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Official Committee Hansard

**HOUSE OF  
REPRESENTATIVES**

STANDING COMMITTEE ON FAMILY AND HUMAN SERVICES

**Reference: Balancing work and family**

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**HOUSE OF REPRESENTATIVES**  
**STANDING COMMITTEE ON FAMILY AND HUMAN SERVICES**

**Wednesday, 29 November 2006**

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

**Members in attendance:** Mrs Bronwyn Bishop, Mr Cadman, Ms Kate Ellis, Mr Fawcett, Ms George, Mrs Irwin and Mrs Markus

**Terms of reference for the inquiry:**

To inquire into and report on:

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

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

**WITNESSES**

**CHOOI, Mrs Annette, Acting Deputy Commissioner, Small and Medium Enterprises, Australian Taxation Office ..... 1**

**D’ASCENZO, Mr Michael, Commissioner of Taxation, Australian Taxation Office ..... 1**

**HOLLAND, Ms Erin Kathleen, Deputy Commissioner of Taxation, Australian Taxation Office ..... 1**

**WALKER, Mr Colin Maxwell, Assistant Commissioner, Australian Taxation Office ..... 1**



**Committee met at 10.54 am**

**CHOOI, Mrs Annette, Acting Deputy Commissioner, Small and Medium Enterprises, Australian Taxation Office**

**D'ASCENZO, Mr Michael, Commissioner of Taxation, Australian Taxation Office**

**HOLLAND, Ms Erin Kathleen, Deputy Commissioner of Taxation, Australian Taxation Office**

**WALKER, Mr Colin Maxwell, Assistant Commissioner, Australian Taxation Office**

*Witnesses were then sworn or affirmed—*

**CHAIR (Mrs Bronwyn Bishop)**—I declare open this public hearing of the House of Representatives Standing Committee on Family and Human Services and welcome the Commissioner of Taxation, Mr D'Ascenzo, and Mrs Chooi, Mr Walker and Ms Holland. Today we are taking evidence from the Australian Taxation Office. The Australian Taxation Office is well placed to advise the committee on the tax treatment of child care. While the ATO applies the legislation made by the parliament, it has a great deal of discretion in how it does so, although the question of verging into policy areas is one of contention. This hearing gives the parliament the opportunity to find out the way in which the ATO applies that discretion and gives the ATO the opportunity to respond to some of the issues raised in submissions, in public hearings and in the four questions I forwarded to the tax office yesterday. The committee has already taken some evidence on tax and child care when the ATO appeared before the committee with Treasury officials. This hearing will allow the committee to pursue some of the issues raised at the hearing in June of this year. Mr D'Ascenzo, would you like to make an opening statement?

**Mr D'Ascenzo**—No; I do not have an opening statement.

**CHAIR**—Thank you for coming today. When we were last together, we were particularly interested in fringe benefits tax and in the fact that the fringe benefits tax exemption for salary sacrificing for child care is afforded to only a small number of people and it is afforded only where the premises test is met, as set out in your public ruling. We know that people, large firms and indeed the Commonwealth in its various departmental or agency capacities very often seek private rulings from you just to make sure that they are complying. When we found out that the tax office allowed their employees to salary sacrifice, I asked whether you had sought a private ruling from yourself. I think your answer to me was that you did not need to ask your administrative arm; you thought the public ruling was sufficiently clear.

We have since taken evidence from people involved in salary packaging. They have indicated to us that to prepare an application for a private ruling from the tax office on the question of fringe benefits tax salary sacrificing for child care can cost them \$50,000 a time and that in the process they are not permitted to discuss their application—it is put in and eventually they will get a response. I think one was a 54-page response saying no. Whereas you, the commissioner, can be satisfied that your interpretation of the public ruling is just fine, everybody else—including Defence and other departments—is going to the trouble of getting a private ruling.

Why do you think they feel that need? Why does it cost so much? Why may people not discuss the application prior to getting a 54-page response saying no?

**Mr D'Ascenzo**—The third point about whether they can or cannot discuss it may well be a misunderstanding by the officers involved about our processes, which do allow discussion. It does not allow people to give preliminary answers without going through the full facts and circumstances of the case. However, there is certainly no bar in terms of discussion with a private ruling request. In fact, most of our operations include that type of activity.

In terms of the costs and the \$50,000 you referred to, I do not know what they have paid, who they have paid and for what. Australia has a private ruling system where we do not actually charge taxpayers, unlike other countries that do have charging regimes. The cost is not incurred in terms of payment to the tax office; I am not sure for what or to whom they paid the \$50,000.

**CHAIR**—I think it is the complexity of putting the application together.

**Mr D'Ascenzo**—The application requires them to provide the facts. They would have to go through the process of organising what they were proposing to do. We give rulings on what we call transactions that are in serious contemplation. You have to have a fair idea of what you want to do and we want to see the documentation regarding the proposal. They might be saying that the documentation that they had to put together for their proposal cost a certain amount of money and they then ascribed that to the ruling; I do not know.

If you are seeking a ruling by yourself, all you need to do is provide us with the facts. If you are using legal or tax agent assistance then we would like the tax agent or professional to provide some guidance on the law.

**CHAIR**—I think they were indicating when they said they wanted to have discussion is that the applications for the private rulings are complex, long and detailed. Obviously, you would recognise it is complex as the tax office itself takes 54 pages to say no. It is not just a question of the facts; we are obviously going to the interpretation of the law as you define it. One of the things that they are interested in is why, for instance, if you find a problem with the way they are arguing a point, you cannot say, 'This is a point. Do you want to give a supplementary submission on this point?' None of this seems to take place.

**Mr D'Ascenzo**—It does usually. It may not have taken place in this case but our processes do actually allow that. In fact, often with our private ruling requests, we do not have a ruling request that starts from day one. Often we have these discussions, we bring to people's attention the areas of concern and then ultimately people materially change the application so we actually have a new ruling request. Sometimes a ruling request is 10 ruling requests.

