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**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON FAMILY AND HUMAN SERVICES

Reference: Balancing work and family

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON FAMILY AND HUMAN SERVICES

Wednesday, 21 June 2006

Members: Mrs Bronwyn Bishop (*Chair*), Mrs Irwin (*Deputy Chair*), Mr Cadman, Ms Kate Ellis, Mrs Elson, Mr Fawcett, Ms George, Mrs Markus, Mr Quick and Mr Ticehurst

Members in attendance: Mrs Bishop, Mr Cadman, Mr Fawcett, Ms George, Mrs Irwin and Mrs Markus

Terms of reference for the inquiry:

To inquire into and report on:

How the Australian Government can better help families balance their work and family responsibilities. The committee is particularly interested in:

1. the financial, career and social disincentives to starting families;
2. making it easier for parents who so wish to return to the paid workforce; and
3. the impact of taxation and other matters on families in the choices they make in balancing work and family life.

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Committee met at 10.34 am

CHAIR (Mrs Bronwyn Bishop)—I declare open this public hearing of the House of Representatives Standing Committee on Family and Human Services for its inquiry into balancing work and family. Today the committee will take evidence from a working mother about the difficulties of finding child care and the resulting cash economy in this industry. The evidence is being taken via teleconference. The committee will also take evidence from the Treasury and the Australian Taxation Office. These agencies are well placed to advise the committee on the cash economy in child care.

Overall, the cash economy could be as high as 14 per cent of GDP, or \$30 billion. In 1998, the Cash Economy Task Force identified child care as one of the fastest growing sectors in the economy. The committee has heard that the cash economy is thriving in the nanny and in-home care sector. A transcript of what is said today will be posted on the committee's website. If you would like further details about the inquiry or the transcript, please ask any of the committee staff here at the hearing. This hearing is open to the public.

[10.35 am]

WATSON, Mrs Kerrie-Ann, Private capacity

Witness was then sworn or affirmed—

Evidence was taken via teleconference—

CHAIR—Welcome. Although the committee usually swears in our witnesses, we cannot do that with you on the telephone. However, I would like to advise you that these hearings are formal proceedings of the Commonwealth parliament and, therefore, the giving false or misleading evidence is a serious matter and can be regarded as a contempt of the parliament.

Mrs Watson—I understand.

CHAIR—We have your submission, which each of us has read. Would you like to make an opening statement?

Mrs Watson—Yes. Thank you for your introduction. I will make an opening statement, if you do not mind. Let me start off by saying that I am a married mother of two young children and have returned to work after the birth of each child. We live in Sydney's northern beaches, and my husband and I both work in the city. For the initial period after each child was born, we employed a live-in nanny. We have three key problems relevant to your inquiry: firstly, the lack of access to registered long day care; secondly, the sheer cost of having children, which goes beyond the cost of formal child care; and, finally, employees' need for family-friendly practices.

Let me start with the first point. I have had a real issue, and still do, with accessing formal child-care services on the northern beaches. It has taken our family over three years to access a reasonable level of long day-care positions—even then, I would classify only one of these two positions as being in any way suitable. You will note from the attachment to my written submission a record of 50 registered child-care centres and family day-care providers that I have kept regarding the availability of positions last year. For the last 18 months prior to this year, there were just no vacancies, despite being on the waiting list, and we were forced to rely primarily on my mother and friends in order to get by. Bear in mind that both my parents have failing health and my mother also works a full-time night job in her own right on the days I am not working.

Finally, this year, we secured a position for both girls but not at the same centre. Instead, for the first two months we endured the geographical spread of more than 25 kilometres between their centres and had to drive two cars into the CBD to get to work. Thankfully, we now have found a centre for each child, approximately four kilometres apart, but you would have no idea of the impracticality that we face even with this on a daily basis. For instance, the additional burden of dropping a second child to a second centre before and after work each day adds a timelag of around 25 minutes each day, each way. That is around an hour a day out of our lives that is unnecessarily wasted because I cannot access one service provider for both children. Why

does this situation occur? It is because, in reality, no priority is given to working parents who are using the services specifically for employment.

Initially I considered the problem to be the total size of the child-care market; however, with some reflection, I really wonder if the issue is not more that we are not directing the positions and services that we currently have. Let me explain. If we segment the available segments and sectors within the child-care market—that is, the group based child-care market—we can see that only one segment is clearly readily suitable for mothers employed in a typical nine-to-five day, and that is long day care. The rest of the segments—your preschools, your kindies, your occasional care, even your family day care—are obviously more suited to women who do not work. In that way they still have access to the majority of services available, which are by nature of a shorter time band and duration—say, from nine to three. The hours of operation in these particular centres make them unsuitable for parents working or studying for a typical eight-hour day.

I am asking for exclusive access to the one segment that working parents need to maintain employment. We are aware of many women who do not work and are still receiving places at long day care centres at reduced cost and well ahead of us. I ask the committee to generally consider that, if you want mothers and second-income earners to go back to work, you need to provide a child-care service that recognises their priority—their necessity, if you like—over families using long day care for child-minding reasons. I believe that this is workable for the following reasons. Firstly, it is only about enforcing current policy, rather than developing it—you have the policy there; it is just not being policed. Secondly, the responsibility for compliance will fall back onto the provider. Thirdly, it is a quick and ready solution to the real child-care crisis that many working mothers face.

The second key point I would like to make this morning regards the current system, which has removed any financial incentive for me to work. By the time I pay for the child care of two children, the transport of the children and then transport to attend work, 86 per cent of my daily net wage is accounted for. I need to point out that public transport is not an option when you are dropping off and picking up children in two different centres, so we have to consider the cost of running a car into the city on the days that both of us work. It is also important to remember that our household receives no maternity allowance part A and, because of this, we cannot access further subsidy payments, such as the immunisation allowance part B and only the very minimal level of child-care rebate. This makes us, in effect, the real working poor.

So why would I do this, considering the minimal financial benefit and sheer buggery of taking over four hours to go back and forth, leaving the house to reach the office and return each working day? It is quite simple. I both need and desire to maintain some level of professional involvement in the workforce or, in the longer term, I will be unemployable. Of course, there is always the option of getting an unskilled casual job of sorts, but how is this in the economy's best interest? The issue of underemployment is also a reality here. Through these pressures, our culture effectively expects women to stop meaningful employment when they have children or at least to become a very secondary worker in the household. We have to ask: have we really progressed much in the last few decades?

Finally, the last point raised in my submission touches on the issue of putting family-friendly workplace policies into action. As I have mentioned, we would expect the public sector to show

corporate Australia how to structure their workplaces to encourage women to have children and to continue in meaningful employment. I cannot help but feel that in reality part-time work and meaningful employment are mutually exclusive concepts. In my case, I am being made to feel grateful that I am permitted to work three days a week, with no security that this arrangement will continue. We talk about this but we as a nation do not do it. Because I cannot get the permanency in my three working days employment basis, I have been looking for alternative jobs, and I can tell you they are not there. What little part-time and casual work there is is invariably on a lower skills basis than my employment. I am not afraid of hard work, but this raises two fundamental points: firstly, how does it benefit the nation to substantially deskill their female workforce simply as a result of their decision to start a family? Secondly, the reality simply is that a lower level casual type job would not begin to cover the costs of child care.

What would help me in a family-friendly workplace environment? It comes down, firstly, to a job-share working arrangement and, secondly, to some acknowledgment that the second working parent still holds the primary caregiver role and, as such, needs part-time provisions during the stages of early childhood and primary school age years. Thank you for listening to my story. I am happy to take any questions you have.

