at the majority of the wage of the person. So that's our dilemma, that we endorse some of your recommendations but we'd be more generous, if I can put it that way.

The major benefit, as we see it, of your report in its whole we would like to underscore, which is that it's raised the level of debate on this issue from something which is treated as a special benefit for women where they're receiving an unearned bonus of some kind just because they had a baby. Paid parental leave has been, by your report so far, cast much more into a reasonable and rational light of something we've earned through our productive working effort in the workplace. I think that that could stand highlighting, and certainly all of our members are agreed on that. The raising of that issue in that way assists. It doesn't quite get to the point where we would accept paid parental leave as a legitimate use of taxpayers' pooled funds the same as defence or the national road system or other infrastructure. We very much thank you for having moved it in that direction even if it's not quite there. But it is on that basis that we would strongly recommend a majority of the person's ordinary-time earnings be the rate.

MR FITZGERALD: Thanks very much for those comments, they've been very helpful and you've got a submission there. There's a number of issues that I'll raise, but maybe I'll start with Angela.

MS MacRAE: It's hard to know where to start because we've got such little time. I guess the issue around the payment level and it not being enough, we've really tried to strike a payment - because it is government funded, and in an ideal world I suppose we would want it to be like other leave, and we've said so in the report. But the reality is that we're not in a position where we thought we could recommend something of that sort that would actually become a viable option for Australia at this stage. The payment level was really struck to make sure that those women that were least likely to get voluntary paid parental leave would be sufficient, and that we could get the vast majority of parents to a position where they could take at least that six months leave off. So we're really looking at trying to get the best bang for the government buck, I suppose, is how we've come to the arrangements that we have.

So I don't know whether you'd comment on whether you think that's a reasonable position to take? I guess your argument is that it's not, but looking at the more substantive arrangement that you've talked about I think would get us into some territory that would be difficult, particularly in terms of cost. If you look at the costings for our model, short of going to a social insurance type arrangement - and most of the schemes that you've talked about overseas, many of them wouldn't cover self-employed for example and they wouldn't get anything. So in fact the self-employed are doing relatively well out of this scheme compared to many self-employed around the world.

I guess for reasons that we outlined in the report we weren't attracted to a social insurance infrastructure for something as small as paid parental leave payments. So I don't know if there's any comment you want to make on that, but that's really the balance that we were trying to strike. While I can see the logic of your position, the

reason we've come to a different view is primarily around those issues.

MS EVANS (ZI): We understand the rationale of your position as well, but the gap between what women are typically paid and what they would be paid is significant, and in that that is not the case for, for example, federal public servants, the logic of our view is I think persuasive for many.

MR FITZGERALD: I think what we think in time will happen is, particularly for higher income women, professional women, most of those are likely to end up with voluntary arrangements as well as the statutory one. The lower paid workers, and obviously self-employed and contractors, that's not likely to be the case.

MS EVANS (ZI): It's interesting that the recent trends for those higher-income earning women is to self-employment, whereas self-employment in the past was a province of trades people and shop owners and retail outlets of various kinds. A much more significant swell of women are leaving large corporate life for the reasons that are covered thoroughly in your paper, and in the professions, whether it be science, law, even our economists such as myself, we are self-employed to a much more significant degree, and they are making that transition at the point of having children. I guess I'm prepared to say why, but that, as the lady said earlier, is a trend that will only be confirmed in the very long term.

But the fact that since 2001 more than half the babies born in Australia have been born to women over 30, I think we have to take into account their stage of life, making those job transitions and in having their babies. 2001 is not yesterday, it's getting to be last week, so we'll start seeing that demographic impact over the course of the initial review period for this policy. Certainly I think that that's a big issue.

MS LACHEUR (ZI): If I could just add, understanding that we're asking for the ideal outcome, if the economic modelling says that's not possible I think we would struggle to accept that the adult minimum wage would be a real benefit. It gives the illusion that yes there is a paid parental leave benefit and people have entitlements, but the money itself is so small as to really have very little impact. So understanding your comments around needing to make it affordable and make the best use of the government's purse, but it also needs to be a benefit that's meaningful to the people who receive it.

MR FITZGERALD: I think it's also true that we're very clear that it's greatest benefit will be to low-income women and their families, and partly choosing the minimum wage and capping it that level was in recognition of that particular fact. So we recognise the benefit of our scheme diminishes the higher the income you earned prior to birth. You've added an important sub-group to that, which is self-employed women, which I am grateful for. But there was no doubt in our mind that we wanted to have the greatest impact on low-income families simply to get behavioural

change; that is, the ability to stay home long enough.

MS EVANS (ZI): We absolutely applaud that, and there is no question we would strongly support the alleviation of any difficulty for those families. But we connect paid parental leave very strongly with the workplace and feel that working ought to be rewarded. These women on a trajectory through their career are at one point taking the leave but they are contributing to the taxpaying pool for a very long time.

MR FITZGERALD: Even if we were to accept that the full replacement wage was the appropriate - you're not saying that, you're saying up to a percentage of ordinary-time earnings, but just take it up to full replacement wages - is the appropriate measure for a longer period of time, the question then is how do you pay for that additionality? You'll notice that there's been various models: forward contingent loans, increase in payroll tax, and social insurance type models, all of which have merit but we didn't support those for the scheme that we've put together. One of the things in talking to business people is that they have opposed the imposts we've already put on superannuation but they've all been adamant that they would oppose more strongly anything like payroll tax increases or other contributions, notwithstanding the merit of spreading the burden. I'm just wanting your thoughts about that, because you've said it should come from the taxpayer.

MS EVANS (ZI): Yes, indeed, and I would have traded in the last couple of tax cuts in favour of paid parental leave, I don't know about you, Olivia. It is a community pool not an employer pool that we're interested in because the benefits of working life go back to the entire community. Our taxes fund everything just the way yours do. We don't see it as more specific to an employer or an individual.

MS LACHEUR (ZI): Nor necessarily a predefined group of people needing to be able to access those. So for example, we're all paying tax which goes towards hospitals, roads, schools, et cetera, whether we use them or don't use them. I think the discussions we had with our members, while some had made very strong statements that they would choose not to ever be parents they felt that they would be happy to make a contribution for other people to access, along the same lines as things like their Medicare levy, et cetera.

MS EVANS (ZI): Indeed, those same members don't plan to grow old, get sick or need a defence force but they're happy to kick the tin, and by the same token life is an uncertain prospect.

MR FITZGERALD: But when you say they're happy to kick the tin, am I right in saying they're happy to kick the tin as part of the general taxpayer pool as distinct from perhaps the imposition of some additional but modest levies or what have you that would be over and above that which we pay?

MS EVANS (ZI): Yes, and I think that it is more acceptable to a typical taxpayer, of which our members are broad cross-section, to pay non-specific tax and receive non-specific benefits as they need them: "I'm not sure I'll need that bit of road but I'll definitely need that bit of road that's part of the national infrastructure," or, "I don't know that I need a defence force or a public servant in the tax office this week, but I'll take them when I can get them." Broad-based tax collection and non-direct lines of taxation are more palatable.

MS LACHEUR (ZI): I just wanted to add, back to your comment that you're really targeting this towards people who are at the lower income earning levels to provide the real benefit for them, that's where we've got a very strong preference for portability to be considered because obviously a lot of those types of income earners would tend to move quite frequently between jobs and they may or may not be able access any leave entitlements if there is a requirement for a minimum of 12 months with one employer. So we have made some comments about taking into consideration that they have been in employment for 12 months, whether it's with the same employer or not, because then there is a benefit for those people at that lower income level.

MR FITZGERALD: I think we picked that up. In terms of the parental leave payment, our criteria is 12 months in employment. What you don't get is the superannuation with that arrangement. One of the issues we're looking at is whether or not that particular eligibility test is reasonable, and some people have said it should be six months, and some have said it shouldn't be 10 hours, it should be something else. So we're just looking at some of those issues at the moment.

MS LACHEUR (ZI): To that extent, the discussion we had was not completely homogenous, but the point of 12 months being they had to establish a relationship beyond the pregnancy was, in concept, fine. That length of time was not seen as unreasonable. Funnily enough, the examples given on it were that it's reasonable, for example, for private health insurance to require a 12-month qualifying period for maternity benefits and those sorts of things. That qualifying period is relatively well accepted in the community, so the length of it is less of an issue than the ease with which it can be administered and the portability of it between employers.

MR FITZGERALD: Thanks very much, Olivia and Carolyn and Chloe. We're very impressed.

MS LACHEUR (ZI): Thank you for your time, we appreciate it.

MR FITZGERALD: Thank you very much, and if we could have Julia.

MR FITZGERALD: Julia, if you could just give us your full name, and if you're representing an organisation.

MS PERRY: Julia Perry, and I'm not; I'm representing myself.

MR FITZGERALD: Over to you.

MS PERRY: First of all I'd like to thank the commission for its extensive work on the issue, its comprehensive consultation process and the encouragement of contribution and debate from such a wide range of people, and the commission's proposal would certainly provide significant extra help to families with newborn children.

As I mentioned, I have been involved with a number of groups with interest in this issue but my presentation today is on my own account and not to be taken as the views of any of those. It's based on my extensive policy background in social security and its relationship to women, work and families. I've been considering the question of paid parental leave for nearly two decades on and off and it looks like I'll continue to do so. I am also informed by my work for the OECD on policy related to mothers in employment in a number of countries as well as wide knowledge of international social security policy and, most importantly, my experience of two former deliberations in Australia on the question of paid parental leave which resulted in the Keating government's maternity allowance, later expanded and re-named under the Howard government to the baby bonus.

On both these occasions what set out to be a government-funded payment to parents taking leave from paid work after childbirth became a flat-rate universal payment on the birth of a baby, due to very strong, popular opposition to a payment only to women in paid work. I acknowledge that my previous submission to the inquiry was dismissed in fairly short order, and I hope what I have to say today isn't too repetitive. I accept that what I have to say will be very unlikely to have an influence on your final recommendations, but conscience dictates me to make a point anyway.

I'm also aware that various key ministers have now cast doubt on the question of budget funding due to the economic situation. Points I wish to make are that paid parental leave needs to be available at full wage replacement until the child is six months old. We're doing grave damage to children and our social future by not making adequate provision for parental care. I'm sure that many submissions have pointed this out, pointed out the importance of six to 12 months' leave on present and long-term emotional, cognitive, physical and social wellbeing of children, and your report has gone into this in very good detail.

But I regard this as an extremely important issue. I think we'll look back with shame on the current period where we have set up a society that's not fit for children

and that we have reached a point with housing costs and with women's employment where we're really depriving children. The commission's proposal that this length of leave could be provided by 18 weeks' worth of the minimum wage is not adequate. Low-income women are unlikely to have other leave entitlements or sufficient resources to make up the time. Higher-income women are likely to have their income locked into housing costs.

Many children are not planned. Many women are the primary earner in the family. It should not be assumed that women's incomes are an optional extra which can be suspended or reduced without pain. I can see it would be wildly unrealistic to propose that the government should pay more than an extra \$3600 over what it now pays to families having babies, which brings me to my next point. The commission has been at pains to say that the parental leave payment would not be welfare and I've seen a number of measures to design transfer payments so as not to be welfare, but the subtleties seem to be lost on the electorate.

If it's paid out of general revenue to individuals it's regarded as welfare, even when it's paid via employers, by child care providers, through the Health Insurance Commission or, you know, being called a tax payment, it still tends to be regarded as that. In Australia welfare is based on need, usually but not always means-tested. I don't believe it's publicly acceptable to pay people who have had recent income while excluding those who have not, because the latter are often in greater need. Even the lack of means-testing seems to be unpopular. I'm quite comfortable with non-means-tested payments for certain purposes, particularly family payments.

But this seems to be the reason for the strong public criticism of the baby bonus and its predecessor, maternity allowance. I found it ironic that so many submissions argued against the baby bonus while advocating publicly-paid parental leave. I really see the commission's proposal as an extension of the baby bonus, but confined to those who meet the prior work condition. I find it very hard to identify any principles of equity that lead to the idea of the taxpayer funding and payment only to better-off families, ie those in paid work.