**CHAIR**—Is it dealt with always by one person in the tax office?

**Mr D'Ascenzo**—Often we do a lot of this in team environments. Depending on the complexity of the issue, it could be one person or it could be in a team environment.

**CHAIR**—Will the person who is making the application be able to know precisely who those people or that person is and discuss it with them directly?

**Mr D'Ascenzo**—Normally in an area where we have a public ruling there may well be one officer working to apply the facts to our public ruling explanation, in which case I would have thought that the contact details would have been there in our response, but I do not know in this particular case.

**CHAIR**—So, if I have prepared my application and sent it to the tax office, I will get a response saying that Joe Bloggs will be looking after this matter and his contact details are as follows?

**Mr D'Ascenzo**—I am not sure whether you have the name of the tax officer, but you certainly have the registration number which allows you to come back into the organisation and back to the person.

**CHAIR**—That could be anybody.

**Mr D'Ascenzo**—No, it would go back to the person in charge of that sequence. In other words, we have an identifier for the piece of correspondence. By using that identifier, you can determine the name of the person who is working on it.

**CHAIR**—Would the name of that person become known to the people making the application?

**Mr D'Ascenzo**—If you make those inquiries, you can then seek those names. There is no problem in the organisation in terms of divulging names of people working on matters. That is our general policy; I do not know what happened in this particular case.

**Mr FAWCETT**—I think it is worth making the point that the evidence received was not an isolated case. This person had actually come back at least twice and had the same treatment in terms of putting something into a black hole and having no contact and no invitation. Your policies may well provide for consultation but the implementation of those policies is not being communicated that well to the public. Perception is reality; so it means that there are many people who are spending considerable amounts of time, effort and money and getting very frustrated.

If you do have those policies that is great, but I suggest that they need to be more broadly advertised and that your processes need to be amended to put in part of the response to an application both an acknowledgement and an indication that people have that option to come and present the context. Someone may be developing a business model that is different to previous ones and which they believe will meet the intent of the public ruling. Your people may not have seen that kind of model before because it is new. The whole basis of innovation is that it is something new. Often they will need an opportunity to explain the context and explain why this new model will meet the intent of the public ruling. I think that needs to be part of the response.

**Mr D'Ascenzo**—I think that is a good idea. We will certainly pick that up and review how well we communicate the general policies within our organisation. At a theoretical level and at a practical level, I think it is a good idea.

**CHAIR**—Perhaps you could tell us how many applications for private rulings on FBT exemption for child care you have received from both the public sector and the private sector.

**Mr D'Ascenzo**—I do not have the details with me.

**Ms GEORGE**—Do we know how many employers have on-site child care and how many are exempt from paying fringe benefits tax?

**Mr D'Ascenzo**—No.

**Ms GEORGE**—We get an impression from submissions but I wanted to clarify the number. You don't actually know?

**Mr D'Ascenzo**—No.

**Ms GEORGE**—Do you know how many parents are salary sacrificing where their employers get the exemption from fringe benefits?

**Mr D'Ascenzo**—No.

**Ms GEORGE**—Then how do you know that there is not double dipping going on in the system?

**Mr D'Ascenzo**—We do have compliance activities to see what are risk areas and follow-up those risk areas. There is no requirement in the law or in our practices for people who salary sacrifice to indicate to the tax office that they are salary sacrificing.

**Ms GEORGE**—Do you have a total for what it would cost the government to have the FBT exemption on child care?

**Mr D'Ascenzo**—I do not think we have a specific cost; we only have some estimates.

**CHAIR**—What are those estimates?

**Mrs Chooi**—In relation to child care?

**CHAIR**—Yes.

**Mrs Chooi**—I do not think we have any estimates. We can give you information at a global level about the number of people who have reportable fringe benefits on their payment summaries but that does not include exempt child care because exempt child care is not reportable. There is no information provided to us on the extent to which exempt child care is provided.

**CHAIR**—How much do you estimate all salary sacrificing by everybody for all the categories of salary sacrificing to be?

**Mrs Chooi**—Again, we are not able to give a comprehensive answer to that because exempt benefits are not reported to us. Child care is an exempt benefit; there are some others as well. The ones of which we are aware I can give you the figures—

**CHAIR**—Cars, computers, telephones, laptops—all those things—

**Mrs Chooi**—Laptops are often exempt as well, so are often not reported. I can give you the amount of reportable fringe benefits shown on payment summaries. That is \$8.7 billion. That figure does not include benefits that are FTB exempt such as laptops and in-house child care. It does not include ones that are exempt from reporting requirements such as car parking benefits. It does not include small amounts, because amounts less than \$1,000 per employee are not reportable. It also includes the benefits that are provided where no salary sacrifice is actually made, so where an employer provides it but does not require a salary sacrifice to compensate for it.

**CHAIR**—Have you made an active decision not to keep a record of how much these benefits cost?

**Mr D'Ascenzo**—No, it is just not needed to be recorded by employers or taxpayers as part of the tax system.

**Mrs Chooi**—We do not need it to assess a FTB liability so we do not ask for it to be broken down. We receive it in aggregate to the extent that we need it to calculate the liability.

**CHAIR**—Okay. Suppose the XYZ jam company or pickles company decided to have a childcare centre for its kids and did not seek a private ruling from you. It leased some premises, did a deal with a childcare provider and decided to let a few other people have access too, so it developed a quiet partnership with the Ajax nuts and bolts factory. It did not tell you about it and it allowed salary sacrificing for all the kids who go to the childcare centre. How do you pick it up?

**Mrs Chooi**—We don't.

**CHAIR**—With your precious premises test, we could have thousands of them go out and establish in breach of your public ruling. They do not have to tell you about it at all.

**Mr D'Ascenzo**—We could have that sort of situation. Again, part of our intelligence activity is to see whether or not there is any development of a sizable number of these type of child care services. If there is a growing number of these, we might have to make investigations.

