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COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Reference: Paid Parental Leave Bill 2010

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SENATE COMMUNITY AFFAIRS

LEGISLATION COMMITTEE

Wednesday, 19 May 2010

Members: Senator Moore (*Chair*), Senator Siewert (*Deputy Chair*), Senators Adams, Boyce, Carol Brown and Furner

Participating members: Senators Abetz, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Brandis, Bob Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Eggleston, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance: Senators Adams, Fisher, Furner, Hanson-Young and Moore

Terms of reference for the inquiry:

To inquire into and report on:

Paid Parental Leave Bill 2010

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Committee met at 9.01 am

CAMPBELL, Ms Nicole Bernadette, Chair, Paid Parental Leave Subcommittee and Executive Committee Member, Australian Local Government Women's Association

COLEMAN, Ms Dinah, Member, National Foundation for Australian Women

COLEMAN, Mrs Marie Yvonne, Chair, Social Policy Committee, National Foundation for Australian Women

COOK, Mrs Sandra, National Director of Policy, Business and Professional Women Australia

GRIFFITHS, Ms Julie Ann Marie, City Vice President, Australian Local Government Women's Association

PERRY, Ms Julia, Member, Social Policy Committee, National Foundation for Australian Women

Evidence from Mrs Cook was taken via teleconference—

CHAIR (Senator Moore)—Welcome. You all have information on parliamentary privilege and the protection of witnesses, and we have your submissions. I want to put on record the appreciation of the committee and the government for the work done by the National Foundation for Women through the consultative process, and also Mrs Cook for the BPW for the work that your organisation has done. We appreciate the submissions that you have given us and also the long-term involvement that both your organisations have taken on this issue. I invite both organisations to make some opening statements. We will start with Mrs Cook, because of the difficulty of telephone hookups. Mrs Cook, would you like to make an opening statement?

Mrs Cook—Yes, I would, and I will take this opportunity to thank you for inviting us to make a contribution to the inquiry. As an organisation whose diverse membership includes both employees and employers, particularly in the SME area, reactions to the exposure draft of the Paid Parental Leave Scheme Bill were diverse. However, BPW Australia has overall support for the immediate introduction of the proposed scheme.

In our original submission to the Productivity Commission back in 2008 we said that government funded PML requires all Australians, whether parents or not, to contribute a minimal amount to the first 14 to 26 weeks of the many of years of parenting, which we claim is a good start for children and is worthy of society's support. Parents contribute enormously to providing the trained employees and the sustainable business owners that will pay the taxes and staff the facilities that all Australians will need as they age and retire.

Gender equity and the rights of working women are central to BPW Australia. We firmly believe that paid parental leave should be a basic right for working parents and should be viewed in the same way as annual leave, sick leave and other provisions. As the scheme matures in Australia, we would expect an extension of leave provisions to 26 weeks, given that research shows that longer paid maternity leave provides better health outcomes for both infant and parent.

My own recent experience while interviewing employees about gender pay equity confirmed that entrenched attitudes about women's contribution to the work force—that they will only be there for a short time so they are not worthy of the same opportunity and investment—remain. We believe the inclusion of paid parental leave as part of standard employment conditions will facilitate cultural change to those attitudes.

Overseas research in countries such as Germany and New Zealand shows that women do return to work after paid parental leave. In New Zealand up to two-thirds of mothers go back to the same employer. Often they negotiate part-time work and more flexible working conditions. This is of particular importance to us as we remain concerned at the lack of quality part-time work in Australia, especially at senior and management levels. We have been impressed at the growing number of employers offering some form of paid parental leave, but many require an immediate return to full-time hours at the cessation of paid leave and this is often not the preferred choice. Evidence shows that when paid parental leave is combined with other practices such as flexible hours, part-time work, the provision of breastfeeding facilities and so on, women's continued participation in the workforce is increased.

A change to work culture that embraces parenting as a part of the life cycle affects both employers, who have greater confidence that women will return, and employees, who do not have to feel guilty about having time off. The existing tension around paid parental leave must be recognised. We cannot stress enough how important it will be to have meaningful education opportunities for both employers and employees.

We know in Australia already that paid maternity leave improves female return-to-work rates, typically to the same employer, and up to 70 per cent return within 15 months. This is why we support the impost of having the employer as the paymaster. I spoke with one business owner yesterday who had minimal time off when she had her children because she had no alternative. She is highly supportive of paid parental leave despite the fact that it will have some administrative impact on her business. That is why we have emphasised the importance of the review and refinement of the scheme as it matures. We thank you for the opportunity to appear before this inquiry.

CHAIR—Thank you, Mrs Cook. We will move to the National Foundation for Australian Women.

Mrs Coleman—As you know, we have been very supportive of the introduction of the Paid Parental Leave scheme and we have provided you with a detailed submission. Yesterday, I emailed through to the committee an 85-page document, which Ms Perry had produced, rather than bringing it along today. It is a very useful background. Ms Perry, who has worked with us on this matter, has had extensive experience working in the Commonwealth on income support policy, including as director of parenting and family policy. As well, she has worked with the Organisation for Economic Cooperation and Development on a study of public policy and labour-force participation by sole and married mothers in OECD nations. That is the basis, indeed, of the document which I emailed to the committee yesterday. Ms Perry will make a brief statement. I should acknowledge my daughter, Dinah Coleman, who will also make a brief statement.

Given that the point of having a parental leave scheme is not only to enhance productivity through female workforce attachment but also to provide benefits to women and children, we are sad to see that there is not any specific statement of objectives in the bill itself which would clarify that it is of benefit on a number of accounts. Indeed, that also makes it harder to analyse whether the program actually meets its objectives once it is operating. What is spoken of but not in legislation does not always get undertaken—ministers' second reading speeches, valuable as they are, do not have any legal standing in terms of a statement of objectives.

The proposed 18 weeks duration, which we accept as rational at this time, is based on the Productivity Commission's recommendations. Along with a number of other people, we would obviously support a longer duration, but we are prepared to accept that we have start somewhere. To that extent, we believe it is appropriate to adopt the recommendations of this bill. But we would prefer to see a period of at least 26 weeks in the next tranche of improvements to the legislation. Clearly, we believe that if we are moving towards 26 weeks over a period of a couple of years, it is really essential to see the superannuation guarantee payment brought into play as soon as possible.

We have noted the views of the Sex Discrimination Commissioner on the importance of involving fathers as well as mothers. We note that the government has indicated that it proposes to look at the partner-specific leave as a next priority. Given that both parents can share the proposed 18 weeks—or 26 weeks, if it is extended—we would again point out that fathers would not lose if we prioritised extending the introduction of partner-specific leave to 26 weeks. But we do see that there is going to be a considerable need to promote the availability of paid leave, as it stands, for fathers because the rate at which fathers choose to take leave to look after a new baby is perhaps not as high as we might think desirable.

Our broad position is that we see this bill as an essential starting point, but we would look to future development of a nationally coordinated approach towards paid parental leave at income replacement level which will incorporate and build on this proposed scheme. We see as very important the protection of low-income, casual and seasonal workers. We see it as important that, over time, the Commonwealth approach subsumes and makes consistent the present confused picture of private and public sector parental leave schemes, which exist now. While we have no doubt that the scheme as proposed in the bill will be of great benefit to many families—often low-income families in rural and regional Australia, working in small businesses and on family farms—we think that there are problems for seasonal workers in the way the bill is constructed at the moment. Ms Coleman will comment on that.

We think that it is very probable that once this scheme is enacted and there are programs in operation—and we note that the government has agreed that it will not require employers to begin making the payments until 1 June, which gives the opportunity for putting provisions in payroll systems—there will be lots of changes beginning to emerge in terms of employer provided schemes, as they stand.

We have noted with interest the submissions from Professor Stewart, and from Professor Baird from the University of Sydney. We think that what is going to happen in terms of privately negotiated parental leave is going to be hard to predict. We want to emphasise, therefore, that we think it is important in policy terms that the Commonwealth stay well across the issues of what is happening in privately provided schemes. We are

very concerned that the more the national Paid Parental Leave scheme is identified as solely welfare transfer for low-income parents the stronger will be the demands that other welfare payments be paid at the same level notwithstanding that the eligibility for these payments is workforce attachment. This is why we believe it is essential that the government establish a policy and administrative regime which emphasises paid parental leave as a workforce related scheme and which maintains a close observation of and even a capacity to influence emerging trends in private and public sector schemes. We have proposed that there should be a post of parliamentary secretary for work-life balance and parental leave as part of the machinery of government to bring about effective future development of policy and to ensure the interconnectedness of policy development across the health, welfare and industrial relations portfolios.

Ms Coleman—Thank you for giving me the opportunity to appear before the committee today. I would like to say that it is important for policymakers to have a real understanding of the conditions for families in rural and regional Australia and especially for those who are seasonal workers. In my submission I have described work in shearing sheds in New South Wales. Often work is hard to find in rural Australia for women and for young people and not all small country towns have affordable child care and the hours the centres are open are not suited to people who have to travel away from home for work or long distances each day. The eligibility clauses proposed for no more than eight weeks break away from work might not be realistic for some seasonal workers in the shearing industry, for instance. There are real physical limits to how far families can travel away from the home base.

In my experience in country towns the lack of school holiday care especially for teenagers is a real problem for women who do find work. I have read the submissions from Professor Baird and Professor Stewart and I think that the points that they raise, in particular with the National Employment Standards and the request for leave—which is not necessarily a guarantee so you may be eligible for paid parental leave, but not necessarily able to get that leave—are very valid. Also I wondered where it did leave women in the shearing industry and other seasonal work with a job to go back to—would they still have a position to return to after being on paid parental leave? Thank you and I would be happy to answer any questions.

CHAIR—Thank you, Ms Coleman. Ms Perry, thank you very much, the document which gave the international perspective was very useful.

Ms Perry—I did want to say that you do not have to read most of it because it is summarised. If you want to look up a particular country it is there, but it is the summary that is the most important.

CHAIR—It is very important to have it on record.

Ms Perry—I congratulate the government for implementing the Productivity Commission's recommendations and providing very substantial assistance to women to take time off to have a baby. As Marie says the policy I proposed was 28 weeks wage replacement paid through up to a one per cent levy on payroll with a government subvention. It would also provide paid paternity leave and a payment to the parents' employer and a period before the birth. This policy was not recommended by the Productivity Commission. I note that there is a similar policy now proposed by the opposition although I do think that the payment specific for fathers, the payment to the employers and the period before the birth are critical and I would appreciate the opportunity to discuss that further.

As Marie mentioned I had been involved in the Keating government's policy on maternity allowance and that of the Howard government, which became the baby bonus later. Both these were intended as paid maternity leave for employed mothers and resulted in a government paid fixed rate payment to all mothers. Each time this is introduced it is heralded as 'the first time ever'. Because of the complexities of meeting the wide variation in family circumstances and the political consideration of discriminating between women who had and had not been in the labour force before the birth these were paid as a simple lump sum payment. The current bill attempts to define eligibility to distinguish between working and not working before and after the birth and it becomes quite complex.

I wish to comment on a small number of issues in the bill. While it will fit the needs of most families it is those whose circumstances are slightly unusual where there could be quite serious, unintended consequences. In my view policy must be robust enough to cover such exceptions and the simpler the legislation can do this the better. My position is that we should trust families to do what meets the needs of the baby and not be too prescriptive. In looking at the length of this bill I am reminded that my last few years in the Public Service was heading a scheme to simplify the social security system. I think back to the baby bonus and, if you a woman in Australia, having a baby the attitude is, 'Here is your money; you sort it out.' It seems a little bit briefer than this current bill.

The proposal is to pay 18 weeks continuous at the minimum wage starting no earlier than the birth and allowing only 10 days work keeping-in-touch provisions during the period. The mother must have been engaged in work for a total period consecutively for 10 months of the previous 13 months prior to the expected birth with a break of no greater than eight weeks. That is the proposal. Out there are numerous families that have financial commitments, particularly housing costs, so tight as to require the mother's usual income. Sometimes the mother is the primary or only earner; sometimes the secondary earner. Many are currently prevented from having children because they cannot afford to lose this income for the period and they have to choose between a house and a child. Others return to employment much earlier than is in the interests of themselves or the child. There are also families I have come across in my research where the father takes on a second job to compensate for the income lost. There was one where the father says that the only time he sees his baby awake is on Sunday afternoons. This is very difficult for family-functioning all around. It is difficult for a nursing mother to have a complete absence because the father is working himself to the bone to try and make up for the costs. I would also like to point out that 27 per cent of working women aged 20 to 34 and 25 per cent of mothers of dependent children are in casual employment and have no paid leave entitlements.

There are a few questions I have there. What happens to women who become pregnant while still on paid or unpaid maternity leave from the previous pregnancy? It is important to note that a relatively high percentage of pregnancies are unplanned. What happens to women who, because of their health or that of the foetus, or the conditions of their work or the workplace, have to leave substantially before the birth of the child? Very few women are in fact able to work to the day of the birth. If they are casuals who do not have sick leave entitlements there is no income coverage for that period. What do they do? In the 50 European and OECD countries I researched only one does not have a period of leave before the birth.

CHAIR—Switzerland, which is surprising.

Ms Perry—Yes, they are tough there—they do not like women. Fourteen have a workplace with benefits where pregnant women who do certain types of work that are dangerous or who are in dangerous workplaces are allowed time off or movement to other work and they are compensated for the income loss.

My next point is that, in relation to the post-birth period, with a lump sum entitlement as in the maternity allowance baby bonus, families can arrange their period of leave. They can arrange to spend it according to their circumstances. Some in tight financial circumstances are able to make ends meet by taking a shorter period off but financing that through the lump sum. Others kind of spin it out. There are a multitude of ways that people cope at present.

This is a larger sum of money but it precludes you working more than 10 days in that period. You cannot say, 'If I can go back to work one or two days a week and my mother can look after the baby, we can pay the rent or the mortgage.' You cannot do that. It is proscribed. This is the sort of example where there is a view of exactly what all women will do and yet there is just so much variation that I really do not think it is flexible enough. Loans are not available because expected income precludes the ability of families to borrow. In fact, I would support Bruce Chapman's loans scheme in the absence of anything better because at least that might allow you to get some money to make it work, but I would prefer a proper scheme.

The leave would obviously be taken by the primary carer, the mother, in a continuous period, but there is a list of complex rules containing what leave might be taken by whom. There are so many permutations out there of roles that can be played by opposite sex or same sex partners, grandparents, other kin or friends. You find the most extraordinarily convoluted arrangements that people have. I really do not see why the arrangements cannot be left to families to work it out, provided it does not exceed the entitlement.

The period of work before the claim has to be consecutive days. You really cannot predict that you might suddenly find you have placenta praevia and have to lie down for eight weeks before the birth. You might have had reason to not be on leave, to be away from the workforce. Why does it have to be consecutive? We are saying that it has to be more than getting a job because you become pregnant only to get the leave. It may be for the convenience of employers. I do not see why Family Assistance Office cannot calculate it.

I have two more quick issues. The income test of \$150,000 a year applies to the financial year ending before the claim. Clearly that is not going to be the income of the financial year in which you have taken a substantial period of paid leave. I have no objection to a means test in principle, but income testing people is quite administratively onerous. I do not think that the income test will save more money than it costs to administer on all the applicants to rule out such a short number. Also I have a problem with an income test that is for the previous year and before the change that causes the income loss.

One other group—this is rather similar to Dinah’s issue—is unpaid family workers, where the woman works full time on the farm or in the small business without pay. When she is absent somebody has to be employed to do her job. There is a real income loss there, because there is the loss of the value of her unpaid work, which is expressed in the cost of replacement. I would be happy to answer any questions.

CHAIR—I welcome the women from the Australian Local Government Women’s Association. We are very pleased to have you. Is there anything you would like to add about the capacity in which you appear today?

Ms Campbell—I am also a mum—of Francoise.

CHAIR—Francoise should be on the record as well! Councillor Griffiths?

Ms Griffiths—I am from Blacktown City Council. I am also the manager for the private sector of the United Services Union.

CHAIR—We have your submission; thank you very much. Would either or both of you like to make a statement?

Ms Campbell—We will just make a brief statement. Firstly, apologies for our lateness; we were held up with prams at security.

CHAIR—Yes, it looks particularly dangerous; I can see that!

Ms Campbell—We are delighted to be able to participate in the inquiry and we are very pleased to provide a submission. The first thing we would like to say is that we commend the government for establishing a paid parental leave scheme. We have some issues that we will talk through. We also recognise and acknowledge the efforts of other political parties in recognising the importance of paid parental leave schemes. It has been a long journey, and it is great to see that there is tripartisan support for supporting parents and their young families.

ALGWA’s role, as you would have seen from our submission, is actually about supporting women in local government, whether they are employees of local government or elected councillors. Julie and I are both elected councillors. So we have a general role in furthering women’s understanding of how local government works and encouraging women to run for local council. As you know, we are appallingly represented at that level of government. One of the important aspects of ALGWA is to take action in relation to any subject or activity of particular interest to women affecting local governing bodies or local government legislation. That is the context in which we put our submission forward.

ALGWA as an organisation looked closely at the Productivity Commission’s report as it was being developed. We started a campaign in 2008 based on the time frames that came out of the draft report from the Productivity Commission. That was for 18 weeks paid maternity leave and two weeks paid paternity leave for all local government employees. The New South Wales local government employees’ award currently allows for nine weeks, and that has the capacity to be taken at half pay. It was effectively a doubling of the existing award entitlement. The New South Wales local government employees’ award is being renegotiated this year, in November.

ALGWA’s campaign has actually been reasonably successful. Local government in New South Wales is a very significant employer. We have some 70,000 employees in the local government sector, so New South Wales is a big player nationally but also across the state in terms of government employees. Councils are autonomous policy-setting bodies in their own right. Some of the councils that have adopted ALGWA’s campaign of 18 weeks at full wage replacement with super and the two weeks paid paternity leave are my council—Ryde Council—Gosford Council, Wyong Council, Ashfield, Leichhardt and the City of Sydney. Some of the other councils that are not quite at 18 weeks but certainly above the award are Blacktown Council—Julie’s council—which is at 14 weeks; Marrickville, also at 14 weeks; Orange, 14—this also includes the two weeks paid paternity leave; Penrith, the same; Port Stephens, 12 weeks; Wollongong, 12 weeks and Hawkesbury, 12 weeks.

We take the view that, like Francoise, from little things big things grow. We will be continuing our campaign across the local government sector in New South Wales. As I said, the Productivity Commission’s report was a great catalyst in focusing people’s attention on what could be done in local government land.

Within the local government sector there are always arguments about whether we can attract and retain quality staff and keep our staff working. Our submission has quite a local government focus, as I said. I certainly appreciate and endorse the comments made by the earlier speakers. There is such a diversity of roles for women. It is important for all of them to be considered.

We have proposed in our submission a number of amendments, many of which are common to a large number of the submissions that the committee has received. We obviously would like the period of paid maternity leave to be flexible enough so that it can be taken at half-pay for 36 weeks as opposed to just 18 weeks. Like many of the other respondents, we recognise 18 weeks is a terrific first step. We see that as the minimum benchmark and not the maximum. We would be looking for the government to grow this, particularly with the program review, to have 26 weeks, to have the capacity to have it at half-pay, to certainly recognise the important role of fathers and implement the two weeks paid paternity leave which was recommended by the Productivity Commission, and to have it at full wage replacement so that there is not the income loss.

The earlier comments are absolutely relevant in terms of the shortfall for some women. I live in Sydney, and buying a house there is extremely expensive. I am just a working girl; I am not a millionaire. It does require both parents to work full-time. It is very difficult to keep things ticking over. That is why the full wage replacement actually does allow you to plan for your families. Families, quite frankly, should not be something that you have to seriously squish in around managing your mortgage payments. That is not how life should be. It should be celebrating and welcoming future Australian contributors to our economy. We should not actually have to be in this awful situation where you really have to think, 'Can I afford to have another child?' It is not asking for anything extra; it is just asking to maintain the status quo of what you have.

One of the issues which we are concerned about is how the paid parental leave from the government will interface with existing industrial arrangements. This has become particularly pertinent for us in New South Wales with the renegotiation of the New South Wales local government employees award. We have actually had—and I have correspondence which I am happy to leave with the committee—some interesting discussions about how this might work. There is a lot of confusion out there. Some councils are quite concerned. There is a lot of almost aggressive language being thrown around with regard to double dipping or getting paid twice. So if there is an existing paid parental scheme, whatever it is, if anyone says, 'Here's another opportunity to access paid parental leave,' it is like: 'You can't have that. You have this. We'll get rid of our system because that's there.' It is almost hostile. That is really disappointing.

The best paid parental leave systems are ones where government and business are working in partnership to ensure that their employees are supported at this very important time. It should not be either/or—either business funds it or government funds it and there is no happy marriage. There is opportunity for business and government to work together. In that regard, one of the points we make in our submission is that we need to make sure that those employers that have existing paid parental leave schemes continue those arrangements and are encouraged to continue those arrangements. The Productivity Commission talked about businesses with an existing paid parental leave scheme as doing it as a point of differentiation, and they absolutely did. They saw the value of investing in their workforce and retaining their employees. There is no doubt at all in my mind that this scheme, whilst very welcome, will certainly mute, to a degree, that point of differentiation to an extent that a business might actually say, 'I'll scrap it now.' That would be a shame. We would like to encourage the government to consider further opportunities arising through the review of Australian taxation and how business might actually be supported. If they are already doing good things and supporting their workforce then what more can we do to actually help them? I think there is scope for that.

The concern we have with regard to the dropping out of participation is significant in terms of local government, and that is something we are certainly happy to take further questions on. I have correspondence which I will leave with you. The question is: how does this scheme interface with arrangements which are under state jurisdiction control rather than under the Fair Work Act? And also, in terms of the public communication campaign for employers and the public more generally, we really need to be clear about what this scheme is. It is not a pseudo award entitlement. It is a paid parental leave scheme that is government funded and will be administered by employers. That is separate to the negotiation of employee entitlements. There is obviously a workplace issue—it is work related—but it is separate to industrial award negotiations. I think there has been a muddying of the waters, and that could potentially be to the detriment of people working in, for example, local government. Somebody working in local government right here and now could be entitled to access the baby bonus or part B of the family tax benefit and might choose to opt out of the government's paid parental leave system for their own reasons—whatever those reasons are. If somehow, at the expiry of an industrial agreement—like, for example, the New South Wales local government employees award—there is this idea that you can embed the government scheme as part of the industrial—

CHAIR—Excuse me, Ms Campbell. We are just going to check whether anyone has any objection to being filmed.

Ms Campbell—No, that is fine.

CHAIR—I think one of the reasons we are being filmed is baby Françoise, but that is cool.

Ms Campbell—She is very pretty.

CHAIR—We are happy with that, but I just wanted to make sure that you have no objection.

Ms Campbell—The importance for us in terms of local government employees is that it is very clear. Then we can give advice back to our members and continue our campaign at councils and say: 'Look, this is not double dipping. This is not somebody being sneaky and somehow manipulating the system to get paid twice. This is actually an existing employee entitlement in local government land, and here is a government scheme as well that augments that. That is terrific and wonderful, because we want to support our working parents. Let us continue to work together.' But I think there is a danger that a negative vibe is occurring, and we really need to address it. I think that public education campaign will be critical. We certainly think existing employers should be encouraged to continue their arrangements. It will be a very important aspect of the programmed review. It would be a great shame if we saw a real drop-off in employers that have already recognised the importance of such schemes.