CHAIR—Thank you very much. We do appreciate your very clearly enunciated testimony this morning. I will begin by saying that I thought, in part, your original submission touched on the question of the black economy.

Mrs Watson—Yes, it is alive and kicking.

CHAIR—Yes—which raises the question, which is relevant to your plight with regard to finding a child-care place: in your experience, is it possible that, when a working parent, a mother, cannot find a child-care place and goes to the black economy, which could well be another mother who stays at home, the person working in the black economy and not declaring income paid could in fact be in receipt of family tax benefit part B as a stay-at-home parent with a family unit of one income?

Mrs Watson—You are correct. The irony is that, generally, you will find that, in that particular circumstance, the parent has the availability to become that black market child-care provider simply because they already have their children at long day care, which I find a double whammy.

CHAIR—So you are saying that they can be an allegedly non-working parent receiving family tax benefit part B, utilising a government subsidised child-care space—

Mrs Watson—Ahead of me.

CHAIR—and precluding you, who are paying tax and working, from having access to that place.

Mrs Watson—That is right, and in reality I am going to work for nothing, which I do for my own reasons—do not get me wrong—but we are talking financial reasons, and basically I earn nothing from this.

CHAIR—You said originally that when your children were very small you had live-in care to assist you.

Mrs Watson—Yes.

CHAIR—If we had a system, for instance, where, if you wanted to continue to have in-home care, the person you would employ would have to have at least a level 2 certificate and be registered so that they could become an approved provider of in-home care and you would then attract the CCB and the 30 per cent tax rebate, would that be attractive to you?

Mrs Watson—It would be. The net effect would be that it would still absorb my entire wage, but in terms of convenience it would be better. There are a few issues here on the 30 per cent nanny rebate, if I can quickly tell you. First of all, I think that the whole nanny concept works best for the under-twos and that is when I, in fact, invariably use that service. When your children get past the age of three, invariably you need some socialisation aspect for the children. So, if you get a nanny—and my children are now four and two—it does not completely replace the need for kindergarten. When you are forced to use two services, the cost blows out.

Secondly, there is the labour shortage. Having talked to a lot of nannies in looking to employ them, invariably their reasons for becoming a nanny were that the child-care sector did not pay enough and they were looking for more lucrative means of employment. If you encourage the nanny sector, I think that is a good start, but you also have to consider the labour drain from the registered child-care market that may happen unless you are going to grow the labour market. Thirdly, of course, there is the tendency for wages to blow out. When I was first looking at nannies, it was \$16 to \$18 gross an hour. I looked in the *Manly Daily* last week and already it is \$20 to \$25 per hour. As you know, with a rebate system put in place, there will be a tendency for it to blow out again.

CHAIR—What if, instead of just attracting the CCB and the 30 per cent rebate, there were full tax deductibility for your child-care expense? How would that affect you?

Mrs Watson—That would affect me favourably. I really think that that is a good answer. It is a tax deduction. It is a necessary part of going to work.

CHAIR—So, as an equity issue, you say that that is a fair solution?

Mrs Watson—I do.

Mrs IRWIN—Firstly, thank you very much for your submission. Your opening statement was excellent. It actually covered a number of questions I wanted to ask you, especially questions to do with family-friendly workplaces, where you mentioned the deskilling of the workforce, job sharing and so forth. But you stated that you have had great difficulty in accessing child care. Firstly, how many centres have you approached? Can you estimate how many hours were involved?

Mrs Watson—Do you have attachment B in front of you? Let me have a look. Excuse me, Mrs Irwin, but I did this last year.

Mrs IRWIN—Yes, sorry. I have that—page 30.

Mrs Watson—Thirty-eight registered child-care centres and 12 family day-care providers. It took me months of work.

Mrs IRWIN—It would have been very frustrating for you. You also stated, I think, in your opening remarks that you have two children but they go to separate child-care centres.

Mrs Watson—That is right.

Mrs IRWIN—What is the reason for this? Is it because one of your children has a food allergy?

Mrs Watson—Yes, anaphylaxis, food allergy. They do not go to the same centre because there is no availability for two children within one centre. That is the sheer buggery that I speak about—excuse the expression. It is very frustrating because, having to drop off and pick up a child from a second centre adds, basically, an hour a day—

Mrs IRWIN—That can be very frustrating.

Mrs Watson—because you are going across the city.

Mrs IRWIN—I know what it was like when my children were babies. In evidence, we have heard that the public sector generally supports family-friendly arrangements, but we understand that you are having difficulties within the government agency where you are working now, I understand, three days a week.

Mrs Watson—Yes.

Mrs IRWIN—Are you able to elaborate on that for us, if you want to?

Mrs Watson—I have a good working relationship with my employer. It is more that there is no policy in place to enforce what I am requesting. Basically I get told, ‘Because of the political climate, we can give you no more than six months forward thinking on that,’ and that is of distress to me because, as of 30 June, my three-day, part-time tenure officially ends. I could not work five days a week; there is no child care available. It is not a matter of this being a nice situation to have; it is a matter, even then, of using the services of three different providers for three days a week. It is not an option in my case, and yet I am not being given that longer term guarantee or commitment that I can work three days a week.

CHAIR—If you had at-home care and the person who was your in-home carer could take the kids to places for socialisation and so on and it was tax deductible, could you work five days a week then?

Mrs Watson—I could from a financial point of view and certainly from the services point of view. The other point I would like to make is that I would prefer not to work full time. I am still the primary caregiver, and I take that responsibility very seriously. I think that working three days a week is a good mix of keeping my skills base up and giving priority to my children.

CHAIR—Would you continue to want to do that indefinitely or, when your children reach a particular age, would you then work full time?

Mrs Watson—No. I would like to do it for the early years of schooling—I would say into the primary school years—then I would take on a full-time position again.

CHAIR—So you would like to be there until they went to high school or just until third, fourth or fifth grade?

Mrs Watson—Probably to high school age.

CHAIR—So about 12?

Mrs Watson—Yes.

Ms GEORGE—I am interested in teasing out a bit more the loss of skills and experience of women at work at a time of changing demographics, with an ageing population. When you look at Australia's data compared with comparable OECD countries, you see that our rate of participation of women at work who have children is lower. If we had the means to make some specific changes to current practices, what would be one or two really key things that you would ask the committee to consider? It seems to me that a lot of opportunity is forgone, and there is a lot of economic cost to the nation, by not providing the means for women like you to be able to return to quality part-time employment, which you can now do in Britain. We are losing a lot of that valuable skill and experience, and the economic costs, I think, will come back to bite the nation. What do you think would be the two or three key issues that would make a difference for women like you?

Mrs Watson—Thank you, Jennie. Your comments are spot on. My two recommendations would be, firstly, to legislate for the right to return to work part time after maternity leave—and this should be available to both men and women, because we need to consider the more active role that dads play in our society today in bringing up the children. Secondly, I would support the concept of job sharing to allow parents of younger children to combine and balance both their part-time work and their role in bringing up the children. So it would be job sharing, which does not seem to be a priority, and also legislating for our right to return to work part time in the early years.

Mr FAWCETT—In terms of what works for you as a busy parent, if employers were given additional incentives to have on-site care in the workplace, as opposed to using a centre, is that something you would prefer, or would you prefer not to take the children into your workplace?