**CHAIR**—I happen to notice that the tax office is always very anxious to get stuck into people who are doing the wrong thing. If my memory serves me, last year I think the amount of tax you clawed back plus penalty plus interest was over \$6 billion. You might be kind enough to disaggregate that figure for me at some stage into how much was tax clawed back, how much was penalty and how much was interest.

**Mr D'Ascenzo**—I think that certainly for the last year that was in our annual report.

**CHAIR**—Double check that. It is over \$6 billion, if my memory serves me.

**Mr D'Ascenzo**—I think it is in that order. This is in the context of \$214 billion of total tax revenue, which suggests that it is creating the environment for voluntary compliance—

**CHAIR**—Some \$95 billion I think is income tax, is it not?

**Mr D'Ascenzo**—I am not sure about the proportions.

**CHAIR**—I think it is.

**Mr D'Ascenzo**—It is something in that order and \$30-odd billion for GST and excise is more—

**CHAIR**—Which of course we call a states tax these days.

**Mr D'Ascenzo**—Right.

**Ms GEORGE**—Just so that I have got this right, is the commissioner saying that his is not able to tell us that there are systems in place which could assure us that there is not a possibility that someone is getting child care through pre-tax income and at the same time claiming childcare benefit and the tax rebate?

**Mr D'Ascenzo**—I think the way that the childcare benefit and tax rebate works is that you actually have to provide receipts of payments.

**Ms GEORGE**—Yes, I am not disputing that, but how do you know the person providing the receipt for the payment is not already at their employer's place of work getting a salary sacrifice arrangement as well? Can you assure us that that is not happening?

**Mr Walker**—There is some work done through FaCSIA, through the Family Assistance Office network, to provide for the childcare benefit entitlement. You will not get the childcare rebate entitlement unless you are receiving childcare benefit for approved care. We work very closely with Centrelink.

**CHAIR**—We understand that. That is not the question she asked.

**Ms GEORGE**—That is not the question I asked.

**Mrs Chooi**—Perhaps I could contribute something. When salary sacrifice is made for an exempt benefit, the person receiving the benefit, the employee, does not receive a receipt from the childcare service for that payment. If a salary sacrifice is made and the benefit is not exempt—in other words, it is an expense payment benefit—then the parent will receive a receipt and they will be entitled to claim the childcare rebate and benefit. Where the benefit is exempt, they do not get a receipt because they have not actually made the payment; their employer has.

**Ms GEORGE**—If you do not know the employers who are making that provision and you do not know the number of employees, how do you monitor the system so that people are not accessing the best of both worlds?

**Mrs Chooi**—We rely on people to self-assess their entitlements. If we become aware that there is an emerging problem then we would put some resources into it. At this stage, we do not have any resources investigating this area. It is not a risk that we have detected.

**Ms GEORGE**—Regarding the question that the chair asked about employers going out without rulings and allowing salary sacrifice, you have got no handle on that either?

**Mrs Chooi**—I cannot give you any more information on it.

**Ms GEORGE**—Very interesting.

**CHAIR**—There is nothing in place in the tax office to do anything about it.

**Mrs IRWIN**—I have three straightforward questions which I hope you can answer. Let us say that I am on the top marginal tax rate of 46.5c in the dollar. My employer offers me salary sacrificing for childcare expenses and that expense is FBT exempt for my employer—as it is, I understand, for some employees in the Australian Taxation Office. If my childcare cost was \$10,000 and I received the full \$10,000 in salary sacrifice, that would mean that I would pay \$4,650 less in tax; is that correct?

**Mrs Chooi**—Yes.

**Mrs IRWIN**—Let us assume I would claim the same cost of child care as a tax deduction.

**Mr D'Ascenzo**—Excuse me, Deputy Chair, is that the adjustment or the tax component?

**Mrs Chooi**—That is the tax component, but it is FBT exempt.

**Mr D'Ascenzo**—If you salary sacrifice \$10,000 of income, yes, that is right, you would pay \$4,650 less in tax.

**Mrs IRWIN**—My second question is: let us assume I could claim the same cost of child care as a tax deduction—that is, I could claim a tax deduction of \$10,000—so I would pay \$4,650 less in tax.

**Mrs Chooi**—Yes.

**CHAIR**—Salary sacrificing and tax deductibility are one and the same thing.

**Mrs IRWIN**—My final question on this one is: isn't salary sacrificing childcare costs where it is FBT exempt the same as tax deductibility for childcare expenses?

**CHAIR**—Yes.

**Mrs IRWIN**—I would like to get an answer from the commissioner.

**Mr D'Ascenzo**—If you have different rates it would make a difference—for instance, if you are on a lower marginal rate you would have less benefit in terms of deductions than the exemption provision.

**Mrs IRWIN**—Virtually what you are saying is that childcare fees are effectively tax deductible where there is an FBT exemption?

**Mr D'Ascenzo**—At the same top marginal rate.

**Mrs Chooi**—The monetary outcome is the same.

**Mrs MARKUS**—Are you saying people on lower incomes—

**Mr D'Ascenzo**—Would get less of a benefit under a deduction system.

**Mrs MARKUS**—Than they would if the exemption was available to them?

**Mr D'Ascenzo**—That is right.

**Mrs MARKUS**—They would benefit more from the exemption being available?

**Mr D'Ascenzo**—That is right.

**Mr FAWCETT**—Which leads me on to my question. In the context of this inquiry, we are actually trying to understand what the barriers are to balancing work and family and reducing stress. A lot of it comes down to the availability of suitable child care. Every family's circumstances change due to the make-up and nature of the job, geography et cetera. One of the things that has become very apparent is that in-home child care, things like a nanny service, are required not only by wealthy people but by shift workers and other people. This is because often overnight care is just not available or if it is it is exorbitantly expensive. Also, the provision of child care by an employer in the workplace or provision of child care close to the workplace is highly desired. We are looking at how we can expand the availability of that.

The flip side is that we are hearing story after story about a barrier to people, which is the current ATO interpretation surrounding in-house care provided by a company. What informs your decisions on how you interpret that legislation? If we simply change the legislation, are there any issues that you think we should consider? For example, should we just change the legislation and say, 'Put aside all your previous interpretations; this is what we now want you to do'?