CHAIR—Thank you. Ms Griffiths, do you have anything to add?

Ms Griffiths—Thank you. I will make mine short and sweet. As you can tell, I have caught the flu. I concur with all the parties that are here today. I come from a very local level. In 2001, I was campaigning for paid maternity leave for the local government state award—which we got up. It was the best day that we ever had. We have many women out there in local government who were struggling to be able to take maternity leave and then return to work. There were difficulties around the types of work that they had to perform and whether they could take the time off.

I will give you an example of a particular director in the council. This director and her husband were having their first child and decided that the husband would have the time off to care for the baby while the director worked. The husband had an accident, a serious accident. They had two mortgages and they had two cars. What ended up happening was that they were so disadvantaged that the director had to come back to work within three months because her husband was severely injured. So the income replacement is absolutely significant for women of today.

Also, there is the difficulty, which Councillor Campbell expressed, regarding local government. At the moment, because the federal government has announced the paid maternity leave scheme, a lot of local government bodies seem to feel that they can opt out of their current industrial arrangements. We have written to the Deputy Prime Minister about this; it is a really big concern. We were of the understanding that one would balance the other and that the current payment through the local government awards or the industrial instruments would be maintained whether they were in the private sector or local government. We felt that that would work towards the ILO convention's paid maternity leave scheme as well, and I am concerned about it.

I am also concerned about superannuation. I asked Minister Macklin about that. I asked whether an element has been put into the whole project regarding employers paying super. The advice I received was that they did not have to pay super as part of the government's maternity leave scheme. I would ask that you take that into consideration, hopefully as a recommendation. Even though it is a minimum wage, we are so far behind the eight ball now regarding retirement age and having an income when we retire—and we are already being told that we are going to be disadvantaged by the time we retire and living on the poverty line—that any little bit that we can get—and I will take a big bit—I would really appreciate. I will stop talking now because I will lose my voice. I thank you for the opportunity here today and I am looking forward to any recommendations that may come out of the committee.

CHAIR—Thank you, Councillor Griffiths.

Senator HANSON-YOUNG—It is encouraging that everybody at the table here today has said that we need to be looking towards extending the program whether that be the length of time up to the 26 weeks, or looking at whether the minimum wage is really the appropriate benchmark, or replacement income. I think that is a message on this issue that needs to be given directly to the government. As for the superannuation issue, I agree with you. It is totally ludicrous that it not be included in this scheme and, just to let you know, I will be moving amendments in relation to that.

Concerning the relationship between this legislation and the existing paid parental leave schemes that some businesses and companies have taken on board—and I put this to the various business groups who appeared

last week—I am concerned that there is nothing in this bill at the moment that is an encouragement for those employers to continue. It is pretty concerning if already, even in local government, those negotiations are up for grabs at the moment. Really they should not be. Perhaps, Ms Perry or Marie Coleman, you could give us some indications about what we could see in the legislation to be a disincentive for existing businesses to dump these schemes. At the end of the day they are going to be looking at their bottom line, aren't they, and I think we need to be realistic about that. How do we stop them from doing it?

Ms Perry—There are different reasons why they do it at the moment. One reason is that it is much easier for large companies, because it is not very expensive to provide paid maternity leave. But it is a shock when you are a very small employer with two employees and you are going to have to pay one of them for nothing. But with the likes of AMP or Westpac, they can factor in 1½ per cent of their income to be used for maternity leave because two per cent of their people are going to take maternity leave in a year. So for large business it is much easier to budget and plan for.

They do it, too, for a point of differentiation. When there are only a few employers providing paid maternity leave they are doing it to out compete other people, so I am not quite sure about the retention aspects of a universal system. I just do not really see the logic in how a universal scheme is going to do that when it is basically a competitive thing.

But I have also come across a number of small businesses who pay paid maternity leave because they just think they cannot not do it—they value their staff and are acting on a moral basis by doing it. Given the state of them at the moment, if the government said, 'For anyone who has a paid maternity leave scheme, the government is now going to force you to continue you that,' that would be the end of any kind of altruistic measures, particularly with respect to the latter group of people who are doing it because—

Senator HANSON-YOUNG—How do we encourage and provide incentive for that partnership? If a woman is being paid only the minimum wage under the government scheme, yet currently in the enterprise bargaining agreement that they have got she would be paid replacement for 14 weeks, how do we ensure that that is actually the top-up as opposed to it simply going back to getting only the minimum for the 18 weeks—which is obviously not going to be better?

Ms Perry—I think that actually saying so would be a very good idea. I do find a problem where the government does not seem to talk to us. Having been inside the government, it is a different perspective to be outside it. The government did not counteract the claims that global warming was rubbish. The government does not understand its power, its influence, in making statements. This is why a statement of intent and a statement of objectives should be in here that clearly says that this is an adjunct to existing schemes—something where, in your negotiations, you could say, 'The government says it is only carrying half the burden and it is expecting you to carry the other half.' Legislation which tries to control every aspect of someone's life is not necessary but what is necessary is promotion of a culture. I would love to see that lesson be taken up by the government—just talk to us and show that kind of leadership.

Senator HANSON-YOUNG—So you are saying that the intent of this—being that the government is providing a base level for a universal scheme which is not meant to be at replacement or the cost of existing schemes—is not effectively represented or even communicated in this?

Ms Perry—In many acts there is a statement of objectives about what the act is intended to do, and you can come up and say, for example, that clause 380 is a problem in terms of your objectives. But with this you cannot do that. There is no reason, for example, to have 295 consecutive days except for a 68-day break. I do not know what that is meant to achieve, so I do not know how to argue against it—it is just there. So I think that having a statement that says something along the lines that this act is intended to supplement provider-based and it is intended that employers have a role to play clarifies issues.

Senator HANSON-YOUNG—It would be nice to see an explanation or a commitment to further extending the program as well. That is what I would like to see.

Ms Perry—As you know, Senator, I would prefer a scheme where there was a mandatory payroll based levy on employers. I think it is the employer's role to pay. I am very concerned about creating disincentives to employ women by putting a risk on young women of workforce age when you are going to take them on. Small employers have said to me, 'If they bring in paid maternity leave, I am never employing another woman'—and I say, 'You don't understand my scheme.' There is already discrimination against women, so I really do not like the idea of an employer top-up on an individual basis as the ultimate goal. But, why we have it, I would not want to discourage it.

Mrs Coleman—I would add that in this business of trying to talk to society about what we are trying to achieve, that is another reason for us arguing that there should be at the minimum a parliamentary secretary who is pretty much devoted to the promotion of the government's objectives. I think that is really quite important. It is very hard for an extremely busy minister, with a vast portfolio, to give enough attention to getting this thing bedded down.

CHAIR—Anyone from the local government association on Senator Hanson-Young's question?

Ms Campbell—I just wanted to reiterate the point that in local government we have had paid maternity leave provisions since 2001. That is when the nine weeks came in. I think a little bit of the confusion that has been created is feigned confusion. I think it is opportunistic actually. At our conference in 2009, the local government association actually put forward a motion, which thankfully was not passed. It was not debated. It was decided to let the executive kick this around and nothing has come out of it yet. I will read you the motion because it goes to the heart of how the scheme could potentially be used to erode existing arrangements. This was the motion from the executive: 'That the Local Government Association supports an increase in the future award's paid maternity leave provisions to 18 weeks on full pay or 36 weeks on half pay where such increase in the award entitlement does not apply in addition to the benefits provided by the federal government's paid maternity leave scheme.' That means you have got a very large employer in New South Wales that has been involved in implementing a paid maternity leave scheme for some nine and a half years now making it very clear that their agenda is to get out of this. I think that is really disappointing. That has been an alarming position taken by the executive of the Local Government Association.

Senator HANSON-YOUNG—Especially in the absence of a government scheme that is offering everything that it needs to offer. It is not long enough. It does not give replacement income. I take Ms Perry's comments about that. In the absence of a scheme that is really delivering what parents need, we cannot be seen to be putting forward a scheme with a communication strategy from the government that does not make it very clear to existing employers who have schemes that they can get out. This scheme does not deliver enough for them to do that. There are women who are going to be worse off.

Ms Campbell—Very much so, particularly in local government.

CHAIR—Mrs Cook, do you have any comment on Senator Hanson-Young's question?

Mrs Cook—I would just like to confirm everybody's comments about the need for clarification. I actually agree that there is a degree of feigned confusion. I think there is already a degree of hostility around the whole concept of paid parental leave, so any campaign that we need to get out has to be extremely clear with really clear objectives to counteract the very negative opinion of most employers out there who offer paid parental leave in the SME sector.

Senator ADAMS—Thank you all for your submissions. They are very interesting and I think you have shown the practical aspects of the difficulties within the schemes that are actually out there, what is going to happen and where we go in the future. You have done that very well. Ms Coleman, having been a farmer for many years and dealt with a number of contractors and the intermittent employing of people, would you like to elaborate a little on how women will be able to be eligible if the work has to go on consecutively? With the shearing contractors we have wet sheep and, as far as the horticulture area goes, you cannot pick fruit when it is raining. There are all these issues and because it is physical work the women will not be working right up to term. I know I worked as a midwife until I was four weeks from having my first child, but it got to the stage where I was going to be the next patient. That was in a different area, but I could not have worked like that on the farm, in the sheep yards or doing anything heavy. Would you like to talk about the difficulty for those people?

Ms Coleman—Yes, I think there is a real difficulty with the eight-week section, because as you say working in sheds is very hard, physical labour, even working as a cook involves very long hours. You frequently work 10- to 12-hour days and are on your feet all day. It is not necessarily easy to stay to full term when you are pregnant. As you say, there have not been wet sheep so much of late, but hopefully there will be wet sheep again and that could involve quite extended periods of time. Also, the shearing industry has an off season, as in other seasonal work, and we might have sit-down time, as it is called in the industry, and you have to look for other work. I was fortunate enough to get other work in droving—I used to take the children droving—and I had farm work to attend to at those times. But it is a real factor and hard to maintain continuous employment.

Senator ADAMS—The other point, which I think you raised, is that the wife probably works on the farm doing unpaid work and once she has a baby someone else has to be employed, so that is another complication. The other point is about acting as a paymaster. I have had a number of small businesses say, ‘This is a government problem; the money should be paid from the Family Assistance Office.’ Would you all like to comment on that, because small business is taxed enough without trying to deal with this issue.

Ms Perry—The reason I support the idea of a parliamentary secretary for this issue is that it is a business issue, an industrial relations issue and a health issue. At the moment it is in the social security portfolio, which underscores the fact that it is a social security payment. It is seen as welfare and, as welfare, it has a lot of problems because it is not based on income need. I think it is necessary to do whatever is possible to take it away from the idea that it is a welfare thing. It is paid by government on a means-tested basis. It is socialist; it is welfare. With regard to the kinds of lengths there are to get the payment through the employer, I know why that has been done but I think it is an incredibly complex system to achieve that kind of semiotic end. In complex cases, particularly, where I would like to see a grandmother stepping in—all the various complex things or where people were not going to take it in one lump—I would like to see an option for payments by the Family Assistance Office. If families and babies are going to be significantly constrained because of the problems for employers, I see no reason why there should not be an alternative where that will occur.

Ms Campbell—We do not see an issue, and it has not been raised within local government as a barrier to local government administering it; that is not the issue. As I said, the alarming thing is that they want to get out of administering what they are currently already committed to. But, in terms of the machinery to set it up and do it, that is not considered an issue in local government.

CHAIR—I will come back to you. BPW, you have members who are employers as well. I am wondering whether you have an answer to this question.

Mrs Cook—Yes, I do. I certainly do not think that they like the idea but, surprisingly enough, we have not had a really hostile reception to it. I think that ultimately they can see the benefit of it and, as much as they never like to do one more thing, they will in fact take it on board. People throw their hands up and say, ‘We’ll never employ another woman,’ but we heard that when leave without pay was introduced for women. I think they will not like it but generally they will put up with it if they have to. That is what I hear from the members who have contributed.

CHAIR—Thank you, Mrs Cook. Councillor Griffiths, you wanted to say something.

Ms Griffiths—Thank you. From a payroll perspective, local government have the ability to generate the payment based on their systems. Some of the smaller businesses might not have such a facility to administer it. Whether or not they would be able to do it would have to be taken into consideration. The only thing that really concerns me about a lump sum payment is: will it actually go to the child or to the family or will it be dispersed in another way, which would be to the detriment of the family? I would ask that, whoever is going to administer it, it be paid on a weekly or a fortnightly basis not as a lump sum, because it will be used for a mower or a whipper-snipper or something else and not the child.

CHAIR—There has been a lot of evidence in previous times around that issue.

Senator FURNER—I have been asking this question consistently and it is in regard to the 10 keeping in touch days. Do any of you foresee any issues associated with returning to work during the leave period for those keeping in touch days in any shape or form?

Ms Perry—I do not think they should be prescribed. They should be left to the employer and the employee. I think very few women would want to go back to work in the first 18 weeks if they could avoid it, but I would like to see it able to be broken. If you have something which you have to finish and only you can do it and you can take that time back or if you want to work a little of that time because you have to make ends meet, I do not want that prescribed. I think it should be left to people to do what they need to do within the entitlement.

Senator FURNER—Do you have an issue with it being consensual; that both parties consent to performing those 10 days?

Ms Perry—It should be consensual by both parties. They are going to be able to work it out a lot easier than the Family Assistance Office is.

Ms Campbell—We have not had feedback from our members or from the Local Government Association that that is an area of the bill that is of particular concern.

Mrs Cook—We have had feedback from several who support the idea that it is consensual. The general idea that we want from this bill is to give women every opportunity to stay connected to the workforce, and that is the reason that they like it because it gives them the ability to keep their hand in and not be treated like a leper when they return to work after having had no contact at all.

CHAIR—Senator Fisher, one question.

Senator FISHER—I am not sure which of you reflected that you felt there was concern, particularly in the business community, about paid parental leave—one of you did. How do policymakers prevent legislation like this from compounding that employer concern, if I can put it that way, and ensuring that the result is as intended, whatever that may be? Some of you have already given evidence about the lack of comprehensive objectives set out in the legislation. How do you prevent a legislative scheme, as reflected in this bill, from effectively compounding that employer concern? More particularly, how do you prevent it compounding that employer concern if you try and legislate to stop employers from letting this scheme replace whatever else they may be providing at this stage?

Mrs Coleman—What we are dealing with here quite often is a decent strategy of communication with employers, quite frankly. There is always confusion and alarm when anything new is introduced. That is just human nature. We have heard the words ‘some feigned confusion’. I think one has to have decent communication strategies in place and real genuine provisions for making sure that you are in contact—if you are government you are trying to run the thing—and listening to the actual experiences of business as much as you are listening to the feigned confusion, because the two things are not quite the same.

I am very much aware, for example, that when the superannuation guarantee program was introduced it was widely advertised that this would lead to the collapse of small business and probably of Western civilisation. In fact, what it has done is lead to the establishment of a very large and very profitable industry with significant investment funds which greatly enhance the working of the Australian community. I think we have got to work on the basis that there has got to be a lot of cooperative work going into this.

Attitudes to maternity leave and parental leave are always mixed in the community. I have something here from an opinion poll we commissioned 12 months ago, which I think is still consistent with a lot of current attitudes. There are age groups which are very supportive. There are gender groups which are very supportive. There are others which are not. There is natural apprehension among employers about something new coming in. I think we have to have a good, solid working program to help people bed things down in their payroll systems and the like, and we have to really listen so that if there are problems identified we can do something about them.

CHAIR—Local government, do you have an answer to the senator’s question?

Ms Campbell—I absolutely endorse the comments made by Mrs Coleman because the communication strategy is key to taking business on the journey and the dialogue. Also, for those businesses that have already got their existing paid parental leave provisions, it is important to explain what this scheme is and how it might interface with what they already have. I think there is also scope within government to consider some incentives for those businesses that have schemes and support them in continuing and growing those schemes. As I said, it is a welcomed start to a longer conversation with business and employees.

Ms Griffiths—In regards to the communication strategy I think we have to really sell to the employers, even to small businesses, that this is a good scheme. There are great opportunities here for retaining staff and a lot of people today say that they struggle to retain people. I think that if we can implement a great strategy where we raise retention as a positive and not a negative—because there is a lot of negativity around it—and stay positive about what the benefits will be to a small business, a large business or whatever, there are plenty of large businesses that can reiterate what the benefits have been for them.

The only other issue was the difference in income. In local government there will be a significant difference between what women currently earn in their job, even as a childcare worker, and what the minimum rate would be. There are quite significant differences. In small business there may not be such a big gap. There is a lot to consider and I think that we really need to move around how we can support each other, support business and really move away from money. I am tired of hearing about money. We are talking about children’s lives, we are talking about families and if we can support them I think we should do that.

CHAIR—Mrs Cook?

Mrs Cook—I would certainly endorse and stress the idea of communication, and I do believe that we need to take that research and those businesses here that show that retention rates after parental leave are very high.

We also need to embrace the employees and see if we can promote a dialogue between the businesses who are fearful and employees, and get them to realise that it is a journey for everybody through their work and not payment to a woman for having a baby. If their communication can address that I think it will go a long way for small business in changing their attitude.

CHAIR—Thank you, Mrs Cook. Senator Fisher?

Senator FISHER—You have spoken about communication. Does this communication from the government do the job? Given that it has been written before the bill has been passed, does it risk exacerbating the negativity, for example, that you have just spoken about, Ms Griffiths? Is it too early to put this information out, given that the bill is not settled and given the sorts of questions about the bill that your organisations have identified as being left unanswered?

CHAIR—Councillor Griffiths, would you like to answer that?

Ms Griffiths—Thank you. My answer is pretty simple. Remember, we have been going on this journey for a long time. Many reports have given exactly the same information. I would say that the information you would find in a book would go part way to addressing some of those issues. I think that you will always find that we are on an evolution: things are going to change all the time. As soon as you print a book there is already an amendment to go in it. The documents you held up are documents that—

Senator FISHER—So I gather you have not actually seen them. I should have asked whether you have had an opportunity to see them.

CHAIR—They have not been distributed, Senator.

Ms Griffiths—No, but what I am trying—

Senator FISHER—They have been distributed to us.

CHAIR—You are not in the business world, Senator. Councillor Griffiths, have you anything to add, because we are rapidly running out of time.

Ms Griffiths—I will finish up there, thank you, Chair.

CHAIR—Thank you so much. Thank you, all, very much: to Mrs Cook for the extra stress of being on the phone—I know that is difficult; to the Local Government Association for your ongoing work; to Françoise for being so well behaved; and to the National Foundation for Australian Women, again, for the work that you have done on this issue for so long.

[10.18 am]

STEWART, Professor Andrew, Private capacity

Evidence was taken via teleconference—

CHAIR—I welcome Professor Stewart, who has been waiting very patiently on the phone. Professor, you understand that there is a lot of interest in this issue. Thank you for your submission—it has been quoted in some of the evidence we have been receiving. You have information about the protection of witnesses and evidence. Would you like to open with a short statement and then we will go to questions?

Prof. Stewart—Thank you, very much, Chair. Just a quick summary of the points I am raising—they are fairly limited. Can I say at the outset that I do welcome this bill in general as being an important initiative in improving the position—

CHAIR—I am sorry, Professor, it is getting very faint on the line—I know it is difficult. Is it possible to yell?

Prof. Stewart—Absolutely!

CHAIR—That would be great.

Prof. Stewart—I will try and use my booming lecturer's voice. Is that a little better?

CHAIR—Yes. You were going to restate some of the points that you have made in your submission?

Prof. Stewart—Yes, very briefly. Firstly, I welcome the bill overall. The issues that I have raised are fairly confined issues about the relationship between the entitlements that the bill creates and the question of existing entitlements to parental leave. The first point is simply that as the bill stands there is nothing in it that makes clear that no leave entitlement is granted. Notwithstanding the title, which will lead many employers and many workers to believe that a right to parental leave is being created by this legislation, in fact it is a right to a payment only. I think the supporting material for the bill makes that clear but what I am proposing is that as a minimum the bill itself should clearly state that a worker who is eligible for parental leave pay does not thereby gain a right to take absence from their work and return to the job at the end of it. They may have that right under some other legislation—most obviously, under the Fair Work Act and the National Employment Standards in that act—but this bill does not create a right to leave.

As I have pointed out, and I understand a number of other submissions have pointed this out, there are some very obvious gaps between the entitlements to parental leave under the National Employment Standards and the entitlement to parental leave pay under this measure. There will be a number of employees who are entitled to parental leave pay but who do not have an existing entitlement to parental leave. Certainly my preferred view would be that that gap be closed in some way by the amendment of the Fair Work Act so as to provide for a broader entitlement to parental leave. But if that is not to be done, and I understand some of the difficulties in proceeding to amend the Fair Work Act, particularly given the need to consult with the states—so if that is not to be done in the short term—at the very least this bill should be amended to make it clearer, to avoid any confusion, that there is no entitlement to a return to work granted merely because there is an entitlement to parental leave pay.

The second point, which I would argue is probably the most important issue that I am raising, is a small but incredibly important point. I think the government has made it clear that it sees the entitlement to parental leave pay as an additional entitlement that is over and above any existing entitlement which might be under an award, an agreement, legislation in the case of the public sector or the terms of an employment contract to a period of paid leave. The point that I have made is that there is nothing that I can see in the legislation which guarantees that the parental leave pay becomes an additional entitlement. An employer that is under an existing obligation, under whatever kind of instrument, to provide a certain period of paid leave may choose to simply take the government payment as a subsidy and not increase the overall amount of leave that they are granting or at least, for that period of leave that they have agreed to grant, to simply use the government payment as a subsidy to reduce what would otherwise be their financial commitment. That might or might not be lawful in any given case. It would depend on the source of the entitlement. It would depend on some common-law principles regarding set-off of entitlements. I am not meaning to go into the legal complexities of that position. I am simply pointing out that some employers may choose, rightly or wrongly, to do that.

If the entitlement is to be an additional entitlement I would strongly recommend that the bill be amended so as to make it clear—and I have put this at the top of page 3 of my submission in bold—that the bill be

amended to state that, for the avoidance of any doubt, a payment made under the legislation is not to be taken—and I have noticed a slight typo—as discharging an obligation of an employer to provide paid leave under any other law or under an industrial instrument, employment contract or other arrangement.

I know that some other submissions have raised the issue of whether employers might seek to revise or renegotiate their arrangements for the future. That is a separate issue and one on which I am not making any particular recommendation. My concern is simply with the situation where, as at the time this bill takes effect, there is an existing entitlement to paid leave.

The final point in the submission is simply to invite the committee to consider whether indeed a bill that provides only a payment and does not guarantee additional leave will in fact have what I understand to be the desired effect of encouraging parents, particularly mothers, to take an additional period of leave in order to bond with their child and in order to improve both the health and wellbeing of the parent themselves and also of the child. As things stand, it seems to me there is an obvious financial incentive for workers to come back to work as soon as possible and merely take the government payment as an additional handout that is over and above any right to paid leave they might already have. If that is to be addressed it does mean, as I think I have acknowledged in the submission, a substantial redesign of this scheme because it would mean turning it into something it is currently not—that is, the source of an entitlement to leave. I would hope that is something the committee might reflect on and deal with in its report, at least by way of recommendations for future amendments to this scheme.