Mrs Watson—I do not have a strong opinion on it either way. I think that if the children were young, in the first year or two, I would certainly like them close by. Now that one is 2½ and one is four it is a little different; having friends within the local area becomes an issue. But I think that having a choice is important. So I think that that option has merit and is very pertinent for women who are just returning to work, particularly with the issue of breastfeeding.

Mr FAWCETT—With the availability of day care, now that the cap on family day care has been lifted, if more people in the vicinity of your home started to run a family day care service, is that a form of care that you would consider or that would be attractive to you?

Mrs Watson—Yes, it would be. There are issues with family day care, though. Invariably they do not suit many working parents typically needing eight-hour days. I spoke with someone from Pittwater Council family day care centre only yesterday and, unfortunately, there really are no spaces for children of women who require longer day care situations. Her words to me were, ‘Look, if you were more flexible with hours, obviously we’ve a better chance of placing you.’ I asked what the times were, and she said, ‘Generally eight or 8.30 to about four.’ That does not suit my needs—a longer span of hours of family day care, yes; but invariably you do not find that occurring.

Mr FAWCETT—We have had some presentations from people from the nanny industry who look at matching families so that the cost of the nanny can be shared, and there is also that socialisation factor there between large groups of children. If you had the additional incentive and if the nanny was registered and trained to a given standard, would that additional level of socialisation of having at least one other family’s children involved attract you to that form of care?

Mrs Watson—Yes, it would, but again I have been down that path. Admittedly, it was 18 months ago when the children were younger. I invariably found that this is still very much an emerging industry. I rang up Share-A-Nanny and I was told, ‘Yes, it’s very difficult.’ It is fine to say that is an option, but has the infrastructure developed to a stage where they are actively pairing? I also considered putting an ad in the local paper to try to match up. There are a few issues particular to my circumstance, like anaphylaxis with the children, and, therefore, my need to ensure my children have a peanut-free environment. That is obviously not the case for all children, but it would be an issue in my case.

Mr FAWCETT—Sure. If you were utilising a nanny and your children were approaching the age where they were going to go to kindergarten or one of those other options, in theory would you be comfortable with a nanny being the person who transported the children to those centres?

Mrs Watson—That is an issue, particularly for the under-25 nannies and the impact that has on your car insurance. It would depend. It is something you would have to consider, and I would have to say that—

CHAIR—Let us say it is someone over 25.

Mrs Watson—Yes, that is right. I looked at all of that when I hired my live-in nannies, which I did above board—I paid tax, superannuation, and the like—but you have got quite a few insurance costs to consider, like household, employer and vehicle insurance, which are things you need, of course, having such a young nanny. But it is a feasible option.

CHAIR—At the moment you get no tax relief for it at all.

Mrs Watson—That is right.

CHAIR—It is pretty unreasonable.

Mrs MARKUS—Or CCB.

CHAIR—Or CCB; you get nothing.

Mrs Watson—Yes.

Mr FAWCETT—Putting aside the financial side of things, one of the benefits the nanny industry put to us is that having somebody there prevents that mad rush to get ready, get out, drop off, pick up, always being concerned in case the child catches a cold or whatever and has to come home. In your experience, did you find that period of having a live-in nanny contributed to you being able to have a work-family balance and took some of that stress off your lifestyle?

Mrs Watson—Very much so, particularly since, in both cases, the children were young. In one case, I was still breastfeeding when I returned to work so it did help very much, being able to just come back and do what I needed to do and leave the household. There is an issue, I feel, though, with the longevity of a nanny. Although I had a very good relationship with our first nanny, there is an issue in the market where it is seen as a very short-term tenure and then they move on. Finding a replacement becomes an issue, and I found it very difficult to find an alternative live-in person for our family.

CHAIR—The point you made about it being a fledgling industry for a larger group of people is something that we certainly will have to take on board.

Mrs MARKUS—I think your comments are quite clear and concise. My question is quite open-ended. In an ideal world, what would be your choice for perfect child care? I know you have talked about the challenge with long day care and that some of those places seem to be taken up by children of mums who are not working. That seems to be one of the sticking points; there needs to be some shift in that. How do you see their needs being met as well as yours? Where do you see there needs to be a shift, or what could the government do to encourage those shifts to happen?

Mrs Watson—It is very important to make a comment up-front that non-working parents also have a right to access child-care services. I am merely saying that, come the crunch, I feel I need priority. Having said that, if we look at the total child-care provider market, I feel that there is only one that clearly comes out for that typical nine-to-five day, and that is long day care. In areas of critical shortage, such as the northern beaches of Sydney, what would be ideal for me would be to get active access priority into that long day care market and for those people who need to use it for non-working and non-study reasons to be educated about and directed into those other services—occasional care, kindies, nine to threes, preschools and even the childminding services of private gyms and the like. So, rather than using the services of a long day care so that they can go to the gym in the morning, encourage them to make use of the shorter period childminding services. It is just a matter of doing that.

What happens is that invariably the non-working parents also find it very hard to find a spot. They put their name down everywhere, and when a long day care position comes up they say, 'Okay, I'll take it.' No-one is actually going out of their way to make my life difficult. The other

thing that hurts non-working parents is that they are usually required to take a minimum of two or three days per week on the roll. They may only want to take up one day a week for socialisation, but the child-care centres enforce that two- or three-day rule.

Mrs MARKUS—So you are talking about a coordination and referral service. Each individual centre or organisation or child-care facility or provider basically uses self-referral with all of the people who are ringing and booking in. What you are identifying there, if I am hearing it correctly, is that there needs to be some sort of coordination in referral so that people are directed to the most appropriate service and working mums like yourself, therefore, would be more likely to access the places that you require. Is that what you are saying?

Mrs Watson—Yes.

Mrs MARKUS—The federal government is developing a child-care services hotline number that people would ring to know where there were vacancies. Do you think that would adequately respond to what you are suggesting, or do you think there needs to be a more localised point of coordination and referral?

Mrs Watson—Unfortunately, I do not think that is the total picture, although it is a very positive step. The reason is there is still that issue of not policing priority. This also goes for single working parents too. I know single working parents seem to get bad press, but they also—

Mrs MARKUS—Can we come back to the policing in a minute? Can you just focus on this hotline number and what could be more effective, and then we will come back to the policing. What you have to say is a valid point, but I do not want to miss your response to the question I have just asked you.

Mrs Watson—I think it is a very positive step, but I do not think it is the total issue. That is why I need to go to the policing step. There still needs to be some mechanism whereby the list and basically the priority placing for child-care service are matched to the need. If we just have a referral service and then I get put to child-care provider A, and if my working situation changes tomorrow, what mechanism is in place for me to be able to resubstantiate where my priority is? For instance, if I were to give up work tomorrow and I have been put ahead of the queue, what mechanism is there in place now for me to have to report my change in status and therefore my need to possibly give up that space? Am I answering your question? I just do not think a referral system is the total picture.

Mrs MARKUS—Yes, you are.

Mrs Watson—It is a good step, though.

Mrs MARKUS—What would you see as being valid mechanisms?

Mrs Watson—You need to put the emphasis back on the child-care providers to enforce the priority that already exists. I do have one of the top priorities in that order, but in effect it is not policed.

Mrs MARKUS—So how would that priority be set by the providers? Are you saying that the funding should be linked to those priorities?

Mrs Watson—That is a possible option. There needs to be some incentive, whether a disincentive or some sort of enforcement—I do not have all the answers in place for the actual mechanics. I do know that the reality differs from what is meant to be the theory—that is, I already have access and yet people who do not have access over me in terms of my employment status readily access child-care services ahead of me. I am not unique. When you take away my individual circumstance, it seems to be a common thread.