There are some European countries that provide a government-paid flat-rate child care leave to be taken after the insurance-paid maternity leave. In general this is paid regardless of prior workforce attachment and in those countries where it has been paid with workplace attachment it has been very controversial, where it has been linked to workforce attachment. If confronted with a choice of the model proposed by the government versus, say, using government funds to increase the adequacy of pensions, benefits and other payments, I would have strong qualms about choosing the former and I think so would the average Australia.

In fact if I were the minister for social security and had two hundred and forty million dollars to spend, I'd find it unconscionable to put the current proposal ahead

of many other pressing needs to reduce poverty. Such dilemmas do not apply in the employer paid leave system. Various paid leave entitlements are a way of distributing paid earnings, such as to provide income continuity during reasonable absences. The wage theoretically reflects the value of a worker's labour, even in government.

But it doesn't have to be paid at the time the work is performed. It's separate from the question of the wage distribution across workers. In Australia we have a problem with the high level of casual work without paid leave entitlement, but that's another problem. Different types of paid leave serve different purposes, and the closest parallel to paid parental leave is paid sick leave, because the entitlement is only paid when people need it, and some get sick more often than others. I see it as quite acceptable that paid parental leave be accommodated within the general wage quantum and in wage entitlement and paid at the person's normal rate of pay.

As the commission has reported and as Zonta was saying, there's now a wide group of employers who do pay it, usually for short periods, particularly public sector and large employers. I note that the commission envisages this trend spreading through bargaining and that the ACTU and many other support employer top-ups. As I understand it, employers topping-up your proposed scheme to replacement earnings would not be permitted but topping-up to extend the time would be, because I think you said - - -

MR FITZGERALD: No, they can top up, voluntarily; they can do anything they like.

MS PERRY: Right. I thought that there was a problem with taking the two together. The problem however is, as Zonta mentioned, that generally workers taking leave would be women of childbearing age. Because the group is identifiable, as Zonta said, direct payment would be seen as an extra cost of employing this group. Avidly reading the letters, columns and the blogs on this subject, and The Daily Telegraph blogs, I think there's still quite a lot of underlying prejudice against women.

There seems to be, on the one hand, people who sort of believe that all women should work, and another that believe that if women want to work, well, they can sort their childbearing out as best they can, or, you know, "I didn't work when" - I mean, there seems to be a real confusion about the roles of women, and both sides seem to be anti - but coupled with that, I'm convinced that this direct payment by employers would led to greater discrimination against women in employment, and I've certainly been told this be a number of small business owners.

Secondly, it would impact more heavily on employers in female-dominated sectors and it would cause problems for small business. The likelihood of an

employer taking parental leave in a particular year is small, but, as Zonta comments, when it happens in a small business the cash flow for that year is blown. I think that their comments on super are relevant at a smaller level, because they're still staying that even that much paid directly is problematic. This is the thinking behind my proposal for an insurance scheme for employers, following the logic of funding for workers compensation. The reason I have not used that analogy is because workers compensation has a number of other problems, such as moral hazard and the difficulty of assessing entitlements. They don't apply in this. In addition, the levy would be very small - around two thirds of a per cent, compared to 9 per cent super, 6 per cent payroll, variable large per cents in workers comp.

The commission dismissed my proposal for a number of reasons: (1) it would be complicated; (2) it would not be worth doing in the absence of a broad social insurance system in Australia; (3) it would be a hypothecated tax; (4) it would have an adverse impact on business. In response to these, I would say that it would not be very complicated. The mechanisms for PAYE and BAS taxes and Centrelink assessments of individuals already exist. It's far less complicated than superannuation or child support, both of which I was involved with the implementation of, because the payment is not linked directly to the individual. So it's really not all that complicated. I would see that, among the self-employed, you would have applied the levy to their declared income and their entitlement would be their declared income. If they were understating their income, so be it, but that's how I would do it.

But I think that the small, additional complexity should be balanced against the much greater policy problems of paying from general revenue or individual employer direct payment. Also I see the benefits of being able to fund a proper scheme of six months at full wage replacement with the paternity leave and the payment to the relinquishing employer dwarf the problem of complexity. So saying, "We don't like it because it's not simple; we will go for a scheme which is extremely inadequate in my view," I don't understand that priority there. The question of a general social insurance scheme is a huge one and very unlikely to be introduced by any government in the present age. The conditions leading to the establishment of such schemes post-World War II were very different and to connect this very modest proposal to that I see as being the tail wagging an elephant, let alone the dog. This is a small scheme which is in fact smaller to implement than many schemes. But to alter our entire way of arranging income support I just think is a miles bigger question and a huge one and really far larger.

I don't see it as a hypothecated tax. It should be specifically within the remuneration system so I disagree with Zonta there. Certainly it could be seen politically as a hypothecated tax in the same way that your scheme could be seen politically as welfare, although I know your argument is specifically that it wouldn't be welfare. But I don't think hypothecated tax is a major problem for the electorate,

certainly the Medicare levy is not. The impact on business is relatively small. It is spread equitably across all employers. Small employers currently recognise their disadvantage in competing in the labour market with large employers who provide paid parental leave at present. The ones that I have spoken to see this as creating a level playing field.

Similarly, those employing women like the idea of funding being spread across all sectors. But certainly business organisations have strongly opposed all forms of parental leave and whatever is proposed needs to be robustly negotiated by government and it's not your role to do that, it's the government's role. But I don't think the problem of addressing that issue is greater than the problem of not having an adequate scheme.

On specific points raised in the commission's current proposal, I would endorse the portability question strongly. I think that most women need to take some time off before the birth and depending on the kind of work they do and their own physical capacity, it is very important. This period is not covered and the argument that it is to provide behaviour change in people staying out of work longer is, in my view, very instrumental and doesn't reflect real life. The taking the leave in conjunction with other forms of paid leave - you have clarified that for me, thank you.

MR FITZGERALD: You are right, we were talking about concurrence but the issue about voluntary top-up I was treating separately. But, you are right, we have got an issue about concurrence which we are trying to look through.

MS PERRY: Yes. I think for the same reasons that it should be able to be taken as flexibly as possible and I think that if people have the option of some sort of top-up from employers which would make them able to continue to meet their mortgage payments, I wouldn't like to see that being excluded by this. Like Zonta, and for the same reasons, I don't think that it should be taken - required to exhaust other paid leave entitlements. So in general applying to start dates, end dates, part-time, full-time, shared, I would prefer to leave that up to families and employer. Every family is different, especially unhappy ones, as Tolstoy would have said, but I'm very libertarian on these matters.

I'm sorry if my presentation has been negative, but I just felt that I had to take the opportunity to express these views. Thank you very much for your generosity in listening to me.

MR FITZGERALD: Thanks, Julia. We're well aware that you would not be happy with our treatment of your proposal, although I'm intrigued by some of the comments you've made today. But I am intrigued by one thing; you started off by talking about the differential between women who are in the workforce and those that would not be, but in your scheme how would you treat them? I know you've got

a different funding model and you believe our scheme is not generous enough and I understand that fully. I don't understand the issue about the differential because even under your scheme a woman in the workforce would be considerably better off in monetary terms than a woman who is not.

MS PERRY: Yes.

MR FITZGERALD: The only difference is in your scheme the contribution comes from both employers and employees, not the general taxpayer.

MS PERRY: Yes.

MR FITZGERALD: But the actual outcome is in fact more differential than ours, so I can't quite reconcile your concerns because we would think our scheme - and I don't want to argue the point about whether it's equitable, we actually think it has a great deal of equity in it. But I don't understand how you can come to your conclusion.

MS PERRY: Well, the government's component would be that everybody gets the government contribution and whether it's the contribution that you propose or the current baby bonus or somewhere in between, I don't have a problem with it being paid by the government in respect of the costs of all women, new parents and I don't have a problem with family tax benefit. I do have some problems with family tax benefit part B, but as a payment to families in the early stages, I see it as like one of those paid care schemes in other countries. You earn a number of entitlements by your labour, I would see this as being in that paradigm and I don't see it - sick leave payments, for example, are very much lower than the sick leave entitlements paid by employers. This is too separate paradigms in Australia. We don't expect the government to pay an earnings-related payment out of tax revenue.

So I would see the long-term outcomes of this as being partly passed on in half a per cent lower wages and quarter of a per cent increased prices across the board. I don't see it as being a net cost to employers, I just see it as being structurally part of your entitlements in return for your labour. Therefore I think it quite conscionable for the payment to be in fact in work, and it would be in fact proportionate to your labour and your entitlement would be as well. I know that it only goes to people who have children, but sick leave only goes to people who are sick and workers comp only goes to people who have a work accident.

MR FITZGERALD: In essence, parental leave only goes to people who need leave.

MS PERRY: Yes.

MR FITZGERALD: I mean, it's disassociated from the costs of parenting.

MS PERRY: Yes, that's right. But it's mainly the question of people's fixed costs. The number of people that I have spoken to who are the primary earners or significant earners - the people who have said that they would have to sell their house or go back to work early, or people who can't afford the rent - it just seems that people have certain options. If you have the option and the preference for arranging your life so that you're in a one-income family, that's an option that you have. But I think that people who have arranged their lives to contribute to the workforce should have this as part of a worker's entitlement - a wage-earner's entitlement. I don't know if I've made myself clear.

MR FITZGERALD: No, but the second point is our scheme obviously does target lower-income wage earners. The fact that we're not pro rata'ing the paid parental leave - the minimum wage - indicates that there will be more significant benefits to lower income earners who would not normally be entitled to voluntary arrangements and certainly currently are under-represented in terms of those areas, yet you don't seem to acknowledge much the benefits that would be derived by that particular group in your analysis.

MS PERRY: I do, but I don't think that 18 weeks is enough for them, because most of them have very little disposable income and so it seemed to me that the 18-week level would be, if the payment they were getting was fairly close to their former earnings, presumably most of them could manage the 18 weeks but not more. I think that it should be 26 weeks, but I don't see budget cabinet accepting, as you mentioned, a proposal which would take it to the 26 weeks for out of budget - I mean, I know what it's like in there.

MR FITZGERALD: Yes. Our consideration wasn't about the budget. We did the budget stuff after we did the design, I might say. The issue for us is whether or not you could get to the 26 weeks with a lesser payment, so before we even knew what the final bottom line would be - which ultimately is a government decision; they can be more generous or less generous, depending on what the government circumstances are - we actually did think that, with the 18 weeks of minimum wage, that we would get particularly lower-income earners much closer to the 26 weeks than is currently the case.

MS PERRY: Certainly. I did mention that your scheme would be a huge step forward on what currently exists, and I'm aware of the dilemmas that you have faced in it. Many of the women at those low income levels unfortunately have no other leave entitlements because casualisation tends to be particularly associated with part-time work. So for many of them, unless they've been saving up for the baby or of course if they've got a wealthy partner, there's very little extra money. I think they could get to 18 weeks, which they couldn't get to now, but no more.

MR FITZGERALD: Okay.

MS PERRY: I apologise if I was - - -

MR FITZGERALD: No, that's very good.

MS PERRY: For being negative.

MS MacRAE: No.

MR FITZGERALD: I'd just make the comment - a self-evident comment - the contribution you made in the first round was very valuable and, whilst in the actual final report we dealt with the financial issues in a relatively short form, I can assure you your contribution has always been very valuable, and today your insights are also much appreciated.

MS MacRAE: I guess that was a point I wanted to make and it's difficult for us because when we get 250 submissions, it's hard to show that we have actually tried to consider them all. Obviously with ones that have been well thought through and had a whole sort of scheme involved, we did try and give them some weighting in our report. But we've obviously looked at things in a lot more detail than we wrote up, so I would just reiterate Robert's point: that I hope you don't go away feeling that we've dismissed it easily, because we certainly didn't do that, and chapter 8 took quite some writing, I can tell you.

I guess one of the issues I suppose where we would probably have to agree to disagree - and it's sort of the point that you were just discussing - but whether or not the scheme that we've got is inadequate. So what we were trying to do was to design a scheme that delivered on the three goals, as we saw them, for the scheme. Now, I think I'd be interpreting you correctly that, for one thing, you think the 18 weeks wouldn't be sufficient to get most people to the six months, even on the current patterns that they've got.

MS PERRY: Yes.

