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**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**PAID PARENTAL LEAVE (CONSEQUENTIAL AMENDMENTS) BILL 2010**

**EXPLANATORY MEMORANDUM**

**(Circulated by the authority of the  
Minister for Families, Housing, Community Services and  
Indigenous Affairs, the Hon Jenny Macklin MP)**

## **PAID PARENTAL LEAVE (CONSEQUENTIAL AMENDMENTS) BILL 2010**

### **OUTLINE**

This bill amends various Commonwealth Acts as a consequence of the introduction of the Paid Parental Leave Bill 2010. This bill also provides for certain transitional matters, including provisions to ensure that the requirement for employers to pay parental leave pay to their employees will take effect for children born or adopted on or after 1 July 2011 (although employers will be able to opt in to provide any eligible employees with parental leave pay from 1 January 2011).

The bill includes amendments to:

- address the relationship between parental leave pay and income for certain purposes in the social security law and veterans' entitlements legislation;
- enable parental leave pay debts to be recovered from social security, family assistance and veterans' entitlements payments;
- enable amounts due under a maintenance liability and child support debts to be paid or recovered from parental leave pay;
- ensure that a person and their partner cannot receive both baby bonus and parental leave pay for a child and make related baby bonus changes;
- ensure that a person and their partner cannot receive family tax benefit Part B for a child for the period for which parental leave pay is payable in relation to the child;
- provide for early claims for family tax benefit, baby bonus and maternity immunisation allowance; and
- include parental leave pay within the compliance activities provided for in the data-matching program.

This bill also makes changes to various taxation laws. These include amendments to ensure that:

- a taxpayer will generally not be entitled to a dependent spouse, child-housekeeper or housekeeper rebate for that part of the income year for which parental leave pay was payable to the taxpayer or their spouse;
- parental leave pay is subject to PAYG withholding;
- employees can salary sacrifice their parental leave pay for non-cash remuneration where that arrangement is offered by the employer;

- parental leave pay is appropriately covered within the system of tax file numbers established under taxation laws;
- taxpayer information can be disclosed for the purposes of administration of what will become the *Paid Parental Leave Act 2010*;
- tax withheld from parental leave pay that was not payable can be refunded; and
- incorrect payments of parental leave pay are not included on the taxpayer's payment summary if the error is detected in time, or, if not detected in time, notice is given that an issued payment summary is not correct.

### **Financial impact statement**

The Paid Parental Leave scheme will have a net cost to the Government of \$1.042 billion (\$1,042.4 million) over five years.

Total net cost

<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>
\$13.6 m	\$196.7 m	\$269.8 m	\$279.0 m	\$283.3 m

## PAID PARENTAL LEAVE (CONSEQUENTIAL AMENDMENTS) BILL 2010

### NOTES ON CLAUSES

**Clause 1** sets out how the new Act is to be cited, that is, as the *Paid Parental Leave (Consequential Amendments) Act 2010*.

**Clause 2** provides a table that sets out the commencement dates of the various sections in, and Schedules to, the new Act. Most amendments commence at the same time as the new *Paid Parental Leave Act 2010* commences (1 October 2010). However, where there is a different commencement day for an amendment, commencement will be discussed in this explanatory memorandum in the context of that amendment.

**Clause 3** provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

#### **Abbreviations used in this explanatory memorandum**

- ‘Child Support Registration and Collection Act’ means the *Child Support (Registration and Collection) Act 1988*;
- ‘Family Assistance Act’ means the *A New Tax System (Family Assistance) Act 1999*;
- ‘Family Assistance Administration Act’ means the *A New Tax System (Family Assistance) (Administration) Act 1999*;
- ‘Fringe Benefits Tax Act’ means the *Fringe Benefits Tax Assessment Act 1986*;
- ‘Social Security Act’ means the *Social Security Act 1991*;
- ‘Tax Assessment Act 1936’ means the *Income Tax Assessment Act 1936*;
- ‘Tax Assessment Act 1997’ means the *Income Tax Assessment Act 1997*;
- ‘Taxation Administration Act’ means the *Taxation Administration Act 1953*; and
- ‘Veterans’ Entitlements Act’ means the *Veterans’ Entitlements Act 1986*.

## **Background**

This bill amends various Commonwealth Acts as a consequence of the introduction of the Paid Parental Leave Bill 2010, and provides for certain transitional matters.

### ***The Paid Parental Leave Bill 2010***

The Paid Parental Leave Bill 2010 introduces Australia's first national, Government-funded Paid Parental Leave scheme (the scheme) from 1 January 2011. Parental leave pay of up to 18 weeks at the national minimum wage will be paid to eligible primary carers who have or adopt a child on or after 1 January 2011 and who can satisfy work, income and residency tests. In most cases, the mother will be the primary carer, but allowance is also made for the transfer of all or part of the payment to the other parent, or to another carer, in exceptional circumstances.

From 1 October 2010, parental leave pay may be claimed through the Family Assistance Office, along with other family assistance payments, up to three months before the birth or adoption. The Government will fund employers to pay their eligible long-term employees as part of the scheme. Eligible claimants who are not paid by their employers will be paid by the Family Assistance Office.

### ***This bill***

This bill makes consequential amendments to various Commonwealth Acts. The bill also provides for certain transitional matters, including provisions to ensure that the requirement for employers to pay parental leave pay to their employees will take effect for children born or adopted on or after 1 July 2011 (although employers will be able to opt in to provide any eligible employees with parental leave pay from 1 January 2011).

This bill includes a range of consequential amendments to:

- exclude parental leave pay from the general definition of income for social security and veterans' entitlements purposes;
- ensure that parental leave pay is counted under the social security low-income health care card income test;
- clarify that parental leave pay is not a leave payment for the purposes of the social security income maintenance provisions;
- clarify that parental leave pay is included as 'PBBP employment income' and therefore disregarded in calculating a person's pension bonus bereavement payment;
- enable parental leave pay debts to be recovered from social security, family assistance and veterans' entitlements payments;

- enable amounts due under a maintenance liability and child support debts to be paid or recovered from parental leave pay;
- ensure that a person and their partner cannot receive both baby bonus and parental leave pay for a child, and make related baby bonus changes;
- ensure that a person and their partner cannot receive family tax benefit Part B for a child for the period for which parental leave pay is payable in relation to the child;
- provide for early claims for family tax benefit, baby bonus and maternity immunisation allowance; and
- include parental leave pay within the compliance activities provided for in the data-matching program.

This bill also makes changes to various taxation laws. These include amendments to ensure that:

- a taxpayer would generally not be entitled to a dependent spouse, child-housekeeper or housekeeper rebate for that part of the income year for which parental leave pay was payable to the taxpayer or their spouse;
- parental leave pay is subject to PAYG withholding;
- employees can salary sacrifice their parental leave pay for non-cash remuneration where that arrangement is offered by the employer;
- parental leave pay is appropriately covered within the system of tax file numbers established under taxation laws;
- taxpayer information can be disclosed for the purposes of administration of the new *Paid Parental Leave Act 2010*;
- tax withheld from parental leave pay that was not payable can be refunded; and
- incorrect payments of parental leave pay are not included on the taxpayer's payment summary if the error is detected in time, or, if not detected in time, notice is given that an issued payment summary is not correct.

## ***Consequences of the Paid Parental Leave Bill 2010 that do not require legislation***

This bill provides necessary consequential amendments and transitional arrangements associated with the introduction of what will become the *Paid Parental Leave Act 2010*. However, there are also some consequences that flow from the nature and structure of the scheme that do not involve or require legislative amendment. These are described below.

Parental leave pay will be taxable in the hands of an individual. Parental leave pay will be regular, expected and able to be relied upon, and would therefore be regarded as income under ordinary concepts for tax purposes. Parental leave pay would therefore also be included in a person's adjusted taxable income for family assistance and child support purposes, and could affect other payments or concession cards with income tests that are linked to taxable income.

PPL funding amounts paid by the Secretary to an employer to fund the payment of parental leave pay by the employer will be assessable for employers as ordinary income. This is because the amounts become the property of the employer, once paid (although the employer would also have an obligation to provide parental leave pay to their employee). A tax deduction would be available on the payment of parental leave pay, and reasonable costs of complying with the scheme would also be deductible.

The payment of PPL funding amounts to an employer and the payment of parental leave pay to an individual are not intended to give rise to any goods and services tax or capital gains tax implications for the employer or the individual.

An employer will not be obliged to make superannuation guarantee payments on parental leave pay paid to an employee (by virtue of the *Superannuation Guarantee (Administration) Amendment Regulations 2009 (No. 1)*).

## Schedule 1 – Amendments

### Summary

This Schedule amends various Commonwealth Acts as a consequence of the introduction of the Paid Parental Leave Bill 2010.