CHAIR—Thank you, Professor Stewart.

Senator HANSON-YOUNG—Professor Stewart, you have outlined your submission quite well and articulated very clearly a number of the issues that other submissions have alluded to without being so precise. From the way you have outlined it, it seems like it is a little bit of an anomaly that we have not actually amended the Fair Work Act in order to introduce this type of legislation or that there is no real reference to it. Do you believe that it would simply be a reference to it, or are you suggesting that we accept that this bill is a social welfare payment and, if we want to provide paid parental leave that is a workplace entitlement and is about workforce attachment, that would need to be done through some other form?

Prof. Stewart—I certainly think ideally the Fair Work Act should be amended to expand the capacity to take parental leave so as to match the eligibility period for an entitlement to this payment. If that were done, you would be amending the Fair Work Act for at least some category of those workers who are eligible for a payment—perhaps this might be limited to employees as opposed to contractors, or it might be limited to permanent employees as opposed to casual employees—to give them a right to take leave for at least the period for which they are eligible. That would be the preferable course. But that does mean a substantial change to the Fair Work Act.

Understanding the practicalities of what might be possible, especially in an election year, and not wishing to hold up the passage of what is a very important measure, my immediate recommendation is that, as a minimum, there should be some reference inserted into this bill to indicate that there is a source of entitlement to parental leave in the Fair Work Act, but also to make it clear that this bill does not grant a period of leave and does not guarantee return to work at the end of a period away caring for a new child. It is a matter of simply clarifying to anyone who looks at the legislation that it has that effect. That is the minimum. The more ideal approach would be to expand the entitlement to leave in the Fair Work Act. Obviously there are pressures of time at this point in the political cycle.

Senator HANSON-YOUNG—It seems then that this legislation, regardless of its merits, is simply a rehashing or a dressed up type of social security payment like the baby bonus as opposed to a workplace entitlement. My concern is that the way this legislation is currently drafted, with the concerns that you have alluded to and the errors in drafting in the intent of the legislation, how easy is it going to be for a government after an election, for example, to simply wind it back or, indeed, how difficult will it be to expand it if it is seen in that social security sphere as opposed to one about entitlement and leave and workplace?

Prof. Stewart—I think there is no question; it is a social security entitlement. In fact it would be better titled the ‘parental leave pay bill’ rather than ‘paid parental leave’. That may seem a matter of semantics but I think it is fair to say that most people in the community would understand the concept of paid leave to mean you have a right to leave your job and come back to it. To answer your question directly, if the bill goes through in something like its current form, even with the amendments I have recommended, of course it remains a matter for the next government as to whether it proposes further changes to either this bill or to the Fair Work Act. I think it would be highly unfortunate if we delayed introducing this important measure merely

because it does not go as far as many of us would like. At the very least I would hope that the committee, if it is not minded to recommend amendments to the Fair Work legislation, immediately should at least seek a commitment from the government that it will look at the issue of amending the Fair Work Act in the future possibly at the end of the review, which I understand is scheduled for this scheme.

Senator FISHER—You have essentially said that the bill as it stands is a social security measure rather than providing an entitlement to leave for parental purposes. The government has information booklets—and you might not have had an opportunity to see them—and one booklet, for example, is for employers and it includes the statement that paid parental leave will give more babies the best start in life. How will this bill do that if, as you say, this bill is just about pay; it is not about leave?

Prof. Stewart—I certainly believe that this bill will have positive effects. There is a link between what this bill is achieving and the concept of parental leave because the availability of a payment where none exists at the moment or the provision of an additional payment on top of an existing entitlement to paid leave will undoubtedly have the effect of allowing new parents, and in particular new mothers, to extend the period away from work. The measure is not purely a financial one; it clearly allows for a greater period of absence from paid work than would otherwise be the case. That is notwithstanding the concern that it does not guarantee to everyone who receives the payment a right to return to their previous job. That I believe is a shortcoming but, at the same time, the overall measure is a worthwhile one.

Senator FISHER—Professor, you very briefly referred to the necessity for the federal government to consult with the states under the referral of powers arrangement in respect of the Fair Work legislation. Given all of that, in an election year there is no prospect, is there, that the Fair Work legislation would be amended to essentially ratchet up the national employment standards to match what might be the standards in any paid parental leave bill?

Prof. Stewart—It is certainly difficult to see how they would be time between now and an expected federal election in October or November to have that consultation proceed, for the necessary agreements to be secured from the states and territories, and for legislation to be introduced to amend the Fair Work Act this year. That is precisely why my recommendation at the moment is a modest one, but I think it is open to the committee—

Senator FISHER—For a clarifying statement.

Prof. Stewart—That is right—a clarifying statement, firstly, that this does not create a right to paid leave; secondly, and arguably more importantly, that a payment made to an employee by an employer that is in receipt of money from the federal government under this scheme does not in any way discharge an employer's obligation under an existing arrangement.

Senator FISHER—So that is the best that could happen before an election, you are saying, and it is far from an optimal outcome.

Prof. Stewart—That is correct. Nonetheless, even though that may not be the optimal outcome, the passage of this bill and the introduction of a parental leave pay scheme from next year would be a significant step forward from where we are at the moment.

Senator FURNER—Professor, can I get some clarity in terms of what you are indicating there about avoiding any doubt of payments made under the legislation, as an example, being an industrial instrument. My understanding of how this bill fits into workplace relations matters is that it interfaces with an award, an enterprise agreement, and it is the minimum entitlement and, therefore, cannot be forgone or be undermined by an employer's attempt to suggest that they do not need to pay anything under this proposed legislation. I use the example of the superannuation guarantee act, where, although the provisions of that particular act are not necessarily covered in full by the Fair Work Act, it is clear there is an obligation there for employers to pay superannuation contributions as a matter of course, it being legislation that interfaces with the standards in the workforce. So I am just wondering whether, if you are not satisfied with the arrangements that are being proposed, you see a further statement or requirement as being necessary to make it clear, from your point of view, how they interact.

Prof. Stewart—Just to correct you on a technical point that many people do not understand about the superannuation legislation, it actually does not oblige any employer to make a payment. The superannuation legislation obliges no superannuation contributions at all. What it says, indirectly and very importantly, is that an employer will be taxed at a certain rate if they do not make superannuation contributions.

Leaving that aside and coming back to this particular bill, let me just perhaps take you through an example which I tried to give in the submission. Let us suppose that an employer has an obligation under this scheme to

provide 18 weeks pay at what is essentially the minimum wage to an eligible employee, and the employer makes that payment. So they are not avoiding their obligations under the parental leave bill or act; they make that payment to an employee. But that employer also is concurrently subject to an obligation in an enterprise agreement to provide eight weeks paid parental leave. Now, my understanding is that the government's clear intent is that what should happen is that the employee receives eight weeks paid parental leave from the employer plus 18 weeks parental leave pay at what will almost certainly be a lower rate of pay from the government but via the employer as paymaster, so to speak. The employee would end up with 26 weeks entitlement in total. That is the intent.

The question I am posing is this. Can the employer say: 'All right, under the enterprise agreement I have to give you eight weeks paid leave. But, of that government funding for 18 weeks, I am going to use the pay for eight of those weeks to subsidise what is otherwise my obligation as an employer under the enterprise agreement, and I will then just top up the difference between the national minimal wage, which is the basis for the government funded payment, and your ordinary pay.' In that situation the employer is thereby saved money and the employee does not get a total of 26 weeks of pay.

The point I am making about the legalities of that is that that might or might not be legal for the employer. If they get it wrong and behave in the way I have just outlined, they may be breaching their obligations under the enterprise agreement. The point is not that it may or may not be lawful; it is that some employers will believe it is—and, anecdotally, I have already heard of employers being under the impression that they can do exactly what I have just outlined.

The clarification I am proposing—which is a very simple, very straightforward matter to add to the bill—simply tells the employer in no uncertain terms: 'You are under an obligation to provide a payment under this scheme to an employee, and that cannot in any way derogate from any other obligation you may have to make a parental leave payment. That is not saying that you can't renegotiate it in the future, which obviously, if it was an enterprise agreement, would be at the end of the term of that agreement. It's not saying that you can't seek to renegotiate a contractual arrangement with your employees. It's simply saying you can't use the government funding to subsidise an existing obligation that you've got.'

CHAIR—Senator Fisher has some questions on notice that the secretariat will forward you. We would appreciate your consideration of those as quickly as you can. I understand your interest in this area.

Senator FISHER—May I ask them on the record for the professor to take them on notice?

CHAIR—The secretariat will send them. How many questions do you have, Senator? Our standard practice is for the secretariat to send the questions to the witness.

Senator FISHER—I have two questions.

CHAIR—Put them on notice briefly.

Senator FISHER—Thank you, Chair. Professor Stewart, in your submission, when you suggest that the legislation should provide that payments under the bill should not derogate from an employer's obligations under industrial instruments, on what basis are you saying that it should be so? In your view, why can it not be that an employer could utilise the bill, were it to come into being, to offset existing obligations under an industrial instrument? That is my first question.

My second question is this. In respect of your recommendation that the Fair Work legislation be amended so that the National Employment Standards are increased to provide a period of leave that matches that which may end up being law under the paid parental leave legislation, why should that be so? Why should it be that social security legislation should essentially be used to drive up and ratchet up standards under industrial legislation? I understand what you are saying about the confusion and the need to clarify the confusion, but why should it be that essentially social security legislation is able to drive up standards under industrial legislation, particularly given the history of the formation of that industrial legislation?

CHAIR—Professor, we will be sending you those questions in writing from the secretariat this afternoon. Thank you very much for your submission and also for being prepared to give us evidence today.

Prof. Stewart—You are welcome. I will certainly undertake to answer those questions promptly. And thank you in particular to the committee for being willing to undertake this via teleconference.

CHAIR—Thank you. Our next witnesses are from the Investment and Financial Services Association.

[10.44 am]

BOND, Mr James Angus, Senior Policy Manager, Investment and Financial Services Association

CODINA, Mr Martin, Director of Policy, Investment and Financial Services Association

CHAIR—Good morning, gentlemen. Thank you for your patience.

Mr Bond—It is all right. It has been educational.

CHAIR—That is the idea. You have information on parliamentary privilege and the protection of witnesses. We invite you to make an opening statement and then we will go to questions.

Mr Bond—We would like to make an opening statement. I would like to thank the committee for the opportunity to appear today to outline the views of the financial services industry. The Investment and Financial Services Association, which I will shorten to IFSA, is a national peak body representing the retail and wholesale funds management, superannuation and life insurance industries. IFSA has over 135 members who are responsible for investing over \$1 trillion on behalf of more than 10 million Australians. Our interest in the committee's inquiry today relates to the treatment of superannuation in the proposed Paid Parental Leave scheme.

In February this year IFSA commissioned Rice Warner Actuaries to evaluate the adequacy of the retirement savings of all Australians and for women specifically. The research shows that Australia has a retirement savings gap of \$695 billion. What is the retirement savings gap? The retirement savings gap is the difference between savings required for an adequate retirement and the amount of superannuation savings people are likely to have on the day they retire, and that is summed across everyone in Australia.

This research also shows that at retirement a typical woman will have 35 per cent less in her superannuation account than a typical man. There are three main factors that impact on the retirement incomes of women. Women have a greater life expectancy than men and, as a result, will need to live off their superannuation for longer; women are paid less than men; and women are more likely to spend time out of the workforce raising children, meaning that they are not contributing to superannuation during this time. Research shows that a typical woman who spends five years out of the workforce from the age of 27 will save \$95,000, or 26 per cent, less than a woman who does not.

The changes to superannuation announced by the government in response to the Henry review will have a significant positive impact on the retirement incomes of all Australians. Increasing the superannuation guarantee from nine per cent to 12 per cent will increase superannuation savings across all Australians and result in more Australians having adequate retirement incomes. While this will improve retirement incomes across the board, it does not change the relative superannuation savings of women compared to men.

The government's proposal to allow many of those over the age of 50 to make larger tax concessional contributions to superannuation is also a positive step. This measure will allow people with inadequate superannuation balances to catch up by making larger tax concessional contributions. This includes women who have spent time out of the workforce. However, including superannuation in paid parental leave is a simple and direct way to ensure that parents who spend time out of the workforce to raise children continue to contribute to their retirement incomes. Such a move would have a substantial positive impact on women's retirement incomes and improve equity in superannuation.

Apart from improving equity, higher superannuation savings for women have a number of positive benefits not just for individual women but also for the economy as a whole. Higher superannuation balances will mean that women have better lifestyles in retirement, more women will be self-sufficient in retirement—which reduces the number of people who will need to draw on the age pension—and Australian savings in general will be higher, which will provide a number of positive benefit for the macro economy. It is for these reasons that IFSA calls on the government to include superannuation in any paid parental leave scheme. Madam Chair, I would like to thank you for the opportunity to address the committee. I would like, if possible, to table our research report, if that is appropriate.

CHAIR—The report certainly will be tabled. We will get that from you. Mr Codina, do you have anything to add?

Mr Codina—I have nothing to add at this stage.

Senator ADAMS—People who are eligible for the current maternity leave that is being paid are getting superannuation. When they go to the government scheme, they will not be getting super. Can you just explain a little more about that.

Mr Bond—My previous and current employer would pay parental leave and that would include superannuation. But if the government scheme replaced my employer's paid parental leave then I would not receive superannuation during that period.

Senator ADAMS—Let us go a little further. If you are getting super from your employer and you are getting the contribution from the government—and, of course, there is no super attached to that—

Mr Bond—Yes, that is right—as far as I am aware. I think you can receive both. Is that correct?

Senator ADAMS—You can receive both but you would you be getting super on one portion but not the other.

Mr Bond—That is right. So I think you would still receive the superannuation from your employer's payments but not from the government's payments.

Senator HANSON-YOUNG—If they were continued.

Mr Bond—Yes, if they were continued.

Senator FISHER—How would your industry cope with that?

Mr Bond—It would depend on the individual employer. Some of our members would have paid parental leave schemes of their own and some would not.

Senator FISHER—It would not be particularly clear to your industry what they should be doing, would it?

Mr Codina—I guess it is not so much a point for our industry but, broadly speaking, for businesses small, medium and large as to how this would apply. I think some have read the proposals as replacing some of the measures that businesses already have in place. Others may see it as an opportunity for their company to be seen as more attractive relative to other companies with which it competes for talent. If there is going to be a compulsory government paid parental leave scheme we think it is essential that it include superannuation. Just as whether or not the arrangements would continue in terms of any leave entitlements that an employer may provide, the same judgments need to be made about whether superannuation would apply as well if salary is being paid during the leave period.

Senator FISHER—Thank you. I understand that. You clearly have a vested interest in your industry in terms of the outcome. But if it were not to be the case, any uncertainty suffered by business were obviously flow on to your members and the people you represent in terms of implementing the nuts and bolts of the bill as it is.

Mr Codina—Certainly our members would be the ones who would have to work through the implementation—as would the employers. From my perspective, the people who benefit would be the women who take advantage of the scheme, not actually our members.

Senator FISHER—Of course.

Senator HANSON-YOUNG—Your figures show that women traditionally retire on 35 per cent less than their male counterparts. You said there are three reasons for that, and I take all of that on board. If were able to counteract the superannuation payments when people have paid leave, how much do you think that would help to close the gap if it is one of three indicators?

Mr Codina—When you look at those three it is important to also look at what the government has announced subsequently. When this piece of work was done, the increase from nine per cent to 12 per cent had not been announced. Secondly, in the budget prior to this one, the government had announced some changes around the concessional caps. These are quite essential, particularly when it comes to women, who tend to try to catch up in terms of their super balances later in life when they have the opportunity to do so—when, hopefully, the kids are off their hands a little bit more. Collectively, in the new 12 per cent regime, people will be able to catch up effectively in a way that maximises the concessions that are available. When you add in this component, which is super for 18 weeks, our estimate is that around \$130 million would be added to retirement savings. The government's numbers suggest that some 148,000 people might be eligible. That means approximately \$130 million would be added to the retirement savings of those who would take advantage of it.

It goes quite an important distance, and of course you have to look at the compounding effects, given that super is preserved in many cases until 60, so you are talking about quite a significant contribution. Clearly, though, the fact that you have an increase from nine to 12 per cent—phased, but nonetheless an increase—I think also helps to lift the tide, in a sense, on that. I think it is an important additional contribution. It obviously does not go all of the way. It is only an 18-week period—and clearly the modelling we did looked at women potentially being out of the workforce, if you talk about two or three children, for perhaps an overall period of up to five years, where the impact is obviously greater than if they are only away for the minimum of 18 weeks—but I think it is an important step towards equity in superannuation.

Senator HANSON-YOUNG—Do you think it sends a clear message to people, if superannuation is included, that that is a really important part of ensuring that we close that retirement gap amount and that just because you are out of your traditional paid workforce because you are having babies does not mean that you should not be contributing to your superannuation?

Mr Codina—Absolutely.

Mr Bond—I think it does send a very strong message that superannuation is important.

Senator HANSON-YOUNG—So you would like to see superannuation included—

Mr Codina—Yes.

Senator HANSON-YOUNG—even in a scheme that only offers 18 weeks?

Mr Codina—That is right.

Senator HANSON-YOUNG—It is still important?

Mr Codina—I think it is the principle fundamentally here that we are talking about, particularly given that it is only 18 weeks, not the five years that has been modelled. But it is still significant in terms of the amount that could be contributed. When you compound that over 20, 30 or 40 years, it is certainly a reasonable amount of money that will be in that person's account that otherwise would not have been.

Senator HANSON-YOUNG—Do you think under this scheme—I am not sure whether I should say 'under this scheme' because the biggest criticism seems to be that this is not really a paid parental leave scheme; it is just a social welfare payment. But, having said that, in an ideal situation of a government funded scheme, who do you see the responsibility for superannuation fitting? Originally, for example, the Productivity Commission suggested in their draft report that superannuation could be paid by the employer and that that would be their contribution for that 18-week period, as opposed to the government. Do you have an opinion about that?

Mr Bond—The employer is required to pay the superannuation guarantee, so if the government is paying their wages during that period then it is the government's responsibility to pay superannuation during that period.

Senator FURNER—What sorts of superannuation schemes do your members deal with? Would any of your members deal with defined benefit schemes at all, as an example?

Mr Codina—Not directly. They may be the underlying managers of some of those defined benefit funds but not necessarily operating the funds themselves directly.

Mr Bond—For example, if a large Australian company has their own old defined benefit scheme—and there are not many of them around anymore—that money would be passed on to one of our members to manage those funds, but they do not run defined benefit schemes themselves.

Senator FURNER—I see. So, in terms of this proposed legislation, there would be little or no impact on those types of schemes?

Mr Codina—It is a good question, and to be honest I have not turned my mind to the impact on a defined benefit arrangement. I think, though, broadly speaking, given that those arrangements are predetermined, in a sense, as a result of whatever the formula may be, if I can express it that way, paid parental leave is actually almost an afterthought now when you are talking about that kind of scheme as opposed to the traditional accumulation scheme that most Australians will be members of. It is easier to envisage how the payment of the SG would operate through an accumulation approach rather than in a defined benefit arrangement. I am actually not sure how the payment would be made by the government in that instance, but presumably it would be made to the employer who has oversight and responsibility for that defined benefit fund.

Senator FURNER—You are right in your response that it is probably little—and I am not certain what the numbers might be. You would be best to have those figures on people who are on defined benefit schemes, but

there may possibly be little or no impact on those workers as a result of this bill in terms of superannuation payments.

Mr Codina—Outside of government it would be very few.

CHAIR—Thank you very much, Mr Bond and Mr Codina. Is there anything you want to tell us that our questions have not asked on notice?

Mr Bond—No.

Mr Codina—Thank you very much.

Mr Bond—Thanks for your time.

CHAIR—Thank you so much. Again, I appreciate your patience.

Proceedings suspended from 11.00 am to 11.14 am

CARUANA, Ms Bernadine, Director, Policy, The Group of Eight Limited

DAVIS, Ms Catherine, Federal Women's Officer, Australian Education Union

DOVER, Mr Steven Robert, Acting Director, Human Resources, Australian National University; and Representative, The Group of Eight Limited

MacDONALD, Ms Terri, Research and Policy Officer, National Tertiary Education Union

RANGOTT, Ms Michelle Anne, National Industrial Officer, National Tertiary Education Union

CHAIR—Welcome. You have information on parliamentary privilege and the protection of witnesses. We have your submissions. Thank you all for contributing to this part of the process. I know you all did to the Productivity Commission as well, so you have been living with it for a while. I would invite each of the organisations to make an opening statement and then we will go to questions. This particular session is due to go through until 11.50 but we actually take it as we go.

Ms Davis—Thank you, senators. The Australian Education Union would like to open by saying that for many years our union has fought for secure workplace entitlements for our members that acknowledge that there is an important time required for the birth, recovery, bonding and care associated with family. For us, being a female dominated industry—about 70 per cent of our members are women—it is key that employers retain that link to the workplace and that employees are guaranteed a right to their former positions. We are very proud of the workplace flexibilities that our union has won over many years. Our current policy and that advocated throughout significant inquiries over the last 10 years has been for a universal 26-week paid parental leave scheme, particularly as this is supportive of the World Health Organisation's recommendation to establish breast-feeding and family bonding.

In the context for this paid parental leave bill before us, we believe it is a good start for Australia and very long overdue. As our submission to the inquiry states, we are supportive of the ACTU's contentions, and I understand that these have already been heard by the committee. We restate our support today. The AEU is here, however, to address a particular concern about the drafting of the bill regarding eligibility requirements, which we are sure were intended as an improvement but may actually exclude some of our AEU members, and that is regarding the requirements for continuous service. We understand the eligibility requirements that have been put, but I can give you some examples of where, whilst our members, particularly casual and relief teachers in schools, sessional teachers in TAFE institutions and also in particular early career teachers who will be often employed on contract, may not make that continuous service requirement because their break may be more than eight weeks but, but for that stipulated break, they would certainly be satisfying 10 out of 13 months employment and certainly the 330 hours of average employment.

I have some particular examples from some states and territories in the TAFE sector. For example, our casual relief teachers may be working an average of one day a week for 10 of the 13 months but not continuous because of the five-week summer break that is the stipulated break but it is very rare for those casual teachers to be brought in in the lead-up to Christmas time and at the beginning of the year, often because professional development, for example, does not occur during that slowdown time and in fact their break would be larger than an eight-week break during that time. Again sessionals in TAFE, who might work well over 330 hours as an average, would not have a semester break of less than eight weeks. The two examples that were brought to my attention were, first, that in Tasmania up until 2009 there were clear examples of casual sessionals employed from late February and finishing in late November, and that would definitely have been over an eight-week break. The second is that the WA TAFE calendar shows that in fact their break would also be above an eight-week break; I think it turns out to be about a 60-day break rather than 56 days. Just to reiterate, our early career teachers who are often employed on term-to-term contracts or yearly contracts often find that in their second year or third year of employment having to move to another school they may not actually secure another contract until well into the first term. So there are examples of early career teachers who particularly are in the younger category and particularly would be potentially in that maternal time of their life. We also know some have often said that, due to the nature of the work, they may actually leave the profession within five years. So retaining them is very important to us.

I would like to make some other points. To remedy that we do support the ACTU's proposals around industry-based exemptions or extending the work test for those employees who might not be caught, but we do believe that they have demonstrated ongoing attachment to the workforce and some of them may be employed in that context for five or 10 years, and certainly do have a relationship with their employer.