CHAIR—As far as I am aware, there is no legal requirement for approved places to give preference to working parents. It is the policy of the individual child-care centre that chooses whether or not to do that. There is no legal requirement for it to be done.

Mrs Watson—That is right.

CHAIR—Centrelink is going to provide salary-sacrificing priority child-care places for its staff. If your employer said to you that they would provide a child-care centre to which you, as an employee, would have priority and you could salary sacrifice to pay the child-care fees, would you find that attractive?

Mrs Watson—I would. That is a very workable solution, a very practical solution.

CHAIR—Is there a last question that anyone wants to ask, because we are running to time? Mrs Watson, you might be interested to know that the next people we are talking to come from Treasury and the tax office.

Mrs Watson—Very good.

CHAIR—Thank you very much for your testimony this morning. I think it has been very thorough, well thought out and enormously helpful to us.

Mrs Watson—Thank you very much for your time. Please let me know if I can provide more information at a later stage.

CHAIR—Thank you very much.

[11.08 am]

KONZA, Mr Mark Stephen, Deputy Commissioner, Small Business, Australian Taxation Office

WALKER, Mr Colin Maxwell John, Assistant Commissioner, Personal Tax, Australian Taxation Office

HEFEREN, Mr Rob, General Manager, Fiscal Group, Social Policy Division, Department of Treasury

THOMPSON, Mr Hector, Manager, Social Policy Unit, Department of Treasury

Witnesses were then sworn or affirmed—

CHAIR—Thank you for joining us this morning. I was particularly pleased that you were here to hear the evidence of Kerri-Ann Watson this morning, who I think very adequately outlined the problems that a working mother faces. I thought we might begin with some general questions related to estimates of the black economy to which Mrs Watson referred. Mr Walker, I think you are very much involved in the area of concern about the amount of tax you will have to forgo in the administration of the new system. Do you have an estimate of the value of the black economy that pertains in this area?

Mr Konza—That falls within my area of responsibility, being small business. We use a commercial service called IBIS, which analyses industries across Australia. They estimate that the child-care industry would be about \$3.755 billion. Much of that industry is covered by government schemes and therefore is at little risk of underreporting at gross income level. The ABS survey of child care in 2002 found that about 52 per cent of care is provided within formal regulated arrangements. Our observation is that that formal sector has continued to grow strongly over the intervening years. Of the informal care, the ABS survey found that 86 per cent was provided by relatives and about 14 per cent by unregulated care provided by unrelated carers, including volunteers, or a combination of formal and informal care. On this analysis, the nanny industry could be worth about \$400 million to \$500 million per annum.

There is no evidence of the compliance rate within this industry, but, based on our experience, the non-compliant part of that industry would be significantly less than that total figure. Allied with this view is the view that nannies are generally not highly paid and therefore the tax avoided is not believed to be substantial when compared with other cash economy risks. For example, by comparison, industries that are subject to cash economy project review include restaurants and cafes worth \$14.9 billion, pubs and clubs worth \$7 billion, building and construction worth \$45.5 billion—although I hasten to add that some of that industry is covered by large companies, so you would not claim that the whole building and construction sector is covered by the cash economy—clothing \$4 billion and road freight \$12.9 billion.

Whilst we continue to monitor all aspects of the cash economy using industry analysis and feedback from the community and continue to action community information or other reports of undisclosed income by people acting as nannies, we do not have a project as such on nannies.

CHAIR—What if you were to include in that the broader service type delivery of cleaners who can also be carers? Our inquiry is concerned about care not only for small children but also for the disabled—some who are very severely disabled—and elderly parents. Therefore, it is that whole care industry and the fact that there is a large black market, with people giving cleaning or other services in and around the home. I think I have seen estimates of the black economy in that area being approximately \$6 billion all up. Mrs Watson's evidence is that the going rate for in-home care is \$20 an hour, which would equal \$40,000 a year, which I would have thought is quite substantial.

Mr Konza—Yes, but individuals receive government rebates, credits and so forth and the final tax—

CHAIR—But they do not get any CCB or tax rebate; they are not eligible.

Mr Konza—No, but they would be entitled to whatever a normal taxpayer could claim, such as family assistance or income rebates they receive through the normal tax system. I am not saying that this is an insignificant sector or that people would say that the amount of money at risk is insignificant. I am saying that there are other sectors of the cash economy that we are actioning and concentrating on.

CHAIR—Are you concerned about the evidence we have just heard that a working mother who cannot get access to an approved child-care place goes to the black market and the stay-at-home mother utilises the subsidised child-care place, receives family tax benefit part B and does not declare the income? Are you concerned about that?

Mr Konza—Yes, because essentially that is a double-dip situation where people are not paying their tax but are drawing government benefits. That would be of concern, yes.

CHAIR—Have you done any modelling of the cost of having tax deductibility for child-care expenses for working parents where it relates to—

Mr Heferen—That modelling would fall to the Treasury. My understanding is that the Treasurer, in response to a question on notice, confirmed that some work was done on tax deduction for work related child-care expenses but also stated that that material will not be released, on the standard basis that preliminary costings, which form part of policy advice to the government, are not made public.

Ms GEORGE—A colleague of mine, Mr Fitzgibbon, the member for Hunter, put questions to the Treasurer, so obviously work has been done. I defer to the chair, but I imagine that, with the terms of reference of this inquiry, if such information was available in government departments, it could not be withheld from the committee.

CHAIR—I think we should look very closely at whether that information not only can be but, indeed, should be made available to this committee, even if it was on a confidential basis.

Mr Heferen—Perhaps I could clarify that I am the general manager of the Social Policy Division. Issues dealing with tax deductibility and costings are done by our Revenue Group, which is a separate area of Treasury. Regarding the question on notice, obviously the advice provided to the Treasurer would have come from that area. I understand the committee's interest in this. Being a public servant appearing before this committee, I am in that difficult position where the minister has responded clearly by putting some information out and by deciding to keep other information confidential.

CHAIR—But the point I am making is that there is a big distinction between a member putting a question on notice and a parliamentary committee requesting that that information be made available to it for the purposes of an inquiry which is part of the business of the parliament.

Mr Heferen—Sure.

CHAIR—That is a question that perhaps we will persist with. As I have said, perhaps it can be made available to us on a confidential basis.

Mr Heferen—Is it appropriate to take that on notice?

CHAIR—Yes.

Mr Heferen—We will take that on notice.

Mrs IRWIN—Further to that, Chair, what position would we be in? Would the department go to the Treasurer or would you, as chair, see the Treasurer for a confidential briefing?

CHAIR—I think we would go to the appropriate minister, the Treasurer, by way of the formal procedures of the committee. I have a question about FBT and the way it applies to salary sacrificing and the provision of child care. The commissioner has made a public ruling. Certainly in the industry there is a concern that the commissioner can change his mind at any time he would like to. It is for that reason that people involved in providing FBT-exempt child care with salary sacrificing get private rulings—because they do not want to be at the whim of the commissioner. That is why I have said that it should be government policy and not simply a ruling or, better still, done by regulation and come through the parliament by way of tabling and disallowance.

However, the Department of Family and Human Services has now said that it will provide such a system for Centrelink and its associated agencies, which together employ 38,000 people. A breakdown of that shows that 71 per cent to 74 per cent of employees in all the agencies are female and something like 11,000 of them are females between the ages of 25 and 45, which are child-bearing ages. There is a big market out there. We have looked at its tender. As I understand it, it will purchase or lease premises outside of its existing places of business. The department asks whoever gets the tender for its rural and regional centres to find child-care places for employees and to accept the FBT burden falling on them because they do not fall within the exemption and the ruling.