MS MacRAE: So that would be the first point, but I think the other thing is that - - -

MS PERRY: I mean the people who have a very subsidiary income, have got a very comfortable housing arrangement - - -

MS MacRAE: Yes. No, I know. I appreciate the group basically that we are concerned about - - -

MS PERRY: Yes.

MS MacRAE: - - - when we look at the data who's actually taking six months, and there's the two groups: there's the high-income women who won't choose to take the six months anyway, but there is a group that the financial constraint is such. We've estimated on our analysis of the figures that we think 18 weeks will get you there, but you're obviously taking a different view and that's legitimate and we're happy to look at that again. I think the other issue is that I think it would be fair to say the commission struggled most with the third objective: the gender equity issues and the normalising of work, or the normalising of working and having a child and balancing those things.

I think probably in terms of your feeling of the fact that our scheme is inadequate, the fact that it doesn't aspire to replace wages for - replacement wages is I think probably partly a reflection of the fact that, to achieve that third level of objective, you've probably weighed that more heavily or seen that as something where we'd have to have a much higher level of payment than the commission has proposed. So I guess fundamentally I don't think we disagree about the main objectives, but what we need to do to meet them I think we probably have a difference of view about, and that's really at the nub of the - - -

MS PERRY: There are two branches of feminism really in this context. One is about recognising the differences between men and women and the other one is about treating men and women the same. I think that I come down on the difference side because I do think that society as a whole needs to accommodate the physical requirement, the particular requirements of women. I know that I want everything to be available to men and women, but I think that we would all expect that the majority of the leave would be taken by women, so I do want to seem women as being regarded as serious players in employment, not some kind of charity case that needs a welfare payment. So there is an issue of the respect for women's work and the acknowledgment and accommodation of women's child-bearing role that informs my view. It's a very big different step for me, because I've spent a lifetime administrating welfare system, looking at questions of vertical equity.

MR FITZGERALD: We've run out of time, so if there's any questions you'd like to ask?

MS PERRY: No, thank you.

MR FITZGERALD: Look, thank you very much for that, Julia. We'll take a 15-minute break and then resume with three participants starting with Workplace Law.

MR FITZGERALD: Okay, are we set? Good. Brian, if you can give your full name and then the organisation you represent for the record, and then some opening comments and we'll have a discussion.

MR WILLIAMSON (WL): Great. Thank you. My name is Brian Williamson. I'm managing director of a legal practice called Workplace Law and I've prepared a submission, which I submitted to the commission on 7 October this year, dealing with the hidden costs of paid maternity leave. Can I indicate at the outset that I have personal opinions about whether there be paid or unpaid maternity leave or parental leave provided, which I prefer to remain to myself. But really, this submission is around the legal context of maternity leave being paid and the implications at law that that might have.

The way that I approached my submission was to say that generally unpaid leave from an employer is treated as allowing continuity of employment but not continuity of entitlements. So that if a person took a year's leave without pay to travel overseas they would only accrue long service leave after 11 years, not after 10, in New South Wales. Similarly, the way that unpaid parental leave works at the moment is that if that leave is taken then whilst the employment is continuous the accrual of entitlements doesn't occur.

This is reflected currently in section 229 of the Workplace Relations Act which talks about the meaning of "nominal hours worked" and basically you have a certain number of hours and then you deduct, and quoted -

the number of hours (if any) in the week when the employee is absent from his or her work for the employer on leave which does not count as service.

So under the current act section 316 periods of parental leave don't break the employee's continuity of service but it doesn't count as service.

My submission is focused on the fact that if parental leave is paid it therefore changes the intrinsic nature of service. This is compounded by the environment where superannuation is paid on the entitlement. Your superannuation is paid on work or deemed work. When I say deemed work I'll give you an example. For any of us who are working in this room we take four weeks' annual leave per year. Your superannuation payments don't stop during your paid annual leave but indeed, that's counted as service. So at the end of two years of employment, if you've taken four weeks of annual leave in the first year, you can't just take three and seven-eights leave in the second year because during that period of annual leave when you've been away your entitlement to your next leave has been accruing as well.

So what I've submitted in the document is that in coming to a view about how your scheme is to work that there be no surprises. Employers, in my view, and I act only for employers, don't like surprises. So therefore if this period of leave is to be paid then unless the legislation says otherwise it will be paid leave with superannuation on top which therefore allows continuous service during that break. In 18 weeks, which is a third of a year, there will be a third of the four weeks' annual leave accrual, there will be a percentage of a person's long service leave accrue and there will also be other unexpected entitlements. These are for personal leave, which is 10 days a year, so that will be another three and a third days.

When I started to scratch the surface I also looked at issues such as notice and severance payments. I have given a couple of examples during the paper. For clarity, let me describe one. You have a person that's at three years and 10 months of service. They then take 18 weeks' paid leave. We're facing a recession. They come back into an environment where they're facing redundancy. If the leave was unpaid their entitlements would be capped at three years, 10 months. If their leave is paid, the argument is they've got continuous service and they're now a four-year employee with further entitlements. That backs into the severance payments which vary from industry to industry. As a yardstick you might say, "Well, it's two weeks per year of service," but in other industries it can be up to five weeks. So there can be a hidden surprise for employers.

So my submission has really been around the issue of if paid leave is to come in that it be very clear in the legislation as to whether that paid leave constitutes a period of service or not. Then it's on the surface and visible to all employers. At the moment the argument is the only cost to the employer apart from admin costs is superannuation. If my hypotheses are correct then there will be a lot more hidden costs.

Can I just say there have been a couple of commentators, one last week in a publication for Workplace Info, who have said that the argument around whether it's unpaid or not is not the issue. It's whether unpaid leave does or doesn't count as service for the purpose of the standard. This particular commentator said that likewise any employment entitlement that refers to service rather than employment would mean there would be no accrual of paid leave during a period of paid maternity leave because service relates to work performed - and then refers to the workers compensation system.

Can I say that I have had a look at the Workers Compensation Act and section 49 of the states act acknowledges that weekly compensation accrues despite a person's entitlement to annual leave. So it's quite possible under section 49 that you will have someone on six months of workers compensation who will then accrue two weeks of annual leave. The point that this writer has been making is that if it's paid from a third party then it can't be service, and refers to the workers comp act on the

basis that the insurer pays, quite often, the employer, who then passes that payment on or is reimbursed in respect of the injured employee. Clearly, no matter what the genus of that piggybank is, the fact that it's come through the employer's hands means that payment has been made and that under workers comp law that leave is exposed to the accrual of annual, long service leave and the other entitlements I mentioned such as increased notice periods and severance payments in the event of a subsequent redundancy.

So in my view this will mean a change of the federal act and it will also mean changes to each of the supporting state systems. I assume from the way your document has been created that it applies to state public service, certainly local government, which has by legislation recently been brought back from possibly being in the federal regime to definitely being in the state regime. So I would see that there will have to be a number of amending pieces of legislation in each state as well as federally.

I've had a very, very brief look - the legislation only came out yesterday in the parliament, and one of the things that we've been waiting on is to see whether Fair Work Australia would change this. I have only really had the opportunity to read in some detail chapter 2, division 5 of the proposed act as a bill. I'm referring to clauses 67 through 85. They deal with one of the 10 national employment standards. Clause 70 refers to entitlement to unpaid parental leave. It says that an employee is entitled 12 months of unpaid leave, et cetera. So it is going to, in many ways, reflect the current scheme and the current act. Clause 79 refers to interaction with paid leave and makes the point that with the exceptions of two subsequent subsections it doesn't prevent an employee from taking other kinds of paid leave while they're taking unpaid parental leave. The effect of the following two sub-sections is that they can't double up, so the 52 weeks remain sacrosanct, and then it's reduced by the amount of the paid leave. So all in all I see the 10 NES as reflecting the current regime. So again I would see probably the Fair Work bill, or Fair Work Act as it will become at some stage, having to be amended to properly reflect what you intend to do or what you're recommending.

MR FITZGERALD: Okay. Can I just ask a couple of questions? The first is just in relation to the current position and using your insurance case. If the federal government were to make the payment to the employer, for the employer to make that payment to the employee under our parental leave proposal, there are two ways that that can be seen. One is it is a payment to the employer, with the employer acting as an agent on behalf of the government; the second way that you can look at that is that the employer is making the payment and is simply receiving a subsidy from the government, and they're different in character.

We want to be explicit about that by the time of the final report, but I just want to understand from your understanding are the outcomes different currently in

relation to the accrual of other entitlements? In other words, if one is simply an agent, does the accrual of entitlements exist as distinct from making the payment in subsidy? Under the current law, your workers compensation case - I'm not sure it falls into which of those two categories.

MR WILLIAMSON (WL): Again this can probably be managed by legislation, but you start to bump into other forms of legislation such as the Income Tax Assessment Act. So is the payment that the employer makes a pass on? If it's a flick pass and no income tax is payable, then you might have an argument that, as a flow through, it doesn't bear the character of an employment payment. But if income tax is deducted, as occurs in the workers comp system, and you're paying super on it, then my view is that it looks like paid leave. Indeed, the whole title of your report is Paid Parental Leave. Now, if you use the word "paid" and you use the word "leave", it clearly is an employer-based scheme; so therefore no matter where the money comes from - I mean, it might come from the employer's customers, but the employer gets a piggy bank at some stage that it uses to pay its employees.

Some of it might be a tax refund or a payroll tax refund, so it might come from the federal government or the state government. It all goes into a pool that ultimately gets redispersed, so in my view anything that results in the employer making a payment to the employee with a reduction of income tax and with a payment of superannuation must be some form of paid leave. Now, you use another concept and you say, "Is it authorised?" Under every scheme, it has to be authorised by the employer because the employee has to make application. It's a compulsory authorisation; the employer hasn't got a choice to say no, but it's still by way of application. So again it fits inside the industrial structure or the employment structure and in my view this gives it the character of now paid leave authorised by the employer. The only carve-outs you can have is by legislation to say that this will be the only type of paid leave which doesn't accrue other types of entitlement.

MR FITZGERALD: So just taking that, we can achieve two outcomes. One is to actually say explicitly that you want accrued entitlements to apply, or the converse. If you wanted to the converse - that is that they shouldn't apply - your recommendation is that you would specifically exclude it as - - -

MR WILLIAMSON (WL): You'd have to carve it out.

MR FITZGERALD: What's the exclusion? What is it excluded as?

MR WILLIAMSON (WL): You'd have to specifically say, as is currently in the act, that unpaid maternity leave doesn't accrue other entitlements and that it's dealt with in section 229 as it doesn't count as service. You'd need to amend the section 316 as it currently stands to say that a period of parental leave does not break the employee's continuity of service, where it says, "However, a period of parental

leave does not otherwise count as service." So you've got this concept of "count as service". Now the current act is silent on any types of paid leave so my view would be - because it's just presumed - if it's paid, it's authorised; therefore, it's service. So you'd need to overtly do it and that would have a knock-on effect to similar legislation at state level and the territories. So for example the New South Wales Industrial Relations Act - I think it's about section 70 - talks about unpaid parental leave. You would need to have the same provision go in. It's not hard to do, provided you have the will of each of the state governments and the territory governments as well.

MS MacRAE: Can I just clarify that because we seem to have had some conflicting information about this. In relation to the reach of the NES, I thought that potentially the unpaid parental leave provisions came under a different sort of constitutional - what's the word, Robert? Sorry.

MR FITZGERALD: They came under the external affairs power.

MS MacRAE: The external affairs power and, as a result of that, they were truly national and so they applied regardless of the state legislature, or am I not correct in that?

MR WILLIAMSON (WL): My view is that there may be some applications of that. Let me go back to basics. Prior to WorkChoices, we had a federal and state shared industrial power under section 51(35) of the constitution and both systems use the same nomenclature; there were awards, there was conciliation, there was arbitration. WorkChoices walked away from that 102 years of history and said, "We'll now use section 120," which is the corporations power. WorkChoices automatically excluded partnerships, so Freehills, who helped draft the legislation, aren't covered by it because they're a partnership. It excluded unincorporated entities, so churches - Little Sisters of the Poor aren't Little Sisters of the Poor Pty Ltd, except for one of their entities; the Baptists aren't incorporated, except in Queensland; and it excluded sole traders.