**Mr D'Ascenzo**—All we have done is tried to fairly interpret the legislation as best we could.

**Mr FAWCETT**—What informs your interpretation, though, because there are many people who do not think it has been fair?

**Mr D'Ascenzo**—Basically, we go through a very rigorous process which involves our senior people trying to understand what the law says, given its legislative background and policy intent. In terms of the tax office, we apply what is called a purposive approach to interpretation that says you have to give regard to what the words of parliament are. You can read those words of parliament having regard to the legislative purpose, the mischief, the intent—any of those contextual factors that allow you to read those words in a way that reflects that object. If the words do not reflect that object, I then ultimately have to apply the words. I cannot just apply the policy; I have to apply the words. I certainly inform our interpretation of the words by what the policy intent was supposed to be.

As our people tried to research what these words meant, we have gone back to the materials that were involved in terms of the government of the day bringing forward these changes to the law. Where Treasury have been involved, we have sought their input in terms of what the words were intended to meet. Ultimately, we see what these words do meet. We have a particular feature in Australia that is unique from any other country in the world, where very senior and respected professionals are on what we call public rulings panels. They help my senior officers to work out what the law is likely to be in relation to a set of provisions.

We went through that process for this childcare ruling to which we referred. I was involved in the public ruling discussions, and that involved good discussions with a range of people, including my senior officers and those external experts. Ultimately, the conclusion in this case was one that we all agreed with.

**CHAIR**—In fairness, you made a ruling, or your predecessor made a ruling, as to what your interpretation of the Fringe Benefits Tax Act was. Then we had the Esso case and you had to change your ruling. That is saying that your first ruling was wrong, as the High Court ruled. This is the area where the inspector-general has a problem with the manner in which rulings are made. He has outlined his concern that you get into the grey area where you say, 'Well, this is the policy that the government wanted, this is what the words say, maybe the words don't quite do it, so we're going to have to work it so we in fact enforce the policy.' That is the kind of grey area identified by the inspector-general.

**Mr D'Ascenzo**—There are many cases where you have a judge in a single instance being overruled by a judge in a federal court.

**CHAIR**—But you are not a court.

**Mr D'Ascenzo**—In a sense the process is similar.

**CHAIR**—No matter what you think, you are not a court.

**Mr D'Ascenzo**—The process is similar in trying to apply your best experience, logic and understanding, having regard to the legal canons of interpretation, to get an outcome that you think is the correct one. We get most of them right.

**CHAIR**—That is a bit of a worry, making that statement, isn't it? I just happen to remember—pardon my saying so—Essenbourne and the awful history regarding that. It took you years to accept that that is what the court said.

**Mr D'Ascenzo**—In fact that is still being challenged.

**CHAIR**—You did not appeal.

**Mr D'Ascenzo**—Not in that case because we won the case.

**CHAIR**—And all the subsequent cases upheld *Essenbourne*, and your Mr Fitzpatrick gave evidence at another committee hearing, saying you finally have accepted that that is the law; you may not tax at multiple points. That is away from today's hearing. With regard to the questions that I gave you on notice yesterday, were you able to prepare for that?

**Mr D'Ascenzo**—We have some responses.

**Mrs Chooi**—The first question that you asked was—

**CHAIR**—Has the ATO estimated the annual value of salary sacrificing for child care or for salary sacrificing overall? Obviously, you have in part answered that.

**Mrs Chooi**—Yes, and I will just expand on that answer a little to give you some more context. Childcare expense for payment of fringe benefits, whether they are part of a salary sacrificing arrangement or not, is not a discrete type of benefit that employers are required to report in their fringe benefits tax returns. Childcare expense payment benefits would form part of the composite figure of reportable fringe benefits disclosed in the payment summary.

In-house childcare benefits—that is the exempt benefits—provided under salary sacrificing arrangements or otherwise are exempt fringe benefits that are not required to be reported in the payment summary or disclosed in the FBT returns. We would have no information on that. Total reportable fringe benefits shown on payment summaries for 2004-05 totalled \$8.7 billion. I mentioned before that that figure does not include FBT-exempt benefits such as laptops, in-house child care or amounts that are excluded from reporting, such as car parking benefits. It also does not include reportable fringe benefits of less than \$1,000 per annum per employee; this is not required to be reported. The figure does include benefits provided to employees where there has been no salary sacrifice arrangement. We cannot answer your question but it does give you an approximation of the magnitude of the figure.

**CHAIR**—I think we have identified a big hole this morning. For example, people such as nurses who work in public hospitals are entitled to a \$9,000 tax-free allowance that they may use as a salary sacrifice for child care, mortgage repayments, car repayments—whatever they like. Does that get captured in that figure?

**Mrs Chooi**—No, it does not.

**CHAIR**—Similarly, you can have a tax-free component of \$16,000 a year for charitable institutions. Again, they can use that \$16,000 for child care, mortgage repayments—anything they like. Where are those figures reported? How many taxpayers actually fall under those two categories of public hospitals and anything else that meets that description and charities?

**Mrs Chooi**—I cannot answer that question; I will have to take it on notice.

**CHAIR**—Can you get that answer?

**Mrs Chooi**—I do not think I can, but I can take it on notice and check to see what information we have. I do not believe I can give you the figure on the numbers.

**CHAIR**—We have whole different groups of people who get tax deductibility for their child care and the rest of them do not. You and the tax office are not collecting the information that can tell us how many people are lucky and get it, as opposed to the great bulk of taxpayers who get nothing.

**Mr D'Ascenzo**—We do not have that information.

**CHAIR**—That is because you do not collect it.

**Mr D'Ascenzo**—That is right.

**CHAIR**—But you could.

**Mr D'Ascenzo**—We could, but that does impose a compliance burden on a lot of people.

**CHAIR**—Yes, but we have just created a loophole where there are absolutely no checks and balances. Anybody could go and set up a childcare centre and be in breach of your ruling. You have no way of knowing whether it is or not because you simply do not collect the information.