The question is this: again, has an estimate been done of the cost to revenue of this particular department going ahead and implementing this particular service? What would be the cost if it were to apply right across the Public Service? And what would be the cost if it were to apply right across the nation, if the FBT for child related services were removed altogether, thus enabling small business people to make such a provision for their employees? Has modelling been done for those costs?

Mr Heferen—I am not aware of any costing that has been done on that basis. My understanding is that—and my colleagues from the ATO will no doubt correct me if I am wrong—if there is an FBT exemption for employer-provided child care, the entitlement to CCB and the tax rebate does not flow to the individual. So, in the sense of the FBT forgone—

CHAIR—No, it is more than that, because there is salary sacrificing. In other words, they are able to pay their child-care expenses with pre-tax dollars. It is the equivalent of having a tax deduction.

Mr Heferen—All I am doing is observing that the benefits that would flow to the individual would be via CCB and that the child-care tax rebate will not. I am not aware of any costing that has been done here. I just want to make that point so it is clear in people's minds that, if that occurs, there are some offsetting savings on child-care benefit and the tax rebate on the other side.

CHAIR—You are doing all right already. We have papers that have been done that show that, for every dollar the government spends in assisting families with children, you get \$1.86 back—and that is the base rate; it could be up to eight times as much. You are doing all right. But, with regard to this salary-sacrificing proposal, it is the equivalent of saying to people who are employees of Centrelink, 'You can have a tax deduction for your child care, but the rest of the population cannot.' Therefore, we are very concerned about the equity there. We have a submission that Deloitte put to Treasury asking, basically, that the business premises limitation be repealed. As I understand it, in private rulings you say that, as long as the entity owns or leases the premises, which does not have to be at the place of business—

Mr Konza—That is our public ruling, yes.

CHAIR—and that child-care services should extend the definition to include all child-care centres, before and after school care, family care and nannies so that you could salary sacrifice to put your child in an existing child-care service or to have in-home care in your own home. Has consideration been given to that?

Mr Heferen—Again, in terms of changing the rules regarding the application of FBT, I am sure you are aware that that is an issue of government policy. That is a question that needs to be raised with the government and, as it is the Public Service—

Ms GEORGE—But is it a government policy? If you are depending on private rulings, it seems to me that it is not necessarily government policy. That is the issue we are trying to get at—

Mr Heferen—I am sorry. I thought Mr Konza was saying that it was a public ruling.

Ms GEORGE—about private rulings.

CHAIR—It could be a public or a private ruling. It is not government policy; it is tax office interpretation, about which he can change his mind instantly—tomorrow. He can say, ‘I’ve had a change of heart. I had a bad breakfast and I’ve changed my mind.’

Mr Heferen—To be fair, you would always expect a public ruling to flesh out what government policy is, as laid down by legislation.

CHAIR—No, not at all. Tax office public rulings are an entity unto themselves entirely. Would you like a list of the ones I am currently dealing with?

Mr Heferen—I think I would be better off not having them, thank you, Madam Chair. The issue would be to bring this to the attention of the government to say, ‘Okay, in this area your legislation says this and the public ruling says something else.’ If they want to change the legislation—

CHAIR—It has always been my argument that all public rulings should be subject to tabling disallowance in both houses of parliament so that we make law again rather than the tax office.

Mr Heferen—I suspect that is a bigger issue—

CHAIR—It is a big issue.

Mr Heferen—that cuts across a range of areas apart from this one. But in this area the committee’s view might be, ‘Well, you have your policy enshrined in the legislation and the commissioner has put out a ruling’ and there might be the sense of an inconsistency there. I do not know these issues well enough to know where there is and is not such an inconsistency. But I guess, in looking across these matters, I have not heard that there is an inconsistency there.

CHAIR—So that you get this really straight, the position is this. The law has been in place for a long time. The commissioner makes a public ruling. He says, ‘This is the test that I will apply.’ Until someone takes that to court and challenges it otherwise, that is the law and it is applied. Effectively, that means, where there is an exemption from FBT and salary can be sacrificed for child care, people are getting the equivalent of a tax deduction. In the public arena, a government department will now supply that to its employees, but the rest of the community cannot have it. That is the situation we are in now. They cannot get a tax deduction.

Mr Konza—Legally, the rest of the community can; practically, there are difficulties.

CHAIR—You are going to tell me that the corner store bloke—

Mr Konza—Other large organisations are able to—

CHAIR—Other large organisations.

Mr Konza—Yes, and I made that distinction in my opening comments. Legally, taxpayers are able to enter into the same arrangements as described in our public ruling and get such an exemption. But we are aware that that is not very practical for small businesses.

CHAIR—Particularly for the 1.2 million small businesses out there which employ a hell of a lot of Australians who are left out in the cold.

Mr Konza—Yes, but I only need to clarify the difference between the law and the practicalities.

CHAIR—You made the statement that anyone else can do it; they cannot.

Mr Konza—All right. It may be pedantic, but I am just saying that—

CHAIR—No, it is factual.

Mr Konza—the law is the same, but it is the practicalities that stop people.

CHAIR—No. If the FBT exemption were given to everyone, everyone could have access to such a scheme.

Mr Konza—No. The way the law operates is that, if you provide child care on your premises—

CHAIR—But it does not have to be provided on your premises anymore.

Mr Konza—The commissioner in his ruling says that he will read that as broadly as he can within the law.

CHAIR—Which is why people got private rulings to cover what they are doing—to make sure that the commissioner is bound by it. If they rely on the public ruling and he changes his mind tomorrow, everything that they have put in place goes out the door, which is why it should become government policy.

Mr Konza—All I am saying is that there is no division within the law. All taxpayers are able to try to set up child-care facilities on their premises, but I recognise that there are practical difficulties. I just want to distinguish the fact that the law does not have some sort of arbitrary cut-off.

CHAIR—That is the phoniest argument I think I have heard for a long time; thank you for putting it.

Mr Heferen—Perhaps I could add one thing. In terms of salary sacrificing to get an effective tax deduction vis-a-vis eligibility for the child-care benefit and child-care tax rebate—and I am not sure of this—given the marginal rates of tax, my suspicion is that low- and middle-income earners would be much better off accessing the child-care benefit and the child-care tax rebate than the tax deduction. There will be a lot of complications there, such as how many kids you have, the cost of care and so forth, but—

Mrs IRWIN—I feel that we are creating two classes of parents here. I have a question that follows on from what the chair has put, because I am becoming very frustrated with this. We are talking about Centrelink employees; they will be getting free child care. Is that correct?

CHAIR—They will be salary sacrificing.

Mrs IRWIN—That is a definite benefit that they will not have to pay tax on. It is Deloitte's, I think, who are now going on about salary sacrificing with an exemption on FBT. My very simple question—and I hope that I get an answer to it—is: would fringe benefits tax exemption for employer-provided child care create two classes of parents: those with tax-free child care and those paying for child care from after-tax earnings?

Mr Heferen—If there is an FBT exemption for some employers regarding the people who are employed by that employer and that employer has an FBT exemption—

Mrs IRWIN—For those with tax-free child care and for the after-tax earnings of those who pay for child care.

CHAIR—In that situation, they are getting an effective tax deduction for their child-care expenses.

Mrs IRWIN—That is right.