We also want to make the points very strongly that we do believe it is important that the act include an object to disallow employers to withdraw from current employer provided schemes. Predominately AEU members' entitlements around paid parental leave are secured via agreements, and it is very important to us that we continue to advance these agreements through bargaining, but would not want to suffer any absorption of those entitlements—hard fought for and hard-won entitlements—through a lack of clarity in the act.

We also believe that because of some of the gaps in the eligibility for unpaid parental leave in the NES, it would be better to clarify the entitlements either in the NES or perhaps at least include a right to return to work from the Paid Parental Leave scheme for those employers who might not be accessing unpaid leave.

There are two final points I would like to make, and they echo your previous submitters—that is, superannuation, to be paid on this leave entitlement, is very important to us for all of those reasons that were explained before about the pay gap between men and women and also about that important link and acknowledgement of service during employment, but certainly the penalty that families face for having that time out of the workforce when otherwise their career paths are showing to be committed to their employer and their profession. Again, for reasons of gender equity, partner leave is very important and we would expect that in the review following the legislation's passing, which we hope will be happening this year, that those two points are very strongly picked up in the review or before the legislation is passed.

Ms MacDonald—I will make a brief statement and then Michelle will follow. I would like to thank the Senate committee for inviting us to speak today. Very quickly, the National Tertiary Education Union has 25,000 members at all public universities. Fifty-four per cent of our membership is women and they are active in all aspects of the union. We also support the ACTU's recommendations. The comments I will make today are specific to our own members, so I will briefly outline some of those issues. We are in a unique position. Because of our priority for parental leave, most of our members who are employed as permanent or fixed-term employees within higher education universities have leave of between 26 and 36 weeks, depending on the agreement, so they are quite well covered.

However, it does not cover casual employees. Our casuals are not covered by the majority of these agreements. Casual employment in universities is very high. Official DEEWR figures have it around the 20 per cent mark, but the real figure is much higher. Studies on headcounts in other areas, which have been translated across, have the figure at about 40 per cent. A recent study by the adult teaching and learning council found that one institution had 198 individuals that were collapsed into 16 full-time equivalent positions. On paper it was 16 people; in reality it was almost 200. That is outrageous. Another example: the same study found that the casual and sessional teaching staff at another institution was responsible for about 80 per cent of the teaching across the institution in the undergraduate level, so that is a significant proportion. When you look at figures like that, you understand why casual teaching is such an important thing for institutions. I noted that the 2008 DEEWR figures came out a couple of weeks ago, and even from last year there is a seven per cent increase. That is on the DEEWR figures, so the actual number is probably going to be much higher. So for us casual teaching is a very important aspect.

Ms Rangott—Just adding to those points that Terri made, focusing particularly on the nature of semester based work in universities: as Ms Davis has discussed in the broader education sector and TAFE, in universities the break is much longer, with the end of the semester in one year going into the first semester the following year. Depending on the university it can be anything from 12 to 18 weeks. So, in fact, you can have employees who have very longstanding employment relationships with a university, year in year out, with many years teaching on a semester basis, or people who work in libraries who are employed for peak periods doing library shelving and things like that, but they will have a 12 to 16 week break between their employment. So we are very concerned that the current definition of the work test in the draft bill will have the unintended consequence of disadvantaging long-term, seasonal or semester based employees who have a considerable relationship with their employers yet would miss out on that entitlement.

In our submission we have suggested a number of ways of trying to rectify that. The first one, which we thought was quite a simple change, was to increase the period of the permissible break from eight weeks up to 12 weeks, or even higher if that were the decision—but, in addition to that, to acknowledge and recognise an employee's employment history with the employer. Whether that be as proposed by the ACTU, in having a separate category, or having a definition which recognises an employee's employment history that it is regular, on a systematic basis and they have an expectation of continuing employment.

That brings me to our second concern I also wanted to bring to the committee's attention, which is the inconsistency between the draft bill and the National Employment Standards. I note that a number of

submissions have already made that point. At the end of the day we are looking for some clarity around the definition of 'longstanding casual employees' and the relationship and their entitlements for both unpaid and paid parental leave.

Mr Dover—The Group of Eight is a coalition of eight leading research intensive universities, employing over 44,000 people, including more than 23,000 women. We note that the exposure draft has addressed a number of concerns that we have raised in our submission and that the administration arrangements have been expanded upon. We would, however, like to focus on the fundamental issue of requiring payment of this parental leave through the employer.

We agree that paid parental leave is an important productivity tool and maintaining individual employee contact with the workplace is vital to ensuring a smooth transition back into the workplace. Indeed, the Group of Eight universities are leaders in this respect, providing, as my colleague said, 26 to 38 weeks of paid parental leave and adoption leave; up to two years of unpaid leave; paid partner leave; sharing of paid leave between primary carers; transition back to work programs; on-site childcare and breastfeeding facilities—indeed, one university has recently added grandparent leave to that list.

CHAIR—Mr Dover, I know this is inappropriate, but which one was that?

Mr Dover—The ANU.

CHAIR—The ANU has grandparent leave?

Mr Dover—Yes. It is unpaid leave, but it enables—

CHAIR—Is it actually included in their enterprise agreement?

Mr Dover—Yes.

CHAIR—That is good.

Mr Dover—Processing these additional payments will result in a significant impost on our payroll areas and will require a considerable investment in software changes, at each institution, to accommodate these arrangements. But should the final program require that employers make these payments, we suggest that the committee seriously consider our proposal to exempt employees who demonstrate they have the comprehensive parental leave provisions. In doing so, the secretary could make the payments for those employees so exempted. Clearly, the Family Assistance Office will have the capacity to make these payments, as they will be doing so for the first six months of the scheme and under other circumstances. This approach would provide a reward for best practice and incentive for those that do not to lift their standard. Such exemptions would satisfy the aims of the program without imposing an additional cost burden on those progressive employers who have already significantly invested to support those of their employees who choose to start or expand their families.

With respect to maintaining connection with the workplace, rather than maintaining that connection through a one-line entry on the employee's bank account through their payroll system, we would like to show the committee an example of what is best practice. While each Go8 university has its own process, this parental pack from the ANU is now provided to all staff applying for parental leave. It includes a guideline for new parents relating to work, a checklist for supervisors and a checklist for new parents. In it we include a small gift, and we encourage the local area to add a little local personal gift for themselves. The guidelines ensure and ask that the manager keep in touch with those employees throughout that process. I seek the committee's indulgence to accept these as evidence of what is best practice.

We also have a different arrangement, particularly in relation to our research staff and some of our teaching staff, in that we encourage staff to come back to the ANU periodically during their leave in order to maintain a strong connection with the academic community. We believe that the 10 days that are currently allowed for that sort of activity—returning to work during that period—is not sufficient, from our perspective. It is not uncommon for academic staff, particularly those who are undertaking research, to continue to keep in touch with the research activities they are undertaking. Often their research has a long time line of five years, sometimes longer, and they have to maintain connection in order to continue to be relevant and to continue to be in touch with the latest research. So we would ask that you reconsider the 10-day limit and consider increasing it so that we can allow that activity to occur throughout the leave period. Finally, I would like to thank senators for providing us with the opportunity to comment on the exposure draft.

Senator ADAMS—I thank all of you for your presentation. I would like to go to the Group of Eight and ask you to comment on the payroll tax and workers compensation. You said that, at the time of consultations,

government representatives were hopeful that issues relating to the application of payroll tax and workers compensation to the government PPL would be resolved. Have you had any clarity on that issue?

Mr Dover—I think so. The exposure draft, and the document which is the guideline for employers' requirements that was on the web, makes it fairly clear that the workers compensation issue has been resolved. It has not quite said that the payroll tax issue has been resolved, but the government is in fact talking to each of the states to see if that can be achieved. Payroll tax would certainly be a big problem in terms of additional expense for the Go8 universities, so we are hoping that that exemption can be delivered.

Senator ADAMS—As far as superannuation goes under your scheme, would your people, with their leave entitlements, have super paid in that respect? And, then, as far as the casual people go, how will they be dealt with? You can probably all answer that.

Mr Dover—'Casual' will depend on the number of hours they do each month. There is a cap of, I think, 450 hours. I am not sure exactly what you mean. Do you mean on the parental payment or on the—

Senator ADAMS—With this government payment there is no superannuation provision.

Ms MacDonald—That is correct. The majority of casual staff at the moment will not be able to access any kind of parental leave. They would not be getting superannuation, regardless. For us, that is a concern.

Senator ADAMS—And as far as the superannuation goes you have got your scheme, so they would be paid there but they would not be paid on the government side. So that means—

Mr Dover—Not as the legislation currently stands.

Ms MacDonald—Not currently, no.

Ms Rangott—Unless we were to negotiate that arrangement, particularly in enterprise agreements for future bargaining rounds, but that would have to be negotiated with each institution.

Ms Davis—Which I understand has been done by the CPSU already to pay the superannuation.

Senator FISHER—Mr Dover, you talked about any obligation under this legislation being able to be effectively used to set off existing industrial obligations. Is that a fair assessment of what you were suggesting?

Mr Dover—Sorry, could you repeat that?

Senator FISHER—If this bill was passed, I heard you suggesting that any payments that would flow as a result of this bill should be able to be offset by employers in the education sector.

Mr Dover—No, that is not what I was actually suggesting. What I was suggesting was that the payment made by the Family Assistance Office for this new paid parental leave scheme be paid directly by the Family Assistance Office for those employers that demonstrated best practice in their current comprehensive paid parental schemes. We are not suggesting that that be discounted.

Senator FISHER—So it is your view that it should not be, as against existing entitlements—noting that future entitlements are for the future?

Mr Dover—I think that is a matter for each institution to negotiate in their enterprise agreements.

Senator FISHER—And that is your organisation's position, is it?

Mr Dover—I can only comment on ANU's current agreement and we have in fact incorporated a clause that will enable the ANU to pay their full entitlements in addition to what this scheme delivers.

Senator FISHER—So are you representing the Group of Eight or ANU today?

Mr Dover—I am just giving that as an example of one university out of the Group of Eight, but perhaps my colleague, Bernadine—

Senator FISHER—Does the Group of Eight have a position on that question?

Ms Caruana—Given the brevity of time to actually respond to the legislation, we have not had a chance to canvass all Group of Eight institutions and get a common view on that. And given that a lot of them are currently in the process of negotiating enterprise bargaining agreements, it is a little bit sensitive for us to actually—

Senator FISHER—Could you please take that question on notice—what is the Group of Eight's view on that?

Ms Caruana—Sure.

Senator FISHER—Secondly, as pointed out by Professor Stewart, with the disparity between any leave entitlements under this bill—which are none—and leave entitlements under the National Employment Standards in the Fair Work legislation, what is the Group of Eight’s position in that respect? Are you able to answer that today?

Ms Caruana—No.

Senator FISHER—Particularly, are you of the view that the legislation—that we have had confirmed by Professor Stewart, for example—in this paid parental leave legislation is just about money and not about leave? Should legislation that is about money be used in anyway to drive what happens in workplace relations outcomes under the Fair Work legislation? What are the implications of that in other areas of workplace relations law for your membership?

Mr Dover—I think that is another one we will take on notice.

Senator FISHER—You may want to; it is part of what has come out from Professor Stewart earlier today. I have a further related question for Ms Rangott. I heard you seeking clarity for casual workers in your sector and expressing that the bill does not do that. How would you propose that happen, given the necessary relationship with Fair Work legislation and the now necessity for the federal government to consult with states who have referred powers to the federal government? I hear you saying you want clarity. How on earth are you going to get that if this bill is to be passed when the government wants it passed? How on earth are you going to get that clarity if the bill is implemented when the government says it wants it implemented?

Ms Rangott—Our recommendation is that the bill look at the definition of the work test as it is currently proposed. So in addition to looking at the question of a permissible break—as it currently stands, the permissible break goes up to eight weeks—our first suggestion is that that go a step further and increase to a minimum of 12 weeks. Further, we believe there needs to be an additional definition under the work test which recognises those employees who are employed on a regular and systematic basis. On that point, we looked at the existing national employment standards, and we have taken that definition so that there is consistency between the national employment standards and the PPL. So we have looked at it from that perspective—that is, taking the existing definition under the NES.

I note that other submissions have flipped it over and said, ‘The national employment standards need to be changed to ultimately reflect the PPL.’ We are not opposed to that, but ultimately the goal should be to make them both the same so that the test for unpaid parental leave and paid parental leave in terms of your relationship with an employer is clear. Our proposal, as in page 2 of our summary of recommendations, is that someone who has been employed on a regular, systematic basis with a sequence of periods of employment of at least 12 months and who would have a reasonable expectation of continuing engagement by the employer would be one of the definitions. That is taken directly from the NES.

Senator FISHER—Are you suggesting that that be in the paid parental leave legislation?

Ms Rangott—Yes.

Senator FISHER—Would that provide certainty? Would there not be interfacing issues between paid parental leave legislation and the fair work legislation if you were to do it that way?

Ms Rangott—We believe that, in addition to the work test as it currently stands with the 330 hours, building in a notion of regular and systematic relationship does deal with that issue.

CHAIR—Senator Fisher, this is your last question.

Senator FISHER—Then I will put this one on notice, because I have one further question for Ms Davis. Ms Rangott, what would your organisation say to those who say that that outcome means that what some have referred to as social welfare legislation in the paid parental leave legislation is driving workplace relations outcomes in the fair work legislation rather than the other way around? Please take that question on notice.

Ms Davies, I will not get your words quite right, but I heard you saying that a parental leave system should be all about nurturing bub and mum. If I have got that right—and if I have not, I am sure you will tell me—do you believe that, as it is, this bill does that, particularly bearing in mind the evidence of the likes of Professor Stewart earlier this morning that this bill is more about money than it is about compelling a workplace to provide leave for mums to bond with bubs?

Ms Davis—Yes, I do. I think that the bonding and, in particular, the recovery from birth is very important to this. But it is also about a paid parental leave scheme, and it acknowledges that a primary caregiver may not be the person who is either breastfeeding or giving birth. So it is about family bonding and physical recovery, but it is also about that connection to the workplace. I do think the bill has an element of that connection. Where it could be improved—

Senator FISHER—Can you describe those elements? What in the bill brings that about?

Ms Davis—It acknowledges that there are employers, though not enough of them, that currently provide paid parental leave through awards and agreements, and those aspects of the paid parental leave bill as it stands are recognised as interfacing with a federal leave scheme. You have to be able to take your federal leave after your employer provides leave. That acknowledges that there is a workplace element in this scheme.

While you could clarify it and there could be amendments that very much could be done in the time that the government would like and we would support that, I do believe that it is more than just paying money. I do believe that the scheme attempts to have attachment to the workforce, particularly the keeping in touch provisions and particularly for those who do have current entitlements to the unpaid leave that they will be able to access through the NES. I think that there is a connection and it clearly has a workplace element that could be improved.

Senator FISHER—Haven't you just said that the achievement of the outcome that you are seeking is really through workplace stuff rather than this bill itself? You referred to existing laws and existing things that employers are doing. Isn't that the rubber that is hitting the road to look after mums and bubs at the moment when you contrast it with this legislation? To the extent that there is something, aren't you saying, 'That's it at the moment'? I do not hear you identifying which bits of this bill add to the mum and bub bonding and what you say should be the objectives of this sort of scheme. I do not hear you pinpointing the bits of the bill that do that.

Ms Davis—Which parts of the bill are you asking me to refer to—the workplace side or the home side? There are keeping in touch provisions which acknowledge that there is a workplace that an employee will be going back to.

Senator FISHER—I am going back to part of your opening statement where you said that this sort of thing should be about looking after mums and babies and bonding at home. I think I am probably asking more about the at home aspect than the keeping in touch provisions. You answer it in whatever way you would like to—I guess if you answer it simply by the keeping in touch provisions then I would say that we would have to agree to differ.

Ms Davis—I can respond with the fact that it does interface with the National Employment Standards around unpaid leave.

Senator FISHER—So it gets a leg up from the National Employment Standards.

Ms Davis—Yes, and I see that there is room for improvement and others have as well but I see that as a good connection and a good start for Australia.

Senator FISHER—Thank you.

Senator FURNER—Can I just take you to both the AEU's and the NTEU's concerns about the continuity of employment. Can you give me some further examples of, in particular the issue associated with the breaks of 12 to 18 weeks? Particularly, I am looking at the length of engagement of those particular casuals and then also I want to explore their opportunities in terms of appreciating that there are different state-by-state entitlements to long service leave. The ones that I am familiar with in Queensland are casuals subject to set requirements who do have access to long service leave after set periods of time providing that they do not break the continuity of employment, which in general is three months. If you could answer those questions, I would appreciate it.

Ms MacDonald—Very quickly, I can speak from personal experience. I was a casual academic for seven years. That by the way is pretty much the average because by that time you work out that it is probably not going to be a good place to stay. I would work up until the very first week of December, I would have marking and submissions on top of that. Once I got past that point, I would no longer have any employment until the last week of February or the first week of March depending on whether or not they gave me notice. I taught each semester for seven years. I taught several subjects for that period across a variety of disciplines. It was just one of those things that I was a long-term academic but I was not part of the university and I was not able

to access the university's parental leave as a casual academic. But if you want to talk about the breaks between semesters, generally speaking.

Ms Rangott—There is a difference as you can appreciate between each university with their own semester breaks. We can certainly provide to the committee information on the different institutions with their own semester breaks. As we have noted in our submission it does go from anywhere from 12 to 16 weeks from mid to late November and then the next semester starts in late February or early March, so they are the times.

In terms of the particular employment patterns of casual staff, again that varies depending on whether or not the institution, in addition to having the staff performing duties during the semester—using academics as an example—then wants to keep them on to perform the marking duties that happen once the teaching finishes. So it does vary, and we do not have any precise information on those patterns and the length of staff.

Ms MacDonald—To illustrate, the problem is with finding who the individuals are. Because, as I described earlier, when you are looking at the official figures it tends to be lots of individuals collapsed into one full-time equivalent, getting the actual data is a very difficult process. The other point that I wanted to quickly make is that there is one further complication to that, which is that you will have casual academic staff, in particular, who will work across a range of institutions at the same time. You will have academic casuals working at Monash University and they will also be working at La Trobe University. You will have them working at RMIT and up the road at the University of Melbourne. So they will be working within the sector for a range of different institutions, because that is their job—their full-time job—and they need to be able to pay their rent and do everything else that they have to do. We have casual members within our organisation who have been casual employees for 10 years. That is a definite pattern of employment.

Senator FURNER—So in those examples they would be working in different institutions over a number of semesters each year? Would that be the case?

Ms MacDonald—You could have them working one semester at RMIT and another semester at Monash. They are working. They have a pattern of work and they are working in their field, but the problem is that they are not covered in terms of parental leave. This is one of the reasons why we were so supportive of this scheme. Having it so that these casual academics could access it would be a significant improvement to their conditions.

Ms Davis—I concur. That particular work pattern would be very similar for our members in TAFE. They would have their own classes and they may be teaching across institutes. Certainly, for that reason, the acknowledgement for the purposes of this, again, is very important for those people who not only have no paid parental leave but have very little or no paid leave at all. To give them entitlements and recognise that service would be very important.

The example that I have from one particular TAFE, Challenger TAFE in WA, is that their semester—their face-to-face teaching—effectively ceased from 10 December to 8 February, which is, as I said, the period of 60 days or so. That is just Challenger, but there would be very similar sorts of breaks. In reference to our school sector, to give you an indication of the sorts of work patterns that a casual relief teacher might have, of course that might be on a day-to-day basis for replacing a teacher who is unwell, but it could be longer days for backfill during professional development days and long service leave. Therefore they could be employed for full terms. That, again, might be a pattern of employment for that person who is unable to achieve or secure a full-time or secure contract. They may well be relief-teaching again for multiple years on end. We have examples of people for whom we know that that is the case. That pattern of employment is indeed long term and, though ad hoc, can be shown to cover significant term times as well.

Senator FURNER—The other part of my question was in relation to long service leave. In your experience, have any casuals reached their entitlement as a result of either proportional long service leave or full entitlements.

Ms Rangott—Yes, we are certainly aware of members of ours who have reached that entitlement for long service leave on the basis of their casual employment history.

Senator FURNER—What are the continuity of employment obligations under those circumstances?

Ms Rangott—They are in accordance with the long service leave provisions of each state generally. Some enterprise agreements have different provisions, so it does vary from institution to institution, or they are referred back to the relevant long service leave provisions.

Senator FURNER—I appreciate the fact that there are variances state by state in access, whether it be proportionate or long service. However, in your experience is there any variance in terms of the continuity employment obligations? In my experience, once you break your three months that is when the clock starts over again.

Ms Rangott—Yes. Again you would be aware that some pieces of legislation do look at the nature of the business, so if the business is closed down or the nature of the business is such that there is no requirement for casual employees. I am aware of our union making those arguments with universities in terms of establishing continuity of service for casual staff because of the nature of the business.

Senator FURNER—In regards to the keeping in touch days, the 10 days per year, how do you foresee that operating in terms of schools, universities or other institutions? What sort of functions will those workers be performing when they come in for those periods of time?

Ms Rangott—As Mr Dover mentioned in his submission, you would expect that particularly academic staff or staff who are employed in a research capacity would be volunteering to be in touch and attend meetings. We certainly have negotiated provisions in our enterprise agreements which assist in that graduated return to work so that you can have that flexibility as well in your return to work side of things. So in terms of not being unnecessarily restrictive, we would support a scheme that is flexible but of course voluntary.

Senator HANSON-YOUNG—This question relates to the issue of superannuation. At least in the NTEU submission that is one of your clear recommendations; in fact it is referenced in two separate recommendations, so you obviously feel passionate about it. Could you elaborate as to why you think it needs to be included in such a scheme? The argument from the government is, 'Well, this is just 18 weeks and we will think about it later on.' How do you feel that interacts with the idea of this being an issue of workplace entitlement and a workplace issue, not just an extension of the baby bonus or a maternity payment?

Ms MacDonald—I will answer that and Michelle might want to follow up. We believe that paid parental leave should be an industrial entitlement as such, that all other entitlements that you would usually get should follow that.

Senator HANSON-YOUNG—So sick leave, long service leave.

Ms MacDonald—Yes, and that has been our position from the beginning. Back of the envelope calculations when the Productivity Commission first was looking at it showed that it was actually not going to be that expensive at all for employers to provide the nine per cent superannuation, which is essentially the minimum, on a minimum wage for 18 weeks.

Senator HANSON-YOUNG—It is just over \$800.

Ms MacDonald—Yes, the price of a corporate lunch. There are not a huge number of people taking parental leave that are given the opportunity. So that is still our position, particularly in relation to our casual staff, who do not get fabulous superannuation, unfortunately. That is something we continually attempt to negotiate with institutions over. So we think it is very important that, particularly given women's time off from the workforce et cetera, superannuation is an important aspect to that and should be included.

CHAIR—Thank you very much. If there was anything we have not been able to get to that we need to, please put a supplementary process in to the committee—something we have not touched on that you think we ought. Thank you in particular to the ANU for the shameless bribery. I am sure we will be able to find children who will use those items with pride.

Mr Dover—I hope they end up at the ANU as students!

CHAIR—Thank you to all of you.