### Background

The consequential amendments in this Schedule are made to the following Acts (ordered as they appear in the Schedule):

- Family Assistance Act;
- Family Assistance Administration Act;
- Child Support Registration and Collection Act;
- *Data-matching Program (Assistance and Tax) Act 1990*;
- Fringe Benefits Tax Act;
- Tax Assessment Act 1936;
- Tax Assessment Act 1997;
- *Medicare Levy Act 1986*;
- Social Security Act;
- Taxation Administration Act; and
- Veterans' Entitlements Act.

### Explanation of the changes

#### ***Amendments to the Family Assistance Act***

##### Interaction of paid parental leave with eligibility for baby bonus

As a general premise, an individual will not be able to receive the benefit of both parental leave pay and baby bonus for the same child. Where the individual is, or was, a member of a couple at the relevant time that a PPL period for one of them started, the intention is that neither the individual nor their partner, or a former partner who was a partner at the relevant time, should be able to benefit from both payments in respect of the same child.



A condition for a person to be eligible for parental leave pay is that the person and the person's partner are not entitled to baby bonus for the child; and a former partner of the person was not entitled to baby bonus for the child when he or she was the person's partner.

The corollary for baby bonus is that an individual or their partner will not be eligible for baby bonus if either the individual or their partner is eligible for parental leave pay and the PPL period for the individual or their partner has started. Similarly, an individual will not be eligible for baby bonus if a former partner of the individual or a former partner of the individual's partner is eligible for parental leave pay for the child and the former partner's PPL period had started while they were a couple.

Section 36 of the Family Assistance Act provides the conditions for eligibility for baby bonus in normal circumstances. Amendments are made to each of the four categories of eligibility for baby bonus in section 36 to make it a condition for eligibility for baby bonus that, in a case where the individual or the individual's partner is eligible for parental leave pay for the child, the PPL period has not started; and, in the case of a former partner of the individual or the individual's partner, the PPL period applying to the former partner has not started or did not start while the former partner was the partner of the individual or the individual's partner. The requirement that the PPL period has not started is to give effect to an individual's ability to elect to receive baby bonus rather than parental leave pay in respect of a child, up until the start of their PPL period.

**Item 1** inserts a new definition of ***eligible for parental leave pay*** into subsection 3(1), which has the same meaning as in the new *Paid Parental Leave Act 2010*. Section 31 of that new Act sets out when a person is eligible for parental leave pay for a child.

**Item 2** inserts a new definition of ***PPL period*** into subsection 3(1), which has the same meaning as in the new *Paid Parental Leave Act 2010*. Subsection 11(1) of that new Act provides that, if the Secretary makes a determination that parental leave pay is payable to a person for a child, the Secretary must specify in the determination, the period for which parental leave pay is payable to the person, and that period is the person's 'PPL period.'

**Item 5** inserts new paragraphs 36(2)(ba) and 36(2)(bb) into subsection 36(2) (eligibility for baby bonus in the case of a parent of a child). New paragraph 36(2)(ba) makes it a requirement for eligibility for baby bonus, in a case where the individual, or the individual's partner is eligible for parental leave pay in respect of the child, that the PPL period applying to the individual or the individual's partner has not started.

New paragraph 36(2)(bb) requires that, to be eligible for baby bonus in a case where a former partner of the individual or the individual's partner is eligible for parental leave pay, the PPL period applying to the former partner has not started or did not start while the former partner was the partner of the individual or the individual's partner. For example, if the individual's former partner is eligible for parental leave pay and the PPL period applying to the former partner has started, but started after the individual and former partner separated, the individual satisfies the condition for eligibility for baby bonus in new subparagraph 36(2)(bb)(ii), that the PPL period applying to the former partner did not start while the former partner was the partner of the individual.

As this eligibility requirement applies in all categories of eligibility for baby bonus, equivalent amendments to new paragraphs 36(2)(ba) and (bb) are made to subsections 36(3), 36(4) and 36(5). **Item 8** inserts new paragraphs 36(3)(da) and (db); **item 10** inserts new paragraphs 36(4)(ba) and (bb); and **item 12** inserts new paragraphs 36(5)(ca) and (cb).

**Items 5, 8, 10 and 12** will commence on the later of 1 January 2011 and the commencement of the new *Paid Parental Leave Act 2010*. However, these amendments will not affect an individual's eligibility under subsection 36(2) for baby bonus in respect of a child born before 1 January 2011; or an individual's eligibility under subsection 36(3) or (5) in respect of a child entrusted to the person's care before 1 January 2011; or an individual's eligibility under subsection 36(4) for baby bonus in respect of a child who was delivered before 1 January 2011.

Requirement for eligibility for baby bonus that an individual or their partner is the primary carer of the child

This Schedule further amends section 36 of the Family Assistance Act to make it a condition for eligibility for baby bonus that an individual or an individual's partner is the primary carer of the child for whom baby bonus is being claimed, at some time during the relevant eligibility period referred to in subsection 36(2), (3), (4) or (5). An individual who is not the primary carer or who is not the partner of the primary carer will not be eligible for baby bonus even if no other individual is eligible for baby bonus for the child.

**Item 3** inserts a new definition of **primary carer** into subsection 3(1). Primary carer in relation to a child who is an FTB child of an individual and is also an FTB child of another individual who is not the individual's partner, has the meaning given by new subsection 36(8), which is inserted by **item 13** of this Schedule. New subsection 36(8) provides that, if a child is an FTB child of an individual and is also an FTB child of another individual who is not the individual's partner, the 'primary carer' of the child is:

- the individual who gave birth to the child if that individual's percentage of care is at least 48 per cent; or
- if that doesn't apply, the individual who has a higher percentage of care of the child than anyone else; or

- if neither of the above circumstances apply but two individuals have an equal percentage of care (that is, higher than anyone else's percentage of care), one of whom gave birth to the child, that individual; or whichever of those individuals the Secretary determines is the primary carer of the child.

If enacted, the *Child Support and Family Assistance Legislation Amendment (Budget and Other Measures) Act 2010* will insert a new definition of **percentage of care** into the Family Assistance Act, and will also insert a new Subdivision D of Division 1 of Part 3 of that Act, for the determination of a percentage of care. If enacted, that Act will also make a minor amendment to the definition of FTB child in subsection 3(1) of the Family Assistance Act to clarify that the definition of FTB child in relation to baby bonus has the meaning given in Subdivision A of Division 1 of Part 3, but, in applying Subdivision D of that Division to baby bonus, a reference to a claim for payment of family tax benefit will be taken to be a reference for a claim for payment of baby bonus. An individual's percentage of care for the purposes of baby bonus will be determined using the same rules as apply for determining a percentage of care for family tax benefit.

**Items 3 and 13** will commence on the latest of: 1 January 2011; the time the new *Paid Parental Leave Act 2010* commences; and immediately after the commencement of Schedule 2 to the *Child Support and Family Assistance Legislation Amendment (Budget and Other Measures) Act 2010* (although it will not commence at all unless both of those events in relation to those Acts occur).

**Item 4** inserts into subsection 36(2) a new 'primary carer' condition for eligibility for baby bonus. New paragraph 36(2)(ab) requires that the individual or the individual's partner is, or was, the primary carer of the child at any time within the period of 26 weeks starting on the day of the child's birth. This eligibility condition applies to all categories of eligibility for baby bonus in section 36, and therefore similar amendments are made to subsections 36(3), (4) and (5) of the Family Assistance Act.

Subsection 36(3) provides for eligibility for baby bonus where the child is entrusted into an individual's care. **Item 6** repeals paragraph 36(3)(b) and substitutes it with the requirement that, within the period of 26 weeks starting on the day of the child's birth, the child is entrusted to the care of the individual or the individual's partner; and the individual or the individual's partner becomes the primary carer of the child. New paragraph 36(3)(cb), which is inserted by **item 7**, then requires that the individual or the individual's partner continues or is likely to continue to be the primary carer of the child for not less than 26 weeks.

Subsection 36(4) provides for eligibility for baby bonus in the case of a stillborn child. Currently, paragraph 36(4)(aa) provides that, if the child had been born alive, the child would have been an FTB child of the individual at birth. **Item 9** repeals paragraph 36(4)(aa) and substitutes it with the requirement that, had the child been born alive, the child would have been an FTB child of the individual at birth; and the individual or the individual's partner would have been the primary carer of the child at birth. **Item 15** makes a minor amendment to subsections 37(2) and (3) (which allow the Secretary to determine that two or more individuals are eligible for baby bonus in respect of a child and to determine the percentage of the baby bonus amount for which each individual is eligible) to remove the reference to subsection 36(4) in those subsections.