Mr Heferen—Sure.

CHAIR—To which other people do not get access.

Mr Heferen—But others who do not get access to that do get access to the CCB and the child-care tax rebate.

CHAIR—That is not the point we are asking about.

Mr Heferen—I accept the question. But I guess the issue for the parent—and for me, being a parent—is, 'Which of those would give me the most benefit?'

CHAIR—I go to the point where you have tried to say that you are better off under CCB—and that could well be. Your modelling would be able to tell whether or not that is true for some parents. However, the rebate is fixed at 30 per cent for out-of-pocket expenses because 80 per cent of taxpayers pay no more than 30c in the dollar. So, by having a rebate, effectively you are fixing the level of concession that you get.

Mr Heferen—The level of benefit, yes.

CHAIR—However, it is capped at \$4,000 and it is for out-of-pocket expenses above and beyond what you expend after getting the CCB.

Mr Heferen—Yes.

CHAIR—Many thousands of people will be much better off getting a straight tax deduction for their child-care expenses. The point is that only a precious few are getting that option. They are two banks and now the 38,000 employees of Centrelink and its associated agencies—

Ms GEORGE—It is good enough for parents who are public servants, but it is not a good thing for other parents.

CHAIR—which includes, ironically, the Child Support Agency. How about that for an irony? If you are working for the Child Support Agency, you are gouging out money for people who are struggling along—and now we are going to be sending mums back to work. If you work for the agency, you can get a tax deduction for your child expenses, but those who we are ensuring you go back to work sure as hell cannot. Is that equitable?

Mr FAWCETT—Madam Chair, I would like to follow up on a point that Mr Konza made. You said that, within the law, this is available to everybody. We see here, from Deloittes and others, that large corporations looking at purchasing a property so that they own the property—

CHAIR—And it is the taxpayer who is paying.

Mr FAWCETT—If a whole bunch of small businesses or individuals bought a \$1 share in a property, as part of enrolling their child there, would the same law apply?

Mr Konza—No, I do not think so.

Mr FAWCETT—Then it is not actually available to everyone.

Mr Konza—They are the practical difficulties that I acknowledged in my answer.

Mr FAWCETT—But, through your interpretation of the law, the practical outcome is that it is not available currently for the small business owner trying to attract people to work for him or her, whereas it is for the large corporation.

Mr Konza—The law states that it has to be on the employer's premises and—

Mr FAWCETT—But, if he owns a \$1 share of the premises, how is that different from a large corporation that owns a 90 per cent share of the premises?

Mr Konza—The ruling clarifies that, when the law says 'on the premises', it has to be a building or whatever that is owned or leased by the employer.

CHAIR—But not at the place where he carries out his work.

Mr Konza—No, that is right. As I say, the commissioner exercised whatever flexibility was available within the law.

Mrs MARKUS—But does that ruling quantify the percentage of ownership that the business must have in that—

CHAIR—They can lease as well.

Mr Konza—It has been a little while since I have read the ruling. My recollection is that it says that leasing the premises outright is within the fringe benefits act but having some sort of pool like that would not be. I think that is a correct recollection.

Mr FAWCETT—Why make that distinction though? What benefit does that bring the Commonwealth and what is the cost to the public who are seeking the service? We have just heard from our previous witness that an employer being able to provide that kind of cost offset along with priority of access to a place will increase our workforce participation by a very large amount.

Mr Konza—It is a simple interpretation of the words ‘on the premises’. If an employer takes a \$1 share along with a number of other employers, it is not on ‘their premises’.

Mr FAWCETT—But it is on premises that they own part of.

Mrs IRWIN—Because they have a share in that.

CHAIR—I will tell you where the difficulty is and why I say that the tax office makes law. If you look at any legislation, normally it will have a definition clause at the front that will tell you what the definitions are. I have not looked at the fringe benefits tax act, but how does the section define ‘premises’—or is there no definition?

Mr Konza—Off the top of my head, I do not know whether there is a definition.

CHAIR—I suspect there is not, which means there is a vacuum. So the commissioner comes in and says, ‘Well, I’ll define what a premises is and I will make a public ruling.’ I understand that public rulings, in the way they are made, are very formal and very detailed. But, equally, the commissioner, if he chose, could go to a Gulargambone Rotary meeting for lunch and, as the guest speaker, say, ‘Today I’m defining “premise”,’ and that would be a public ruling. He could go to Woolamba a week later and say, ‘I’ve changed my mind. I’ll now define “premises” this way.’

That is why a private ruling has been obtained not only by banks but also by a government department—so that the commissioner cannot change his mind on and is bound by the definition of ‘premises’ in his private ruling. That is the law by which he must be bound. We have this curious situation where people who want to take advantage of a tax ruling do not trust the commissioner to stick to it, the government has not had the wherewithal or the stomach to make it a policy and do it properly and people get a private ruling to make sure they cannot be disadvantaged by a new piece of law making. It is a crazy situation.

Mrs IRWIN—As deputy chair, I would like to get it on the public record that I agree with everything that you have just said.

Mr Konza—I think, equally, I need to say that the law that binds the commissioner to public and private rulings is the same.

CHAIR—No, it is not. He can change a public ruling.

Mr Konza—He change private rulings as well, both on a prospective basis.

CHAIR—He is bound by it.

Mr Walker—Until he changes it.

Mr Konza—Until he changes it.

Mr Walker—He can change that.

CHAIR—Once he has established it, it is set up and he is bound.

Mr Walker—If he decides that there is a reason to change a private ruling, he can withdraw that private ruling and issue another.

CHAIR—And it is prospective.

Mr Walker—And it is prospective.

Mr Konza—As is the case with public rulings.

Mr Walker—Exactly.

Ms GEORGE—That will make for interesting reading in our final report. At the moment, are employers obliged specifically to report salary-sacrificed child care to the ATO?

Mr Walker—I think what you are after is that, in circumstances where they are exempt benefits, they are not required to report them to the ATO. In circumstances where they are not exempt benefits, they include them in their fringe benefits tax return.

Ms GEORGE—Perhaps you could take this on notice: could you provide the committee with how many employees currently salary sacrifice for child care. Do you have that data?

Mr Konza—We can check what we have. I know that we do not have the data for exempt benefit arrangements, but we can check what we have for non-exempt benefit arrangements.

Mrs IRWIN—Following on from salary sacrificing, I am curious to find out what arrangements Treasury and the ATO have for their staff. Firstly, do you have on-site child care and, secondly, do you allow your employees to salary sacrifice?

Mr Heferen—In relation to Treasury, there is a child-care centre in the Treasury building, but I think it is in the part that belongs to the department of finance; they lease that part. I think it is the Abacus child-care centre. I am not aware of salary sacrifice arrangements and would have to take that on notice.

Mrs IRWIN—Please take that on notice.

Mr Heferen—Certainly.

Mrs IRWIN—What about the ATO?

Mr Walker—We have one centre in Canberra; I cannot tell you about anywhere else. Obviously the numbers that it can take are very limited. I believe that it is called Bluebell and, through an employer arrangement, there is the ability to salary sacrifice.

Mrs IRWIN—That is very interesting.

CHAIR—How nice. How long has that centre been in existence?

Mr Walker—I have no idea at all. Being a parent, I only became aware of it maybe two or three years ago. I was unaware of it until then.

CHAIR—I wonder whether we could have the date that that child-care centre opened.

Mr FAWCETT—Or, more importantly, of the salary sacrifice options.

CHAIR—The date of the public ruling.