**Mr D'Ascenzo**—We do not collect it in that systematic way, but we do have a range of intelligence processes that indicates—

**CHAIR**—How many childcare centres have you been out there attacking?

**Mr D'Ascenzo**—We do not attack taxpayers; we are seeking—

**CHAIR**—People feel they are under attack.

**Mr D'Ascenzo**—to try to ensure that people have an understanding about their compliance.

**CHAIR**—How many people do you go out sniffing out to find if they are in compliance?

**Mr D'Ascenzo**—Again, I think the proposition of compliance is multifaceted. It starts from: do people understand what their rights and obligations are? Our first process is, yes, we have provided public rulings to tell people what their rights and obligations are. We provide a free facility for people to understand their rights. The vast majority of Australians want to do the right thing. We start from that proposition.

**CHAIR**—With self-assessment, there is an obligation on the tax office to have some way of keeping track of things so that we know if there is a problem—rather than what has happened over the years, when we allowed a practice to go on for years and said, 'Now we've got a critical mass, wham, we'll cut down on it and say it's a roort.'

**Mr D'Ascenzo**—We have very sophisticated risk engines in our organisation.

**CHAIR**—What is a risk engine?

**Mr D'Ascenzo**—Areas that try to detect areas of non-compliance.

**CHAIR**—Okay. Do we have a risk engine for childcare centres?

**Mr D'Ascenzo**—We have not heard or seen of any issues with childcare centres.

**CHAIR**—I rest my case. You wait until you get a critical mass and problems and then you will whack it. Then you have got people in all sorts of problems. You say, 'We want the tax back, here's the penalty, here's your interest,' and you get \$6 billion.

**Mr D'Ascenzo**—I am not sure that we have had any evidence of any rorting in the childcare area.

**CHAIR**—Has anybody asked the question before?

**Mr D'Ascenzo**—I think we have been involved with the industry for many years.

**CHAIR**—Go back to your involvement. The tax office used to run 15 childcare in-house centres for your employees.

**Mr D'Ascenzo**—I am not sure, but I am sure that is right.

**CHAIR**—That is the information you gave us.

**Mr D'Ascenzo**—In that case it is right.

**CHAIR**—You then decided that you were not going to be in the childcare service business anymore and the first answer that came our way led us to believe that your employees were not in fact salary sacrificing anymore. When we dug down and probed, we found out that you were, but they just happened to be in somebody else's childcare centre.

**Mr D'Ascenzo**—That is right.

**CHAIR**—Because the Commonwealth is the one employer, it is open to every public servant available. Your answer that came back to this committee did not say that; we had to probe and we found it. We were very grateful that we were told that the Bluebell centre went to the ABS and therefore your employees went into an ABS centre, but they are still part of your salary sacrificing program.

**Mr D'Ascenzo**—That is right.

**CHAIR**—Why did you decide to close down the 15 childcare centres?

**Mr D'Ascenzo**—I think that is an organisational issue of not wanting to be in that business, as you pointed out.

**CHAIR**—You mean you found somebody else in the Public Service who would do it?

**Mr D'Ascenzo**—It is open for people to see whether or not there are positions in other government childcare facilities that they can access. I think we have 43 people out of 21,000 who take advantage of that opportunity.

**CHAIR**—We know that Mr Hockey is very anxious to open it up to 38,000 people in Centrelink and Centrelink is the body with the largest number of public servants of child-bearing age.

**Mr D'Ascenzo**—Having said that, that is part of the framework of the law.

**CHAIR**—It is not happening yet. They have not even put in for a private ruling yet.

**Mr D'Ascenzo**—It does not have to be a private ruling. The law itself says that if you are a government department then each government department is a related entity. Therefore, provided you have childcare facilities that meet the in-house childcare requirements law, you are entitled to do that. It has nothing to do with rulings.

**CHAIR**—To give credit to the department, they are concerned that they would only be able to meet your guidelines and ruling in big metropolitan areas. They have many employees who are scattered around different parts of Australia who will be discriminated against by your ruling. That is not being a model employer.

**Mr D'Ascenzo**—I am not sure our ruling does any more than say you have to be on the premises of the employer.

**CHAIR**—Are you really going to build a childcare centre in Gulargambone?

**Mr D'Ascenzo**—All I am saying is that is what the law requires people to have to meet the requirements.

**Ms GEORGE**—Do you accept the inequitable outcomes in the way the current system operates?

**Mr D'Ascenzo**—Again, the role of the commissioner is to apply the law fairly—it is really a policy decision as to whether or not the law operates fairly or unfairly in a discriminative way.

**Ms GEORGE**—In terms of your own employees, surely you would have heard concern that some can access the salary package and others cannot, let alone the privileged position of federal public servants vis-a-vis the woman who is working at the local chicken factory who never gets access to any of these benefits.

**Mr D'Ascenzo**—As I have said, that is a feature of the act in terms of how the Commonwealth is treated under the FBT Act. That is something that I take as a given.

**Ms GEORGE**—Do you have a point of view about it?

**Mr D'Ascenzo**—I think my role is to apply the law rather than to have opinions about it.

**Ms GEORGE**—In terms of these issues, it was good to get your response on the public record. At this stage, have you done any further analysis or costings, particularly apropos the recommendations put to government by the task force on care costs? They have gone to a lot of trouble to do their own modelling. Have you had a chance to have a look at their submission, to have costings done?

**Mr D'Ascenzo**—I am not aware of it.

**Ms GEORGE**—So major corporations in this country can put to you a compelling argument about how the corporate sector might be able to assist in expanding the number of childcare places and it just sits on a bookshelf or in a filing cabinet somewhere?

**Mr D'Ascenzo**—I think it might go to government rather than to the tax office. We do not make that; we are just administrators.

**Mr CADMAN**—Would it go to Treasury?

**Mr D'Ascenzo**—It would be Treasury.

**Ms GEORGE**—You would have no input into—

**Mr D'Ascenzo**—Treasury would often ask for our advice in terms of what the administrative perspective of a proposal is. We often work with Treasury on the costings, but I do not know whether we have in this case.