For consistency with eligibility for baby bonus in the case of a stillborn child, an amendment is also made to eligibility for maternity immunisation allowance in the case of a stillborn child. Paragraph 39(3)(b) currently requires that, had the child been born alive, the child would have been an FTB child of the individual at birth. **Item 16** repeals paragraph 39(3)(b) and substitutes it with the requirement that, had the child been born alive, the child would have been an FTB child of the individual at birth and the individual or the individual's partner would have been the primary carer of the child at birth.

The amendment made by **item 16** will not affect an individual's eligibility under subsection 39(3) for maternity immunisation allowance in respect of a child delivered before 1 January 2011.

Subsection 36(5) provides the conditions for baby bonus eligibility in cases of adoption. **Item 11** inserts new paragraph 36(5)(bc), which requires that the individual or the individual's partner is, or was, the primary carer of the child at any time within the period of 26 weeks starting on the day the child is entrusted to the care of the individual.

The amendments made by **items 4 to 12 and items 14 to 18** of this Schedule will commence on the later of 1 January 2011 and the commencement of the new *Paid Parental Leave Act 2010*. However, the amendments of section 36 of the Family Assistance Act described above will not affect an individual's eligibility under subsection 36(2) for baby bonus in respect of a child born before 1 January 2011; or an individual's eligibility under subsection 36(3) or (5) in respect of a child entrusted to the person's care before 1 January 2011; or an individual's eligibility under subsection 36(4) for baby bonus in respect of a child who was delivered before 1 January 2011.

## Effect of favourable review of payability determinations etc. for parental leave pay

An individual can make a claim for both baby bonus and parental leave pay. **Item 27** of this Schedule makes amendments to provide for the deferral of a baby bonus claim in circumstances where an individual has also claimed parental leave pay. Under those amendments, if a payability determination is made that parental leave pay is not payable to the individual, the Secretary can then determine the baby bonus claim. However, an individual may also seek review of the parental leave pay determination, and the outcome of that review may only become known after a baby bonus entitlement determination is made. If the decision on review is that parental leave pay is payable to the individual, this will have consequences for the individual's eligibility for baby bonus, because an individual cannot receive the benefit of both baby bonus and parental leave pay in respect of the same child.

**Item 14** inserts new section 36A into the Family Assistance Act. New subsection 36A(1) provides for the effect of a favourable review of a payability determination for parental leave pay, on an individual's eligibility for baby bonus. Subsection 36A(1) applies if:

- an individual would, but for new section 36A, be eligible for baby bonus in respect of a child; and
- either:
  - a payability determination was made to the effect that parental leave pay is not payable for the child; or
  - a decision made on review of another decision under the new *Paid Parental Leave Act 2010* has the effect that parental leave pay is not payable for the child; and
- a decision (the ***favourable review decision***) made on review of the payability determination or the decision on review (referred to above) has the effect that parental leave pay is payable for the child.

If subsection 36A(1) applies, the individual is not, and is taken never to have been, eligible for baby bonus in respect of the child.

If a baby bonus entitlement determination had been made for the individual in respect of the child under section 42 of the Family Assistance Administration Act (because a claim is made for payment of baby bonus and the Secretary is satisfied that the claimant is eligible for baby bonus in accordance with Subdivision A of Division 2 of Part 3 of the Family Assistance Act), and subsection 36A(1) applies, this could result in a review of that decision under section 105 of the Family Assistance Administration Act. This would be on the basis that the individual is not, and is taken never to have been, eligible for baby bonus in respect of the child. A debt for the amount of baby bonus paid to the individual would also be raised.

However, if the favourable review decision described in paragraph 36A(1)(c) is made before the person's PPL period starts, and, before the PPL period starts, a decision on review of the favourable review decision has the effect that parental leave pay is not payable for the child, new subsection 36A(2) provides that, despite new subsection (1), section 36A does not affect, and is taken never to have affected, the individual's eligibility for baby bonus in respect of the child.

If a payability determination is made that parental leave pay is payable to an individual, it comes into force on the day it is made and continues in force until it is revoked under section 25 or set aside on review under Chapter 5 of the new *Paid Parental Leave Act 2010* (new section 23 of that Act). Subsection 36A(3) operates if: the favourable review decision referred to in paragraph 36A(1)(c) is made before the PPL period relating to the parental leave pay starts; and, before the PPL period starts, the payability determination (as in force after the favourable review decision) is revoked under section 25 of the new *Paid Parental Leave Act 2010*. Under section 25 of that Act, if, before the start of the PPL period, the individual requests that the payability determination be revoked, the Secretary must revoke the determination.

In these circumstances, subsection 36A(3) provides that, despite new subsection (1), new subsection 36A does not affect the individual's eligibility, after the determination is revoked, for baby bonus in respect of the child. The effect of this provision is that, if the individual's eligibility for baby bonus is affected by subsection 36A(1), such that the individual is not and is taken never to have been, eligible for baby bonus, their eligibility for baby bonus is not affected after the payability determination for parental leave pay is revoked.

The note to new subsection 36A(3) clarifies for the reader that, if this subsection applies, new subsection 39(1A) of the Family Assistance Administration Act (which is inserted by **item 24**) allows the individual to make an additional claim for payment of baby bonus in respect of the child.

If a baby bonus entitlement determination made for the individual on a previous claim was affected by the operation of subsection 36A(1) (the individual was eligible for baby bonus but subsection 36A(1) applied such that the individual is not and never was eligible for baby bonus), and subsection 36A(3) then applied, the intention is that the individual could make a new claim for baby bonus in respect of the child, which would be determined at the time it was made.

In contrast to the effect of new subsection 36A(2), if subsection 36A(3) applied, the decision made in relation to the previous claim would not be further reviewed. If the Secretary is satisfied that the individual is eligible for baby bonus on the new claim, an entitlement determination on the new claim would be made under section 42. Any debt of the individual which may have arisen in relation to the previous baby bonus claim would continue to apply, and could be recovered from the baby bonus amount to which the individual may be entitled under the determination on the new claim.

The amendment made by **item 14** will commence on the later of 1 January 2011 and the commencement of the new *Paid Parental Leave Act 2010* (but will not commence at all unless that Act commences).

**Item 24** inserts new subsection 39(1A) into the Family Assistance Administration Act. As described in the note to new subsection 36A(3), new subsection 39(1A) allows for an additional claim for payment of baby bonus in respect of the child if new subsection 36A(3) has applied.

Subsection 39(1) provides that a claim for payment of baby bonus in normal circumstances is not effective if the claimant has previously made such a claim based on the same circumstances (whether or not the claim has yet been determined). New subsection 39(1A) provides that subsection (1) does not apply if: new section 36A applied in relation to an individual's eligibility for baby bonus in respect of the child, but ceased to apply because of new subsection 36A(3); and the claim is the individual's first claim for payment of baby bonus in respect of a child after new section 36A so ceased to apply.

#### Amount of baby bonus in respect of a child to take into account parental leave pay of others

Subsection 37(1) of the Family Assistance Act provides that generally only one individual is eligible for baby bonus under subsections 36(2), (3) or (4). However, subsection 37(3) allows the Secretary to determine that two or more individuals are eligible for baby bonus in respect of a child if the Secretary considers this reasonable, and to determine each individual's percentage of the baby bonus amount. This may occur, for example, where there has been a change in the care of the child within 26 weeks from the birth of the child, such that two individuals could both be eligible for baby bonus in respect of the child. (**Item 15** makes a minor amendment to subsections 37(2) and (3) to remove the reference to subsection 36(4) in those subsections.)

It is intended that the Secretary may also determine a percentage of the baby bonus amount for which an individual is eligible, in circumstances where parental leave pay is payable to an individual, for example, the birth mother, and a change in the care of the child occurs within 26 weeks of the child's birth such that another individual is eligible for baby bonus in respect of that child.

**Item 17** adds new section 66A at the end of Division 2 of Part 4. New section 66A allows the Secretary to determine the percentage by which an individual's baby bonus amount is to be reduced to take into account the payment of parental leave pay to another individual in respect of the child. New subsection 66A(1) applies if: an individual has been, or is being, paid parental leave pay for a child; and the individual has been or is the primary carer of the child at any time within the 26-week period starting on the day of the child's birth; and another individual is eligible for baby bonus (under subsection 36(2) or (3)) in respect of the same child.

The Secretary may determine a percentage by which it is reasonable to reduce the other individual's baby bonus amount to take into account that the first-mentioned individual has been, or is being, paid parental leave pay in respect of the child (new subsection 66A(1)). Paragraph 66A(1)(c) indicates that new section 66A applies whether or not the individual's eligibility for baby bonus is affected by a determination under subsection 37(3) (that is, a determination of a percentage of baby bonus for which the individual is eligible because two or more individuals are eligible for baby bonus in respect of the child).

New subsection 66A(2) clarifies that, despite section 66, which provides for the amount of baby bonus (or a percentage of baby bonus if a determination is made under subsection 37(3)), the amount of baby bonus for the individual is reduced in accordance with the determination under subsection 66A(1).