So even now, whilst they talk about a uniform industrial system, both the Liberal Party and the Labor Party have failed in that aim because whilst the mix was about 60-40 prior to WorkChoices, it moved to about 85-15 - 85 per cent being covered under the federal regime. Now, there is an argument, and I accept the argument that the external affairs power might enable that parental leave to cover either partnerships or sole traders, but I still think there's a further carve-out at state level and the doctrine of state immunities probably applies, which means that state government departments and instrumentalities won't be covered. You've also got the shift of local government. Previously local government was incorporated, and therefore there was an argument that it moved into the WorkChoices world.

Now, earlier this year in Queensland, they decorporatised local government. In New South Wales in the last two weeks, they've decorporatised it but called it a "body politic" but still left it incorporated. So all these niceties mean that the argument that local government had moved federally is over and they've moved back to the states in Queensland, New South Wales and Victoria. You've still got the others states, but they're sideshows in terms of the numbers. Under the doctrine of state immunity, I think there's a fairly strong argument that the federal conventions won't apply - so to employees, Department of Health, Department of Housing, so it misses the nurses, misses teachers, et cetera. We've already seen the decorporatisation in the last four weeks of RailCorp. So they're moving it back to a government department for two reasons: (1) to move it out of WorkChoices, and (2); to gain further control of it. Whether Sydney Water or all of the other state-owned corporations will go in the same way is unknown, but there is a very clear cleaning out of which jurisdiction is going to cover - - -

MS MacRAE: Your view, just to be perfectly clear so I do understand it, is that if we wanted to be sure, to be clear in all jurisdictions, we would definitely need to make any legislative change, not just to the NES, but to a range of state legislative instruments as well.

MR WILLIAMSON (WL): Absolutely, and the other area where you'll need to do it is also in terms of the long service leave legislation, because even though the NES refer to long service leave - and I haven't read the provision but I understand it will still recognise the current state systems.

MR FITZGERALD: So just to push the clarity a bit further, right at the moment in the state of New South Wales, the unpaid leave provisions, the 52 weeks, how is the public servant in New South Wales covered? The public servant in New South Wales is covered by separate legislation which has incorporated those provisions, or because nearly all the conversations we've had so far in this inquiry, everyone has assumed that all employees, irrespective of who they're employed by, are covered by the NES unpaid leave, or the WorkChoices Act provisions of unpaid leave. What you're saying would indicate to me that that isn't so, but state legislation may well reflect those same provisions through other instruments.

MR WILLIAMSON (WL): Yes. Look, I haven't prepared today to look at the question of doctrine of state immunities.

MR FITZGERALD: No, that's fine.

MR WILLIAMSON (WL): But in terms of the WorkChoices legislation, it's based on section 51(20), and in the preamble I think it's section 16 of the act talks about its application to constitutional corporations. A constitutional corporation is an entity that's incorporated, and secondly, one that either deals in trade or in finance. So

there are arguments and there are older cases, like Red Cross, for example, where only 4 per cent of their turnover came from non-government funding, as to whether they're a trading corporation, and that's where the argument about local government came in. But as a general proposition, I would think that the reach of the NES isn't so great that it will cover all employees, and that's the critical point.

MR FITZGERALD: I agree. Certainly we intend to be explicit by the draft report in relation to this. Given that you act in this area all the time, do you have a particular view as to whether or not leave entitlements should in fact accrue? You may not have a view on that, but I just wanted to see - or whether they should be excluded for the purposes of paid parental leave?

MR WILLIAMSON (WL): As a matter of logic, I would have thought that if you have a paid form of leave, then entitlements accrue. You have it for annual leave, you have it for long service leave, you have it for personal leave, you have it for military service leave, you have it for any type of paid leave by the employer. I own my business, so I suppose if I sent myself to the US for a six-week conference and the firm paid my travel and paid my income during that period, I would not expect my annual leave to be reduced because of that period of paid leave. So logically, it seems to me that it should not be a carve-out that is different to the other types of paid leave. That being said, the fact that the first days of the scheme is being put up as the minimal cost to employers based on superannuation payment then has to be rewritten, because clearly there will be other costs that will be overt, not covert.

MR FITZGERALD: Can I ask this question? Long service leave, I presume your answer, is if I take long service leave for a year, all of my other entitlements continue to accrue or does long service leave sit separately?

MR WILLIAMSON (WL): No, it doesn't sit separately. It's like annual leave. So after 10 years of service in New South Wales, you're entitled to two months of long service leave. During that two-month period, you would accumulate a further small percentage of long service as well as annual leave and personal leave.

MR FITZGERALD: Some employer groups have said to us that this leave is of a different nature or character to other leave. I'm not absolutely certain why they believe that, but when you look at the other forms of leave that you mention, which are very diverse in character, each of them have their own peculiarities and a desire to meet different needs. But I'm just wondering whether you think there is anything intrinsically or innately different about the nature of paid parental leave that would support an argument that it is different in character from other leave.

MR WILLIAMSON (WL): Only the cost and only the politics.

MS MacRAE: I guess the distinction though, to some extent is that the level of

payment is different. I mean, ordinarily, if you're taking another form of leave, you're generally getting paid, aren't you, at your existing rate of pay as if your service had continued. In this case, you're taking leave and the amount you're paid will be, we've said, capped at the minimum wage.

MR WILLIAMSON (WL): Yes.

MS MacRAE: So your accruals won't be related to that minimum wage payment. It will depend on what you're earning at the time you take that - the leave that accrues while you're on that - - -

MR WILLIAMSON (WL): That's not necessarily so. It is for annual and personal leave and long service leave, but it's not for workers compensation leave. The first 26 weeks at full pay, and then you'd reduce to a statutory rate. The reason I raised workers comp was that it in many ways is analogous to what you're looking at here. We have the money paid from an insurer, generally to an employer who disburses it to the employee for a period of time as the whole of pay, but then reduces to a statutory rate which fluctuates depending on how many dependants the injured employee has, and even recognises that there might be no injury but just the payment of hospital and other medical expenses.

Hence the reference to section 49 of the Workers Compensation Act in New South Wales. There are a number of similarities, and therefore, that makes it, in my view, paid leave. Yes, you're going to end up with all sorts of anomalies. For example, you may have an anomaly where someone is a casual employee earning \$300 a week, goes on maternity leave. The first hurdle is you will say to me, "But our system doesn't cover casual employees." Yes, it does, because once a person is a long-term casual, they're deemed permanent. The long service leave reflects that.

Long service leave accrues for casuals, and there are some pretty well thought out arguments now around how long it takes a casual to become deemed permanent. So it's more than theoretically possible for a casual to be earning \$300 a week, then go on maternity leave and get the 577 or whatever the precise figure is. The interesting argument then becomes, when they accrue that, what are the entitlements they accrue, if it's going to be paid? So the 1.3 weeks of annual leave, what's that worth, and so on.

MR FITZGERALD: Okay. Thanks very much for the submission, and we will be looking at it as we've indicated in the break. We're also seeking advice from DEEWR in relation to a number of these issues, but the central point of your submission is that we need to be explicit, we agree with, and we will be.

MR WILLIAMSON (WL): Employers hate surprises. I can say that, acting for them all the time.

MS MacRAE: We wouldn't want to deliver any to them either. We certainly wouldn't want to find that later on there was something that we didn't know was sitting behind the recommendations.

MR WILLIAMSON (WL): The second part of it is that, you see, some of these arguments come out - and I won't hold you up - but some of these arguments come out two and three years later. The way that they will come out can be ugly. I've recently dealt with a matter that was prosecuted in the state Industrial Magistrates' Court. Employer and employee have an argument, employee leaves the business, the employer had failed to pay the correct amount during the last six weeks. They ended up with seven prosecutions each worth \$33,000 of fines. One of the prosecutions was for \$54 for the incorrect calculation of the annual leave loading.

MR FITZGERALD: Right.

MR WILLIAMSON (WL): Now, to be exposed to a \$33,000 fine for a \$54 miscalculation - eventually they were busted for \$1650 on that. But the point that I'm making here is that this is an argument, if it's not explicit, will come out two and three years later. It will come out in the context of either a workplace ombudsman prosecution or some sort of damages claim and/or discrimination claim. Hence the desire for it to be overtly dealt with rather than leave a fertile area of grey law for employers and unions to play with.

MR FITZGERALD: Sure, that's great.

MS MacRAE: As long as we cover notice and severance and the other legal accruals you reckon we've got the field covered, there's nothing else there that we should be thinking about?

MR WILLIAMSON (WL): You could technically throw workers comp in - - -

MS MacRAE: Right.

MR WILLIAMSON (WL): - - - as the sixth area. But I would have thought - theoretically possible but it's nevertheless there. You could have a person who goes on that leave who is covered by workers comp, I daresay it happens. But provided you cover those I think you've covered the areas, you've covered the field.

MR FITZGERALD: All right. Look, thank you very much.

MS MacRAE: Thank you.

MR FITZGERALD: Now we'll have the Public Service Association of New South Wales. All right. If you could give your names and the position and the organisation you represent and then, as has been the custom all day, if you could then give an opening comment and we'll have a bit of a chat about those points.

MR TURNER (PSA-NSW): Okay . I'm Steve Turner. I'm assistant general secretary of the PSA.

MS DUNCAN (PSA-NSW): I'm Karen Duncan. I'm a member of the PSA.

MS HAMEED (PSA-NSW): Shabnam Hameed, I'm the women's industrial officer of the PSA.

MR FITZGERALD: Great. Over to you.

MR TURNER (PSA-NSW): The Public Service Association of New South Wales is a trade union which represents New South Wales government, New South Wales universities and related private sector employees. We represent approximately 47,000 members, 58 per cent of which are women. The PSA's initial submission supported a six-month scheme at full wage replacement. While our position has not changed, the PSA welcomes the commission's proposed scheme as we believe that it is a first good step and that a paid parental leave scheme is urgently required in Australia.

We acknowledge that the world economy has changed rapidly since our last submission and that such proposal - that the commission's recommended scheme should be implemented in the 2009 budget. We submit that the introduction of a paid parental leave scheme in the 2009 budget will complement the government's current policy and response to the global financial crisis of stimulating the economy, as the proposed scheme will encourage spending.

Most Australians of child-bearing age are necessarily early in their career and have not reached their full earning potential and simultaneously face multiple financial responsibilities, including repayment of higher education debt, higher mortgage repayments and rising living costs and consequently have small savings in their banks. New parents face additional costs around the time of the birth of the child. As such, a paid parental leave will deliver funds to the Australians at a point in their life cycle where they are most likely to spend the funds, in a short term stimulating the economy.

The proposed scheme however, poses some difficulties for our members and it is the intent of our verbal submission today to outline those concerns. Protection of current entitlements. Current industrial entitlements need to be protected to ensure

that the proposed scheme has the desired effect to enable parents who can supplement the statutory scheme with other industrial entitlements to take at least six months of paid parental leave. We make the submission as employers have already begun to indicate that they will not guarantee current entitlements to parental leave and that they will negotiate to reduce current entitlements through bargaining by absorbing the proposed government-funded parental leave scheme into current arrangements.

Absorption of the proposed government scheme by employers through bargaining would be detrimental to the workers as they currently receive industrial-negotiated paid parental leave plus the baby bonus and are also eligible for family tax benefit B. Were employers able to absorb the proposed scheme workers would be worse off by up to \$6125.26 - very particular.

MR FITZGERALD: I was going to say, that is very particular.

MR TURNER (PSA-NSW): As they will be no longer eligible for the baby bonus or the family tax benefit B. We note that it is the commission's view that most employers will keep their existing programs to ensure they remain employers of choice. However, recent Australian experience under WorkChoices has been that employers will seek to reduce conditions if there is an inadequate legislative framework to protect employees' entitlements.

We also submit that the global financial crisis with the predictions of reduced economic growth and increased unemployment may reduce employees' bargaining power to maintain their current conditions. We concur with the commission's view that employers and employees who wish to restructure their employment benefits should be free to do so and that it is desirable, given the intent of the statutory paid parental leave scheme, that any new package of employee benefits - and employees and employers may privately negotiate in the light of the statutory scheme - be at least as valuable to employees as their current packages. To ensure that workers are at least as well off under the proposed scheme the PSA submits that the statutory scheme must specify that government entitlement is in addition to current entitlements and contain a no-disadvantage clause which ensures that employers cannot reduce workers' package of family-friendly entitlements.