Ms GEORGE—It is quite unbelievable.

Mr FAWCETT—Or not so much when the centre opened but, more importantly, when the financial arrangements were made for people to access it.

Mrs IRWIN—Two classes of parents!

CHAIR—I want to go back historically to the first ruling the tax office made that said that child-care expenses did not fall within the meaning of the legislation as a necessary expense to produce assessable income. On what date did the commissioner first make that ruling?

Mr Walker—There are a number of court cases.

CHAIR—Yes, I am aware of those. The first of those court cases, I think, was in 1979 and it was presided over by Mr Justice Anthony Mason, who was sitting as a single judge. In that case he held that, on the facts, the appellant could not have worked without incurring child-care expenses, but he upheld the ATO's assertion that it was not sufficiently closely linked to the production of assessable income. It was on that basis that it was ruled out. It has been back to court on a number of occasions—

Mr Walker—Back in 1972, there was a case where both sides of that argument were discussed. It was found to not be necessarily incurred in gaining or producing assessable income and, further, that the loss or outgoing was of a private nature. You need to remember that section

8 talks about two limbs. It may well be that you could get something to be necessarily incurred but at the same time, if it is of a private nature, it will be ruled out anyway.

CHAIR—How do you distinguish between a car expense and a child-care expense?

Mr Konza—Equally, travel to and from work is considered to be personal in nature.

CHAIR—Travel to and from the child-care centre could be personal in nature, but the actual expense incurred is necessary for the production of assessable income.

Mr Walker—Section 8 requires you to pass two limbs. The second limb is that, if it is—

CHAIR—But you make an accommodation with regard to cars.

Mr Walker—Cars, again, come into the same category. They are under that same base.

CHAIR—But you can get it for a car and you cannot get it for child care.

Mr Konza—No, we said the opposite.

Mr Walker—Only to the extent that the car is used to gain or produce assessable income and is not used for private purposes.

CHAIR—Precisely. Why can't you make the same distinction?

Mr Konza—All we are saying is that the use of a car to travel to and from work is treated similarly to child care.

CHAIR—But that is what I am saying. Okay, the travel to and from the child-care centre cannot be included. But, to produce assessable income, the services of a child-care centre are as necessary as the use of a car for business purposes.

Mr Konza—Legally, you are talking about travel to engage in what is still of a personal nature. Under the act, that is not allowable as a deduction.

CHAIR—That is the present state of the High Court decision. In other words, the High Court nicely said, 'This is not a legal problem but a political problem; you solve it,' and we have failed to do it. However, we are finding out today that there are lots of lurky ways of getting around the High Court decision—and it is being done by getting a public ruling on FBT. It is amazing.

Mr FAWCETT—Madam Chair, I believe it is the position of the committee—and it is certainly my own position—that we are not actually anti employers finding ways to deliver things.

CHAIR—No, we are pro it.

Mr FAWCETT—We are actually saying, ‘Full marks. It’s great to see initiative being taken and it’s great to see them supporting their workforce but, for heaven’s sake, let us remove the minefield that stops the broad public from being able to do the same thing for their employees.’

CHAIR—Why can’t a small business person secure a place in a child-care centre and say, ‘I’ll secure that and you can salary sacrifice to pay for your child-care’?

Mrs IRWIN—I think we are trying to say that there should be fairness for all.

Ms GEORGE—There are ways of getting around it, obviously.

CHAIR—Absolutely. However, if you are a big government department, you can do it—and particularly the tax office.

Mr Walker—I think the answer to that goes back to what Mr Konza talked about before. But the reality is that, if you wanted to move into that zone, clearly the government would need to change the legislation to allow it to happen, and it is available to the government to do that.

CHAIR—No. We are pointing out now that there are lurky ways of getting around that High Court decision that says you cannot have a tax deduction for child-care expenses.

Mr Konza—No, there are no lurky ways.

CHAIR—Yes, there are and the tax office has one.

Mr Konza—No. There is section 47 of the Fringe Benefits Tax Act, which is an act of parliament.

CHAIR—Which the commissioner has interpreted.

Mrs IRWIN—That is correct.

Mr Konza—Are you expressing dissatisfaction with his interpretation of the word ‘premises’?

CHAIR—Yes, we want it to apply more broadly.

Ms GEORGE—We want it to be transparent and to apply equally to all citizens.

CHAIR—To be a benefit for all.

Mr Walker—But it would not apply equally. From a practical perspective, a small business may not be able to access that ability; but, from a transparency perspective and a legal perspective, it is still there.

Mr FAWCETT—But that brings us back to that same question. If doing it is ethical and right and it encourages workforce participation, why doesn’t the commissioner take the proactive step

of making the ruling broader so that the small business person, who at the end of the day employs the majority of Australian workers—

Mr Konza—Because the words defining ‘premises’ are in the act.

CHAIR—But the commissioner has interpreted what ‘on the premises’ means.

Mr FAWCETT—If you wish to achieve your outcomes, you need to remove the words ‘on the premises’.

CHAIR—The problem is this: the commissioner has made his public ruling and he is not going to broaden it. If he had made it broader in the first place, that would have been okay. But now, if he broadens it, he will be seen to be fiddling. The bottom line is that we do need the government to seize the initiative and amend the act. That would be far preferable to the situation we have now, where people get an advantage because the commissioner has made an interpretation.

Mr FAWCETT—I think our secretariat has been given its writing instructions.

Ms GEORGE—Could you enlighten me, please, whether Treasury has updated the revenue cost of the 30 per cent tax offset in light of government estimates that around 85,000 parents will go from welfare to work and of the budget announcements about the uncapping of places on family day and OOSH places? Secondly, could you explain to me why the projections show the cost of the offset in the 2006-07 financial year as lower than that in future years—minus \$280 million in 2006-07, \$305 million in 2007-08 and \$330 million in 2008-09? I find it hard to understand why in the first financial year the offset, which will be based on the costs of the two previous years, is projected by you to be lower—

Mr Walker—The costs of 2004-05, just one year.

Ms GEORGE—Parents are able to claim in this financial year—

Mr Walker—For the 2004-05 year’s costs, yes, but not the two years.

Ms GEORGE—When you anticipating that more people will be returning to work with the uncapping of places, why are your projections lower for the first year?

Mr Walker—I would have to defer to Treasury for this, as it goes to costings.

Mr Heferen—As I mentioned at the start, I am from our Social Policy Division and issues about the tax rebate are dealt with in a different area. I am happy to take that on notice and come back with responses on that. In relation to the first part of the question, which is whether the costs have been updated to reflect other government policy, again that is something I will have to get confirmed and provide that information to the committee.

Ms GEORGE—Thank you. Do you have an assessment of the number of users who will not benefit from the 30 per cent tax offset or those who will not get the full benefit? Could you take that on notice and see whether there is any data available?

Mr Heferen—I can take that on notice.

Mrs IRWIN—I want to talk about tax deductibility. The Treasurer has said that any move to get rid of the current forms of federal financial assistance for child care and replace it with tax deductions would benefit some and leave others worse off. Is this the view of Treasury and has advice been provided to the Treasurer to this effect?