**Ms GEORGE**—You do not appear to have had your advice sought about this major piece of—

**Mr D'Ascenzo**—Not in the awareness of the people here. There may be links between Treasury and our revenue analysis area in terms of the costings, but I do not know. I can take that on board, if you wish.

**Ms GEORGE**—The chair put to you this morning the case of a particular company that had put in two submissions to try and find a way to satisfy your business premises test in an innovative way. Those two applications have cost them \$50,000 on both occasions and I dare say that is a common experience in the corporate sector. It seems to me that the law, as it is being applied, is acting as a real disincentive to getting a greater contribution.

**Mr D'Ascenzo**—Again, we are applying what we believe the law to be.

**Ms GEORGE**—On the record we can say no-one has sought your view about—

**Mr D'Ascenzo**—I can take that on notice; there might be someone else in my organisation that has been in touch with Treasury on those matters. At this point in time, I do not personally know that to be the case.

**Mrs MARKUS**—My question relates to some of the comments that have already been made. We are here to represent our constituents and more specifically with this particular inquiry to look at families and the barriers to their balancing work and family—not just in terms of policy but also in terms of accessibility to child care. If you look at the rulings that have been made to date regarding premises, has the agency ever looked at removing the business premises limitations from exemption?

**Mr D'Ascenzo**—They are more legislative changes rather than administrative changes. It goes to the policy of what the scope of that provision is, and that is more the Treasury and government bailiwick than the administrators' bailiwick. We read the area of business premises reasonably broadly, which we thought was consistent with the act. We did not try to narrow that down to specific areas of business premise. I think this is one area where that interpretation was open on the words and which we thought reflected the underlying policy.

**Mrs MARKUS**—I think the evidence that we have taken probably contradicts that that is looked at broadly. The evidence we have taken indicates that if a business chose to try and buy some places for their employees or if a group of businesses came together to build a childcare centre or have a childcare centre that was accessible to all their employees, the types of rulings that have been made to date by the tax office would not include such options.

**Mr D'Ascenzo**—I am not sure of every ruling that has been given in this area and others may clarify that. My broad understanding is that there is a requirement for someone to have exclusive rights over the business premises. That was clarified in the Esso decision to say, 'You can have joint arrangements, but they have to legally be akin to exclusive ownership.' That means, depending on the nature of the rights between the parties, it becomes harder for some parties to fall within that criteria. Again, it is following what the courts have indicated to us is the right interpretation of that law. It is an area of application that varies very much around the facts. We would have had rulings where people do meet those requirements and other rulings where the nature of the ownership by the various parties is much more transitional or less limited. You can go there, but if you leave, you no longer have any rights to the property, which is suggestive that it is not really your property or your business premises. You sometimes have to look very carefully at the facts to see whether or not it meets the requirements.

**Ms KATE ELLIS**—I turn to the childcare rebate and particularly the huge number of eligible families who have not claimed the rebate. I noticed earlier this month the Assistant Treasurer made an announcement that the ATO would now automatically amend for those families, which leads me to ask: if they have all the necessary data to do this, why are we asking any families to go through the red tape exercise of filling out these and putting in their claims?

**Mr D'Ascenzo**—Colin will talk about this. My understanding of it was that, because of the implementation date, we were not able to get the right level of information from the various third party providers for us to do an auto-amending process upfront. We now have that information and we are able to do so. The auto amending is subject to a proviso that it does not take into

account provisions of the law that allow you to share or split your rights with partners and spouses; there are some optional choices that we cannot make for taxpayers.

**Mr Walker**—There is no doubt that the transfer issue is an issue for us. The reason—

**CHAIR**—Where the fee is paid by partner X and that partner only has an income to absorb a certain amount of that, they can transfer the rest to partner Y.

**Mr Walker**—That is right.

**CHAIR**—That is something you do not know about or it would take a lot of digging to find it out.

**Mr Walker**—The difficulty is around, first of all, who the spouse is, and secondly whether the two spouses agree that the transfer should occur. Certainly, we are aware in some cases where rather acrimonious separation has occurred and people would not want to transfer, which would be unfortunate.

**CHAIR**—What is the case when they separate? Are they still entitled to share like that?

**Mr Walker**—Absolutely.

**CHAIR**—What happens if you take on a new spouse? Can you split it three ways?

**Mr Walker**—No, the law requires the spouse to be the spouse as of 30 June of the year in which you are making the claim.

**CHAIR**—So you could have serial spouses?

**Mr Walker**—The law only allows for one spouse.

**CHAIR**—At a time?

**Mr Walker**—No, the law only allows for one spouse to be transferred to and that spouse is specified—

**CHAIR**—At a time, but next year it could be a different one?

**Mr Walker**—Absolutely, yes, if you want to keep changing partners.

**Ms KATE ELLIS**—In light of that, if there are differences, what work is being done to find out why people are not claiming the benefit? I understand there are almost more families that are eligible that are not claiming it than those that are. Has the ATO done any surveys or talked about what the problem is there?

**Mr Walker**—We certainly have. Keep in mind that this is what we describe as a year 1 issue, rather than a year 2 issue. In year 2, which is the claims that will come in next year, we will have

all of the information required to make the claims. We will automatically allow those claims. The only change that will be required for people to look at is the transfers, where there is a requirement. We were unable to get all of the correct information for all taxpayers this year because the announcement was essentially backdated six months and childcare providers were unable to supply and collect the correct information to supply to Centrelink. It went onto a self-assessment base but we did have enough information to say that, if you are a person using 50 hours or less of child care, we would be able to tell you how much it cost and how much childcare benefit you were entitled to and therefore calculate your rebate.

**CHAIR**—I have a problem. We have 561,000 children out of four million available children who actually have a CCB paid in respect of those children.