We note that it is the commission's view that the duration of a paid statutory scheme does not have to be equal to the period of absence as parents already use many other options and access to privately-negotiated paid maternity schemes and past accumulated leave to fund a period of leave from work to care for their children. The PSA supports the Unions New South Wales recommendation that 18 weeks' paid parental leave be introduced in May 2009, 22 weeks' in May 2011, 26 weeks' in May 2012 and 28 weeks' in May 2013.

It is the PSA's view that for the scheme to be viewed as part of a working life rather than a private matter that the scheme needs to have a strong industrial underpinning for those in the workforce, with a separate welfare stream for those out of the workforce. For paid parental leave to be a normal part of working life it needs to be structured like any other leave arrangement and should be at full income replacement, attract normal superannuation contributions, be counted as service for the accrual of other industrial entitlements and have equivalent compliance and dispute resolution mechanisms. All other forms of paid leave, including recreation leave, sick leave and long-service leave, are paid at an employee's full income, attracting superannuation contributions and is counted as service. Quick and effective dispute resolution is also available in the state jurisdiction here in New South Wales to deal with breaches, disputes of interpretation or cases of discrimination through the IRC.

The PSA submits that the scheme needs to have compliance in dispute resolution mechanisms to effectively deal with any breaches, disputes of interpretation or cases of discrimination arising as a result of the implementation of the scheme. We contend that this would be most effectively done through the industrial courts as it is a no-cost jurisdiction and it facilitates easy access to the layperson and has an emphasis on conciliation and maintaining an ongoing employment relationship. The PSA submits that the scheme must have universal coverage and provide the same parental leave conditions for all Australian workers, regardless of whether they are in the state or federal industrial relations jurisdictions.

As such, the scheme must be implemented, we say, through commonwealth legislation and not through the national employment standards, as the national employment standards do not, we believe, cover workers in the state industrial relations jurisdictions. While mirror legislation could be introduced in the state jurisdictions to mirror the NES provisions, the PSA is of the view that this could undermine the simplicity of the scheme, complicate implementation and open the scheme to protracted negotiations between state and federal governments.

The PSA submits that the proposed scheme should be paid at the adult minimum wage or at full income replacement, whichever is the higher. We have been swayed by the commission's argument: that replacement wages, sometimes the basis of paid-leave schemes overseas, would provide weak incentives for lower-income families to work depending on the nature of welfare payments available to those out of the labour force, and welcome the commission's proposal that the scheme provide a minimum wage to those workers who currently earn lower than the minimum wage due to working less than full-time hours. We concur with the commission's view that such a scheme would create good incentives to work for lower-income families, since the payment is significantly more than the value of income support for women working in the unpaid sector.

It is our position however that for parents earning more than the adult minimum wage, full wage replacement needs to be provided so that families can adequately meet their regular financial obligations and take an adequate period of leave around the birth of their child. The PSA submits that it is important that the scheme provide full wage replacement for those earning more than the minimum wage, as the scheme sends a strong signal about the value of parenting. It is also important from a gender equity perspective that paid parental leave be at full wage replacement for parents earning above the adult minimum wage, as parental leave will be predominantly accessed by women.

We note that the commission has considered many models that address who should finance the scheme, including direct employer-financing, employer top-ups and pooled funding arrangements, and have weighed the risks and complexities involved in each scheme. Nevertheless, we seek further exploration of how the scheme can deliver full wage replacement due to the significance of the issues outlined. It is the PSA's position that superannuation should be calculated at the employee's actual wage and paid at existing rates, and not capped at 9 per cent of the adult minimum wage. It is important from a gender equity perspective that employers be required to continue normal superannuation contributions, as women will be the primary users of the scheme and women already have disproportionately lower amounts of superannuation savings.

Capping of super for the period of the parental leave scheme would be a substantial disadvantage for women, as it impacts on their long-term ability to accumulate adequate superannuation. Capping of superannuation also poses considerable compliance and administrative costs for employers and employees. Employers would need to reconfigure their payroll systems to calculate and pay the capped amounts, which would be of considerable cost to many organisations as system modifications and additional human resources may be required. Employees will be disadvantaged by capping not only due to the long-term effect on their superannuation balances, but because many superannuation funds require ongoing normal contributions, especially in the New South Wales public sector.

Many PSA members have their superannuation in the State Superannuation Scheme, SSS, which is a defined benefit scheme with approximately 24,000 members. The scheme mandates that members of the scheme and their employers continue paying their normal contributions during a period of paid maternity leave and, in fact, also through period of long leave without pay of more than six months. The rate of contribution is not set, unlike more recent accumulation schemes, and is greater than 9 per cent and varies from member to member. Members are entitled to a defined benefit on retirement calculated on their exit salary.

Other PSA members have their superannuation in the State Authority Superannuation Scheme, SASS, which is another defined benefit scheme with

approximately 50,000. Most members in the SASS scheme are entitled to 18 per cent employer contribution and make 6 per cent of their own contributions, with some members entitled to 21 per cent employer contribution. The rates of contribution vary depending on the original scheme prior to the amalgamation of SASS. Like SSS, the SASS scheme requires that employers and employees continue to make their normal contributions during a period of paid maternity leave which is referred to as "prescribed leave" under the respective schemes.

Under the commission's recommendations to cap super, employees will need to contribute both their normal contributions and the gap between the capped amount and their normal employer contributions to accumulate super, which will place immediate financial strain on the employees. As both schemes are defined benefit schemes, there is also an added complication - that there is no scope for accumulation of superannuation funds. Therefore the capped lump superannuation contribution would need to be invested into another fund that allows for accumulation. Employees and employers would then face additional administrative costs, as they'd be required to make two superannuation schemes.

It is also the PSA's view that requiring that employers pay normal superannuation contributions is more equitable between employers, as those employers who employ more highly-paid employees will receive a proportionally high employee-retention benefit. The workforce attachment requirements, we do not support this recommendation as it excludes individuals who are attached to the labour force but may work less than 10 hours per week, be seasonally employed, or precariously attached, or may not yet have returned from a previous period of parental leave. The PSA submits that the 10-hour threshold is too high, as it excludes workers who consistently work one day per week.

Workers may have lifetime attachment to a labour force, but may work one day per week over considerable periods of time to fulfil their child rearing responsibilities or while upgrading their skills. The 10-hour threshold is of a particular relevance to the PSA as our members have the right to request part-time work until their child is of school age. The right to request is complemented by the right to return to their former position, hence workers may not meet the commission's proposed eligibility criteria for attachment to the workforce when in fact they have ongoing employment and attachment. We believe these workers should not be disadvantaged and submit that the threshold of labour force attachment should be reduced to seven hours per week or one working day.

We further submit that the criteria should explicitly account for periods of leave. As previously stated in our submission, 24.8 per cent of workers, mainly casuals, have no leave entitlements and need to spend a period away from the labour force for recreation, illness, family and community service and jury duty et cetera. Workers who are forced to self-finance their leave due to their employment status as

workers without leave entitlements should not be further disadvantaged by being excluded from the proposed parental leave scheme. The PSA submits that this is a poignant consideration, as mothers often need to take leave prior to the birth of their child due to illness. This is recognised in most industrial parental leave entitlements, which allows mothers to access maternity leave prior to the birth of their child.

The PSA contends that a woman's eligibility to the maternity leave scheme should not be compromised because of a period of illness prior to the birth of a child. Periods of non-attachment to the workforce should also be discounted for seasonal workers or for those in precarious employment, ie casuals as mentioned before, as periods between jobs characterise this growing part of our workforce. The eligibility criteria that parents need to have connection to the workforce in the immediate 12 months preceding the birth of the child also needs to be reconsidered as this criteria excludes many women who have long-term connection to the workforce but may be temporarily disconnected as they are having second or subsequent child.

Many families plan their children close together and parents may not have the opportunity to return for a period of parental leave of 12 months before proceeding on the next period of parental leave. This is especially the case for our members as our members have the right to request an extension of a period of unpaid parental leave by a further 12 months to a total of two years. As with the right to request part-time work the right to request a further period of unpaid leave is complemented by the right to return to work, securing ongoing employment.

Members have already contacted the PSA to advise us that under the commission's proposed eligibility criteria they would be ineligible for the paid parental leave regardless of long periods of previous workforce attachment and ongoing employment, certainly because their babies were born too close together. We believe that eligibility criteria that exclude workers who have a genuine attachment to the labour force may produce a perverse outcome and act as a disincentive to maintain a connection with the workforce.

The PSA welcomes the recommendation that eligible mothers may transfer the entitlement of 18 weeks' parental leave to eligible partners as it will allow the other parent to more fully share in parenting. However, we feel the restriction that there can only be one transfer between parents to be limiting and denies flexibility. More than one transfer of leave between partners could become very important if the primary care giver becomes ill or cannot continue to provide care. Shared, not concurrent, access to leave between partners would also facilitate quality care for the child and more equitable career opportunities between partners. For example, if both partners are able to access 2.5 days' leave per week both partners would be able to share in child-rearing and maintain the connection to their careers.

We welcome the recommendation for paid maternity leave and other

parental leave but submit that the two-week paternity/other parent leave for eligible partners should be increased to four weeks at replacement wages plus full superannuation to allow partners to have a more adequate time to bond with the baby and provide support for their partner. We also submit that more flexibility should be afforded and that the parental leave for eligible partners should be available 12 months from birth or adoption of the child. This is particularly important for those workers with existing parental leave entitlements as the proposed six-month limitation may exclude workers from accessing this leave.

The restrictions of the proposed 18-week entitlement pose a number of different problems that will need to be resolved in the final recommendations which are: after the birth of the child. The woman may need to access the scheme prior to the birth of the child due to the physical impacts of pregnancy. A period of prenatal leave may be in the best interests of the mother and the child. This is explicitly recognised in most industrially-negotiated schemes which allow for access to maternity leave prior to the birth of the child. For example, PSA members covered by our conditions award can access paid maternity leave nine weeks prior to the expected date of the birth of the child.

We note that it is the commission's view that while the commission acknowledges that many women need some prenatal leave, women are able to use sick leave where there is a medical need and a prenatal period is also covered by several existing statutory provisions. However, as previously explored in our submission re casuals who do not have access to paid leave entitlements - as such the PSA submits that it is important that women be able to access a period of prenatal leave.

Further, after a period of other continuous leave commences at the birth of the child - must be commenced within six months of birth. The PSA does not support this requirement as it would disqualify many of our members from accessing the scheme. Many of our members are general staff in universities. Across that sector they have an excess of 26 weeks' paid parental leave under their enterprise agreement with 26 weeks being the minimum entitlement in the sector. Under the commission's eligibility criteria they would be ineligible for the proposed parental leave scheme and the proposed paternity payment. This would disadvantage our members by \$9788.04, the current minimum wage of 18 weeks.

Most PSA members have an entitlement to 14 weeks' paid maternity leave under the Crown Employees Award which allows them to access leave at half pay. The commission's proposed eligibility criteria would disqualify members who accessed their leave at half pay from the proposed parental leave scheme, again disadvantaging them by that amount. We note that members could modify their access to leave entitlements to ensure eligibility for the proposed scheme by either taking a longer period of prenatal leave or foregoing excess leave at half pay. But

this may disadvantage our members financially due to the tax implications or may lead to perverse consequences such as members taking longer periods of prenatal leave than necessary.

MR FITZGERALD: Mr Turner, we're just going to run out of time shortly.

MR TURNER (PSA-NSW): Yes.

MR FITZGERALD: So if you could make a couple of concluding comments and then we can ask some questions.

MR TURNER (PSA-NSW): I think most of what I was going to say is covered by our submission which - we have put a new submission in.

MR FITZGERALD: Thanks very much for that very detailed and comprehensive response. I might ask Angela to start off with some questions - sorry, yes indeed.

MS DUNCAN (PSA-NSW): Mine's quite short.

MR FITZGERALD: No, that's fine, please, sorry about that. My fault.