Mr Heferen—I am not aware of advice being provided. In relation to the general proposition, it is undeniable that that would be the case. Given the progressive nature of the tax system, people on the top marginal rate will get a greater benefit in absolute terms from a tax deduction than those on a lower rate. If implicit in that is the notion that, if you get tax deductibility—a bit like if you are eligible to salary sacrifice with your employer having a fringe benefits tax exemption—you would not get access to the child-care benefit and the child-care tax rebate, as I said before, that is clearly the case. Deductibility and/or fringe benefits tax exemptions, as you go up the income scale, will provide a proportionally higher and higher benefit; as you go back down the income scale, it reverses. So, with low- and middle-income earners, as I noted before—particularly with low-income earners—the child-care benefit and the child-care tax rebate will provide greater assistance in absolute terms. I suspect that is what the Treasurer was alluding to.

CHAIR—But, on that point, the same argument can be made about the 30 per cent rebate. For instance, if you are on a very low income, you are not paying any tax.

Mr Heferen—That is right.

CHAIR—Let us get it right. Could the tax office give the committee a list of all the different thresholds? We start with \$6,000. Prior to the last tax deductions, if you were a single person earning \$40,000 a year—this is before the most recent tax cuts—you would pay over \$9,000 tax. If you were a husband and wife or a couple whose salary was, say, one-third, two-thirds, you would pay \$5,500 tax. If you were a couple on a single income of \$40,000 with two children under five, not only would you pay no tax at all but you would get a top-up of \$1,500. I would like to see all those thresholds; there have to be a myriad of them. I would like a list of all them, please.

Mr Heferen—There certainly is one.

CHAIR—Can I have that list?

Mr Konza—That modelling has been done within Treasury, I am sure.

Mr Heferen—A breakdown of all of the different rebates, thresholds—

CHAIR—Yes.

Mr Heferen—As you noted, if you are a single parent, whether you have one child, two kids, three kids, four kids—

CHAIR—Yes, I want all of that. Or if you are a senior couple, and you earn this much, you are on a \$12,000 threshold. The offset is \$12,000, is it not?

Mr Walker—Yes, but it varies.

Mr Heferen—I can seek the information—

CHAIR—That is what I want—the variations. This notion that we all have a single threshold is nonsense.

Mr Heferen—At each level of income and each different split, if you are a couple, whether it is 100-0, fifty-fifty, two-thirds, one-third, 80-20 or whatever—

CHAIR—Do not go to the minutiae, but just give me a broad outline.

Mr Heferen—I am sure we have something somewhere that will at least give you a sense of the range of variables that are there.

Ms GEORGE—Just in relation to that, we have this problem about effective marginal tax rates and the impact on decisions people make about returning to work. There have been a number of submissions made to the inquiry that the way you do away with this problem in the long term is to move to a system whereby you pay a universal payment based on the age of children. Has Treasury done any thinking or any modelling on this? Does it have any data that may shed light on that proposition?

Mr Heferen—Not that I am aware of. You are talking about a universal payment irrespective of income?

Ms GEORGE—Yes, the costs of that as against the system as it operates today.

Mr Heferen—Not that I am aware of.

Mr FAWCETT—Sorry to be like a dog with a bone, but I want to come back to this interpretation of the tax act. The case that has been put to us is that the ability of a small business to access this provision is restricted by the act, which says:

... the ... child care facility ... is located on business premises of:

the employer—

The actual wording of section 47 of the Fringe Benefits Tax Assessment Act has an 'or' after that, and says:

(ii) if the employer is a company, of the employer or of a company that is related to the employer ...

So is it your contention that there is a definition somewhere that says 'related to', means a wholly-owned subsidiary, because any other form of relationship then, whether that be through a

part lease or a part ownership or part share holding, establishes a relationship? If the act allows that, then why doesn't the commissioner's ruling?

Mr Konza—Our ruling sets out that there has to be sufficient relationship for—

Mr FAWCETT—So it is your interpretation of the act that prevents a small business from accessing this.

Mr Konza—No, the—

Mr FAWCETT—Sorry, but how can you say no?

Mr Konza—Because to have a \$1 share, as you posited before, would render the first limb of that section pointless. Lawyers do not generally read acts so that the relationship in the second limb means that there are no premises, because that would be an illogical reading of the section. You will see that in the ruling the commissioner has analysed what he thinks is meant by the word 'related', and says that it has to be more than a simple amalgamation of different businesses.

Mr FAWCETT—But we still come back to the fact that it is his analysis and his interpretation that has prevented small businesses from accessing this.

Mr Konza—No—

Mr FAWCETT—That is fine, we can look at changing the act to make it clearer.

Mr Konza—That is your view of it. We say the act is there.

CHAIR—You make the point well, because if it was subject to tabling and disallowance, we would have this argument, this discussion, in parliament, and then we would make law about it.

Mr Walker—You would have that discussion. Undoubtedly, you would come to the position that the commissioner has to come to, and that is that your—

CHAIR—No, that is not necessarily so.

Mr Walker—No, in tabling a regulation, if that regulation is not supported by the primary legislation, then it would have no effect. The commissioner's ruling is essentially doing exactly the same thing.

CHAIR—No, it is not.

Mr Walker—If we make a ruling, that ruling is our interpretation of the law until you change that law.

CHAIR—No, it is not. If the commissioner knew he was going to be subject to being carved up in the parliament, he would be very careful about that ruling.

Mr Walker—The commissioner is very careful about his rulings anyway. There is a very comprehensive rules process for that.

CHAIR—We will not go there. We have a lot of rulings out there, and, believe me, some of them are shockers! As I said, would you like the list of the ones I am dealing with currently?

Mr Walker—No, thank you.

CHAIR—Shockers! With the position that the commission has at the present time with regard to disallowing tax deductibility for child-care expenses, you are relying on High Court decisions at this point in time.

Mr Walker—We are relying on the courts, yes. The courts have interpreted and told us how it should be.

CHAIR—You have been known to say, ‘We think the court’s wrong, we won’t apply it,’ but on this occasion you are following the court’s decisions.

Mr Walker—We are.

CHAIR—We could, of course, get the High Court to change its mind too, I suppose, and it can do that too. Going back to the black economy, we really have not introduced any policies that have targeted the black economy. We said the GST would, but most of us knew it would not.

Mr Konza—The Australian Business Number is regarded by the tax office and Treasury as being very effective in combating business-to-business cash transactions, but it is not effective in dealing with business-to-consumer transactions.

CHAIR—If we go back to in-home care, and I will call it that rather than nanny care, because there are plenty of shift workers and people who you would not normally associate with nannies who need this sort of facility, if you had allowed them to have a tax deduction—make the choice: you can have a tax deduction or you can go the CCB 30 per cent rebate—and the in-home carer was at least a level II certificate and had a tax file number and the employer had a small withholding tax, that would kill the black economy activity of the people participating in that way, wouldn’t it?

Mr Konza—The people who employ those in-home carers currently have a withholding tax liability. That is a minor point. The point I made at the very beginning of this discussion was that the presence of government benefits for the formal part of the child-care industry means that we believe—

CHAIR—You are capturing quite a bit of it.

Mr Konza—Yes, and so what you are saying is that there would be a data set created that we could use, and that would have a similar effect.

CHAIR—Yes, that would capture a whole new section of it.

Mr Konza—It would.

CHAIR—And the incentive to comply with the small withholding tax and the tax file number would be the fact that you get a tax deduction.

Mr Konza—That is not a matter we comment on, sorry.

CHAIR—If you did not get the tax deduction, you would be happily out there in the black economy still. Okay, that concludes the questions I wanted to ask and, as there are no more questions from the rest of the committee, I thank you for appearing today. We would be obliged if you could bring back to the secretariat the things we have asked you to take on notice. If we have other things that we want to follow up, I guess we can call on you for that.

Resolved (on motion by **Ms George**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 12.04 pm