Proceedings suspended from 11.59 am to 1.29 pm

GALBRAITH, Ms Amanda, National Councillor, the Pharmacy Guild of Australia

RILEY, Ms Toni, National Councillor, the Pharmacy Guild of Australia

WHALAN, Ms Marion, Divisional Manager, Workplace Relations and Small Business, the Pharmacy Guild of Australia

CHAIR—Welcome. Information on parliamentary privilege and the protection of witnesses is available. We have your submission. Thank you very much. As always, the guild gets involved with just about every major social issue that we face and we recognise that involvement. I now invite any or all of you to make an opening comment after which we will have questions.

Ms Riley—On behalf of the Pharmacy Guild of Australia, I would like to thank the committee for the opportunity to address you on this important matter of the Paid Parental Leave Scheme for the Australian community. The guild supports the provision of this Paid Parental Leave Scheme for Australian parents, who represent a large section of the community. However, we do believe that this scheme should be administered and paid by the Family Assistance Office and not small business owners.

As you well know, the guild is a member association and represents small business community pharmacy owners. In Australia there are just over 5,000 community pharmacies, and this network is spread throughout the whole of Australia—metropolitan, rural, regional and remote regions. The guild represents about 85 per cent of these community pharmacies and each, as I have said, is a small business. Currently the community pharmacy sector engages about 50,000 people, and 85 per cent of those are women. The high predominance of women—at least 45 per cent of them falling into the childbearing age of 25 to 45 years old—makes this proposed Paid Parental Leave scheme a high priority for our sector. Putting some numbers around that, that 45 per cent currently would mean about 19,125 young women today qualifying for that scheme—about four in every pharmacy.

With such a large number in the community pharmacy sector potentially benefiting from this government funded scheme, it is vital to our members, the small business owners of Australia, that the scheme does not impact negatively on their business operations. We have serious concerns in relation to the proposed aspect of the scheme that suggests that we as pharmacist employers should act as the government paymaster. We therefore recommend removing this paymaster function for employers, which is currently proposed in the exposure draft. We did seek some feedback from our members, who are the owners of community pharmacy businesses in the country, on what this proposed scheme would mean to them. The feedback that we received during the limited time we had available to prepare for this hearing has supported the position we are putting forward and also that of our colleagues from ACCI—that in its current form the proposed scheme will impose unjustifiable additional red tape, administrative burden and costs on our businesses.

Community pharmacies generally operate extended and long hours to meet the needs of their customers in their communities, with the owners often working between 5½ to seven days a week. These time-poor proprietors—which Amanda and I are—are already struggling to meet regulatory burdens placed upon small business. Examples of that are the GST, BAS statements, withholding tax, PAYG and, in my case, payroll tax. This additional role to act as paymaster for government funded PPL payments will only increase the burden and the danger of unintentional noncompliance, and pharmacists, by their nature, really want to do the right thing. The guild believes there is no evidence to support the claim that the employer paymaster function will encourage greater workplace connection. Guild members who have taken the time to provide us with feedback on this issue have universally objected to this argument. The pharmacy sector already enjoys a great connection with our employees, especially as a lot of our owners and our employees are young women. In the experience of our guild members, an employee's attachment to the workplace is determined by a variety of factors, none of which has any connection to the identity of the payer of parenting payments. Under the proposed PPL scheme the employer performing the role of paymaster will not in any substantial way influence the connection with our staff and their workplaces.

In practice, in the community pharmacy sector, continued connections with the workplace following the birth of a baby are encouraged by both the employer and the employee. Guild members have advised that all employees on maternity or parental leave are included—and we always do this—on email lists and receive invitations to social occasions and staff training events. They certainly make regular visits to the pharmacy, often continuing to utilise their staff benefits by shopping at the pharmacy for products and services for their baby and also for advice from the pharmacists that they know and respect. Most mums, first-time or otherwise,

maintain contact with the workplace in pharmacy, and not only the workplace but colleagues who have become friends and an important part of their social networks.

Community pharmacy is well known for being able to provide flexible work options because of our extended trading hours. That is particularly due to the capacity within the sector to offer flexible, part-time employment opportunities, and more often than not due to the fact that this capacity is sought by employees after a period of time at home with their babies. In my experience, first-time mums in particular do not often know if or when they want to come back to work after they have had their child. For others it is a financial necessity that they return to work either full-time or part-time as soon as possible. These decisions are personal and individual to the family; and, while an entitlement to 18 weeks paid leave will assist some families to defer returning to work, who performs the paymaster function is quite irrelevant, given the experience of our members. We have prepared a couple of case studies and we are happy to run through those with you now or take questions as you see fit.

CHAIR—We will go to questions first, Ms Riley, and then if there is time we will get to the case studies, or you can table them, because they would just be talking about the experiences that your pharmacies have; is that right?

Ms Riley—Yes. Excellent.

CHAIR—Ms Galbraith or Ms Whalan, do you have anything to add in terms of opening comments?

Ms Galbraith—I will leave the opening comments to Toni, but one of the case studies is actually about my experience in my pharmacy—

CHAIR—So it is you!

Ms Riley—and my employees, so if you wanted me to go through that—

CHAIR—Ms Galbraith, without the written stuff, why don't you tell us about your experience as your opening statement?

Ms Galbraith—I have a 2½-year-old now, but at the time I was going on maternity leave I had two pharmacists also on maternity leave. I struggled to find replacement pharmacists for them; that was the biggest challenge. But, at the end of the day, that is essential because we cannot open without a pharmacist on the premises, so you do those sorts of things. But I question whether I could have, in my position of going on maternity leave—and as the sole business owner I do everything; I am the paymaster and HR and IR—whether I could have managed to have made these payments as requested by the government now. In fact, for a great period of time after I had my daughter she was unwell and I was unwell, so my other pharmacists would have just been waiting because I could not have gotten to the pharmacy to have dealt with that at the time. I suppose I would like to support the concept, we endorse maternity and parental leave—it is a great concept—but I think it is a bit prohibitive for small business and small business owners to be required to fulfil that function.

CHAIR—Ms Whalan, did you want to add anything?

Ms Whalan—No. I am happy to answer questions and assist the committee in any way.

CHAIR—Senator Adams, do you want to start?

Senator ADAMS—Thank you. I would like to talk to you about the superannuation component—the fact that super is not included under the bill. Could you comment on that, please.

Ms Whalan—I will answer that question. Yes, and we think that is right, because this is not an employment related entitlement. This is a welfare benefit funded through the government scheme. If there was ever a thought of adding superannuation to that then the money coming forward from the government would have to be increased to cover that superannuation component.

Senator ADAMS—Do you see any unfairness in the fact that some women would be getting super on their existing leave but those who are eligible for this particular parental leave would not be getting any super? The ones getting super would be getting super for their own leave, plus they would get this allowance but they would not have super added to that.

Ms Whalan—I guess there are a lot of things that are unfair or not equal in terms of this scheme and many other employment or non-employment related benefits that are available. We have asked around our members and across our membership we do not have any form of a paid maternity or parental leave scheme. That is predominantly because our members are small-business owners and it is simply not within their capacity to be

able to offer that. As we have said, there is strong connection. About one-in-three employees return after having a baby—again, for a whole range of reasons. But, yes, there are inequities in who gets super and who does not and who is absent from that. I have three children. I went back to work pretty well straight away after I had my three kids. My husband stayed at home for 12 years. So I am the one with the super nest egg, not him. That is going to happen, depending on decisions and circumstances that people are faced with. We believe that superannuation not being required to be paid in this scheme is the correct decision at this time. Certainly it would be a very onerous obligation indeed if that were introduced, particularly for small business.

Senator ADAMS—Coming back to the paymaster situation where you feel that the Family Assistance Office should do the payment, have you costed what it would cost for your pharmacies to have to administer the benefit?

Ms Riley—A significant impost of time is expected. When you look at all the steps that the paymaster is required to do, it is not going to be something that is dashed off in five minutes. There are a lot of different steps: we have nine different steps here, each of which are required to be absolutely 100 per cent correct, so they need to be totally verifiable. These are things that are completely separate to what we already do with our current payrolls. There will be a significant amount of time required. One group has made a suggestion that it could be something like one hour per employee per pay period, whether it is a one-, two-, or four-week pay period. Most of the average pharmacies are paying their people on a weekly basis. That is a significant impost in time. I currently have three girls on maternity leave and another one going this Friday or next Friday—she hasn't decided yet. We are not talking about one or two people or one or two hours; we are talking about a significant amount of time.

Ms Galbraith—I think it is important to remember that. Most community pharmacies are owned and run by pharmacists such as Tony and me. We are there to provide the community with our health knowledge and the information we can provide. This obligation would take me off being available for patients—or I would I have to work after hours and therefore miss out on time with my own family. We are not big businesses that have a whole HR department; each small-business owner is the HR department. There is time, but there is also what we are not doing because we have to do this. For me that is a priority, because I am a community pharmacist and I want to be there available to my patients at all times rather than doing this sort of paperwork.

Senator ADAMS—Have you had a lot of feedback from your rural pharmacy people?

Ms Riley—I am in a regional area—I suppose you cannot call Bendigo rural.

Senator ADAMS—Yes, but getting to some of the smaller one-town pharmacy.

Ms Riley—Most of the smaller town pharmacies are single pharmacy operators who are doing absolutely everything. I cannot say personally that I have spoken to too many. Have you spoken to anybody, Marion? Their issues are going to be exactly the same. Their concern is always around how they get the information and the timeliness of getting the information—who knows what sort of thing. That is always a really big issue. The further you get away from a regional area, the more difficult it is to access the information that you need to be doing everything appropriately.

Ms Whalan—One of the members I spoke to is out in rural New South Wales where there is no face-to-face shopfront in terms of any government agency. He said he felt that he would then be the source of information. He has Indigenous employees and he has people from non-English-speaking backgrounds. He said, 'It is hard enough for me to explain to them about the new workplace laws and their entitlements in relation to that. Now I'm going to have to be explaining this when it could be dealt with through the Family Assistance Office and through that method.'

We did look at the figures in the government's business impact statement. I think the figure quoted in there was \$100 for an upgrade for a small business in terms of their payroll. One member who I spoke to who is currently looking at this because they are about to upgrade their payroll systems for changes in workplace relations laws is on MYOB and he said, 'You don't get an upgrade for less than \$360 and in most cases by the time the guy has got to come out and play around with it it is \$600 or \$700.' Of course, when they are further out there are also travel costs associated with that. It is not insignificant in terms of what a small business is going to have to do if they are required to take on the paymaster function. There is no provision anywhere to compensate small business for that if that is indeed the way that this legislation proceeds.

Senator ADAMS—How are casual or part-time employees going to get on to qualify for the guidelines?

Ms Whalan—The qualification requirements in terms of the 10 months and the 330 hours, when you break it down to a working week it is 8.25 hours. If you break that down to a five-day week it is 1.65 hours a day.

We have minimum shift provisions in all our awards now that are three hours. We have, as we said, a high prevalence of part-time employment at the moment because of our high percentage of female employees but also because it suits the sector and it suits our long opening hours but it also suits our employees. We are able to provide a big flexibility capacity in terms of swapping shifts and being flexible about when people work and accommodating their family responsibilities, particularly their children 9 am to 3 pm, with younger women coming in at the start and the end. So pretty much anyone who is eligible will be able to qualify in our sector.

Ms Riley—No doubt. Out of my 35 women half of those are part-timers and working all kinds of hours, beginning and end of day, and some of those are young mums as well. You would have the same kind of thing too.

Ms Galbraith—Yes, I am actually thinking that a lot of my evening casuals who would be teenagers would fit the 8.2 hours per week. So potentially you have not only got that 25-45 age bracket, I have got younger woman who would be able to get under that capacity. So there is a very large audience out there. Of my 16 female staff, 14 of them would be eligible for this system.

Senator FURNER—Ms Riley, how many staff do you employ in Ballarat, is it?

Ms Riley—In Bendigo. Everybody gets Ballarat and Bendigo mixed up. Ballarat is not as good as Bendigo!

Ms Riley—I have three men who work for me as well, so I have 38 staff with 35 women.

Senator FURNER—And you are the only pharmacist?

Ms Riley—No, there are four other pharmacists, and they are women. My three men are couriers, actually.

Senator FURNER—So out of the three female staff you have on unpaid maternity leave, in terms of the proposed legislation there is the keeping in touch process of 10 days during the period of leave. How would you consider that be utilised in your business?

Ms Riley—Very easily. They are in and out of my pharmacy two or three times a week. They come in for morning tea, they come in to staff training, they come in to buy products, they come in to get advice.

Ms Galbraith—They come in because everyone wants to see the baby.

Ms Riley—Yes. It is really a social thing. I think that is one thing that is very different about community pharmacy: it is a social environment as well as a workplace. Our customers treat it as a social environment as well and when our staff are on maternity leave they are still part of it. So the keeping in touch part for community pharmacy is a given, it just happens anyway. It is not an impost.

Ms Whalan—And for our professional staff, our pharmacists, in that period that they are off, which may be 12 months, they have to maintain their CPD, their professional development points, to maintain their registration as a pharmacist. That happens already in our sector.

Ms Galbraith—There are mums who have got children younger than one, including me at the time, who work an evening shift. They might come and do a Sunday afternoon because hubby is at home and they can leave the baby at home for three or four hours and not have to worry about feeding and that sort of thing. So they do not always leave entirely; it tends to be a bounce in and bounce out sort of thing. I might need someone one afternoon and I cannot find anybody else and they might accommodate that need. And there are Christmas parties and things like that that they still get invited to. They are still employees of the business. There are plenty of opportunities.

Senator FURNER—So they willingly come in and perform some work during that time off?

Ms Galbraith—Yes. A lot of them are suddenly functioning on one income and not two and, if they can get a couple of hours work and get some extra income and it does not affect the child because dad can help, that works perfectly well for a lot of them.

Ms Riley—Some of my staff are back after their second and third children. So we do not lose them; we keep them.

Senator FURNER—Your submission makes mention of a counterproposal or a second recommendation of opting in. How would you foresee that operating?

Ms Whalan—We looked at that in the first instance because of the draft legislation now saying that the Family Assistance Office will run the entire scheme for the first six months. So there is going to be the capacity in the Family Assistance Office and within the government to run that for every person who applies for the first six months. When we looked at that, we thought about some of our members, particularly some of

our members who are under the bigger banner groups, whilst they are still individual owners they do then have some greater capacity because of the way they pool together, for instance, some of their resources. It may be attractive to some businesses to take up that option, but we maintain that, for the majority of our members, the burden in terms of administration and time and the cost that is not going to be reimbursed in any way, shape or form under its current proposal, they probably would not see the benefit.

ACCI have also put this position and obviously we have discussed that with them. There may be some businesses who do see a benefit in picking that up, particularly those larger businesses who already have a form of paid leave, possibly as an employment entitlement under an agreement or a contract of employment and there are some synergies there. That is why we put that option as a second proposal. But it does not take away from the fact that our primary position is that we do not see a role for the private sector employers to be paymasters of a government-funded scheme.

Senator FURNER—You just made mention of those larger businesses possibly providing paid parental leave. Would you be familiar with how many there may be and what sorts of entitlements they might provide?

Ms Whalan—I can only speak for the pharmacy sector. We did a quick whip around, because we heard you ask that question last week. As far as we know, none of our members currently provide any form of paid leave. So it is not something that is in our sector.

CHAIR—I have a question about the imposts of payroll. Ms Riley, you have got 30-odd staff.

Ms Riley—Yes.

CHAIR—Do you have a payroll system now?

Ms Riley—We use a MYOB system. We would be doing it all week otherwise.

CHAIR—Have you talked with MYOB about what it would mean to have the payroll capacity for giving out money that the government gives you to give to your staff?

Ms Riley—Not as yet, no. As Marion just talked about, she has spoken to a group who has done some of this preliminary work.

CHAIR—Can you provide us with that data that they have given you?

Ms Whalan—Yes. We got the employer business requirement statement only yesterday from the Australian Taxation Office. So we have had it less than 24 hours. I sent that over to a particular member who I felt confident could give me a quick answer and a quick precis of it. He was the one that Toni mentioned. He said that it would be between \$600 and \$700 to upgrade and that he believed, in terms of looking at the raft of requirements—the record-keeping requirements, the auditing requirements and the fact that he anticipates, based on what he has read, a fair amount of phone call traffic between himself and the Family Assistance Office—that, in the event that he had six employees on paid parental leave at once, it would add half a day of processing to his fortnightly pay.

CHAIR—And he has quantified this?

Ms Whalan—Sorry?

CHAIR—So he has quantified this? Are you prepared to give that information? That is the kind of stuff we need. We have read the explanatory memorandum and the bill, and the way they read is that the impost is on the employer to contact the FAO to say an employee is eligible, the employee can talk to the FAO at any stage about what their entitlements are—no more than they would talk to you as employers about any other entitlement—and how much they are entitled to is then worked out. The government provides that money to the employer and the employer pays that person, in the same way they would be paid if they were at work. It is no different to how that payment operates.

Ms Whalan—It is a little different.

CHAIR—Why is that?

Ms Whalan—Because it is a payment that does not attract leave accrual, it has to be treated differently in the payroll system. So it is more work. It cannot simply go through as a payment because it will automatically attract tax if that is applicable. The systems are set up to automate. Mind you, we are talking about businesses that have an automated system, such as Toni's.

CHAIR—Do you have any record, in your role as the IR person for the whole of the guild, of how many of your employers do not have automated systems? Employers have to work through a lot of systems; there are

many responsibilities. I would be really interested to find out, in an organisation such as yours, what the payroll systems of the thousands of pharmacies are.

Ms Whalan—It is not something that a lot of employers want to share. I know there are some who have it all on their laptop, because I have met them and spoke to them—they simply use an Excel spreadsheet to work it out, write out cheques and give them to their employees.

CHAIR—Their employees are actually paid by cheque, individually?

Ms Whalan—There are some really simple systems out there. Those employers may not want to come forward and be identified because their peers and colleagues may see them as unsophisticated, in a profession that prides itself on being very professional. There are some out there who have very, very basic processes for paying their staff. They do it all themselves. There is a broad range. Those employers with basic processes are not necessarily going to come forward and be upfront. They are not necessarily going to want to be identified.

CHAIR—They will not be upfront about asking for assistance?

Ms Riley—They will be upfront about asking for assistance, but—

CHAIR—That is what I would have thought—if they wanted help, they would be asking.

Ms Riley—Maybe we could survey our members.

Ms Whalan—And see if we get answers.

CHAIR—I would be really interested in the processes.

Ms Whalan—We may or may not get answers. It would be totally voluntary on their part. But there certainly is a range. I can only base this on what I have seen from the industrial point of view. I can say confidently, from the industrial point of view, that the sophistication in terms of how our members across the board comply with their industrial obligations is diverse, for a whole range of reasons. Part of it is the employers' own language and literacy skills. It is the whole gamut. Some of the documents that the government has circulating at the moment explaining the scheme to employers are very complex. They are not written in plain English. They are not easy to follow and understand. I have a colleague in the small-business sector who says you have to remember that not having good language and literacy skills is common across the Australian community, and a lot of those people are small-business owners.

CHAIR—But, I would trust, not in your business, as a community pharmacist.

Ms Riley—You would hope not, but the reality is that we have no control over that.

CHAIR—I know, but, in terms of the work and expectations in your industry, I would hope that would not be a major issue.

Ms Riley—Amanda and I are community pharmacists. As an add-on to being a practising community pharmacist, you become a business administrator as well, for which you do not have any training. You fly by the seat of your pants, effectively, or you go off and do courses. The reality is that we are trained as health professionals to be practising community pharmacists. We learn all the other things as we go on, as a result of being a business owner.

CHAIR—And the responsibility of being an employer.

Ms Riley—That is exactly right. As time has gone on—I have been an owner for 30 years now—the demands of being an owner have changed significantly and quite dramatically. My concern about this scheme is that it is another level of complexity. It is another thing we have to be familiar with. I do not know whether we are different to any other sector, but the reality is that our staff trust us. They will come to us for advice and ask: 'What should I do about this? I do not understand it. Should I do this? Should I do that? How do I apply for it? Where do I get it from?' They expect us to know all the answers. The burden is then on us to comply with the letter of the law. As I said before, we like rules. That is what pharmacists are. We live by rules.

Ms Galbraith—We are good with rules.

Ms Riley—Yes, and we do not want to do the wrong thing. From the way it is sounding at the moment, I think this is a really slippery slide for us. We, as a group of professionals, are going to be concerned about where we sit in this, how we do it and how we make sure we do it properly. I think that part is the really concerning part for us.

Ms Galbraith—I know there is some concern about the connection with the workplace, but I believe that is strong anyway in most pharmacies. I question why it needs to be any different to the current system with the

baby bonus, where you apply and get it from Medicare. That is a perfectly valid system. The Family Assistance Office has already said they will do it for the first six months, so they will have set up that infrastructure. Why can't it just continue that way to avoid small businesses—perhaps large businesses are quite happy to take it on—having to take that responsibility on?

CHAIR—We will put that to the department this afternoon. I think one of the key aspects is something that Ms Whalan said earlier—the government does not believe it is a social welfare payment. It is a link to the workplace. You have explained the particular relationship that you have with your employees. I draw your attention to the information that the government has put out about the background to the scheme and what it is all about. This is to look at women who are workers who are having a family. That is the difference. It is not a system through the department of social security or anyone else; it is a parental scheme. There is information that is available, so you can get that and have a look at it. We will put that to the department, but that is certainly one of the things there is an information number for in these brochures I believe.

Ms Galbraith—We have seen that information.

CHAIR—And you have contacted the number and asked your question?

Ms Galbraith—No. We are trying to avoid small businesses, in our case pharmacy owners, having to do all this extra paper work. If the Family Assistance Office is already going to have it set up, why is small business going to have to do it?

Ms Whalan—In my assessment and reading of the legislation and the fact that you can have an eight-week break and still be eligible, you can resign eight weeks before your baby is due and be a stay-at-home mum and you will receive this benefit if you have done the 330 hours in the preceding 10 months. Because women predominate in the casual workforce, a lot of casual workers are going to be eligible for this payment who will not be working when their child is born and may have no intention of going back. I cannot agree with you that this is an employment related benefit. This benefit is going to go to a lot of women or fathers or other carers who are not in the workforce and have no intention of being in the workforce.

CHAIR—We will put that position, as you have done. Thank you very much.

[2.03 pm]

SMITH, Dr Julie Patricia, Director, Australian Breastfeeding Association

CHAIR—Good afternoon, Dr Smith, and thank you for sharing your time with us. You understand the provisions for the protection of witnesses and evidence. If you care to, please make an opening statement, then we will go to questions. We have scheduled for this to go through to about 2.30.

Dr Smith—Thank you very much for the opportunity to come and speak on this particular bill. It is one that is dear to our heart. I will just start off by outlining very quickly who we are. The Australian Breastfeeding Association was established in 1964 as the Nursing Mothers Association with the aim of supporting and encouraging women who want to breastfeed their babies and to raise community awareness of the importance of breastfeeding and human milk to infant and maternal health. We are recognised as the leading authority on breastfeeding. We have more than 15,000 members across the country, including in many rural and regional areas. We provide a number of services, including a National Breastfeeding Helpline. We run breastfeeding education classes for mothers, we provide email support on breastfeeding issues, we have various peer support programs throughout the country, we hire out breast pumps and we provide resources and products for parents and health professionals. We also provide workplace programs, which I will say a little bit more about.