MS DUNCAN (PSA-NSW): My name is Karen Duncan and I'm a 39-year-old mother of a two-year-old boy and I'm expecting another child in June 2009. I live with my partner and child in Concord, Sydney and we have a mortgage of \$420,000, which may sound large, but it's a challenge to have a smaller mortgage in Sydney when trying to accommodate a family.

I'm employed as a senior counsellor by the New South Wales Department of Education and Training. Prior to the birth of my first child I had worked full-time for many years. I returned to work three days a week when my child was 10 and a half months old due to financial necessity. My partner earns an average income as a public service and also studies part-time. He also has an older child from a previous relationship for whom he has financial and parental responsibilities. I believe we're a fairly typical Sydney family with fairly typical financial burdens. While I'm very pleased to see government-paid parental leave for most employees finally seriously on the agenda I would like to raise several concerns with the proposed model. I believe my concerns will be shared by many working women who live in Sydney at this time.

First concern: the model does not specify that existing maternity leave arrangements be kept and that the new scheme be in addition to all existing arrangements. This is of great concern given that currently many public servants have 14 weeks more of paid maternity leave at full wage replacement. If these conditions were not kept these employees such as myself would be severely

disadvantaged by the proposed model.

Second concern: the condition that the proposed 18 weeks of parental leave be taken within six months of the birth of the baby requires some further consideration. It's important that this proposed leave be in addition to maternity leave already available to maximise the time that primary carers can spend caring full-time for their babies. Currently many public servants take their 14 weeks' maternity leave at half pay over 28 weeks, as I did, and then take extended leave at half pay after that. Would these mothers then be forced to forfeit the additional proposed 18 weeks' paid leave or would these mothers be forced to take their public service paid maternity leave at full pay and therefore pay more tax just so they can obtain access to the additional 18 weeks proposed paid leave?

Some specifications needs to be made that allow primary carers to be entitled to both this existing parental leave at full or half pay to their choosing and the proposed additional 18 weeks of paid leave. In this way many public service primary carers would be able to take close to a year off work on some kind of paid leave to spend with their babies which would benefit society at large. Perhaps the six-month condition needs to be removed to enable this or at least some specifications included that if the 18 weeks are taken as the first form of leave that other existing maternity leave and other entitlements can follow with exception. Currently it is my understanding that public servants have to use up all their available paid maternity leave before they are permitted to take any other form of leave.

Concern 3: I'm concerned that unless it is specified in this model, public servant mothers or primary carers may be able to be forced to take all available public service leave before being eligible for the proposed 18 weeks' paid leave. This would be extremely deleterious because where mothers or primary carers return to work with babies or infants it's likely that their child will be sick from time to time and sent home from child care and that the mother or primary carer will be required to take further time off work to care for the child. Hence mothers or primary carers need unused annual or extended leave to cater for this.

Concern 4: the condition that the primary carer must be employed continuously for the preceding 12 months to the birth of the child to obtain the proposed 18-week payment will be detrimental to many of the neediest of families. Many pregnancies are unplanned and this condition will continue to force those who have not been able to plan for pregnancy back into the workforce prematurely. No-one benefits from having stressed, sleep-deprived, guilt-ridden parents back at work for this reason.

Concern 5: the condition that the employee has to be in paid employment for a continuous 12 months prior to being eligible for second or third et cetera periods of paid parental leave will also be detrimental to many families. There are many

reasons why the primary carer may not have been back in paid employment for 12 months prior to having another baby in their care, including some women have a subsequent pregnancy very soon after giving birth, which may not allow them the opportunity to return to work before the next birth. Many primary carers will take a period of unpaid leave to care for a baby because of the inadequacy of the current and proposed parental leave systems. Under the current proposal many of these people would continue to have no paid leave available to them to care for subsequent children and hence be forced prematurely back into the workforce.

Concern 6: I believe it is worth highlighting here the lack of generosity that currently exists even in the public sector with regard to funding maternity or parental leave for subsequent children. This is an enormous problem, given that a lot of families contain more than one child. In the department I work, which I believe has similar conditions to most New South Wales departments, women who work full-time are granted full-time material leave of 14 weeks for their first baby. Most mothers that I work with, including myself, then return to work part-time for the following years, but still hold a full-time position.

When these mothers have a second baby, and the same for subsequent children, they are only entitled to full-time maternity leave for another 14 weeks if they give birth to the second baby within two years of giving birth of the first baby; if more than two years have lapsed, they're only entitled to pro rata maternity leave for 14 weeks. This causes extreme financial stress for the women I work with, who are dependent on the one and a half or 1.6 incomes just to meet basic needs, as opposed to the 1.2 incomes that are currently provided for. Are public servants all to try and space their subsequent children in less than two-year gaps?

I, like the mothers I work with, took all the paid leave available to me to extend my time with my first baby, such as maternity leave, annual leave. So there is limited other paid leave available to me to allow time with second and subsequent children. This is a serious issue that does not seem to have been addressed in the current or any past models. In my instance, where I'm expecting a second child and am only eligible for a pro rata maternity leave for the second, my family income after the birth of my second will not cover our basic costs and we actually have to sell our home just to get through the next couple of years. We have a lot more money than many families in Sydney, so I presume they're all renting.

MR FITZGERALD: Thanks very much for that. Can I just ask a couple of questions, one that you just need to clarify it for me. You have both, Karen and Steven, raised the issue of our eligibility criteria not being appropriate; on in relation to the hours, being you want a reduction from 10 hours to seven. But I'm not clear, and it's obviously in your written submission, but what is the period of time that you think is reasonable to demonstrate an attachment to the workforce? We have said 12 months with any employer, or employers, and we're conscious of the second and

third child issue as well that Karen has raised. But I just wonder, do you have a proposal.

MS HAMEED (PSA-NSW): Yes, our proposal would be for the second and subsequent child to tie it in with the right of return and the right to request part-time leave. So under the family provisions test case, where it came from, we have the right to part-time work until the child is of school age. So what we'd be suggesting is for any subsequent period of parental leave that your workforce attachment prior to your first child be taken into consideration.

MS MacRAE: Up until that first child turns six or is up to school age.

MS DUNCAN (PSA-NSW): Yes.

MR TURNER (PSA-NSW): If you already meet the eligibility, you shouldn't have to re-demonstrate it.

MS MacRAE: Yes, for the first child, then that eligibility would be enough to qualify you for any children you had up until the time that first child is school-aged.

MS DUNCAN (PSA-NSW): Yes.

MR FITZGERALD: What about in relation to the first child, what is the period of time that you believe is appropriate to demonstrate attachment? Are you supporting the 12 months? I got the feeling that you - - -

MS HAMEED (PSA-NSW): We haven't put in a submission to reduce the 12 months but we think that there should be some scope there for people to put in and say, "Well, I've been sick for two months before my child was born, which is why I don't have 12 continuous months."

MR FITZGERALD: So you have exceptional circumstance provisions?

MR HAMEED (PSA-NSW): Yes, or that I've been on recreation leave as a casual or I've been in between jobs as a casual.

MR TURNER(PSA-NSW): Or have been - like, we have people who work with national parks who are only employed during the ski season or during the summer walking season, and they might be able to demonstrate that they have worked with national parks for seven years but for one reason or another they haven't quite met the criteria just before the birth of this child, but it would be quite clear to demonstrate ongoing employment. They might have got glandular fever in the last ski season or - - -

MR FITZGERALD: Who would make that determination? I'm just trying to work out - let's assume you're stuck with the 12 months, you have the exceptional circumstances provisions, including the seasonal worker type of thing. Who would actually make the determination? Is it back to, let's assume, Centrelink or somebody?

MR TURNER (PSA-NSW): If you had a dispute resolution procedure in it, it could be done through the Industrial Relations Commission, for instance. They are quite good at looking at employment relationships and determining someone's employment, for instance.

MR FITZGERALD: Yes, it's tricky. I must say, no matter what eligibility criteria could you come up with, there are all those cases or circumstances which fall outside that.

MR TURNER (PSA-NSW): The criteria in the public sector at the moment is 40 weeks. So obviously you can't have been pregnant before you started work. We don't really have many disputes arising from that.

MS MacRAE: 40 weeks out of the previous 52?

MR TURNER (PSA-NSW): You just have to have been employed for 40 weeks before you're eligible for taking maternity leave. So we have got paid maternity leave, but you're only eligible if you have been employed for more than 40 weeks.

MR FITZGERALD: Continuous?

MR TURNER (PSA-NSW): Yes.

MS HAMEED (PSA-NSW): It doesn't have to be the 40 weeks immediately preceding the birth, you just have to have worked for the public service for 40 weeks. So it would be possible - - -

MR FITZGERALD: At any time? But surely that's time-constrained. There must be a period of time within which the 40 weeks have to be worked.

MS HAMEED (PSA-NSW): It says that you must have 40 weeks' continuous service. So if you took one week off the week before you had the baby on leave without pay, it doesn't break your 40 weeks' continuous service.

MR FITZGERALD: Sure, but the 40 weeks have to be worked within the past 12 months or the past two years.

MS HAMEED (PSA-NSW): You still have to be an employee.

MR FITZGERALD: Yes.

MS HAMEED (PSA-NSW): Yes, but if you're on leave without pay there isn't a time constraint on how long you should be - - -

MR FITZGERALD: Sure, no, that's fine.

MS MacRAE: Just that it doesn't break your continuity of service.

MS HAMEED (PSA-NSW): Yes, exactly.

MR TURNER (PSA-NSW): I only raised it to show that, you know, there is a limitation and, if there's a dispute about that, it can be resolved.

MR FITZGERALD: Another issue you've raised, and part of it is the way we have drafted it but part of it is because it doesn't work, is the issue that both Karen and Steven raised in relation to concurrent leave or the taking of the statutory period and the collectively bargained period. Our intention was not to have a situation where you had to take the PSA leave, for example public service leave, and then ours and you might miss out. That wasn't the intent. What we were trying to get to is a situation where you don't take concurrent leave. The reason for that was to try to get additionality so that you maximise the period of time at home. Clearly our formulation doesn't work for the reasons that you have well illustrated, but we are struggling with what will work.

One answer to this problem is simply to ignore it; that is, to simply say you have to start our leave within a period of time, six months or 12 months, and not worry about concurrency. So if you want to take concurrency, you take it. If you have voluntary leave, you can take it. The question is whether we should be concerned with it, given the endless range of possibilities that exist within various workplaces. That was our intent. Our intent was to try and get a longer period, no concurrency; it wasn't meant that people would lose their entitlement to the paid parental leave, but that's obviously how our wording has been interpreted.

MS DUNCAN (PSA-NSW): The problem is - I might have it wrong, but my understanding is that when you give birth, as a mother at the moment, that you have to take your public service maternity leave straight up. You're not allowed to take your annual leave or any other forms of leave first, that's a rule in the legislation. So that's a problem for this, and that needs to be changed if yours isn't changed.

MS MacRAE: But if we were to say that you could take that and you could take this, the paid parental, at the same time.

MS DUNCAN (PSA-NSW): At the same time. I see.

MS MacRAE: As long as you commenced our leave within, say, six months, and it would be concurrent. So we wouldn't say that concurrency wasn't allowed.

MR TURNER (PSA-NSW): If you made it that you accessed your leave within the first 12 months, then I don't think there'd be a leave scheme that generous around, Australian Capital University is the only place - - -

MS HAMEED (PSA-NSW): Australian Capital University.

MR FITZGERALD: That comes close.

MR TURNER (PSA-NSW): : - - - that has 12 months' paid maternity leave. So if you were to put yours out to 12 months' rather than six months', then public servants could take their six months' at half pay and then access your leave from the six months one day and then - - -

MR FITZGERALD: But my question is, should we worry. Should we simply say, "Look, as long as you take it within a reasonable time, whatever else, leave, you have - - -"

MR TURNER (PSA-NSW): That's a better - - -

MR FITZGERALD: Well, I'm not sure if it's better, just it's simpler.

MS DUNCAN (PSA-NSW): Would it have tax implications if you were getting two lots of pay at the same time? Would that mean that you wouldn't actually end up with any of the money because it was all just going in tax?

MS MacRAE: It certainly wouldn't all go.