The amendment made by **item 17** will commence on the later of 1 January 2011 and the commencement of the new *Paid Parental Leave Act 2010*.

#### Interaction of parental leave pay with family tax benefit Part B

Section 58 of the Family Assistance Act provides that an individual's annual rate of family tax benefit (FTB) is to be calculated in accordance with the Rate Calculator in Schedule 1. The annual rate can be converted to a daily rate using subsection 58(3).

Part 4 of Schedule 1 to the Family Assistance Act sets out the rate calculation process for FTB Part B. Clause 28B currently provides that an individual's Part B rate is nil if the individual's adjusted taxable income is greater than \$150,000.

**Item 18** inserts a new clause 28C into Schedule 1 to the Family Assistance Act that deals with the relationship between FTB Part B and parental leave pay. New clause 28C also provides a 'nil' rate rule that precludes payment of FTB Part B to an individual for any day that occurs during a PPL period applying to the individual or their partner. This amendment commences on the later of 1 January 2011 and the time the new *Paid Parental Leave Act 2010* commences, but does not commence at all unless the latter occurs.



**Item 2** is a related amendment to subsection 3(1) of the Family Assistance Act to insert a definition of **PPL period**, which has the same meaning as in the new *Paid Parental Leave Act 2010*. An individual's PPL period is the period for which parental leave pay is payable to the individual (generally for up to 18 weeks).

If an individual and their partner separate during the individual's PPL period, then this rule would cease to apply to the ex-partner, and he or she would have access to FTB Part B under the usual rules. If separated parents share the care of the relevant child and the Secretary decides that a particular parent should be paid parental leave pay, then the other parent may be able to access FTB Part B for the child under the usual rules.

The note at the end of **item 18** changes the heading to clause 28B to read 'Adjusted taxable income exceeding \$150,000'.

### ***Amendments to the Family Assistance Administration Act***

#### Time period for an effective claim for baby bonus in circumstances where the claimant is given a notice of determination that parental leave pay is not payable

A claim for parental leave pay in respect of a child can be made up until the day before the child's first birthday (section 60 of the new *Paid Parental Leave Act 2010*). Depending on when an individual claims parental leave pay, the decision on the claim may not be known until later than 52 weeks following the birth of the child. Subsection 39(2) of the Family Assistance Administration Act provides that, subject to subsection 39(3), a claim for payment of baby bonus in normal circumstances is not effective if made later than 52 weeks after the birth of the child (if the claim involves eligibility under subsections 36(2) to (4) of the Family Assistance Act) or the time the child is entrusted to the care of the individual (if the claim involves eligibility under subsection 36(5) of the Family Assistance Act).

If an individual's claim for parental leave pay is determined later than 52 weeks after the birth of the child and the determination is that parental leave pay is not payable to the individual, the individual would be restricted by subsection 39(2) from making an effective claim for baby bonus in respect of the child. Amendments are therefore made to section 39 to allow a claim for baby bonus later than the 52-week claim period in this situation.

**Item 20** inserts a definition of **parental leave pay** into subsection 3(1) of the Family Assistance Administration Act, which is defined as having the same meaning as in the new *Paid Parental Leave Act 2010*.

**Item 25** omits the reference to subsection (3) in subsection 39(2) and substitutes it with a reference to subsections (3) and (3A).

**Item 26** then inserts new subsection 39(3A) into section 39. New subsection 39(3A) extends the period in which a claimant can claim baby bonus in respect of a child beyond the 52-week period referred to in subsection 39(2) if: the claimant or the claimant's partner made a claim for parental leave pay for that child under Part 2-4 of the new *Paid Parental Leave Act 2010*; and is notified by the Secretary under section 24 of that Act that parental leave pay is not payable; and that notice is given either after the 52-week period referred to in subsection 39(2) ends, or during the last 13 weeks of the 52-week period. The claimant is not prevented by subsection 39(2) from making an effective claim for baby bonus in respect of the child, if the baby bonus claim is made within the period of 13 weeks after the day on which notice of the parental leave determination is given.

The above amendments to the Family Assistance Administration Act will commence at the same time as the new *Paid Parental Leave Act 2010* commences, but will not affect a claim for baby bonus made before 1 October 2010.

Deferral of normal circumstances baby bonus determination pending resolution of parental leave pay

A claim for parental leave pay may be made up to 97 days before the expected date of birth of the child. Similarly, a claim for baby bonus will also be able to be made prior to the birth of the child (although could not be determined until after the birth). An individual may choose to make a claim for parental leave pay and baby bonus in respect of a child, and, in circumstances where this occurs, the claim for baby bonus will be deferred, pending resolution of the claim for parental leave pay.

**Item 27** repeals subsections 41(3) and (4) of the Family Assistance Administration Act and substitutes new subsections 41(3), (4) and (4A). New subsection 41(4) provides for the deferral of a claim for baby bonus in circumstances where the claimant or the claimant's partner has made a claim for parental leave pay in respect of the child. If the claim is one for payment of baby bonus in normal circumstances and the claimant or the claimant's partner has made a claim in accordance with Part 2-4 of the new *Paid Parental Leave Act 2010* for parental leave pay for the child (to whom the baby bonus claim relates), the Secretary must not determine the baby bonus claim until one of the following occurs:

- if the Secretary determines under that Act that parental leave pay for the child is payable, the PPL period applying to the individual who made the parental leave pay claim starts, or the Secretary revokes the determination under section 25 of that Act; or
- the Secretary determines under that Act that parental leave pay for the child is not payable; or
- the parental leave pay claim is withdrawn under section 61 of that Act.

The amendments made by **item 27** will not affect a claim for baby bonus made before 1 October 2010.

Amendment to paragraph 47B(1)(c) (obligation to notify of change of care)

The *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Act 2010* added section 47B at the end of Division 3 of Part 3 of the Family Assistance Administration Act. Section 47B imposes an obligation on an individual, who claims and is entitled to baby bonus based on eligibility under subsection 36(2) or (3) of the Family Assistance Act, to notify the Secretary of a change of care if that change of care occurs in the 26 weeks beginning on the day of the child's birth or the day the child is entrusted to care, respectively, and the child ceases to be an FTB child of the individual as a result of that change in care. Section 47B commences on 1 July 2010.

The notification obligation will assist the Secretary to review the amount of baby bonus payable to an individual where there is a change of care that results in another individual also being eligible for baby bonus for the same child. The individual's baby bonus amount could be reassessed when a decision is made that another individual is also eligible for baby bonus for the child under subsection 37(3) of the Family Assistance Act.

**Item 29** amends paragraph 47B(1)(c) of the Family Assistance Administration Act to take into account that an individual ceasing to be the primary carer of a child can also result in the need to reassess an individual's baby bonus, notwithstanding that the child may still be an FTB child of the individual.

For example, if an individual's percentage of care changes from 100 per cent care to 40 per cent care in the first 26 weeks following the birth of the child and another individual is the primary carer of the child under new subsection 36(8) of the Family Assistance Act, the child may still be an FTB child of the first individual. However, the first individual is no longer the primary carer of the child. Paragraph 47B(1)(c) is repealed and substituted with the requirement that, as a result of the change of care, the child ceases to be an FTB child of the individual or neither the individual or the individual's partner is the primary carer of the child.

The amendment made by **item 29** will commence on the later of 1 January 2011 and the time the *Paid Parental Leave Act 2010* commences. However, the amendment made by **item 29** will not affect a claim for baby bonus made before 1 January 2011.

## Early claims for FTB, baby bonus and maternity immunisation allowance

**Items 19 to 23 and items 27 and 28** amend the Family Assistance Administration Act to enable a person to claim FTB, baby bonus and maternity immunisation allowance in respect of a child up to 97 days before the child is expected to become their FTB child (which would happen when a child is born or adopted or otherwise entrusted into the person's care). This is consistent with the capacity for a person to claim parental leave pay up to 97 days before the expected date of birth or adoption of their child. This alignment would enable a person to claim all relevant payments from the Family Assistance Office at the same time.

**Item 19** inserts a new definition of **early claim day** into subsection 3(1) of the Family Assistance Administration Act. This concept would be relevant in relation to a claim for FTB by instalment, a claim for baby bonus in normal circumstances and a claim for maternity immunisation allowance in normal circumstances. The early claim day would be the day occurring 97 days before the day that the child to whom the claim relates is expected to become an FTB child of the claimant.

**Item 20** inserts a new definition of **parental leave pay** into subsection 3(1). This term is defined as having the same meaning as in the new *Paid Parental Leave Act 2010*.

The only way a person can become entitled to a family assistance payment is to make an effective claim for the payment. Under section 7 of the Family Assistance Administration Act, for example, a claim for FTB is effective if it meets prescribed requirements. **Item 21** inserts a new subsection 7(3) which provides that a claim for FTB is not effective if made before the early claim day. **Item 23** makes a similar amendment to section 38, which deals with claims for baby bonus and maternity immunisation allowance.