**Mr Walker**—Yes.

**CHAIR**—The report that came out by way of a press release was that 193,000 families have claimed the rebate. You only get the rebate if you get the CCB, and that includes the tapered figure of \$25 a week. In that sense, it is not means tested in that you are eligible to hook onto the rebate.

**Mr Walker**—Absolutely.

**Mrs IRWIN**—That is a very low number, isn't it?

**CHAIR**—Yes, and the figure is even more staggering. It is \$813 a family, on average, yet the CCB does not apply to a family; it applies to a child. You say that with the automatic trigger another 140,000 families will benefit. Again, I make the point: it is not families who get it; it is a payment in respect of each individual child to which the rebate is then latched on and which you then may deal with as I just described. On my figures, that means that the average spend by those people who have claimed it already is \$2,400. I know from personal empirical evidence of people with whom I have spoken that people are spending easily \$12,000, \$14,000, \$15,000, up to \$20,000 a year, and getting back a miserly \$1,300 or in some cases nothing. This is because the care they are putting in place does not come under the umbrella of 'approved'; therefore it does not get CCB and it does not get the rebate. So we have four million children eligible for some form of child care if they are able to take it up, only a quarter of those kids actually get a guernsey at all. Then we start talking about families and we get an incredibly low rate. Something is not working.

**Mr Walker**—Let me try and explain from a number of perspectives. First of all, as far as approved child care is concerned, that is the government's policy; that is what the legislation discusses. We are obviously working within that. The estimates at the time of that policy announcement were that some 650,000 families would benefit as a result of paying for approved child care for their children. There is a cap, obviously, on the claims per child. As of 27 November 2006, 222,519 actually made a claim and 156,351 did not make a claim, but we are aware they are entitled and we are auto amending to give them those entitlements.

**CHAIR**—That still leaves a lot out.

**Mr Walker**—I must come back to Ms Ellis and answer her question reasonably quickly as well. Having had a look at that, you also need to keep in mind that the childcare rebate vests in the primary claimant. Whichever parent is the parent who is claiming childcare benefit for the child—it might be both if they are sharing—is the primary claimant and they are the figures that we are actually collecting. The transfers are another set of figures that we can clearly provide to you, which is transferring an amount that is unable to be used by the primary spouse.

**CHAIR**—You do not yet know how many people are doing that?

**Mr Walker**—We can certainly tell you how many have to date. I cannot provide that now, but I can supply it. You also need to keep in mind that approximately 80 per cent of taxpayers use tax agents. Tax agents are allowed to lodge returns until about the middle of May. There are still a reasonable number of taxpayers yet to lodge returns, primarily businesspeople. We expect those claims will continue to come through, as they are now, to the point where we will know exactly how many have claimed. Once they have lodged the tax return, we can ensure they get their entitlement. We will continue to do so.

**CHAIR**—You must be able to tell us how many taxpayer returns have been processed at this point in time.

**Mr Walker**—I could, but I cannot tell you off the top of my head. I can certainly supply that on notice without a problem.

**Mr D'Ascenzo**—We have stepped up educational marketing to the tax agents to make sure that they are aware of the ability of some of their clients to claim childcare rebates.

**CHAIR**—That easing-up period is a great advantage to the tax office and the government because it means you have taxpayers' money longer, for which you pay no interest and the government gets interest on it while you hang onto it. You do not have to give it back until May.

**Mr Walker**—That is not a question that I would want or need to answer. We certainly have done some work around trying to work out what happened. There is a disparate range of answers that have come through such as: people were unaware; people were aware but were not sure how to do it; people forgot; tax agents failed to ask the question of their clients. We have taken some action to try to highlight this to people, particularly in the tax agent area. When we first picked up the issue, we were on approximately a fifty-fifty claimed, not claimed base. We are now running at about 70 per cent claimed, 30 per cent not claimed. Our efforts have borne fruit and for all those people who have not claimed, we are now processing auto amendments and the tax agents will be starting very soon and will have those up to date reasonably quickly. In 2007, this will not be an issue because everybody will get their entitlements.

**Ms GEORGE**—It will be done automatically.

**Mr Walker**—It will be done automatically, yes.

**Mr D'Ascenzo**—With the ability of the taxpayer to make those different choices if they wish.

**Ms KATE ELLIS**—Regarding the work that was done prior to the introduction of the rebate, it has been no secret that we have had a lot of discussions about tax deductibility for child care and ways of doing that. We have had a number of witnesses who have come before this committee and said that it is a fairer system to do it through a tax rebate because it is of greater benefit to lower income earners, whereas tax deductibility is aimed at the higher end of the market. I wonder whether you did any work prior to the introduction of the 30 per cent rebate that would back this up or, if not, whether you think it is true that a rebate would affect a broader spectrum of parents than tax deductibility.

**Mr Walker**—I could not answer that question off the top of my head. There were discussions by the government around the whole system that they wanted to introduce. Whether a rebate is a better system than a deduction depends entirely on your ability to use the amount of rebate to which you have an entitlement. It would be on a case-by-case basis. It is the same with the deduction: you can only use it to the extent of the amount of income that you have received. The rebate has the ability of being transferred to the other spouse, and that is one of the features of this system.

**CHAIR**—Which tax deductibility does not.

**Mr Walker**—That is right; exactly.

**Ms GEORGE**—In the modelling that you did for the 30 per cent tax offset, what were the factors that led you to place the cap at \$4,000? Was there any consideration given to the potential inflationary impacts of an open-ended tax deductibility system and the extent to which that would help push up the price of childcare places in a system where it was left uncapped?

**Mr Walker**—You would need to ask that question of Treasury or the government. We basically administer the system and implemented it, but they are—

**Ms GEORGE**—You have not been involved in any discussions as to why caps are set?

**Mr Walker**—No, not at all.

**CHAIR**—Can we go back to the questions that were placed on notice and also put these expenses into context. We wrote to the Department of Transport and Regional Services requesting an estimate of the cost to the department of setting up its own childcare centre and how much it would cost to run each year, because we wanted to get a handle on the cost of providing overall care. The Department of Transport and Regional Services said that setting up its own single childcare centre would cost \$818,202 and then it would cost \$539,160 per annum in ongoing costs. We are really talking about big bucks.