Why are we here? Paid maternity leave has important implications for breastfeeding, for the health and welfare of mother and baby. That is our primary concern and our primary focus. Our longstanding policy is that the Australian Breastfeeding Association supports the right of women to choose whether or not to enter the paid workforce. ABA believes that access to lactation breaks in the workforce is fundamental to maintaining a breastfeeding relationship after a return to work. We support the concept of paid maternity leave in order to give women the optimal chance of establishing breastfeeding before a return to work. We are very clear: it is a mother's own choice as to whether she is in paid or unpaid work, and we will support her wherever she is.

We have been involved in the breastfeeding and work issue for more than two decades—three, actually; I can remember when I had my child in 1981. We have made submissions to various inquiries on paid maternity leave, including the inquiry by Pru Goward, as Human Rights Commissioner, and the recent Productivity Commission inquiry. We had specific action in our Breastfeeding Leadership Plan in 2004, which was that funding for maternity leave should be available for all new mothers, not just those in the workforce, concentrated on the months when breastfeeding is being established. Those women most at risk of being forced back to work financially and not breastfeeding—that is, disadvantaged women and those of lower socioeconomic status should be especially targeted.

Our support for employed breastfeeding mothers includes promotion of breastfeeding-friendly environments, including through schemes such as our Breastfeeding Friendly Workplace Accreditation scheme. Our approach to paid maternity leave is, as I said before, focused on the health and welfare of the mother and child. Our recommendation to the Productivity Commission was that it should evaluate any proposal in those terms. Our submission was that all eligible mothers should have access to a minimum of six months paid maternity leave from birth, regardless of their employment status. That would be consistent with health recommendations for six months of exclusive breastfeeding and continued breastfeeding into toddlerhood. We also sought paternity access to include some sort of part-time work or sharing option to provide families with flexibility.

We support the draft legislation as a suitable foundation for Australia to commence a statutory system of paid parental leave and to enhance child health and development. We really value a scheme which enables women to plan their maternity leave with greater certainty, which encourages them to initiate and continue breastfeeding. We support the scheme because it is both inclusive and equitable and provides help for the early months of establishing breastfeeding and facilitating mother and child health and bonding. Paid maternity leave may also facilitate access to social support for mothers. They are more able to take the time to go along to their playgroups, nursing mothers groups and Australian Breastfeeding Association groups. It may also increase their opportunities for volunteer participation in mothers groups such as ours, contributing to social capital and personal development.

The legislation before us is very similar to the design proposed by the Productivity Commission, and we acknowledge that. There are some areas where we urge some strengthening, and we also urge action by the

government and the parliament to bring Australia into line with ILO conventions regarding maternity protection.

We strongly support this legislation. One of the key issues as we see them is that it is not quite long enough—it needs to be longer to allow for the six months of exclusive breastfeeding. Universally, six months is the recommendation. Anyone who has breastfed a child exclusively for six months will tell you that it takes a lot of time, commitment and energy. We believe it would be very appropriate for that period of paid parental leave to be extended to six months to ensure that mothers have every opportunity to meet those recommendations and give their child what needs to be given.

We also note that health authorities recommend continued breastfeeding beyond six months. While, for most mothers with babies of that age, some level of employment is not incompatible with breastfeeding, there are certainly stresses and pressures on mothers. For some mother-baby duos where the mother is in full-time or close to full-time employment, there may be some difficulties in sustaining breastfeeding even beyond the six months, depending on the particular situation. So that is our main comment, really: that it needs to be longer. But we do see the scheme as a solid basis for moving forward into the future.

We would also note that the work test could exclude many mothers caring for more than one infant or young child—even women with a commitment to the labour force in the longer term—because of the implications of their capacity for significant employment participation if they have more than one child. We understand that the thrust of this legislation is to maintain a connection between the mother and her employment, but many mothers do maintain connection with their employers into the second year of life of the child. So we would urge you to consider the impact of that work test on those mothers.

There is a couple of other issues which we see as small-scale and probably not related directly to the legislation. We note the loss of superannuation tax concessions and access to those. We really think that that is an area that needs to be looked at. We also note the issues, potentially, for small businesses, where employers are responsible for the payments for the first six months. We would not make a big issue of that. We ourselves have around 30 staff, all of them female. Although we are a charity and we do not have a lot of money, we do, as a matter of principle, pay 12 weeks paid maternity leave.

CHAIR—Congratulations, Dr Smith. It is very important.

Dr Smith—Yes. We are not fully cognisant of the details of how this is going to be administered, but we do not expect it will cause major problems, although we have 30 women, potentially—though a few of them have probably had their children. It is an important piece of legislation, and those sorts of details can be sorted and should not stand in the way.

We also note that the legislation allows fathers access to a portion of leave, subject to negotiation between the mother and the father. We trust that that will be exercised within the family in a way that is fair to the mother, because she is the one who has had the baby. But we are pleased to see that that option is in there, because it can help the mother transition back to paid work if her partner can take the time to work part time, help care for the baby and bring the baby into work for feeding and so on. So we also think that is a good provision.

The final thing is that we would like to draw attention to the need for complementary policies to protect breastfeeding where we have women returning to paid employment, because the transition back into the workforce, as I mentioned, raises extra pressures in balancing work and family when a mother is continuing breastfeeding. So we need appropriate, breastfeeding-friendly workplace provisions and employment conditions. The ILO's Convention No. 183 establishes women's rights to paid maternity leave, but it also includes provisions for continued breastfeeding, and there are various aspects of that convention that we think the Australian government should ratify.

The leading Australian employers, including those at Parliament House itself, are adopting 'breastfeeding friendly' through the Breastfeeding Friendly Workplace Accreditation scheme that we run. I think it was in 2008 or 2009 that Parliament House was accredited as a breastfeeding-friendly workplace, and we were delighted to be able to do that.

We would urge, though, that the parliament consider the implementation of broader strategies to support mothers to initiate and continue breastfeeding. We set these out in our Breastfeeding Leadership Plan in 2003. *The best start* report from the Parliamentary inquiry of this committee in 2007 at pages 77 to 82 has a number of recommendations regarding complementary breastfeeding-friendly policies, and we draw your attention to those.

I would also draw your attention to the issues around child care in this area. We have instigated a program of breastfeeding-friendly child care, which is in development at the moment. That is another aspect of protecting breastfeeding from the pressures of return to work and care by a person other than the mother.

In conclusion we urge the parliament to support this historic legislation. There is significant potential gain in maternal and child health, workforce participation and work-family balance for just a small increase in existing expenditure. In the absence of paid parental leave added financial pressures could lead to more mothers feeling pressured to return to work too soon at a cost to the health and welfare of them and their baby. Further delay in the introduction of a paid parental leave scheme is a barrier to breastfeeding and further comprises the health and wellbeing of vulnerable infants and their families and leads to an increased cost burden on our society, as the *Best Start* report pointed out, and would be an unacceptable neglect of the needs of Australian mothers and babies.

Senator ADAMS—Thank you for your presentation. With your eight weeks maternity leave, do you pay super with that?

Dr Smith—Twelve weeks.

Senator ADAMS—I thought you said that your organisation pays eight weeks.

Dr Smith—Twelve weeks.

Senator ADAMS—Twelve weeks, okay. Do you pay super with that?

Dr Smith—Yes, we do.

Senator ADAMS—Are you affected with payroll tax for that?

Dr Smith—I understand, from my recollection of being treasurer, we are. I certainly remember we pay workers compensation and I am pretty sure we pay payroll tax. It varies from state to state as to which charities pay and the size of the business. I think that our payroll is high enough that we do but I cannot be sure.

Senator ADAMS—Would you be able to let the committee know and take that on notice for me? Let us know what the situation is actually for each state, which would be very handy.

Dr Smith—We do not employ people everywhere. We only employ people in Melbourne and we have two staff members in Sydney and a couple in Brisbane and Adelaide.

Senator ADAMS—So that is three states where you have employees.

Dr Smith—They are in our branch offices, so they are employed by the branches rather than the head office.

Senator ADAMS—If you could give us an idea as to where that goes. Sorry about that; I thought it was only eight weeks, but I have 12 weeks here.

Senator HANSON-YOUNG—That is even better.

Senator ADAMS—Yes, that is right.

Dr Smith—It costs us but we do it.

CHAIR—You are philosophically with Dr Smith, I think.

Senator ADAMS—I did pick that up and I think you are doing a great job. I would like to say, as I am a coalition senator, that we are supporting the bill. But if we were to be elected we would probably improve it if we could. That is just to set your mind at rest that we are supporting it.

Dr Smith—Six months would be lovely.

Senator HANSON-YOUNG—Did you say, ‘Six months would be lovely’? Is that what you just said?

Dr Smith—Yes.

Senator HANSON-YOUNG—It would be, and I think that is exactly where we need to go. What this legislation should be offering is six months. If we were doing the right thing that is what it should be. With the fact that a charity organisation as small as the Australian Breastfeeding Association can pay 12 weeks and include superannuation I do not see how the government can get away with not including superannuation on an 18-week scheme that pays the minimum wage. It is not much over \$800 for each person who would be eligible per year. It seems ridiculous, but you obviously understand the nature of being able to give mums that opportunity to be out of the workforce to breastfeed their babies. The investment in the health of that child is

going to pay off dividends in the long term as well as the significance of ensuring that we support our female workers, particularly in knowing that they have to take that time off. Superannuation has to be included and that is my bottom line. Legislation is a good point on which to have the discussion and to start pushing, but it is nowhere near where it needs to be. There are still a lot of issues with it. What kind of representations does your organisation make to government over these issues? Were you consulted at all in the drafting of this legislation?

Dr Smith—We certainly kept in touch with the Productivity Commission inquiry. We found that a very helpful and open process. We have some contact with the Commonwealth health department. I am not aware that we have been consulted specifically on this legislation but we have certainly been engaged in the process. In this particular case we were invited to speak today.

Senator HANSON-YOUNG—Throughout the Productivity Commission's inquiry were you heartened at the number of submissions that advocated for six months?

Dr Smith—We have been delighted since 2007 with the Best Start inquiry at how much interest there is in providing support for mothers to breastfeed—whether it be through broader policies or through paid maternity leave legislation. I am not sure whether the Productivity Commission's inquiry itself was the focus of our delight. It started with a huge number of submissions to the parliament.

Senator HANSON-YOUNG—No, it started long before that. I asked that because there were significant numbers of submissions within that inquiry process that all advocated for six months as a minimum.

Dr Smith—Six months is the logical period for paid parental leave because, as I said before, the health recommendations are for six months of exclusive breastfeeding. As I also said, the time that it takes to breastfeed a baby is most intense in that first six months and the time pressure on the parents and the family is greatest at that point.

Senator HANSON-YOUNG—Of course. Most children are not even really starting solids until six months. Even the intervals are shorter, aren't they?

Dr Smith—There is research that once you introduce solids or anything else the time the mother needs to spend with the baby reduces quite a bit.

Senator HANSON-YOUNG—And doctors tell mothers not to start feeding their baby solids until at least six months.

Dr Smith—Yes.

Senator HANSON-YOUNG—It makes it pretty difficult if you have to go back to work after 18 weeks and you are not allowed to give your baby solids.

Dr Smith—That is right. That makes it very hard and it limits women's options for full time or part time; whereas beyond that is becomes a bit more flexible—depending, of course, on their employer's attitude, which is why we emphasis the importance of complementary policies to support the mother.

Senator HANSON-YOUNG—I totally agree with you on the point of complementary policies and finding more flexible ways for nursing mothers to be able to go back to work and continue breastfeeding their baby where need be. I am not sure if you have had a chance to see the actual draft legislation because clearly this whole turnaround time is so fast.

Dr Smith—I looked at the explanatory memorandum and that was enough.

Senator HANSON-YOUNG—The government whacked the draft legislation on the table and I think submissions closed three or four days afterwards, so it did not give people much opportunity to give feedback. There is reference to a review period but there is no reference in that to the length of time or even the payment amount; it is only in relation to superannuation and whether there is to be a specific paternity leave entitlement. You have obviously indicated your support for superannuation to be included but given your main concern about the length time being a minimum of six months surely you would like to see that as a specified aspect of any review?

Dr Smith—Absolutely. As I said, we support this legislation strongly as a good basis for a current and future design of this scheme. We do believe that six months is the appropriate period of time. We understood from the Productivity Commission inquiry process that we had a good grasp of what the government was adopting, so we were comfortable with the legislation when it was brought forward—even though we have not

had a chance to read all of it. It would be helpful to include in that review the government moving forward specifically on that six months issue because I would not want to see this legislation delayed. If that issue was going to delay the legislation that would be really unfortunate but it is certainly a direction which should be taken in the future. Including it in the review provisions would be one way of making sure that we can revisit that issue very soon.

Senator HANSON-YOUNG—I guess it is not just about making sure that that is a reference to the review but that we would want to see a commitment from government that they actually do want six months. The minister has never actually said that. Does that surprise you?

Dr Smith—Not really.

CHAIR—Because of the nature of your organisation that covers so many women and families across the country—but it is usually the women who read your newsletters—have there been any comments or issues raised in your interaction about the whole idea of parental leave?

Dr Smith—I think that the association has a very neutral policy about the paid work issue. We support women to breastfeed wherever they are. This issue of paid work versus unpaid work can be a very divisive issue.

CHAIR—We are very much aware of that.

Dr Smith—But we also feel that women's lives are complex and a woman is not either a paid worker or an unpaid worker—in our eyes, she is a mother who happens to have work responsibilities of various kinds—and we want to make sure that, wherever she is working, whatever sort of work she is doing, she is able to breastfeed her baby and the baby is able to benefit from breastfeeding. For us, our policy is a strong one. We do not care whether you are in the paid workforce or not, that is your business, but we will support you wherever you are.

Senator ADAMS—Dr Smith, have you received the government's *Paid parental leave—information for parents* or the other booklet *Paid parental leave—information for employers and consultation outcomes*?

Dr Smith—I am not sure from what avenue. I have certainly seen a version of that. I am not sure whether it is the hard copy version that you have there because I got it electronically.

CHAIR—I think it is the same version as is available electronically. It is the same information.

Dr Smith—Yes, we have received information on it.

CHAIR—Thank you, Dr Smith.

Dr Smith—Thanks for the opportunity.

[2.29 pm]

ANDERSON, Ms Jody, Branch Manager, Workplace Relations Policy Group, Department of Education, Employment and Workplace Relations

COWAN, Mr Paul, General Manager, Seniors, Families and Carers Division, Centrelink

LANDER, Mr Andrew, Branch Manager, Communication and Media Branch, Department of Families, Housing, Community Services and Indigenous Affairs

SALVAGE, Mr Malcolm, National Manager, Family and Child Care Program, Centrelink

SANDISON, Mr Barry, Group Manager, Families Group, Department of Families, Housing, Community Services and Indigenous Affairs

SHELLEY, Ms Colette, Acting Group Manager, Workplace Relations Policy Group, Department of Education, Employment and Workplace Relations

WARBURTON, Mr Mark, Branch Manager, Paid Parental Leave Branch, Department of Families, Housing, Community Services and Indigenous Affairs

CHAIR—Welcome. As departmental officers you will not be asked to give opinions on matters of policy, though this does not preclude questions asking for explanations of policy or factual questions about when and how policies were adopted. I now invite you to make an opening statement before we go to questions.

Mr Sandison—Thank you for the opportunity to attend the hearing. Officers from DEEWR and FaHCSIA are here to assist with the inquiry today. Also here are officers from Centrelink to assist in relation to the implementation of the PPL. FaHCSIA has lead responsibility for the Paid Parental Leave scheme. DEEWR has policy responsibility in areas where there are interactions between the scheme and existing employment and workplace relations policy. Centrelink bears the main responsibility for implementing the scheme in accordance with the legislation. The implementation is currently in its design phase.

The committee has before it the main paid parental leave bill. The committee may have noted that the main bill does not include the transitional amendments relating to the phase-in of the employer role or a range of consequential amendments to family assistance, taxation, social security and other legislation. It is expected that a paid parental leave consequential amendments bill will be introduced into the parliament next week. A second consequential amendments bill, containing amendments to the Fair Work Act 2009 and the Corporations Act 2001, which require consultation with the states and territories, will proceed once these processes are complete.

Since February 2008, when the Productivity Commission was asked to examine ways that the government could provide improved support to parents of newborn children, the government has been committed to broad consultation on proposals for a paid parental leave scheme. There are a large number of issues to be taken into account in a policy development exercise like this, and the government has been keen to balance the interests of all parties and make the scheme fair for parents and employers. The commission conducted extensive public consultations before and after the release of its draft report in September 2008. Over the course of the consultations, over 400 public consultations were considered, of which 160 submissions commented on the draft report.

In the May 2009 budget the government announced the introduction of a paid parental leave scheme based largely on the Productivity Commission's recommendations. A commitment was made to undertake further consultations to finalise the scheme's details. Between August and October 2009, FaHCSIA and DEEWR conducted over 32 consultations with over 100 representatives of key stakeholder groups. These included major employer and employee peak bodies; representatives of small business, including COSBOA, the Australian Retailers Association and the Australian National Retailers Association; family and community stakeholder groups; and tax professionals, payroll specialist and payroll software developers. The government remains committed to consulting on the implementation of the scheme, and the minister has announced the formation of a PPL implementation group to provide feedback and to assist in relation to implementation matters.

The department is also consulting on the adequacy of a draft employer business requirement statement, which is aimed at assisting employers prepare for their role in the scheme. The government is committed to the public availability of information on the proposed scheme, and information about the scheme, including the proposed PPL work test requirements, has been made available to enable women who may be eligible in the

early days of the scheme to understand what they have to do to qualify. Detailed policy statements, in the form of the parent and employer booklets, were released at the same time as the draft legislation to give interested parties and the general public the latest information about the scheme. Also, the department has been funded to undertake an appropriate communication campaign, following passage of the legislation, to inform prospective parents and employers about the operation of the scheme.

I will be able to assist the committee with its inquiry today. I believe my DEEWR colleagues would like to make some opening remarks as well.

Ms Shelley—I thank the committee for inviting the department to appear at the hearing today. DEEWR has worked very closely with FaHCSIA during the development of the micropolicy details of the PPL scheme and the draft legislation. The department's interest in the scheme arises due to its interaction with the workplace relations system—in particular, the ability of PPL claimants to keep in touch with their workplaces while they are accessing parental leave pay, and also the relationship between the PPL scheme and existing workplace entitlements such as the unpaid parental leave entitlement under the National Employment Standards and employer funded parental leave schemes.

In this context, I thought it might be useful for us to clarify for the committee the intended operation of the PPL scheme as it applies to the issues I have just mentioned, particularly aspects which have already been raised before this committee, both during the hearings and in submissions. Firstly, the Keeping in Touch provisions, which are referred to in clauses 49 and 50 of the bill, are designed to enable a PPL claimant to keep in touch with his or her workplace while in receipt of parental leave pay. The Keeping in Touch, or KIT, provisions enable PPL claimants to perform work for the purpose of keeping in touch with their employer for up to 10 days without losing access to parental leave pay.

The PPL provisions provide clarity for both PPL claimants and employers that there is still an entitlement to parental leave pay where a KIT day has been worked. It is important to highlight that any work performed by a PPL claimant must be performed for the purpose of keeping in touch with his or her employment or engagement and facilitating a return to that employment or engagement. The intention is that employees will use KIT days to participate in training or planning days and conferences. However, the bill does not mandate the types of activities that can be performed. This flexibility protects employees by ensuring that they will not lose access to parental leave pay if they agree to perform work that does not fall neatly within a set of prescribed activities but which both they and the employer understand to be for the purposes of keeping in touch with the workplace. The draft PPL bill also clearly provides that KIT days can be accessed only by mutual consent of employers and employees, as provided for in clause 50(b) of the bill. Employees cannot be compelled to perform a KIT day.

The interaction between the unpaid parental leave provisions under the National Employment Standards and the PPL bill has also been raised during hearings, and I would like to clarify a few points on this matter for the committee. Many employees who are eligible for parental leave pay will also be eligible for unpaid parental leave under the National Employment Standards. However, the Productivity Commission made a deliberate decision that the work test would deviate from the unpaid parental leave requirements under the National Employment Standards. The PPL scheme has wider eligibility criteria compared with the unpaid parental leave provisions in the National Employment Standards in order to maximise access to the PPL scheme.

The Productivity Commission report did not recommend amending the unpaid parental leave provisions in the National Employment Standards to provide all PPL claimants with a guaranteed right to access 18 weeks leave or a return-to-work guarantee. Workers who are ineligible for unpaid parental leave under the National Employment Standards may access paid leave, such as annual leave or long service leave, while in receipt of parental leave pay. Alternatively, they may negotiate unpaid leave with their employer.

The PPL scheme is designed to complement existing workplace entitlements and provides employees with the flexibility to choose when to take their parental leave pay to best suit their needs. Employees may receive parental leave pay concurrently or in addition to existing types of paid leave—for example, employer funded paid parental leave or annual leave. Where an employee has an existing entitlement to paid parental leave under an agreement, it is enforceable in its terms as provided for by the agreement. This includes entitlements to paid leave that are contained in enterprise agreements made under the Fair Work Act, enterprise agreements made under old federal or state workplace laws that remain in force, AWAs and ITEAs, as well as common law contracts. For example, if an enterprise agreement provides that the employer will provide employees with eight weeks of employer funded paid parental leave, an employer must continue to provide this entitlement to the employee in addition to the government parental leave pay.

An enterprise agreement can only be varied during its period of operation in accordance with the requirements of the Fair Work Act, including that a majority of employees must approve a variation. It is only once an enterprise agreement passes its nominal expiry date that parties are permitted to renegotiate its terms and to make a new agreement.

Employers who currently offer paid parental leave differentiate themselves as employers of choice. Employers provide paid parental leave and other family-friendly provisions because it is good for their business and they benefit in the long term from increased workforce participation of parents and retention of skilled staff. For this reason the Productivity Commission in its final inquiry report considered that a withdrawal from existing PPL schemes was unlikely. In its submission to the Senate committee inquiry the Business Council of Australia noted that feedback from its members indicates that they do not intend to withdraw existing paid parental leave schemes but are looking to marry existing schemes with the PPL scheme to ensure that employee benefits are maximised.

Employers cannot simply choose to absorb parental leave pay against existing employer funded schemes and withhold parental leave pay owed to an employee. Under the PPL bill, employers for whom an employer determination is in force must pass on parental leave pay as required under the legislation and provide relevant employee records.

Employers and employees may negotiate for an employer to provide employees with top-ups to full replacement wages; however, employers must continue to comply with the PPL legislation. The government has expressed its intention to work with employers on how their own schemes will complement the PPL scheme and its intention to work on initiatives, for employers who do not currently offer paid parental leave, to complement the government's PPL scheme. I hope this information assists the committee with some of the matters that have been raised during the inquiry.

CHAIR—Thank you very much, Ms Shelley. We have kept a list of some of the major issues that have been raised by people who have come before us. I am sure you have as well. We will see whether they are all picked up during the questions.

Senator ADAMS—I would like to ask about the booklets *Paid Parental Leave: Information for Parents*, May 2010 and *Paid Parental Leave: Information for Employers and Consultation Outcomes* and the flyer which is headed *Planning to Have a Baby?* Firstly, what was the cost of producing this information?