**Item 22** inserts a new section 15B into the Family Assistance Administration Act. New section 15B prevents the Secretary from determining an early claim for FTB by instalment (in respect of a child who is not yet an FTB child of the claimant) where the Secretary is satisfied that, at the time the determination would otherwise be made, the claimant is likely to become eligible for FTB were the child to become an FTB child of the claimant. This deferral rule would not apply if the claimant is unlikely to be eligible even when the child in respect of whom the payment is claimed becomes an FTB child of the claimant. This might be the case, for example, where the claimant does not meet the residence requirements and there is nothing to suggest that this situation will change by the time the child in respect of whom the claim has been made becomes an FTB child. The claim would be rejected in these circumstances.

Where the conditions in new section 15B are met, determination of the claim must be deferred until the earlier of:

- the time when the child becomes an FTB child of the claimant or is stillborn; or
- 28 days after the day on which the child was expected to become the claimant's FTB child.

**Item 27** repeals subsections 41(3) and (4) and replaces these provisions with new subsections 41(3), (4) and (4A). Of relevance to the early claim measure are new subsections 41(3) and (4A).

New subsection 41(3) prevents the Secretary from determining an early claim for baby bonus in normal circumstances (in respect of a child who is not yet an FTB child of the claimant) where the Secretary is satisfied that, at the time the determination would otherwise be made, the claimant is likely to become eligible for baby bonus were the child to become an FTB child of the claimant.

Where these conditions are met, determination of the claim would be deferred until the earlier of:

- the time when the child becomes an FTB child of the claimant or is stillborn; or
- 28 days after the day on which the child was expected to become the claimant's FTB child.

New subsection 41(4A) is a similar provision that applies in relation to an early claim for maternity immunisation allowance in normal circumstances (in respect of a child who is not yet an FTB child of the claimant) where the Secretary is satisfied that, at the time the determination would otherwise be made, if the child were to become an FTB child of the claimant, the claimant would either be likely to be eligible for FTB in respect of the child or be likely to be so eligible except that the claimant's rate of FTB would be nil.

As with early claims for FTB by instalment and baby bonus, determination of a claim for maternity immunisation allowance would be deferred until the earlier of:

- the time when the child becomes an FTB child of the claimant or is stillborn; or
- 28 days after the day on which the child was expected to become the claimant's FTB child.

However, when the child becomes an FTB child of the claimant, the claim for maternity immunisation allowance may continue to be deferred until other eligibility requirements are met (e.g. the child is immunised), due to existing subsection 41(5).

**Item 28** makes a consequential amendment to subsection 41(7) to take account of the references to an FTB child in new subsection 41(4A). Subsection 41(7) modifies the operation of section 22A of the Family Assistance Act (relating to the meaning of 'FTB child') as it applies to children who arrive in Australia after having turned three but before the child turns 16, after having been adopted or as part of the adoption process.

These amendments do not affect a claim for FTB, baby bonus or maternity immunisation allowance made under the Family Assistance Administration Act before 1 October 2010. **Subitem 5(1) of Schedule 2** to this Bill provides the relevant transitional rule.

#### Recovery of parental leave pay debts from family assistance payments

Section 84 of the Family Assistance Administration Act currently enables certain debts to be recovered by means of deductions from instalments of FTB to which a person is entitled. The provision covers debts due to the Commonwealth under specified provisions in the Family Assistance Administration Act ('debt' is defined in subsection 82(3)) and debts arising under specified legislation, including the Social Security Act, the *Data-matching Program (Assistance and Tax) Act 1990*, the *Farm Household Support Act 1992* and others. **Item 30** includes the new *Paid Parental Leave Act 2010* in this list.

Section 84A is a similar provision, which enables the same types of debts to be recovered from the whole or part of a person's entitlement to family assistance. **Item 31** ensures that debts under the new *Paid Parental Leave Act 2010* are also covered.

Sections 92 and 92A enable similar types of debt to be recovered from another person's instalments of FTB or entitlement to family assistance, with their consent. **Item 31** also amends these provisions to include within their scope debts under the new *Paid Parental Leave Act 2010*.

The existing restrictions in these provisions relating to recovery from child care benefit and child care rebate remain unchanged.

#### ***Amendments to the Child Support Registration and Collection Act***

**Item 32** inserts a new definition of ***instalment of parental leave pay*** into subsection 4(1). Instalment of parental leave pay means an instalment of parental leave pay under the new *Paid Parental Leave Act 2010*.

**Item 33** inserts a new section 72AD. This new provision applies where the Secretary is required to pay an instalment of parental leave pay to a person.

Under the current rules, if a payer who has an enforceable maintenance liability is an employee, then the Child Support Registrar may collect amounts due to the Commonwealth under the maintenance liability directly from the employer through deductions from the employee's salary or wages (the relevant rules are set out in Part IV of the Child Support Registration and Collection Act). However, deductions cannot reduce the employee's salary or wages to an amount which is below the 'protected earnings amount'.

The concept of 'salary or wages' is defined in subsection 4(1) as including 'work and income support related withholding payments'. This term is defined by reference to various provisions in Division 12 of Schedule 1 to the Taxation Administration Act which specify payments from which an amount of tax must be withheld. This bill is also amending Schedule 1 to the Taxation Administration Act to enable PAYG withholdings from parental leave pay.

This change would mean that parental leave pay is also salary and wages for the purposes of Part IV of the Child Support Registration and Collection Act and can be subject to deduction by an employer where the employer is required to pay parental leave pay to their employee (payer). This is the intended outcome.

Under new section 72AD, the Registrar may give a notice to the Secretary, seeking deductions from a person's instalments of parental leave pay from a specified day. The person must be the payer of an enforceable maintenance liability under the Child Support (Registration and Collection) Act (that is, liable to make periodic payments to the Registrar in respect of an ongoing liability), or owe a child support debt in relation to an enforceable maintenance liability (that is, an amount in respect of the liability remains unpaid after the day on which the debt became due and payable under section 66 of the Child Support Registration and Collection Act).

The provision will also apply to a payer who is both a payer of an enforceable maintenance liability and a payer who owes a relevant child support debt.

The notice by the Registrar must specify the person's name and set out sufficient particulars to enable the Secretary to identify the person. The notice must instruct the Secretary to make deductions of an amount specified in the notice from the person's fortnightly instalments of parental leave pay. The amount specified in the notice may be an amount in respect of both the payer's ongoing liability and the overdue child support debt, under paragraph 72AD(2)(c), or an amount only in respect of the payer's overdue child support debt, under paragraph 72AD(2)(d).

In either case, the amount to be deducted is subject to the limitations in subsections 72AD(3) and (4). Subsection 72AD(3) provides that the amount to be deducted from the person's instalment of parental leave pay for a period must not exceed the amount (if any) by which the person's instalment for the period exceeds the amount ascertained by applying the protected earnings rate to that period. Because the protected earnings rate is a weekly amount prescribed for the purposes of the definition of the term in section 4 of the Child Support Registration and Collection Act, the amount of the protected earnings rate applied to the fortnightly instalments paid by the Secretary will be twice the protected earnings rate.

Subsection 72AD(4) provides that an amount is not to be deducted from the person's instalment of parental leave pay for a period if the person's instalment for the period is less than the amount ascertained by applying the protected earnings rate to that period.

Subsection 72AD(5), to avoid doubt, makes it clear that a notice is not invalid merely because it specifies an amount that exceeds the amount that subsection 72AD(3) allows to be deducted, or because subsection 72AD(4) does not allow an amount to be deducted. The effect of such a notice would be that it would be read as requiring deduction only of an amount which would leave a balance satisfying the requirements of subsections 72AD(3) and (4).

New section 69 of the new *Paid Parental Leave Act 2010* authorises the Secretary to make the required deductions from an instalment of parental leave pay payable to a person (subject to the limitations in new subsections 72AD(3) and (4)) and to pay the amounts deducted to the Child Support Registrar.

**Item 6 in Schedule 2** is the related transitional provision, which makes it clear that a notice in force prior to the commencement of the new Act requiring an employer to make periodic deductions from a person's salary or wages continues in force after that commencement as if those salary or wages included the person's instalments of parental leave pay.

To avoid doubt, **item 7 in Schedule 2** provides that section 72AD of the Child Support Registration and Collection Act applies in relation to enforceable maintenance liabilities or debts (as referred to in subparagraphs 72AD(1)(b)(i) and (ii)) that existed immediately before the commencement of this item in the same way in which it applies to such a liability or debt that comes into existence after that commencement.