MR TURNER (PSA-NSW): I think if you just said "if you accessed your leave within 12 months," then people could decide how to juggle it, and those with schemes like ours where you can start from nine weeks before the birth and go to six months at pay, they would be accessing it around seven months or in the seventh month.

MR FITZGERALD: Or you can take ours first, sort of thing. The other complication is, you're right, ours doesn't have a pre-birth period and we're obviously looking at that in light of the submissions. But even if we did, ours would not start as early as your scheme permits or requires. In some cases, some actually require people to take time off. We heard of one yesterday, the department of finance I think requires you to take it at four weeks pre-birth.

MR TURNER (PSA-NSW): But the pre-birth part is important. I've got a personal example of that. My daughter was diagnosed with a heart condition in the womb and so that meant the last month before birth involved visits to the Children's, Westmead and time off and ensuring rest up until the birth. So women I believe need excess on circumstances before the birth.

MR FITZGERALD: Can I ask this question: would you simply say that the 18 weeks can be taken - in your case, you know, any time from four weeks prior to birth? Our problem with that, given that it's not conditional on any medical evidence, is that you shorten the duration post-birth, because our concern in a statutory scheme has been to get post-birth longevity. I can actually understand fully what you've just said. The difficulty we have is the earlier you start this pre-birth, the less additionality you get post-birth. That's the problem. That's the trade-off we're sort of looking at.

MS HAMEED (PSA-NSW): Just to address that and the concurrency issue as well, anecdotally most women I know try and work as long as they can because they're aware that they're accruing their other entitlements while they're at work. On the concurrency issue, they added complication with having no concurrent leave is how do you frame employer top-up in that scenario, and I just wanted to raise that, which is something we haven't.

MR FITZGERALD: Yes, well, that's also part of why we are reconsidering whether or not we should deal with the issue of concurrency at all, because the myriad of arrangements are likely to grow, not lessen. I know we're very short on time, but Angela might have some questions.

MS MacRAE: Well, they were the main points I think that I wanted to raise. So I think, given the time, unless - I guess the final thing is just in relation to the super, and again I think part of this was our wording has led people to think we were recommending something different than we were. We certainly didn't intend to say that employers wouldn't be allowed to pay more than 9 per cent; the mandatory part would be 9 per cent, but if they wanted to, for administrative or other reasons, pay more than 9 per cent, we had no problem with that at all. So it certainly wasn't intended to say that there's no facility for you to go higher than that if you chose to.

MR TURNER (PSA-NSW): A defined scheme.

MR FITZGERALD: Well, defined schemes pose a particular issue, and I just want to ask one question on that. In the defined schemes, you have indicated that that employer and the employee need to continue to make payment during the period of leave. If our scheme, just ignoring the voluntary - the PSA arrangements that you have, if you were to take the 18 weeks and you were to get the minimum wage and

you were in a defined benefits scheme, then the employer would have to continue to make payment and the employee would have to make payment out of that leave.

MR TURNER (PSA-NSW): Which is why we submit that it ought to be the minimum wage or your current wage, whichever is the greater; because otherwise, if you're trying to cover your 6 per cent of your average public service salary out of the minimum wage, you significantly delete the amount of money you are taking home.

MR FITZGERALD: Look, thanks very much for that. We appreciate, Karen, your personal experience; that has been very valuable in fleshing out a number of points, and we have lots of participants present, and so I thank you for that. Thanks very much for your submission. That's great.

MR TURNER (PSA-NSW): Thank you very much for the time.

MS MacRAE: Thank you.

MR FITZGERALD: Eva? Last cab off the rank. If you could give your full name and then a summary of the organisation that you represent and then just some key points and we can have a discussion.

MS COX (WEL): The points, yes. Eva Cox, chair, Women's Electoral Lobby Australia. We sent in a sort of fairly enthusiastic media release we sent out, which was somewhat ignored, to say thank you very much, we actually really enjoyed your first part, because for the first time you had articulated some of the points that I think I made in first submission, which is it is important to introduce a parental leave scheme and recognise the importance of the relationship between paid work, and I thought it was quite interesting listening to the lawyer on some of those sorts of questions about what is really leave and what isn't leave; when listening to it, I was scribbling notes, because I think that's one of the important issues if we get it up.

The other point I'd like to make at this particular stage, and I think it's an important one, is I'd very much like the debate from now on to be divided into two areas. One is the introduction of a parental leave scheme and the other one is whether we can afford it; because at the moment I think the government is, to put it mildly, lying in its teeth by saying it's going to be terribly expensive, because they're ignoring the fact that 13 weeks of it is already covered. So they're acting as though, you know, the option is only bringing in the whole thing in one fell swoop, or not bringing it in at all.

So I suppose, and this is a difficult thing to say, you know, we don't want to encourage the government to do so, but I think that we need to sort of encourage them to get the architecture of a parental scheme in, even if they don't think they can afford the full 18 weeks in the first place; because it's easier to argue for an increase in payments than it is to argue the entire thing again and again and again. I mean, this is version number 5, I believe. That's the trouble with being old and having been around for a while.

So I just think we need to recognise and maybe - I mean, it's in your report, but I think it just needs to be emphasised in the discussions, you know, that we're talking about weeks 14 to 18 essentially, in terms of the extra money, not weeks 1 to 13, and to therefore sort of look at the architecture of putting it together. The arguments for not delaying the scheme have been put well by lots of other people; there's a high level of expectations, we're well and truly overdue, etcetera, and it can be seen as a stimulus, particularly because the bulk of the money would go in this case to lower-income families who would be spending it rather than saving it. So you could regard it as a gesture to the current situation.

Proposed changes, we have got a few points that we do want to make about the changes and I do want to raise them. One is the workforce attachment which was

raised by the last person. I think a lot of us have concerns about 10 hours, it's a sort of odd amount; it's not two days a week, it's sort of one and a half days a week or various bits of that sort. I think there's general agreement that either seven hours a week, or we were suggesting 14 hours a fortnight, because you might get people literally who do work every second week, do, say, a weekend shift in a nursing home, for instance, you know, whatever it is. So I think 14 hours a fortnight, which is the acknowledgment of sort of one full day a week, is probably a more appropriate way of dealing with that particular one.

The eligibility for leave and payments, that's why I was really interested in the employment lawyer's stuff, because we have got some serious concern that there's going to be obviously a number people who are eligible for a maternity leave payment who have got no eligibility for any maternity leave because even though they have got 12 months' service it has been broken service, so therefore they haven't accumulated the entitlement to the 12 months' maternity leave. I mean, originally I thought we wanted to change the employment standards, but we have now listened to both the last speaker and the one before.

I mean, again if you go for separate legislation, I think there needs to be legislation which does set up an entitlement to 12 months' maternity leave even if it's not continuous employment for one employer, which also raises the issue which we didn't raise, because it became rather too hard, what happens to people that don't actually have that entitlement, and I think we would like to see at least a partial entitlement for people who do want to take some leave, because we do have the situation of the new employee or the casual employees who don't have continuity literally having no entitlement to any leave at all, and I think that becomes a problem.

MS MacRAE: So giving them access even to some unpaid leave. Is that what you mean?

MS COX (WEL): Even to some unpaid leave.

MS MacRAE: Yes.

MS COX (WEL): Because at least they're getting the baby bonus. I think it would be a useful thing to assume the baby bonus covers them for, say, 13 weeks and to say, okay, if they have got some sort of job from which they can take leave, then the issue then becomes the right of return. So you have to deal with the employers on that. But I think the idea that you can actually be in the situation where you can't even take six weeks' leave is ridiculous, I think that needs to be looked at, it's sort of one of the holes in the system. So we have got to look at that. Then at the same time also look at the fact of the entitlement of the broken 12 months. Yes, you have moved from one job to the other, you're entitled to get a maternity leave payment but you're not entitled to any form of official leave because you're not covered in the

12 months' continuous employment from one employer. So that's a hole that needs to be fixed which, as I say, whether it comes under the national employment standards, given the limits of whether that covers it or not - and obviously that's a situation that you're going to have sort out whether the foreign affairs power works or doesn't work that for that.

MR FITZGERALD: It's very confusing.

MS COX (WEL): I know. You'll probably end up having to have a High Court challenge to work it out by the time it comes to that.

MR FITZGERALD: Probably.

MS COX (WEL): Because that was one of the things that we did recommend. We were against the idea of paying it to women outside the paid workforce because of the issue that it does need to be separate and we put up the proposal that we should actually tax the baby bonus, because I think that would make things quite a lot easier in terms of trying to make it less attractive maybe to the higher-income earners who could opt to do that as well. It wouldn't very much affect the lower-income earners as far as I can see. I mean, I haven't done anything. You'd have to get NATSEM or somebody to model it. But as far as I can see, for lower-income earners they probably would lose very little of it in tax if they weren't eligible, but it would certainly claw back some additional money from higher income earners.

It would make sense that if you've got paid maternity leave that has been taxed, which is being funded out of the baby bonus, that the baby bonus itself becomes taxed rather than income tested. I mean, the income test they've got is an absurd one anyhow because it's based on sort of current income just after you've had the baby. It's highly unlikely that nobody will actually end up on the other side of it, so by taxing it you do get the equity question into that so we'd like to put that on the agenda. So other recommendations, the administration - this is one point that one of our members made. The administration modelled by the Tax Office may reduce its legitimacy as an employment-based program, but it's better than Centrelink.

So there's just still some concern as to whether it should be going through the Tax Office or it should go through somewhere like DEEWR just to sort of make it really clearly an employment thing is just symbolic. We do need an effective, independent, inexpensive disputes submission. I know they put up the idea of the state IRCs. I mean that's obviously one of the options or somewhere in Fair Work, but I just think because there will be a lot of marginal issues and we do need to be able to solve those so we would like to be able to make sure that's that - and I think we'd also like to see a no-disadvantage test. I mean, you can't force employers to necessarily maintain all of what they've got, but you can at least try and ensure that they don't take away current entitlements.

They can blend your proposal into their current entitlements, but I think they should at least maintain what they've currently got. The six months at birth was something that obviously perturbed quite a lot of people that we talked to as well. It's too rigid; it should be available over a 12-month period, and I would say 12 months rather than trying to specify it within that thing there because 12 months would give most people - apart from the very limited people that have got 12 months' entitlement, but presumably they can bump that into the second year if they need to anyhow. But the idea that, by the time you've got this one plus other ones, you should be able to fit it in yourself in a sequence that best serves your needs.

I don't think taking it at the same time is actually a good idea because that does have a lot of tax implications and income implications if you're taking two at the same time. It also doesn't give people, as you say, the right to extend things which could lead to employers pressuring people to come back sooner by sort of overlapping the entitlement. So I think if you say that, the choice should be obviously the parent's choice and not the employer's choice as to the sequence in which you take it that might protect people's ability to make their own choices. The issue of being able to take it on half-pay was also an issue we wanted to raise because a lot of people want to do that and it is one of the ways that they can extend their leave if they have no other leave, so I think we would to see that written in - the entitlement could be taken over 36 weeks or however many weeks we end up with.

The issue of capping superannuation, I think you had the complexities of this cap thing coming there. Incidentally, I wouldn't worry too much about the people who are in the original defined benefits scheme which comes out in relation to that because they're all getting close to retirement age. Yes, it's been locked down - - -

MR FITZGERALD: There are a few elderly there, aren't there?

MS COX (WEL): Yes, it's been locked down since 1992, I think they closed - - -

MR FITZGERALD: In New South Wales?

MS COX (WEL): - - - the state super scheme, yes, and so I don't think too many of them are going to be pregnant in the future. But the other, I don't think - I mean there is already a possibility when people take unpaid leave, because people do - I know, because we had the scheme at the university. There are ways that you can reduce or make choices about reducing your super or paying it in a different way.

MR FITZGERALD: The commonwealth scheme only locked out partial defined benefits only a few years ago, so they actually have a very different cohort with the second scheme, not the original scheme.

MS COX (WEL): Yes. Well, I think there are ways already in the scheme that, if people take unpaid leave, they can choose to top up or not choose to top up and it gets hung in suspension. I must say, personally I've got some sort of problems about all the fuss about the super, because quite frankly in a sense they shouldn't be paying super if their income isn't over 32,000, because there's no advantage in adding to your super when your income level is at - that particular problem. So I don't think we'd weep tears of blood if the super stuff didn't make it up. I know it's an article of faith, because most people don't understand the superannuation system so they think an extra six or seven hundred dollars shoved in when you're having a baby is going to make a huge difference at your end of life. But if you actually look at the average incomes for women, it's not going to make very much difference at all so it's not something that I think we'd go to the wall on.