Mr Warburton—I can tell you the cost of printing the booklets. We obviously do not have disaggregated the departmental resources that went into producing the booklet. The cost of printing the two booklets was \$22,104.

Senator ADAMS—Is the flyer *Planning to Have a Baby?* included in that \$22104?

Mr Warburton—No; I will take that on notice. There was a bit of work involved in that. There was the printing associated with it. It was also market tested because to make sure that the brochure was up to the task of communicating a number of messages to parents. Two of the important messages we were trying to get across were around making sure that people understood that at this stage the state legislation has not been passed and that they understood the work test.

Senator ADAMS—How long will it take to get the answers to the questions on notice? We do not want it to be outside our sitting period.

Mr Warburton—Hopefully we have some people watching who are hunting up the information for you at the moment.

Senator FISHER—We might be able to get it today.

Senator ADAMS—That is fine. It would be great if we got it today. When were the booklets produced?

Mr Warburton—They were produced over a period of about two months. On 4 May the exposure draft went out. The electronic copies of the booklets went on to the Family Assistance Office website at the same time. Some copies of the booklet were available at that point, and the rest came to us over the next week.

Senator ADAMS—The minister's letter states that they were sent to us on 12 May. Is that correct? You were saying that it was on 4 May.

Mr Warburton—No, the letter is correctly dated. We prepared the letter for the minister, had it signed and immediately got the copy of the letter to our mailing house, where they were enveloped and distributed to members and senators.

Senator ADAMS—How many have been distributed and where have they gone to date?

Mr Warburton—These are only the hard copies. We are aware that there have been quite a few copies downloaded from the website. The hard copies, at the moment 2,960 copies of the parent book have been distributed and 3,010 copies of the employer booklet, and 2,260 of each of them have gone to senators and members in total. We have had 10 of each come to this committee. We have had 10 parent and 10 employer booklets sent out in response to requests coming into our national mailing and marketing house and we have sent in the order of 600 of each to PPL consultation participants and people who the minister has invited on to the implementation group.

Senator ADAMS—Were these booklets produced before the draft legislation was produced?

Mr Warburton—They were being produced at the same time.

Senator FISHER—When were they printed?

Mr Warburton—My understanding is that some were printed on the weekend prior to 4 May. We had some advanced digital copies produced so that they would be available for the launch. The remainder were produced in the week following that.

Senator FISHER—When was the exposure draft of the bill released?

Mr Warburton—That was 4 May.

Senator FISHER—Yet some of the booklets were printed prior to 4 May, you have just said. It means some of the booklets were at the very least printed prior to the release of the exposure draft of the bill on 4 May. Is that right? That is my understanding from what you have just said.

Mr Warburton—Well, yes.

Senator ADAMS—On page 2 of both publications it says:

This policy statement describes the Paid Parental Leave scheme proposed by the Australian Government. For the scheme to come into force, Parliament must first pass legislation making it part of the law. Until the scheme becomes law, it is possible that some details of the scheme that are outlined in this booklet may change.

As far as I am concerned, this could be considered a waste of money. Once the legislation has been passed and the changes made, how do you envisage that you are going to distribute that and what is the cost that you may have budgeted for?

Mr Sandison—Can we split that and Mr Warburton will answer the first part about, and then the issue about communication and how information around the final piece of legislation as passed by parliament would be communicated will be something that Mr Lander will answer.

Mr Warburton—I guess we are engaged in a number of different communications activities at the moment, relatively small-scale information activities only prior to the passage of the bill and a broader, larger communications campaign that will occur following the passage of the bill, assuming that that happens. The communication activities before the legislation is passed are twofold. The prime purpose of the brochure is that there are women out there now who can be pregnant and will have a child on the other side of 1 January. Unlike some other arrangements we have in place, the decisions that they are making now can affect their eligibility, so it was thought reasonable that those parents should have information on what is intended so that, if they wish to ensure that they will be eligible when they have their children, they are able to do that to the maximum extent that they can achieve. Obviously the legislation can be changed by the parliament, but the view was that it was important to get that information out there.

The booklets are also to try to assist, so that there is an informed debate on the legislation. Not everybody particularly finds legislation easy to read. Indeed, often you cannot get a good view on how the scheme is going to operate in practice. A large part of what was trying to be achieved with the booklets was to give people a real feel for how the scheme would operate and what was envisaged. Andrew might want to talk about the post-legislation communication activities.

Mr Lander—Certainly. Following on from the passage of legislation it is intended that we would run a campaign proper. As you would be aware, we have been allocated a sum of money for 2009-10 as well as a sum of money totalling \$10.2 million for next year, 2010-11, to run a communication campaign. The intention would be that that campaign follows on from the passage of legislation.

Senator ADAMS—That goes to the question I was going to ask about the forthcoming publications. I have done a little bit of research. Is this setting a precedent—publishing statements like this before the legislation has actually been passed? Is this a normal process?

Mr Sandison—I think it depends on the nature of the initiative that is being implemented and the nature of the eligibility that might come through with whatever changes are being proposed by government. There are some things where there is a line in the sand and data is selected in relation to eligibility for certain things—changes in payments and things like that—where you would not communicate before; it would be when it happens. For other things where there is a requirement to meet eligibility tests, it is fair and proper to try to provide some advance notice to people. We have differentiated about information content versus a communication campaign that can only be done according to appropriate processes after there is legislation approved by parliament.

Senator ADAMS—Has it happened before, to your knowledge?

Mr Warburton—It is quite common practice for the government to put out policy statements when it is implementing major initiatives. For example, in the area of health reform there is frequently documentation put into the public domain to explain the details of those reforms. Over my working life, I have frequently been involved in preparing materials, normally associated with budget measures, that explain the detail of the government's decision in greater detail than can be included in budget statements. Implementing a major initiative like this is a bit different, simply because it is a major initiative and it requires quite some lead time to implement it. We are also involved in consultation processes with people and we are trying to give them feedback on what has happened as a result of the consultation processes. So they are giving us input and the government is considering that and firming up details of its policy based on that. I guess it is providing feedback on where things are up to?

Senator FISHER—Ms Shelley, did the Fair Work legislation require any lead time—using Mr Warburton's language?

Ms Shelley—I am not sure what you mean by 'lead time'.

Senator FISHER—Mr Warburton was suggesting that this legislation is somehow different and requires—I think your words were, Mr Warburton—lead time. You used those words, so you might—

Mr Warburton—Yes, I did.

Senator FISHER—For Ms Shelley's benefit perhaps, in that context, what were you saying about this legislation? I heard you to say that it requires some sort of lead time. Is that correct?

Mr Warburton—Yes, that is correct.

Senator FISHER—Ms Shelley, did the Fair Work Act require any lead time?

Ms Shelley—No, it did not. I think the distinction can be made, as Mr Warburton and Mr Sandison said, in relation to the issues of eligibility under the scheme and getting the information out.

Senator FISHER—So there were no consultations with stakeholders about the fair work legislation?

Ms Shelley—Yes, there were consultations, but I think the issue my colleagues are talking about is more about eligibility for a scheme that is coming in.

Senator FISHER—Are there any eligibility tests under the Fair Work Act that might have required some lead time?

Ms Shelley—Not that I am aware of that is in the same vein as Mr Sandison and Mr Warburton are talking about.

Senator FISHER—So no changes to eligibility, for example, for accessing leave under the Fair Work Act—none of that?

Ms Shelley—If you are talking about the National Employment Standards, they were out well in advance of the act itself.

Senator FISHER—Yes. There was a discussion paper to that effect.

Ms Shelley—That is correct.

Senator FISHER—Mr Warburton?

Mr Warburton—I was just going to say my understanding is there are consultation requirements for changes to the Fair Work Act—

Ms Shelley—There are now; that is correct.

Mr Warburton—so there are certainly lead times involved.

Senator FISHER—And I am simply using the fair work legislation as an example of legislation with which the people before us might be familiar. Mr Warburton, are you aware of any other circumstance when information advertising a government program has been made public, let alone produced and made public, prior to that program being legislated? Are you aware of any other example?

Mr Sandison—Can I just make a comment. We do not classify the information items as advertising material. They are identified as providing an information source for people in relation to eligibility—that is the primary target for getting the information out. I know you deem them to be advertising material. We do not classify them that way and we went quite a way between what is a communication campaign for legislation versus trying to advise people that would make use of the scheme about critical information.

Senator FISHER—Are you aware of any other circumstances in which information publicising eligibility has been released in advance of legislation of the program that would activate that eligibility or not?

Mr Warburton—I think I can give you an example. I was involved in the higher education reforms under the previous government. There were a whole range of issues papers put out and there was consultation with the sector. A series of government decisions were made. If my recollection is correct, they were announced in the context of the budget. Quite detailed material was put out about those changes to higher education and higher education funding. It included a whole range of material more or less about how eligibility for grants to the higher education sector would work. There were a whole range of funding programs. That material was all put out in the context of the government announcing its policy, and that was followed by an entire new funding act for universities.

Senator FISHER—You said you ‘think’, and that may well be correct. Can you confirm on notice your recollection, firstly.

Mr Warburton—I can confirm it. I was involved in that process, and that was the process: quite detailed material about the government’s policy position was put into the public domain to inform the public of what was intended and that occurred in advance of consideration of the Higher Education Support Act.

Senator FISHER—Okay, there was subsequent legislation. Are you saying that the material was more than a discussion paper, for example, or an issues paper? It was more than that, was it?

Mr Warburton—It was confirming what the outcome of the government’s policy development processes were.

Senator FISHER—Were, or were intended to be and would be once legislation was passed?

Mr Warburton—It was clearly a statement of government policy and—

Senator FISHER—But this is more than a statement of government policy. This is talking about what will be people’s rights and obligations if legislation is passed.

Mr Warburton—I think it is clearly caveated that it is subject to the passage of legislation.

Senator FISHER—There is a paragraph about that. There is a convenient disclaimer on the back of this particular brochure to that effect that says:

For the scheme to come into force, Parliament must first pass legislation making it part of the law. Until the scheme becomes law, it is possible that some details ... may change.

I accept that point. Then on what basis does the first line of the foreword in each of these documents—the one for workers and the one for employers—say as follows:

On 1 January 2011 the Australian Government will deliver Australia’s first Paid Parental Leave scheme.

On what basis is that statement being made?

Mr Warburton—I think that is a statement of the government’s intention.

Senator FISHER—It is an absolute statement, I think you would say. I understand we have the people before us who were involved in drafting these booklets. When the first line of Minister Macklin’s and the Deputy Prime Minister’s foreword refers to:

On 1 January 2011, the Australian Government will deliver Australia’s first national Paid Parental Leave scheme.

I presume that is a reference to the bill before this committee?

Mr Sandison—Correct.

Mr Warburton—Correct.

Senator FISHER—So on what basis is anybody able to say that on 1 January 2011 the bill that is before us will (1) become law—that is, will be passed by parliament; and (2) will be operative by one January next year?

Mr Sandison—I think we have answered that that is the intent of the scheme. We have the caveat that is in there to note that it is the intention and it is waiting on the passing of legislation.

Senator FISHER—Isn't that kind of sidelining parliament? If you take this as written, parliament doesn't matter.

CHAIR—I think that the officers have answered as much as they can. This is an issue you need to take up with the minister.

Senator FISHER—You have got to a point on the record. We have spent 15 minutes on it so far. That is fine, but we have the point on the record.

Senator FISHER—Thank you, Chair. I have a couple of other areas of questioning, but I am happy to come back to them.

CHAIR—You are sharing your time with Senator Adams.

Senator ADAMS—I have just got one more. Just to follow on as far as it being a policy statement, I am looking at page 13 of *Paid parental leave—information for parents*, which is telling people to lodge their claim early. That is a description of what you have to do to lodge a claim. To me that is becoming, 'This is the way it has to be done. This is what you do.' It is very, very definite. I think this has gone quite beyond being a policy statement; it is actually a guide as to how you are going to behave all the way through. Would anyone comment on that?

Mr Sandison—I think we have answered the questions that relate to how we prepared it, the timing we have put in, the costs and so on. We consider this to be an information source that provides an overview of the proposed legislation, with an appropriate caveat attached.

Senator FURNER—Has anyone raised that in terms of being an issue?

Senator FISHER—Has anyone raised what?

Senator ADAMS—They haven't even seen it.

Senator FURNER—What we are just talking about.

Mr Warburton—In the context of the consultations, people were quite interested in how the scheme was going to work in practice. You have legislation and it sets absolute parameters, but it does not really give people a feel for how the scheme will work in practice. That is what we were trying to achieve with the two booklets. We wrote one that tried to explain the scheme from the perspective of parents and one that tried to explain the scheme from the perspective of employers so that they could see how it would work, see what they would have to do and broadly could see what was intended.

These booklets are quite useful in terms of FaHCSIA outlining its policy in some detail for service delivery agencies and also in terms of our preparatory work for our communications campaign. For the communications campaign to be effective, we will need to start picking up this sort of material and test it and make sure that it makes sense to parents and employers. We certainly found out in the consultations that there was a need to get this sort of information out. The market research that we are doing preparatory to our communications campaign is indicating that there is quite a bit of misunderstanding about how the scheme might work. So we need to produce this material and then work out how it fits into the communications campaign. I think it will take us some time before we manage to embed this into the community's consciousness. It takes some time for people to really commence to understand how these programs work.

Mr Lander—I would like to make a quick comment regarding research as part of the campaign work. Our campaign research that we have started to undertake has indicated that the people who have found out about the scheme were very interested in finding out as soon as they possibly could about the scheme and what it meant to them. There was quite a strong indication that people were interested in that information. I want to reiterate a point that Mr Warburton made earlier about the testing of these products. We tested these products with focus groups to make sure that people did not misinterpret their intention and that they understood that these products were an outline of prospective legislation and not legislation that exists currently. The feedback we got from that testing was that people understood that.

Senator FISHER—Mr Lander, you have helpfully described to the committee the importance of ensuring that people understand. Did people understand that the paid parental leave bill would provide them with something additional to what may be their entitlements under existing workplace law?

Mr Lander—I cannot answer that question in detail. There was a sense of confusion. As a result of our research, there was a sense of a misunderstanding of what is being proposed.

Senator FISHER—And that has not been clarified by the bill itself, has it?

Mr Lander—I cannot answer that.

Mr Sandison—We do not expect the public to interpret the bill. Therefore, there is a need for the information sources. The testing was done with members of the public in relation to information to give advice about prospective eligibility for a proposed scheme. You mentioned that that has not been cleared up by the legislation.

Senator HANSON-YOUNG—It is not clear in the legislation—that is the point.

Mr Sandison—No, but we are talking about public documents that have been tested with the public.

Senator HANSON-YOUNG—It is not specified in the bill.

Senator FISHER—Exactly. So how can material describing a bill be clear about something the bill itself is not clear about? Mr Lander, you said you did focus group consultations to check that people were clear about this. How can they have been clear on that point alone?

Mr Warburton—My understanding is that, while it is not explicit in the bill, the bill provides for payments which are additional to those provided under current industrial agreements.

Senator FISHER—Thank you. Mr Warburton, are you and perhaps Ms Shelley aware of evidence provided by Professor Stewart this morning—and I will read the relevant paragraph from his submission—which, I would suggest, is at odds with what you have just said? He said:

... there is nothing in the Bill itself that addresses the relationship between a payment made under the new scheme, and a payment made in satisfaction of an existing obligation to provide paid leave.

Is he correct? If not, which provision in the bill does what he says he cannot find in the bill?

Mr Warburton—I do not believe there is a provision in the bill that explicitly addresses those matters, but that does not mean that the bill does not achieve that state of affairs. There are many states of affairs—

Senator FISHER—Can you explain how?

CHAIR—Go on, Mr Warburton.

Mr Warburton—There are many states of affairs that will apply—for example, some tax things—that do not require explicit provisions in the bill, and—I am not really one to comment on drafting policy—

Senator FISHER—Thank you. Perhaps I could ask Ms Shelley, because she was commenting on this aspect as well. Ms Shelley—and you will correct me if I have got this wrong—you talked about an employer having an obligation under the Paid Parental Leave Bill to pass on the paid parental leave payment. That may well be so. But is there, either in this bill or anywhere else, anything stopping an employer from counting that payment to offset an existing workplace relations obligation that that employer may have—because Professor Stewart says there ain't. Is there anything that makes it so? And, if so, what?

Ms Shelley—My understanding is that that payment must be passed on to the employee.

Senator FISHER—What prevents an employer from passing that payment on and then arranging that that payment be in part or full satisfaction of an obligation that an employer has to a worker, other than under the Paid Parental Leave Bill?

Ms Shelley—If there were already an employer-funded scheme together with the PPL scheme, there would be a requirement under both to make those payments—to provide the parental leave pay under the PPL scheme and to make the payments under the employer-funded scheme.

Senator HANSON-YOUNG—Where does it say that? Where does the legislation actually say that? Because that is the point: there is no direct reference. In fact, the business groups we spoke to last week were glad—they did not want any direct reference.

Senator FISHER—Exactly.

Senator HANSON-YOUNG—They said, ‘It’s fantastic; please don’t touch it. We don’t want a direct reference.’

Senator FISHER—But the populace is rather confused. Tell us why they should not be.

Ms Shelley—In relation to the employer-funded scheme, there is a requirement under workplace relations law that those payments be made under the industrial instrument or the contract or whatever covers that current scheme.

Senator FISHER—What is to prevent the industrial instrument or the contract from providing that other payments made to the same end may be able to be set off, as against the workplace or industrial obligation, or may be able to be ‘absorbed’, to use old workplace relations parlance? Let me ask the same question another way: is it always going to be the case that whatever industrial instruments create that obligation in the first place also say that you cannot use one to offset your obligation under the other. Let me be more particular: that you cannot use payments made—under, say, a paid parental leave act—in satisfaction of your workplace relations obligation. What is going to say that? And will it always say that? I think the answer is: no, it will not.

Ms Shelley—If there is a requirement under one to pay the parental leave pay, and still a requirement under the other to make those payments under a current employer-funded scheme, then there is a legal requirement in both respects.

Senator FISHER—Indeed. But what stops the second from being satisfied, in part or in full, by the first? I am happy to hear the answer—Professor Stewart says there ain’t one. You might want to take it on notice, to clarify.

Ms Shelley—Yes. I will take that on notice.

Senator FISHER—The second aspect to which Professor Stewart goes is, essentially, around his view that the Paid Parental Leave legislation is a misnomer—and this is my paraphrase of his evidence—in that it requires payment to be made but does not provide an entitlement to leave. I note that the promotional literature says that once you have returned to work you will be ineligible for paid parental leave. To be eligible for paid parental leave you must be on leave or not working. Professor Stewart is suggesting that the Paid Parental Leave Bill does not give all workers a right to access leave in the first place. You are talking about eligibility, so what ensures that workers can satisfy that eligibility, that is, being on leave?

Mr Warburton—The analysis is correct and, in fact, that is the intention.

Senator FISHER—Does the bill achieve it?

CHAIR—Senator.

Mr Warburton—There is no intention through this bill to change people’s leave entitlements. It is quite clear that people can receive parental leave pay and not be on leave. They may not have an entitlement to leave and, where that is the case, the bill provides for those people to be paid directly by the family assistance office, the secretary of FaHCSIA.

Senator FISHER—But they can only access the payment if they are not working.

Mr Warburton—That is correct. They have to be not working but they do not have to be on leave to access the payment. They may be a casual or seasonal worker who does not have a leave entitlement but, if they have been working and they do not have a leave entitlement and they meet the work test, they will qualify for the payment and they will be paid directly by the family assistance office.

Senator FISHER—What is the response to Professor Stewart’s contention in his submission that the principal drawback of a scheme, this scheme, is that it confers a right to payment rather than a right to leave?

Mr Warburton—The professor is correct, Senator.

Senator FISHER—Hence his description of it, I think, essentially as a parental payment bill would be a more accurate name of the bill rather than a parental leave bill.

Mr Sandison—I think we will take that as a statement, Senator.

Senator FISHER—Sure.

Mr Warburton—I do think there is a broader context to what is being done here.

Senator FISHER—Is it to encourage parents to take time off work—family time, baby time?

Mr Warburton—There is certainly that objective.

Senator FISHER—How does the bill achieve that?

CHAIR—If you interrupt the witness one more time, it may be time we moved onto another questioner because it is not going to get us anywhere.

Senator FISHER—Okay, Chair, thank you. Mr Warburton.

Mr Warburton—The bill provides for 18 weeks pay at the national minimum wage and the estimates of the Productivity Commission were that, on average, that additional financial contribution, if you like, would result in an increase to the average period that a new mother took away from work of 10 weeks. It does not translate one for one but it estimated that that would be enough to get nearly everybody to take six months away from work.

Senator FISHER—Thank you, Mr Warburton. The brochure says you can receive parental leave pay before, after or at the same time as employer-provided paid and unpaid leave, and I think Ms Shelley has described the sorts of paid and unpaid leave that might qualify. What in the bill means that a worker can get paid parental leave under the bill before or after employer-provided paid and unpaid leave of any sort?

Mr Warburton—The bill provides for an additional entitlement—the 18 weeks.

Senator HANSON-YOUNG—Additional to what?

Senator FISHER—Good question.

Mr Warburton—Additional to any existing employer-provided paid or unpaid entitlements.

Senator FISHER—Where does it say that?

Mr Warburton—That is the issue that we were discussing before. I think we concluded that debate.

Senator HANSON-YOUNG—We did not conclude it. That was the point; you could not answer it.

Senator FISHER—And the chair stopped me from interrupting you to try to get you to conclude it.

CHAIR—I am sorry, Senators, but what we actually agreed was that the department would take it on notice, which is standard practice in these processes. If you have more questions around that particular issue, I would suggest that they are on notice to the department. We are rapidly moving through time, so you may want to keep going on another issue.

Senator FISHER—Thank you.

Mr Warburton—You asked what enabled them to take it before, at the same time or after.

Senator FISHER—Before or after, actually. I get ‘at the same time’.

Mr Warburton—The bill provides that this 18 weeks of payment is to be taken in one continuous block and that it can be taken at any time in the 12 months after the birth of the child or the child coming into the person’s care in the case of adoption and so forth. It also provides that the person will specify the start date. So parents will need to think about when they want to take this period of pay. If they want to take, for instance, six weeks of employer-provided paid leave beforehand, they organise with their employer to take that six weeks and then they specify the first day of this payment as the first day after that six weeks has run out. So it is within a parent’s control to specify when they want to receive it.

Senator FISHER—My question is around that area, Chair. Senator Hanson-Young will ask the questions that she wishes. A further issue I want to continue to pursue is that I understand you to be not disagreeing with Professor Stewart’s point about the bill itself not conferring any entitlement to leave per se. Professor Stewart goes on in his submission to say that that should be fixed, and he contemplates two scenarios: firstly, to broaden the National Employment Standards under the Fair Work legislation to ensure that all people who are entitled to a payment under the PPL bill also be entitled to some form of leave so that they can trigger the eligibility criteria for PPL. That is my description of his preferred outcome. Whether or not you agree with it, he said that was his preferred outcome.