### ***Amendments to the Data-matching Program (Assistance and Tax) Act 1990***

**Item 35** amends the definition of 'personal assistance' in subsection 3(1) of the *Data-matching Program (Assistance and Tax) Act 1990* to include the payment of an instalment of parental leave pay under the new *Paid Parental Leave Act 2010*. This change will include parental leave pay within the compliance activities provided for in that legislation.



**Item 34** makes minor technical amendments to subsection 3(1).

### ***Amendments to the Fringe Benefits Tax Act***

Salary or wages, as defined in section 136 of the Fringe Benefits Tax Act, can be the subject of a salary packaging arrangement between employer and employee. On the basis that payments of parental leave pay are not salary or wages as mentioned in section 12-35 of Schedule 1 to the Taxation Administration Act, the existing definition of salary and wages in section 136 does not cover payments of parental leave pay.

Where a person is being paid their parental leave pay by an employer, the intention is that the employee should be able to salary sacrifice their parental leave pay for non-cash remuneration. The amendment made by **item 36** ensures that parental leave pay is salary and wages as defined in section 136 of the Fringe Benefits Tax Act when paid by the person's employer.

### ***Amendments to the Tax Assessment Act 1936***

Section 16 of the Tax Assessment Act 1936 protects taxpayer information from unauthorised use or disclosure. However, these rules do not prevent the communication of taxpayer information in specified circumstances set out in subsection 16(4). Taxpayer information can, for example, be communicated to the Families Secretary for the purposes of the administration of the Family Assistance Administration Act and the administration of the social security law.

**Item 38** inserts a new paragraph 16(4)(fca) into the Tax Assessment Act 1936 so that taxpayer information can be communicated to the Families Secretary or the Chief Executive Officer of Centrelink for the purpose of administering the new *Paid Parental Leave Act 2010*.

This amendment commences at the same time as the new *Paid Parental Leave Act 2010*. However, if item 32 of Schedule 2 to the new *Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010* (which repeals section 16 of the Tax Assessment Act 1936) commences on or before that time, the amendment made by **item 38** does not commence at all.

Section 159J of the Tax Assessment Act 1936 sets out the circumstances in which a taxpayer who contributes to the maintenance of a dependant, as defined in section 159J, is entitled to a rebate or offset of tax in his or her assessment in respect of an income year.

Section 159L sets out the circumstances in which a taxpayer who contributes to the maintenance of a person wholly engaged in keeping house for the taxpayer (the housekeeper) and in caring for particular dependants is entitled to an offset of tax.

Under both sections, a taxpayer is not eligible for a rebate or offset of tax if the taxpayer is in receipt of particular other assistance payments. For example, subsection 159J(1AA) provides that the taxpayer is not entitled to a dependent spouse or child-housekeeper tax offset in respect of an income year if the taxpayer or the taxpayer's spouse (while being the taxpayer's partner as defined in the Family Assistance Act) was eligible for FTB Part B for the whole of the income year. Subsection 159J(3AA) addresses the situation where the taxpayer or their spouse was eligible for FTB Part B for part of the relevant income year and ensures that an appropriate rebate amount is allowable to the taxpayer. Subsection 159J(3AB) applies where a taxpayer or their spouse had a shared care percentage which applied in calculating their FTB Part B rate during the whole or part of the income year.

Subsections 159L(3A), (5A) and (5B) are similar to the rules in section 159J except that a taxpayer can remain entitled to the housekeeper tax offset while being eligible for FTB Part B if the taxpayer contributes to the maintenance of a spouse who is in receipt of disability support pension. However, pursuant to subsection 159L(4), a taxpayer will only be eligible for the maximum housekeeper tax offset where they have a spouse in receipt of disability support pension and the housekeeper is engaged in caring for the spouse.

The amendments made by **item 48** repeal subsections 159J(1AA), (3AA) and (3AB). The content of these subsections is provided for in new section 159JA, which is inserted into the Tax Assessment Act 1936 by **item 49**. The restructuring of the provisions has no effect on the substance of the rules that apply where a taxpayer or their spouse is eligible for FTB Part B.

New section 159JA provides that an individual is not eligible for the dependent spouse or child-housekeeper tax offset for the part of the year that parental leave pay is payable to them or their spouse (within the meaning of the new *Paid Parental Leave Act 2010*). **Item 51** inserts a new section 159LA into the Tax Assessment Act 1936, which replaces subsections 159L(3A), (5A) and (5B) and also provides that a taxpayer is not eligible for a housekeeper tax offset for any part of the year that parental leave pay is payable to the taxpayer or their spouse.

These amendments ensure that a taxpayer is ineligible for the relevant dependency tax offsets whether they choose to receive parental leave pay or FTB Part B. A taxpayer who receives a combination of both FTB Part B and parental leave pay during the whole income year would not be entitled to a dependent spouse, child-housekeeper or housekeeper tax offset for any part of the year that parental leave pay is payable to them or their spouse.

A taxpayer with a spouse in receipt of disability support pension is eligible for a housekeeper tax offset if they or their spouse is in receipt of FTB Part B or parental leave pay. However, the housekeeper must care for the spouse. If the housekeeper is not engaged in caring for the spouse and is instead engaged for some other purpose, then an offset will only be available in specific circumstances determined by the Commissioner of Taxation.

Consistent with the amendments at **items 48 and 49**, **item 50** repeals subsections 159L(3A), (5A) and (5B). The contents of these subsections are provided for in a new section 159LA which is inserted into the Tax Assessment Act 1936 by **item 51**.

A taxpayer's eligibility for a rebate or offset of tax under section 159J or section 159L, and whether the taxpayer would have been entitled to such an offset but for the exclusions provided for in subsections such as subsections 159J(1AA), (3AA) and (3AB), and subsections 159L(3A), (5A) and (5B), which are now to be provided for in new sections 159JA and 159LA, affect the amount of other offsets the taxpayer may be eligible for.

Under section 23AB of the Tax Assessment Act 1936, taxpayers (other than members of the Australian Defence Force) that have served with an armed force under the direction of the United Nations are eligible for an offset of tax. The amount of the offset is the sum of a fixed amount plus 50 per cent of the amount of dependency tax offsets the taxpayer would be eligible for, disregarding subsections 159J(1AA), (3AA) and (3AB) and subsections 159L(3A), (5A) and (5B).

Section 79A provides a tax offset for residents of particular isolated areas, known as the 'zone tax offset'. Depending on the taxpayer's location, the amount of the offset will be the sum of a fixed amount and either 50 or 20 per cent of any dependency tax offsets the taxpayer would be eligible for (known as the taxpayer's 'relevant rebate amount'), disregarding subsections 159J(1AA), (3AA) and (3AB) and subsections 159L(3A), (5A) and (5B).

Section 79B provides a tax offset for members of the Australian Defence Force serving at particular overseas localities in an income year. The amount of the offset is the sum of a fixed amount plus 50 per cent of any dependency tax offsets the taxpayer would be eligible for (known as the taxpayer's 'concessional rebate amount'), disregarding subsections 159J(1AA), (3AA) and (3AB) and subsections 159L(3A), (5A) and (5B).

**Items 39 to 47** amend sections 23AB, 79A and 79B in response to the amendments to section 159J and section 159L and the insertion of new sections 159JA and 159LA. The amendments are not substantive in effect.

**Item 37** inserts a definition of *member of a family tax benefit (Part B) family without shared care* into section 6 of the Tax Assessment Act 1936, which is the definitions section of that Act. This definition will be relevant for the purposes of the new sections 159JA and 159LA as well as existing sections 159J and 159L.

Part VA of the Tax Assessment Act 1936 establishes a system of tax file numbers and the objects of this Part are set out in section 202. **Item 52** inserts a new paragraph 202(la) to provide that an additional objective of Part VA is to use tax file numbers to facilitate the administration of the new *Paid Parental Leave Act 2010*.

### ***Amendments to the Tax Assessment Act 1997***

**Item 53** amend the definitions section of the Tax Assessment Act 1997, section 995-1, to include a definition of ***parental leave pay***. This term is used in the Taxation Administration Act.

### ***Amendments to the Medicare Levy Act 1986***

**Items 54 to 57** inclusive amend the *Medicare Levy Act 1986* as a direct consequence of the changes made by this bill to the rules in the Tax Assessment Act 1936 concerning rebates for dependants and housekeepers. The changes to the Medicare Levy Act are not substantive in effect.

### ***Amendments to the Social Security Act***

#### Income and parental leave pay

Section 8 defines the concept of income for the purposes of the Social Security Act. Income is broadly defined to include an income amount (valuable consideration, personal earnings, moneys or profits) earned, derived or received by the person for their own use or benefit and a periodical payment or benefit by way of gift or allowance. Subsection 8(8) then excludes specific amounts and types of payments from this broad definition.

**Item 58** inserts a new definition of ***instalment of parental leave pay*** into subsection 8(1) of the Social Security Act. This term would mean an instalment of parental leave pay under the new *Paid Parental Leave Act 2010*.