We have an estimate from another department that we took in private session, so I will not say which department it was. They are building a new childcare centre and they are spending \$2 million to establish it. That will serve the people who will be in one single city; if you are outside that city, tough luck for you. We are seeing an enormous amount of taxpayers' dollars—because that is what government departments have—being used to establish very expensive centres to meet your ruling so that their employees can get salary sacrificing.

**Mr D'Ascenzo**—I keep saying it is to meet our view of what the law says.

**CHAIR**—That is your interpretation of the law.

**Mr D'Ascenzo**—That is exactly right.

**CHAIR**—Other people put in alternative applications to you and say, 'We think you ought to rule in a particular way,' and you take 54 pages to come back and say, 'No.'

**Mr D'Ascenzo**—I think that goes to show the care that we take in trying to explain to people why we make those distinctions.

**CHAIR**—It shows you are very determined.

**Mr D'Ascenzo**—Under our system of private rulings, which is unique in the world, taxpayers have a right to go to the AAT or the courts.

**CHAIR**—Correct.

**Mr D'Ascenzo**—Those costs may be one reason why the tax office has not engaged in large-scale—

**CHAIR**—You were prepared to transfer your expenditure just to another arm of government. It is all coming out of the taxpayers' pocket.

**Mr D'Ascenzo**—Forty-three people in the tax office have taken that opportunity.

**CHAIR**—But that is all they have got; you are not offering it. We have taken evidence from other departments that they have a back-up list of people who would like to come in. For instance, CSIRO has 132 people who are in it. If you are not offering your definition of 'centre', you cannot have it.

**Mr D'Ascenzo**—This committee was looking for the childcare position in Australia and Mr Fawcett said the committee was seeing some benefit in that process. If agencies feel that this is good for their employees, that is fine.

**CHAIR**—We think it is excellent for them; we are just concerned about the people who get locked out of the system.

**Mr D'Ascenzo**—Again, that is a matter that has to be taken up with government.

**CHAIR**—I go back to the questions that I put on notice to you. I wanted to ask about GST and in-home care, otherwise known as nanny care. What is the position with a GST liability? Presumably, if a parent of the child employs someone and pays a wage, there is no GST implication. What is the GST implication of someone who rings an agency and asks for an in-home carer to be placed in that home for the week or indeed for the year as an ongoing service?

**Mrs Chooi**—The supply of childcare services is generally GST free. The circumstances in which it is GST free are where it is supply of child care by a registered carer or the supply of child care by an approved carer. Both of those terms are within the A New Tax System (Family Assistance) (Administration) Act.

**CHAIR**—That would mean an in-home carer, a nanny carer, who is not registered, is not approved and comes from an agency would be subject to GST?

**Mrs Chooi**—Only if that agency is registered for GST purposes.

**CHAIR**—Which means they have to have a \$50,000 turnover.

**Mrs Chooi**—Yes.

**Mr D'Ascenzo**—Or it could be optional.

**CHAIR**—It could be?

**Mr D'Ascenzo**—Optional; you can register below a \$50,000 turnover.

**CHAIR**—Yes, but you are not obliged to.

**Mrs Chooi**—Our view is that—

**CHAIR**—If you are a charity it can be \$100,000.

**Mr D'Ascenzo**—That is right.

**Mrs Chooi**—Most long day care, family day care, before and after school care, vacation care, occasional care and some in-home care and approved care is GST free. People can register as registered carers if they are grandparents, relatives—

**CHAIR**—Friends and so on.

**Mrs Chooi**—Friends and that sort of thing, including nannies.

**CHAIR**—How many nannies have you got on the book?

**Mrs Chooi**—We do not administer that act.

**CHAIR**—But you did administer the scheme under Paul Keating in 1986 or 1987 when there was actually a rebate paid.

**Ms Holland**—1995.

**CHAIR**—If they registered with you there was a part tax deduction at least, and you registered the names. Could you trawl back and tell me how many actually registered—

**Mrs Chooi**—I will see if I can find that.

**CHAIR**—and when the policy came to an end, how many disappeared off your books?

**Mrs Chooi**—I will check it. I certainly do not know off the top of my head.

**CHAIR**—Which, of course, leads into the black market question.

**Mr Walker**—You will be able to get current details from the Department of Families, Community Services and Indigenous Affairs; they administer that particular act.

**CHAIR**—But that scheme has long since gone.

**Mr Walker**—Yes, but in the current situation you will be able to get that information on anybody who is registered or approved.

**CHAIR**—We know that, yes. What about the black market?

**Mrs Chooi**—A lot of information in relation to the cash economy and nannies was provided at the hearing on 21 June by Mr Konza. You are asking now whether we are able to disaggregate that information or provide any more material. We have not been active in this area in our active compliance activities, so we do not have any supplementary information that we are able to provide to expand on that and we are not able to disaggregate those figures any further. They were obtained from an external provider called IBISWorld and we provided to you what we had from them. Unfortunately, I am unable to expand on that question.

**CHAIR**—The fourth question was about updating of the figures for 2003-04 relating to the percentage of income tax revenue paid by the top marginal rate.

**Mrs Chooi**—The publication to which you refer is a Treasury publication; it is not one of ours. I am not able to answer the question as to whether they have updated them or not.

**CHAIR**—But you come under Treasury; you were moved into Treasury. Why couldn't you get that information? You are part of Treasury.

**Mrs Chooi**—The time frame was reasonably short and I have not been able to get it yet.

**CHAIR**—Could you have another go today, please?

**Mrs Chooi**—I can ask; either they can provide something or we can.

**CHAIR**—Please don't fob it off on Treasury; you are part of Treasury. That was deliberately done. I think we are coming to the end of our time. Thank you for your attendance today. We do appreciate it. If we could have those extra bits of information, that would be great.

Resolved (on motion by **Mrs Irwin**):

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

**Committee adjourned at 12.01 pm**