He then moved to a second outcome, which is that, if that is not to be done, the parental leave bill itself should be amended to make it clear that eligibility to receive parental leave pay does not of itself confer any entitlement to take leave from employment and he says that that point should be highlighted in any public information concerning the new scheme—leaving aside it could already have been done, given that he is reflecting what the bill itself says, which is what the taxpayer funded information is supposed to be about. What is the most appropriate mechanism to resolve that? Is it by amendments to the paid parental leave bill

itself? Mr Sandison, I think it was you who talked about consequential amendments to the Fair Work legislation. Is it intended to be done through the Fair Work legislation?

Mr Sandison—I think the best thing to do is to take that one on notice. In terms of it being an issue raised, as it has been through the submission and then through the hearings, it would be something that would be discussed and advice would be provided to government to work out the best way.

Mr Warburton—Broadly, Senator, at this point, this is an issue that was considered by the Productivity Commission. If my recollection is correct, its draft report did have those two things aligned. It put it out for consultation. There were strong views put about casual workers and seasonal workers, who do not have entitlements under the National Employment Standards. Whether or not particular employers want to give them those entitlements is a different matter. It moved away from alignment. One of the objectives of this scheme is clearly to provide this to seasonal and casual workers and others that do not have the entitlements under the Fair Work Act. So at this point in time it is explicit policy that they be different and I think I should record that we think—

Senator FISHER—That they be different?

Mr Warburton—That they be different.

Senator FISHER—That what be different?

Mr Warburton—Eligibility for paid parental leave and eligibility for unpaid parental leave under the National Employment Standards in the Fair Work Act. So that currently is an explicit piece of policy, and if you change—

Senator FISHER—Where is it explicit in policy? I get that it is explicit in legislation, because there is a legislative gap.

Mr Warburton—If you go to the *Information for Parents* booklet, on page 1, the fourth dot point, we make it quite clear that parental leave pay is not a leave entitlement. We do recognise that not everything about the scheme will be in the legislation. There are a whole range of laws relevant—

Senator FISHER—Sorry, at the risk of being accused of interrupting you, do you think that prospective parents understand from that that the Paid Parental Leave Bill itself does not of itself entitle them to the payment?

Mr Warburton—I do not think parents understand anything about the Paid Parental Leave Bill, Senator.

Senator FISHER—How does this taxpayer funded material assist them to understand that? Indeed, the sentence to which you have just referred does nothing to illuminate them, does it?

Mr Warburton—At the moment this is a statement of government policy and I think we have done as much as we can to try to make the arrangements clear. We will be market testing them in our communications campaign. We have been given resources for communications. The sort of issue that you are raising is something that we do need to communicate to parents. There are a lot of things that need to be communicated to parents. This is a major new government initiative, and some of these details take some time to sink into the collective consciousness, if you like, but we will give it our best shot.

Senator FISHER—So, Mr Warburton, you have referred to the fourth dot point on page 1 of *Information for Parents* as the statement of government policy that leave eligibility will not be aligned by this government—that is, leave eligibility and therefore eligibility for PPL payments versus eligibility for leave under, say, workplace relations legislation. That is this government's policy statement that it does not intend to match one with the other, is it?

Mr Warburton—Eligibility for the payment and eligibility for leave are not matched, but—

Senator FISHER—And this government does not intend to match it; is that what you are saying?

Mr Warburton—That is my understanding of the government's current policy.

Senator FISHER—This dot point in this booklet says that, does it?

Mr Warburton—The dot point in the booklet makes it quite clear that parental leave pay is not a leave entitlement. There is fairly close alignment—

Senator FISHER—Under this bill.

Mr Warburton—There is fairly close alignment between the National Employment Standards and the employer determination—that is, the conditions under which employers are required to provide parental leave pay.

Senator FISHER—Professor Stewart told us about the workers who will fall through the gaps.

CHAIR—The witness was not present when Professor Stewart gave evidence.

Senator FISHER—Fair point. I will move on to my final area of questioning around amendments to the Fair Work legislation. What is the process for that, given the states' referral of powers now?

Ms Shelley—Under the multilateral intergovernmental agreement for the national workplace relations system signed by the referring states there is a requirement to consult with the referring states and territories. There is a three-month period for that consultation in relation to any amendments to the Fair Work Act.

Senator FISHER—Have those consultations started? In other words, has the three-month period been triggered yet?

Ms Shelley—Yes, it has.

Senator FISHER—When did it get triggered?

Ms Shelley—I would have to take that on notice.

Senator FISHER—Please do, in respect of every state that has referred its powers. Obviously whether or not it has expired by the time the government presumes that parliament will be considering this bill is kind of critical, isn't it?

Ms Shelley—I will take it on notice.

Senator FISHER—Is that three-month time period critical in that respect? Do the consultations need to have been completed under the intergovernmental agreement for the referral of powers before any amendments can be made to the Fair Work legislation to support any paid parental leave bill?

Ms Shelley—The requirement is a three-month notice period for consultations.

Senator FISHER—For example, take Professor Stewart's suggested amendment about existing obligations from an employer. If an employer has an existing obligation under a workplace instrument to provide something in respect of parental leave Professor Stewart is recommending that it be made very clear that that existing obligation—as opposed to future obligations that might be negotiated—be required to be satisfied in addition to any payments that might flow under the Paid Parental Leave Bill.

So Professor Stewart is suggesting that the Paid Parental Leave Bill be amended to make it clear that an employer cannot satisfy their existing workplace relations obligations for parental leave in any part by a payment that might flow under the PPL legislation. Would an amendment to that effect in the PPL Bill violate any aspect of the deal done with the states to refer their workplace relations powers to the Commonwealth? Perhaps I should ask it another way: would an amendment of that sort comply with the deal done between the Commonwealth government and the states to refer their workplace relations powers?

Ms Shelley—Are you talking about the consultation?

Senator FISHER—Any aspect. Under the referral of powers the states have referred their workplace relations powers to the Commonwealth under the auspices of the Fair Work legislation. If the federal government were to bring about, in a separate bit of legislation, some change to employers' workplace relations obligations I would have thought there might be something—for example, in the intergovernmental agreement underpinning the referral—that the states would have something to say about.

The negotiations that you are talking about deal with amendments to the Fair Work Act but if it is not proposed by the federal government to amend the Fair Work Act to deal with workplace relations—in fact, they propose to put workplace relations stuff in the Paid Parental Leave Bill—does that comply with the deal done with the states to refer their workplace relations powers?

Ms Shelley—The intergovernmental agreement only requires consultations in relation to the Fair Work legislation. That includes the Fair Work Act and the Fair Work regulations.

Senator FISHER—Is there anything else? To the extent that there are other things that underpin or form part of the referral of the states' workplace relations powers to the Commonwealth, do those things prevent the

sort of amendment that I am talking about, or would providing workplace relations stuff in the PPL legislation comply with those agreements or arrangements?

Mr Warburton—In respect of adding a clause to the paid parental leave bill, the first thing we would need to do if that were contemplated would be to get legal advice as to whether or not the Commonwealth had the constitutional power to do so.

Senator FISHER—Indeed.

Mr Warburton—It is not really for me to speak on workplace relations matters, but—

Senator FISHER—That has not been referred; you are right.

Mr Warburton—I am aware that some of the complexity in the Fair Work Act is there because of issues around the scope of the Commonwealth's constitutional power. So I think that sort of matter would again arise if you attempted to put that sort of clause in the bill. We would certainly need to get advice on it.

Senator FISHER—Thank you, Mr Warburton. Is that sort of amendment possible within the time frame contemplated by this government for the passage of the paid parental leave bill?

Mr Warburton—I think that is what we said we would take on notice—the issues around Professor Stewart's comments and advice to the committee in his submission.

Senator FISHER—If you could take that final question on notice as well, that would help.

Senator HANSON-YOUNG—I have various different areas that I would like to discuss. Firstly, going back to the beginning, when did the drafting of the bill commence?

Mr Warburton—My recollection is that it was towards the end of February. It was after the summer sitting period. Is that correct?

Mr Sandison—Do you want an approximation as in 'early this year' or are you after a particular date when formal drafting was started?

Senator HANSON-YOUNG—If you could take that on notice in terms of the formal start date, that would be good.

Mr Sandison—Certainly.

Mr Warburton—It was early March.

CHAIR—Is that suitable as your answer, Senator Hanson-Young? You do not need to take that on notice?

Senator HANSON-YOUNG—If you could get me the precise date, I would like that.

Mr Warburton—I am not sure that we can give you a precise date. We sent our first set of drafting instructions to the Office of Parliamentary Counsel in December. The Office of Parliamentary Counsel's workload is basically determined by the government and its legislative program. Some people may have read those drafting instructions before we had our first meeting. I could probably give you the date of our first meeting, but there would have been work going on beforehand. I could not comment.

Senator HANSON-YOUNG—The date of the first meeting would be helpful. You are suggesting at this stage, without giving that definite date, that it was early March. Can you outline for me what the intent of the bill actually is.

Mr Warburton—The intent of the bill is to provide eligible parents with 18 weeks of parental leave pay. It is for parents who have children or adopt them after 1 January. If the question is about objectives—

Mr Sandison—You are talking about the intent of the bill as opposed to the objectives of the program, I suppose—the objectives of the initiative.

Senator HANSON-YOUNG—I am asking what the intent of the bill is, and then my next question was going to be about what the objectives of the policy are.

Mr Warburton—The intent of the bill is to provide for a Paid Parental Leave scheme, and the objectives are to increase the period of leave taken after the birth of a child for maternal and child health and development reasons; to increase workforce participation; and to change community attitudes, sending a strong signal to the community that it is quite a normal part of working life to take time off work following the birth of a child.

Senator HANSON-YOUNG—Do you think those objectives are clearly outlined in the bill itself?

Mr Warburton—The objectives of the scheme are not outlined in the bill. The bill provides for the payment, for making employer determinations, for how the payment is transferred to partners and so forth.

Senator HANSON-YOUNG—You said that you would take a number of Senator Fisher's questions on notice. If you cannot answer the following question or if it is one of the questions that you are going to take on notice, that is fine. I just wanted to be clear on whether or not employers can use this payment as all or part of their own existing schemes, some of which are not listed in official workplace entitlements or bargaining agreements. Some are just company policy that could be changed, not official employment agreements or contracts. If you could give me an answer now, that would be great. What I want to know is whether employers can use the \$530-odd per fortnight that this scheme will provide as part of schemes that they already run themselves.

Mr Warburton—Companies can change policies that are not in any way backed up by legislative requirements, industrial agreements or anything like that. Nobody at this table is saying companies cannot change their policies. On the broader issue that is being debated here, what might be the long-term response by employers to the creation of this scheme—will they change or remove their schemes?—I think the government wants to continue to encourage them to maintain and enhance those schemes and to build complementary measures around the Paid Parental Leave scheme that it is putting in place. We will be evaluating the impact of this change. We have been given funds for a fairly significant evaluation. The issue of employer response to the creation of the scheme will definitely be part of that evaluation; it will be monitored quite closely. So we expect to have information on that down the track.

Senator HANSON-YOUNG—But there is currently nothing in the bill that clarifies that particular point, is there?

Mr Warburton—That clarifies that there is going to be an evaluation?

Senator HANSON-YOUNG—No. I am asking about whether, through the government introducing this scheme, employers could change their current schemes or look at their own bottom line and say, 'Hey, we can save X-thousand dollars per person taking parental leave.'

CHAIR—Senator Hanson-Young, that has been taken on notice. We have gone through that issue at length. Is there another part—

Senator HANSON-YOUNG—The direct question was: is there anything in the legislation that goes to that point?

Ms Shelley—Senator, I might be able to assist. Section 70 of the bill, which is in the section that talks about instalments of parental leave pay, makes it very clear that, 'despite any other law of the Commonwealth, a state or a territory', 'an amount must not be deducted from an instalment' of paid parental leave except in accordance with the PPL bill. I would suggest that is a requirement on the employer to pass on that payment in full.

Senator HANSON-YOUNG—Either you are trying to answer a question that I have not asked, or you are being tricky with the way that you are answering it.

Ms Shelley—I am sorry, Senator, I thought that was the question.

Senator HANSON-YOUNG—It is not the question.

CHAIR—That is not a fair thing to say—

Mr Warburton—Senator, there is a very clear answer to your question. Your question is: there are some employers who choose to do things now; can they choose differently in the future? The answer to that question is manifestly 'yes'.

Senator HANSON-YOUNG—Are you concerned with evidence that was given to the committee as recently as today which suggests that the local government association in New South Wales are already looking to dump or change their own scheme to be replaced by what the federal government is putting forward, despite the fact that the information in your own booklets and all of the public statements by the minister suggest, 'It's okay. We know it's a mickey mouse scheme of only 18 weeks at minimum wage, but employers out there are going to top it up.' There is nothing in this legislation which guarantees that, yet as recently as today we are hearing that the local government association in New South Wales is saying, 'We'll let the federal government do it.'

Mr Sandison—We have answered the questions as officers of the various agencies; we have provided the information about the structure of the legislation and the intent of the scheme; we are aware, and take on board, issues that have come through the submissions; and I do not think—for the record—that any officers were trying to be tricky in responses to you—

Senator HANSON-YOUNG—It was a very different question.

Mr Sandison—We have been trying to get to the answer, because it has been asked in a number of different ways to try to provide information to the committee.

Senator HANSON-YOUNG—Thank you, Ms Shelley. It was not the question that I asked that you have answered.

Ms Shelley—I am sorry, Senator, I must have misinterpreted it then.

Senator HANSON-YOUNG—It was not given in that particular section, but you had already given that answer previously—which was why I asked it again, because it was a different question.

To continue: in relation to the drafting of the bill, who did you consult with and which organisations were consulted? Could we have a list of them, please?

Mr Warburton—Sorry—I have just been given a note. Could I correct something?

Senator HANSON-YOUNG—Yes.

Mr Warburton—The first meeting with OPC was on 9 February. Sorry—who did we consult with in drafting the legislation?

Senator HANSON-YOUNG—Yes.

Mr Warburton—Government agencies prepare drafting instructions and take them to the Office of Parliamentary Counsel. We did that within FaHCSIA in consultation with the Department of Education, Employment and Workplace Relations and a range of other government agencies—Treasury, the Tax Office and so forth. But the drafting instructions reflect what policy is and, as outlined by Mr Sandison at the beginning, this whole exercise has had extensive consultation in the development of policy, most recently in the second half of 2009. We were developing the very detailed policy which would go into the drafting instructions at the same time as we were consulting. We made recommendations to ministers around policy at the same time as we advised them of what was said in the consultations. The government made its final decisions, and drafting instructions were given to OPC consistent with that. The process of putting the legislation together was one which is done internal to the Commonwealth, if you like.

Senator HANSON-YOUNG—So there was no consultation group of expert organisations set up—for example, the ACTU or the National Foundation for Australian Women? There were no formal consultations with any of those groups? Since the budget announcement last week—

Mr Warburton—I am a bit unclear on what you are asking me. If you are asking if we released sections of the draft bill before the exposure draft went out, the answer to that is no.

Senator HANSON-YOUNG—No, that is not what I am asking.

Mr Warburton—If you are asking us about the consultation process at the end of 2009—

Mr Sandison—I think the issue is that the development of policy and the development of legislation happened at the same time and intertwined. We did not go out with a specific draft of legislation to a steering committee advisory body but we had engagement with various groups in relation to consultation about the policy. As you develop policy you develop the legislation or the outline or the drafting instructions and that evolves. So I think we can give a description of some of the groups with which we consulted. It was not specifically on legislation, it was on the development of the scheme, which is how we feed into the process.

Mr Warburton—We accessed a range of existing consultative forums that the Commonwealth has. In the employment portfolio there is the National Workplace Relations Consultative Committee. That group set up a subcommittee and there were a number of meetings with that committee. The Tax Commissioner has a range of forums that are primarily to consult on tax matters, but the commissioner was very kind and let us use his forums. He has a small-business consultative forum. He has a forum of payroll software developers and so forth. They often have to amend systems for tax changes, and so we are able to access that forum.

Senator HANSON-YOUNG—But we are not using their system, given the last couple of weeks. An aside.

Mr Warburton—We looked at what groups were not represented through such forums, so there are a whole range of community organisations that we invited to specific meetings or had teleconferences with and we sent them information, and we consulted with those in that manner. In the employment portfolio, as I understand it—my colleagues will correct me if I am wrong—there is a ministerial council set up and underneath that is what is called the high-level officials group. We used that to consult with the states and territories. DEEWR also have responsibility for public sector agencies within the Commonwealth and have a forum where they meet with heads of corporate. We met with them because government agencies will be fairly significant employers in this scheme. I think I have covered most of it.

Senator HANSON-YOUNG—Was there any legal advice gathered in relation to possible amendments to the Fair Work Act to ensure there was some direct link, despite the fact that this has been put up as a stand-alone piece of legislation?

Mr Warburton—There was a range of legal advice in putting together the Paid Parental Leave Bill as well as consequential amendments that are required. That legal advice is used to inform amendments rather than being legal advice on amendments, though there are clearance processes for the bill with various parts of the Commonwealth, in particular the Attorney-General's Department, to make sure that draft provisions are consistent with other aspects of Commonwealth policy, for instance, in relation to the protection of personal information and matters like that.

Senator HANSON-YOUNG—In relation to the assessment that was put forward by Professor Stewart, for example, were any of those issues highlighted in your legal advice that was either given or sought in relation to the advice during drafting of the amendments in the legislation?

Mr Sandison—I think we will have to take that on notice in alignment with Professor Stewart's submission but also in relation to what advice we provided to government in relation to the development of policy.

Senator HANSON-YOUNG—Okay. Thank you. I have got one more question.

CHAIR—There will be many questions on notice. There are a number of issues we have not got to.

Senator HANSON-YOUNG—My final area of questions is in relation to the review. You have already referenced that yourselves. Could you outline what you believe the review will look at? What you mentioned before seems broader than what is actually highlighted in the legislation.

Mr Warburton—The legislation does not refer to the review. The government has given commitments to a comprehensive review. The first policy booklet that it put out at budget time last year, which we used to start the consultations, made it clear that there would be a comprehensive review. There seems to be some confusion about two particular matters that were identified there. One is the provision of superannuation, which was essentially a recommendation of the Productivity Commission. The Productivity Commission originally had super included in its scheme. The global financial crisis was happening at the same time. The Productivity Commission, in its final report, said that it believed in principle that that should be included in a scheme but recommended that it not be introduced at this point in time but that consideration to introduce it occur in a review of the scheme to be held two years after the scheme's introduction. So the government was confirming that it was accepting that recommendation. The government also moved away from the Productivity Commission's recommendations by not funding a paternity leave component. So the bill provides for sharing of the 18 weeks. The paternity leave component was a dedicated two-week payment only for partners, if you like. Largely because of fiscal reasons the government decided not to proceed with the paternity leave component and was signalling clearly that that also would be looked at in the review. It was just trying to make it absolutely clear that those things would be covered by the review, but the review is intended to be comprehensive. So it is much broader but it is just saying that they will be dealt with.

Senator HANSON-YOUNG—What kind of auditing will happen between when the scheme is up and running and when the review happens? What type of auditing and collection of information will occur so that, once you finish that two years, you have actually got some data to work with?

Mr Warburton—There is to be an evaluation of the scheme. We already are moving to put that in place, because we want to undertake some baseline surveys of parents and employers in the second half of this year before the scheme starts. We have got \$2.86 million over five years for that evaluation activity. We have an evaluation strategy that has been prepared, and we have gone to the evaluation panel that the department has. We have tendered for universities and consultancy firms to undertake evaluations for us in the past and they exist on a panel. We have sought proposals from seven of those, and we are in the process of finalising the successful bidder to work with us on the evaluation. That will look at the impact of the scheme on employers,

its impact on working mothers, how effectively the scheme is being administered, whether there is any change in the availability of employer funded paid parental leave and whether the scheme is likely to have long-term impacts on maternal and infant health, women's workforce participation, gender equity and work-life balance. So the evaluation is quite broad and it is going to be conducted by people with considerable expertise in the area, and our intention is that findings from that will help feed the review, if you like, of the scheme.

Senator FURNER—A number of the witnesses have raised concerns in relation to the eligibility of employees, particularly seasonal workers. We have heard from the ACTU and the education unions today about that being an issue. We have also heard that, in some circumstances, the institutions and the universities have multiple employers. In addition to that—and I will try to group these together so you might be able to give me an answer for them all—is the issue associated with the eight-week break to identify someone's entitlement to not breaking continuity of employment. I notice that, in her second reading speech, Minister Macklin refers to seasonal workers. She refers specifically to that type of eligible employee as having an entitlement where the eight-week period is not broken. Could you give me an explanation about the entitlements of seasonal employees and the entitlements of someone who works for multiple employers and where the eight-week continuity period came from.

Mr Warburton—What we got from the Productivity Commission was, broadly, that in the 13 months prior to the birth the person should demonstrate some reasonably substantial attachment to the workforce. They recommended that there should be at least a 10-month period in those 13 months before the birth where the person worked continuously and for a total of 330 hours. The first thing that was said to us in the consultations was: what do you mean by 'continuously'? We got some feedback on that and considered it, and where we landed was: nobody works completely continuously—you have the weekends off—so how big a break can you have? Where we got to was you can have up to eight weeks between any two consecutive working days. For a day to count as a working day, you have only to have worked one hour on that day and, as long as that gap is no bigger than eight weeks, you are continuous across the gap. Then you add up all your working hours, and they have to add to 330 hours.

We do not mind how many employers you work for. Any paid work as defined under the act counts as work, so it can be with multiple employers. For instance, the Tertiary Education Union raised the issue of people taking three months off. A person who was concerned about that would need only one hour of work in that three-month period to be eligible for the scheme. We really had to consider: how big does this period get before the person is not working continuously? You can reach a point where you do not have a work requirement and you virtually have the baby bonus. The intention is not to do that, so there are judgment calls to be made about what an acceptable break is, and where we landed was the eight weeks.

Senator FURNER—The ACTU raised transmission of business as an issue. Transmission of business, of course, is where another employer buys out a prior business and forwards on the entitlements to that subsequent employer. Do you foresee any issues associated with the bill in regard to extending the entitlement to the new employer as a result of transmission?

Mr Warburton—Did the ACTU raise this?

Senator FURNER—They did.

Mr Warburton—Their analysis is correct. The bill does not provide for the payment to transition between employers in that respect.

CHAIR—In the middle of a pay period.

Mr Warburton—That is correct. If an employer determination was made and we started paying through one employer and then something happened midway through and the person had a different employer, that would effectively turn off the employer determination and we would start to pay the person directly. There is quite a bit of complexity in achieving that sort of thing correctly, and it is currently not in the bill.

Senator FURNER—Lastly, I have an issue with the argument about this not being leave. What is your definition of leave?

Mr Warburton—I will defer to my employment people.

CHAIR—Ms Shelley, can you take that on notice? It is a really threshold issue. You would have seen the evidence: there are people who claim it is a welfare payment and there are people who claim it is linked to the workplace and is a leave payment. Could we get something from the point of view of how that is seen by the department?

Ms Shelley—Yes.

CHAIR—We have a lot of questions on notice ranging across a lot of the issues, some in terms of the role of the FAO. I promised there were questions for the FAO. We will get them to you as quickly as we can, and if we can get them back next week it would be very valuable.

Mr Sandison—Certainly.

CHAIR—I am sure you know what they are, having seen the evidence that has come through. Thank you very much. We appreciate the work that has gone into this process. We are due to report on 3 June, so it gives us a tight time frame—and in the middle of that there is estimates. Thank you very much.

Committee adjourned at 4.05 pm