**Item 59** inserts a new paragraph 8(8)(d), which excludes an instalment of parental leave pay from the general concept of income.

'PBBP employment income' is disregarded in working out the amount of a person's pension bonus bereavement payment. **Item 60** amends the definition of PBBP employment income in section 93WC of the Social Security Act so as to include an instalment of parental leave pay in the definition.

There are specific rules in the relevant Rate Calculators in Part 3 of the Social Security Act which modify the concept of ordinary income in circumstances where a person is entitled to a termination payment or a leave payment. In broad terms, the termination or leave payment is taken to be ordinary income received by the person for a period (the income maintenance period) equal to the period to which the payment relates. The payments potentially affected by these income maintenance period rules include disability support pension (except for the permanently blind), youth allowance, Austudy payment, newstart allowance, widow allowance, partner allowance, sickness allowance and parenting payment.

By definition, a 'leave payment' includes a payment in respect of maternity leave, as well as other specified types of leave (see, for example, point 1067L-D16 of the Social Security Act). **Items 61 to 67 inclusive** amend the relevant provisions to make it clear that an instalment of parental leave pay is not a leave payment for the purposes of the income maintenance provisions.

To qualify for a claim-based health care card, a person is required to satisfy the health care card income test (paragraph 1061ZO(2)(d) of the Social Security Act refers). The Health Care Card Income Test Calculator in Part 3.9A of the Social Security Act sets out the requirements of that test. Of relevance to the test is a person's 'allowable income' and 'ascertainable income', both of which are linked to the concept of ordinary income, as defined in section 8 of the Social Security Act. However, the definition of 'income' in point 1071A-4 also expands the concept to include specified payments that may not otherwise be considered as ordinary income.

**Item 68** amends point 1071A-4 to include an instalment of parental leave pay within the expanded definition of income for the purposes of the health care card income test. Including instalments of parental leave pay within the health care card income test is consistent with other inclusions to the test, helping to ensure targeting of the card to genuine low-income earners.

#### Recovery of parental leave pay debts from social security payments

Section 1228 of the Social Security Act provides that certain overpayments under that Act and other specified Acts can be recovered by means of deductions from social security payments under section 1231.

**Item 69** inserts a new paragraph 1228(2)(ca) to enable an instalment of parental leave pay that should not have been paid to a person also to be recovered by deductions from the person's social security payments. This amount would be a debt owed to the Commonwealth by the recipient under the new *Paid Parental Leave Act 2010*.

Section 1234A of the Social Security Act provides for the recovery of social security debts and debts incurred under specified Acts from another person's social security payment with their consent.

**Item 70** inserts into paragraph 1234A(1)(a) a reference to the new *Paid Parental Leave Act 2010*. This change will enable recovery of a debt under the new *Paid Parental Leave Act 2010* by deductions from a third party's social security payment with their consent.

### ***Amendments to the Taxation Administration Act***

The general rule in section 8WA of the Taxation Administration Act is that a person must not require or request another person to quote their tax file number (TFN). An exception to this rule is where the requirement or request is made in compliance with a specified law listed in section 202 of the Tax Assessment Act 1936 (paragraph 8WA(1AA)(b) refers). **Item 71** amends paragraph 8WA(1AA)(b) to include a reference to new paragraph 202(la) of the Tax Assessment Act 1936 (as inserted by **item 52**), which refers to the new *Paid Parental Leave Act 2010*.

Section 8WB protects a person's TFN from being recorded, used or disclosed to a third person. This general rule does not apply to the extent required or permitted by, or reasonably necessary to comply with an obligation imposed by, or in the exercise of a power or performance of a function under or in relation to, a specified law listed in section 202 of the Tax Assessment Act 1936 (paragraphs 8WBA(1A)(a) and (b) refer). **Item 71** also amends these paragraphs to include a reference to new paragraph 202(la) of the Tax Assessment Act 1936 (as inserted by **item 52**), which refers to the new *Paid Parental Leave Act 2010*.

The core framework for PAYG withholding is set out in Schedule 1 to the Taxation Administration Act. In particular, section 12-110 of Schedule 1 provides that an entity (defined in section 995-1 of the Tax Assessment Act 1997) must withhold an amount from certain social security, veterans' entitlements and other payments it makes to an individual, to the extent that the payment is not exempt income.

**Item 72** amends section 12-110 in Schedule 1 to the Taxation Administration Act to include parental leave pay within its scope. As a result, any entity making a payment of parental leave pay to an individual must withhold tax from that payment. This includes a payment from the Secretary (within the meaning of the new *Paid Parental Leave Act 2010*) where an employer is not required to pay a person their instalments of parental leave pay.

Pursuant to section 16-155 in Schedule 1 to the Taxation Administration Act, entities that have provided amounts to a recipient from which tax was withheld (known as withholding payments under the Tax Assessment Act 1997) must give the recipient a payment summary within 14 days of the end of the year. The payment summary must cover the withholding payments and certain other payments or benefits provided to the recipient during the year, as prescribed in section 16-155.

As a consequence of the amendments made by **item 72**, any payer that provides an amount of parental leave pay to a recipient in a financial year must ensure that the annual payment summary provided to that recipient covers the amount of parental leave pay.

Pursuant to section 16-160 of Schedule 1 to the Taxation Administration Act, an entity must also ensure that parental leave pay amounts are reported on any part-year payment summary provided to a recipient.

**Item 73** amends section 16-155 to provide that an entity must ensure that an amount of parental leave pay not lawfully payable to a recipient is not reported on the annual payment summary provided to the recipient if the payer is made aware before the payment summary is provided that the payment was not lawfully so payable.

The amendment also provides that, if the entity becomes aware that a payment summary has been issued which includes an amount of parental leave pay which was not lawfully payable, then they have 28 days from when they do become aware either to provide an amended payment summary, notify the recipient of this fact, or to notify the Secretary that the entity will not notify the recipient. Generally, the entity should provide the recipient with an amended payment summary. If the entity becomes aware that the amount has been included after the end of the financial year, the entity may instead elect to notify the recipient in the approved form. If the entity becomes aware that the amount has been included after the end of the financial year and the entity does not elect to either issue an amended payment summary or provide the recipient with a notice in the approved form, then the entity must notify the PPL Secretary in writing of this fact.

**Item 74** amends section 16-160 to provide that an entity must not report an amount of parental leave pay not lawfully payable to a recipient on a part-year payment summary issued to the recipient if the entity was made aware that the amount of parental leave pay was not lawfully so payable before the recipient requested the part-year payment summary.

Subdivision 18-B of Schedule 1 to the Taxation Administration Act deals with the refund of tax withheld from withholding payments made in error. Under section 18-65, if a payer has become aware of the error before 21 July, or the recipient has requested a refund of the withheld amount before 21 July, then the entity has an obligation to refund the withheld amount.

If the payer did not become aware of the error, or the recipient did not apply for a refund, before 21 July, then the recipient may apply in writing to the Commissioner of Taxation for a refund of the withheld amount under section 18-70 of Schedule 1 to the Taxation Administration Act.

**Items 75 and 80** amend section 18-65 and section 18-70 respectively to provide that an individual may recover an amount withheld from a payment of purported parental leave pay that was not lawfully so payable under those sections. **Items 76, 78, 79, 81 and 82** are consequential amendments to section 18-65 and section 18-70 to correct references in these provisions necessary as a result of the amendments in **items 75 and 80** to ensure that the whole of the sections apply to a payment of purported parental leave pay that was not lawfully payable.

**Item 77** amends section 18-65 to provide that an entity's obligation to refund a withheld amount under section 18-65 will arise only if they become aware that there has been a withholding to which section 18-65 applies, or if the recipient requests a refund of an amount to which section 18-65 applies before the end of the financial year (rather than before 21 July of the following year). As a consequence, a person will be able to apply in writing to the Commissioner of Taxation for a refund of an amount withheld under section 18-70, provided the payer did not become aware of the error and the recipient did not apply for a refund before the end of the financial year in which the withholding occurred.

The Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 (the Tax Confidentiality Bill) seeks to consolidate the secrecy and disclosure provisions applying to taxpayer information that are currently spread over many taxation Acts (including section 16 of the Tax Assessment Act 1936) into a single new framework in Schedule 1 to the Taxation Administration Act.

New subsection 355-65 of Schedule 1 to the Taxation Administration Act (as inserted by the Tax Confidentiality Bill) would replace section 16 of the Tax Assessment Act 1936. **Item 83** therefore makes similar amendments to subsection 355-65(2) in Schedule 1 to enable disclosure to the Families Secretary or the Chief Executive Officer of Centrelink for the purposes of administering the new *Paid Parental Leave Act 2010*.