I think the issue of it being something which you accrue - the issues that were raised by the first speaker after the tea break - is really important. I think the more this looks like, smells like and is administered as a proper leave payment, the more it sends the appropriate message, which is that having paid maternity leave is not a welfare payment. It's not being nice to people, it's actually an acknowledgment of the fact in the same way that paying for people - I mean, I was interested you mentioned the army stuff. If employers can get the commonwealth payment and regard it as continuous employment while somebody goes off and plays soldiers at the weekend, I can't see why parenting leave shouldn't be treated in exactly the same way. So we'd be very concerned if in any way you did legislate to exempt these types of leave payments or the issue of accruing other forms of leave and so on, because it does become something of a problem.

I think those were the main points that we actually - we did just want to say that we're very pleased that you've included all family types. We do think the use of employers as paymasters to retain the workplace connection is really important and they need to be encouraged. I know they're squawking, but never mind; you've got to squawk about something. The inclusions of casual and the self-employed is good, and the inclusions of partner leave and the right to use other leave and so on to extend the leave payment. It's an interesting point about sick leave. If I can remember when my daughter was pregnant, she wasn't allowed to use her sick leave for any proportion of the pregnancy.

She had to be sick and the problem is that pregnancy is not defined as an illness, so therefore you can't actually do that. She had a very healthy pregnancy and she couldn't find the excuse of using it, even though she actually had quite a bit accrued - and no parental leave at that stage, although we've got some now. So I think they were the main points we made.

MR FITZGERALD: Thanks very much, Eva, for that. Just in relation to the workforce eligibility, I've heard your comment about the seven hours per week or

14 hours per fortnight. I'm more perplexed about the 12 months. As you've heard from a number of submissions, some have indicated that our 12-month attachment is too tough. On the other hand, we do want an attachment period. Some alternatives include actually simply saying you have to have worked X number of hours in the last 12 months sort of thing so that you move away from both weekly averages, or even fortnightly averages, to simply blocks of hours or what have you. I don't know whether you've thought about it, but it is tricky. Once you have an eligibility criteria, whatever you put in place is going to exclude certain groups. Our intent is not to exclude large numbers if we can come up with some sensible formula.

MS COX (WEL): Yes, I think it's a difficult one. I was listening to things like the National Parks and things like that and how many pregnant ski instructors they actually have, but it's an interesting sort of point there. Whether or not you can establish whether or not this is an ongoing pattern, ie over the last five years this person has regularly worked for six months of the year in various sort of seasonal employment and count that as continuity, that becomes the sort of question. But I think the idea of some sort of continuity as being of the workforce becomes important, because otherwise it's sort of the workforce attachment thing becomes a bit bizarre and you're going to get a whole lot of people running around saying they were actually self-employed and worked terribly hard; that thing's there. So I suppose it doesn't worry me so much that there's some sort of continuity but maybe it's the continuity of employer at least that you could use as some sort of better indication than maybe the hours. I think hours become, you know - so that if you're employed by the same employer on a regular basis over a period of say a couple of years that would at least be some sort of signal that you're working in the equivalent of some sort of work-related type stuff.

It does worry me, as I said earlier, that people who tend to have broken employment, and I think that's going to be an increasing process, are stuck in the fact that even though they have actually probably been employed pretty continuously they might have - I mean maybe one can allow for a break of up to six weeks or something within that 12 months. That might be one way of sort of dealing with it, of not just - it has to be to absolutely continuous.

MR FITZGERALD: Yes.

MS COX (WEL): But people who have got broken employment who therefore don't have any sort of employer eligibility and that sort of thing, I mean that - since that's likely to be an increasing employment model, particularly with people like subcontractors and so on.

MR FITZGERALD: Yes,

MS COX (WEL): It could actually become problematic. So yes, I appreciate the

fact that we need that but I don't want it to be weakened down to the point where - - -

MR FITZGERALD: No.

MS COX (WEL): - - - it can be too easy to fudge - - -

MS MacRAE: Yes, might as well not have a test.

MS COX (WEL): Yes.

MR FITZGERALD: No, no, and we're keen for that not to happen.

MS COX (WEL): So I think there has got to be some sense of continuity. So maybe it is continuous or continual employment with the same employer over an extended period or - - -

MR FITZGERALD: Or something.

MS COX (WEL): - - - you know, sort of block employment with no more than a couple of weeks in between them, because sometimes you do have a break.

MR FITZGERALD: Yes, I know. I think we'll just have to look at that and just see.

MS MacRAE: Well, most of the other issues that you have raised - I mean many of them were raised by some of our previous participants today.

MS COX (WEL): Yes.

MS MacRAE: The issue around the half pay I guess is - would you have anything different to say about that from the previous people? Were you most concerned there about the tax implications of when it might fall if people weren't able to take it at half pay?

MS COX (WEL): No, it really is just a case of if that's the only leave you've got - and that's the situation with a lot of people that that will be the only leave they've got. They might - because they've been a casual or because they've used their other leave or they want - that the ability to take 36 weeks at half pay is the only chance they have of trying to fill it out, whereas if it's on full pay sort of it is more highly taxed and then it does become - I suppose it becomes an issue then in terms of family tax benefit B.

MR FITZGERALD: Yes.

MS COX (WEL): But I just - yes, it's something that I think particularly for lower-income families, and these are the ones that are really going to be most likely affected by - the capacity to draw half the minimum weekly earnings might just be enough to allow you to stay home. If you're not a saving family - - -

MR FITZGERALD: Yes.

MS COX (WEL): Most - you are entitled to take all sorts of leave at half pay - - -

MR FITZGERALD: The voluntary arrangements are very flexible but once you've got a government-sponsored scheme it becomes - every time you add another layer of flexibility you add another layer of complexity which has a cost back at the Commonwealth.

MS COX (WEL): What are the costs of - - -

MR FITZGERALD: You're paying it for another - you're doubling the time, doubling the number of payments.

MS COX (WEL): What if you just sort of paid it normally to the employer but just left it to them to arrange it with the employee? I mean that might - you can continue to pay it to the employer over the 18 weeks and just do not specify the - - -

MR FITZGERALD: I suppose our view was that families, whether they receive the payment over 18 weeks or a longer period would in fact use that money - putting aside the tax issue for a second, would use that money to extend the leave to whatever they think is appropriate. I know there's a psychology in this, because to be honest it's the same amount of money and you might as well get it up-front then you can deal with it how you like. But there does seem to be a psychology about this.

MS COX (WEL): There are some tax benefits from getting it at the half level.

MR FITZGERALD: Yes.

MS COX (WEL): I think you're probably making a sort of fairly middle class assumption which is that people can make decisions about putting your money in the bank versus who people who literally live from week to week, if they get it on a fortnightly basis they'll spend it. So it just gives them that security. But I think if you just said, "This will be paid to the employer over a period of 18 weeks but the employer and employee can have a discretion to work out the payment level for that sort," then it doesn't add the additional cost to the government and it just leaves it as a private decision that can be made by the people that want to make it.

MS MacRAE: I guess finally, we haven't really probed this very much with any of

the unions and perhaps I should have, but they have also been calling for a sort of a no-disadvantage test. To some extent we have made some assumptions about how much we think employers might be prepared - because of wanting to remain employer of choice and all those things, that they would keep their schemes. How broadly do you think a no-disadvantage test might be relied on and to the extent that it did become so, how problematic do you think it would be in terms of determining a dispute in that case, the difficulties of determining what is a no disadvantage?

MS COX (WEL): If it's done on the basis, which is what I was suggesting - which the unions, I think, are thinking you hang on to all your present entitlements and add this one on top - - -

MR FITZGERALD: Yes.

MS COX (WEL): - - - I think that's probably unrealistic. But if you said that the net result should be no disadvantage, I think that actually means that people actually understand it, for a start, you know, "I was entitled to this sort of money, 13 weeks at my full wage beforehand, and now I'm going to get an extra six weeks at the minimum wage." It's fairly easy to work out. Then the employer folds the first 13 weeks of the Commonwealth money into their existing scheme. I think that that's probably the best that you can expect out of a no disadvantage clause because I think if we go for the other one - again disadvantages those people that have been lucky enough to get, you see - and given the fact that this works very well for the - you know, one of the interests that we have in this is to cover the people that haven't been covered so far.

So I suppose I'm sort of being a bit sort of - I just don't worry so much about the people that have got it as long as they don't end up worse off, because - I think given a recession is coming it could easily be that some employers would take - the possibility of cutting costs rather than - very much cutting costs rather than just being reimbursed, in a sense, for part of what they're doing now.

MR FITZGERALD: Sure.

MS MacRAE: Yes. I guess in terms of that repackaging we had thought that sometimes there might be a spot for a financial benefit for a non-financial benefit. So it might be that with the government underpinning people might say, "Well look now we've already - as we have already got 14 weeks' full replacement wage instead of giving us the equivalent dollars in that can we have 10 of that but can we then have more flexibility around our finish times, for example," so other family-friendly things that aren't related so closely to dollars, whether you would get into disputes there that would become difficult to settle in terms of where you're swapping a monetary for a non-monetary benefit.

MS COX (WEL): The point about it is if you followed my suggestion, which is you just fold the Commonwealth scheme in, they can still do what they like with the rest of their money. You're not - - -

MR FITZGERALD: No, your outcome is where we want to be.

MS COX (WEL): Yes.

MR FITZGERALD: It's how do you actually phrase that?

MS COX (WEL): But in a sense if they then negotiate with a person that they want to work three-quarter time or something for longer period, they're not likely to take them to court on a no-disadvantage thing because that's something they have negotiated. What you want to avoid is the employer being able to say, "Well now the Commonwealth has said you can get 18 weeks at the minimum wage and that's all I'm going to give you and I'm going to take away the top-up money."

MR FITZGERALD: No, that's right.

MS COX (WEL): That's what you want to - - -

MR FITZGERALD: We're all sharing the same end point. It's just how do you get there?

MS COX (WEL): Well, I think the easiest thing is to ensure that the net result has to be similar to - it has to at least be at the current level.

MS MacRAE: Yes.

MS COX (WEL): If you say "at least" that still allows the unions and people who have the capacity to bargain it up if they have got enough power under those circumstances.

MR FITZGERALD: All right. I think we might call it a day. Thanks very much for that, Eva, as always.

MS COX (WEL): That's okay.

MR FITZGERALD: We stand adjourned until 9 o'clock tomorrow morning here in Sydney.

AT 5.12 PM THE INQUIRY WAS ADJOURNED UNTIL
THURSDAY, 27 NOVEMBER 2008

INDEX

	<u>Page</u>
COMMUNITY AND PUBLIC SECTOR UNION: STEPHEN JONES KRISTIN VAN BARNEVELD RHIANNON CARTER	340-351
AUSTRALIAN HUMAN RIGHTS COMMISSION: ELIZABETH BRODERICK CASSANDRA GOLDIE SARAH SQUIRE	352-361
SHOP DISTRIBUTIVE AND ALLIED EMPLOYEES ASSOCIATION: THERESE BRYANT IAN BLANDTHORN	362-373
CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION: JOHN SUTTON	374-380
AUSTRALIAN INDUSTRY GROUP: STEPHEN SMITH SAMANTHA EDWARDS	381-394
UNIONS NEW SOUTH WALES: MARK LENNON SARAH GARDNER	395-404
LACTATION CONSULTANTS ASSOCIATION: SUSAN SCURRY DECALIA BROWN	405-416
ZONTA INTERNATIONAL: OLIVIA SARAH-LE LACHEUR CAROLINE EVANS	417-428
JULIA PERRY	429-437

	<u>Page</u>
WORKPLACE LAW: BRIAN WILLIAMSON	438-446
PUBLIC SERVICE ASSOCIATION OF NEW SOUTH WALES: STEVEN TURNER KAREN DUNCAN SHABNAM HAMEED	447-462
WOMEN'S ELECTORAL LOBBY: EVA COX	463-472