The amendment made by **item 83** commences on the later of the time the new *Paid Parental Leave Act 2010* commences and immediately after the commencement of item 1 of Schedule 1 to the new *Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010*.

### ***Amendments to the Veterans' Entitlements Act***

#### Income and parental leave pay

Service pensions and income support supplement are subject to income testing. The income test definitions are in section 5H of the Veterans' Entitlements Act, and subsection 5H(8) excludes specific amounts and types of payments from the broad concept of income.

**Item 84** inserts a new definition into subsection 5H(1). An ***instalment of parental leave pay*** is defined to mean an instalment of parental leave pay under the new *Paid Parental Leave Act 2010*.



Consistent with the comparable amendment to the concept of income in the Social Security Act, **item 85** inserts a new paragraph 5H(8)(d), which excludes an instalment of parental leave pay from the general concept of income.

'PBBP employment income' is disregarded in working out the amount of a person's pension bonus bereavement payment. **Item 86** amends the definition of PBBP employment income in section 45UUC of the Veterans' Entitlements Act so as to include an instalment of parental leave pay in the definition.

#### Recovery of parental leave pay from veterans' entitlements payments

Section 205 of the Veterans' Entitlements Act enables certain overpayments under that Act and other specified Acts (such as the Social Security Act) to be recovered by deductions from veterans' entitlements payments, by legal proceeding (other than an excluded amount) or by instalments.

**Item 87** inserts a new paragraph 205(1)(cb), which enables the recovery regime in section 205 to apply in relation to an amount that has been paid by way of parental leave pay that was not lawfully payable. Such an amount would be a debt owed to the Commonwealth by the recipient under the new *Paid Parental Leave Act 2010*.

The amendment made by **item 88** inserts a reference to new paragraph (cb) into subsection 205(2) so that the amount can be recovered by deductions.

The amendment made by **item 89** includes new paragraph (cb) in the definition of 'excluded amount' in subsection 205(8). The effect is that overpayments of parental leave pay will not be recovered by legal proceeding under authority of subsection 205(1C). This method of recovery would be available under the new *Paid Parental Leave Act 2010*.

**Item 90** also includes reference to new paragraph (cb) in the definition of 'recoverable amount' in subsection 205(8) so that the amount can be recovered by instalments in accordance with paragraph 206(1)(c) of the Veterans' Entitlements Act (subsection 205(1D) refers).

## Schedule 2 – Transitional provisions

### Summary

This Schedule provides for certain transitional matters relating to employer determinations (which require an employer to pay instalments of parental leave pay to a person). This Schedule also provides other transitional provisions required as a result of changes made by Schedule 1.

### Background

Chapter 3 of the new *Paid Parental Leave Act 2010* provides for the payment of instalments of parental leave pay either by a person's employer or the Secretary. Part 3-5 provides for the making of an employer determination where prescribed conditions (set out in new section 101) are met. If an employer determination is in force for an employer and a person, then the employer must pay instalments to the person if the employer has been funded to make those instalments.

This Schedule contains transitional provisions to ensure that the requirement for employers to provide parental leave pay to their employees will take effect for children born or adopted on or after 1 July 2011 (although employers will be able to opt in to provide any eligible employees with parental leave pay from 1 January 2011).

There are also transitional provisions relating to the amendments made by Schedule 1 to the Child Support Registration and Collection Act and amendments relating to certain family payments.

### Explanation of the changes

#### ***Part 1 – Transitional provisions relating to employer determinations under the Paid Parental Leave Act 2010***

##### **Item 1 – Employer determination made where expected or actual date of birth is before 1 July 2011**

This item modifies the operation of new section 101 of the new *Paid Parental Leave Act 2010* for a person where the child in relation to whom parental leave pay is claimed is expected to be born before 1 July 2011 (in the case where the claim is made before the child is born) or is born before 1 July 2011 (where the claim is made after the child is born).

The note refers the reader to **subitem 1(9)**, which deals with the situation where the expected date of birth of a child is before 1 July 2011 but the child is born on or after that date.

In these circumstances, **subitem 1(2)** provides a new subsection 101(1) that replaces subsections 101(1) and (2) of the new *Paid Parental Leave Act 2010*. An employer determination can only be made under modified subsection 101(1) if the employer has elected to pay the person their instalments of parental leave pay (under section 109 of the new *Paid Parental Leave Act 2010*) and the person has consented in their claim to the employer doing so. Consistent with the conditions that apply for employer determinations under the new *Paid Parental Leave Act 2010* where the employer has made an election under section 109, there would be no need for the employer to be likely to be required to pay instalments for at least 40 consecutive PPL days if the employer determination is made or for the person to have had 12 months' continuous employment with the employer prior to the expected date of birth or the day the child was born (as appropriate).

**Subitem 1(3)** labels an employer determination made under modified subsection 101(1) as a ***transitional employer determination*** for the purposes of **item 1**, for ease of reference.

**Subitem 1(4)** provides that section 103, subsection 107(2) and specified provisions dealing with the review of employer determinations do not apply to a transitional employer determination. These provisions are replaced by the rules in **subitems 1(5), (6), (7) and (8)**.

**Subitem 1(5)** enables an employer, who is given a notice under section 102 advising of the making of a transitional employer determination, to give the Secretary an acceptance notice within 14 days after the date of the Secretary's notice, if the employer accepts the obligation to pay instalments. The acceptance notice would need to comply with the requirements of section 104.

If the employer gives the Secretary an acceptance notice within that 14-day period, then the transitional employer determination comes into force on the day the Secretary receives the notice (**subitem 1(6)** refers). However, if the employer does not give the Secretary an acceptance notice within that timeframe, the Secretary must revoke the transitional employer determination and give notice of the revocation to the employer (**subitem 1(7)** refers). **Subitem 1(8)** allows the Secretary to extend the 14-day period in which an employer can provide an acceptance notice to the Secretary.

**Subitem 1(9)** deals with the situation where the child in respect of whom parental leave pay was claimed is born on or after 1 July 2011. In these circumstances, the Secretary may make an employer determination for the person and their employer under the usual rules in section 101 of the new *Paid Parental Leave Act 2010*. If the Secretary does so and has previously made a transitional employer determination for the person and the employer, then the transitional employer determination is taken never to have been made.

**Subitem 1(10)** ensures that sections 275 and 276 (which deal with how the new *Paid Parental Leave Act 2010* applies to adopted children and claims made in exceptional circumstances) also apply in relation to the transitional arrangements set out in this item.

**Item 2 – Employer determination made where expected date of birth is on or after 1 July 2011 but child born before that date**

**Item 2** applies where an employer determination is made for an employer and a person under the new *Paid Parental Leave Act 2010* on the basis of a claim made before the child's birth, where the expected date of birth is on or after 1 July 2011 but the child is born before 1 July 2011 and where the employer has not elected (under section 109) to pay the person their instalments. In this situation, the usual rules regarding employer determinations would have applied rather than the modified rules in **item 1** of this Schedule because the expected date of birth of the child was on or after 1 July 2011.

Under **subitem 2(2)**, if the Secretary makes a payability determination that parental leave pay is payable to the person in relation to the child, the notice of decision required to be given to the employer by the Secretary under section 113 must also state the day the child was born, be dated and advise the employer that the employer determination will be revoked unless the employer gives the Secretary notice agreeing to pay the person their instalments, within 14 days of the date of the Secretary's notice. This would allow the employer to make a choice about whether or not to pay the person their instalments, given that the child for whom parental leave pay is payable was born before 1 July 2011. Under **subitem 2(3)**, if the employer does not give the Secretary a notice, then the employer determination must be revoked with effect from the day of the revocation. The Secretary would be required to advise the employer of the revocation decision. In these circumstances, section 103 (which requires an employer to respond to the decision to make an employer determination by accepting the decision by acceptance notice or appealing the decision) is taken never to have applied.

**Subitem 2(4)** ensures that sections 275 and 276 (which deal with how the new *Paid Parental Leave Act 2010* applies to adopted children and claims made in exceptional circumstances) also apply in relation to the transitional arrangements set out in this item.

**Part 2 – Other transitional provisions**

**Item 3** is a transitional provision relating to eligibility for baby bonus and is discussed in this explanatory memorandum in the context of the relevant amendments to the Family Assistance Act made by Schedule 1.

**Item 4** is a transitional provision relating to eligibility for maternity immunisation allowance and is discussed in this explanatory memorandum in the context of the relevant amendment to section 39 of the Family Assistance Act made by Schedule 1.

**Item 5** contains transitional provisions relating to claims for FTB, baby bonus and maternity immunisation allowance. These transitional provisions are also discussed in this explanatory memorandum in the context of the relevant amendments to the Family Assistance Administration Act made by Schedule 1.

**Items 6 and 7** are transitional arrangements related to the amendments made by Schedule 1 to the Child Support Registration and Collection Act. They too are explained in the context of those child support amendments.