

2010-2011-2012

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**PAID PARENTAL LEAVE AND OTHER LEGISLATION AMENDMENT
(DAD AND PARTNER PAY AND OTHER MEASURES) BILL 2012**

EXPLANATORY MEMORANDUM

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

PAID PARENTAL LEAVE AND OTHER LEGISLATION AMENDMENT (DAD AND PARTNER PAY AND OTHER MEASURES) BILL 2012

OUTLINE

The Bill contains the measures set out below.

Dad and partner pay

This measure delivers on the Government's 2010 election commitment to extend the Paid Parental Leave scheme by introducing a two-week paternity leave payment. The new payment will be implemented from 1 January 2013.

The Government's Paid Parental Leave scheme will now be extended by introducing a new payment, called dad and partner pay, for eligible working fathers and partners. The new payment will be added to the *Paid Parental Leave Act 2010* by this Bill.

Dad and partner pay will be available to eligible fathers and partners, including adopting parents and parents in same-sex couples, who are caring for a child born or adopted from 1 January 2013. Eligible fathers and partners will be able to receive two weeks' dad and partner pay at the rate of the national minimum wage, the same weekly rate as for the existing parental leave pay – currently, \$590 a week before tax.

Other amendments

Amendments originally introduced on 3 November 2011 in the Paid Parental Leave and Other Legislation Amendment (Consolidation) Bill 2011 are being reintroduced as part of this Bill to streamline the consideration of current amendments to the legislation underpinning the Paid Parental Leave scheme.

Parental leave pay amendments

The Bill makes minor refinements to the *Paid Parental Leave Act 2010* to improve clarity and consistency. The amendments include refining the provisions which permit 'keeping in touch days', and clarifying the operation of a number of provisions, including debt recovery provisions, notice provisions, and the provisions relating to delegation of the Secretary's powers under the Act.

Fair work amendments

The Bill also amends the *Fair Work Act 2009* to clarify unpaid parental leave arrangements where there is a stillborn or infant death, to enable early commencement of unpaid parental leave, and to enable employees who are on unpaid parental leave to perform permissible paid work for short periods for the purposes of 'keeping in touch'.

Financial impact statement

Dad and partner pay

Dad and partner pay has a net cost to Government of \$188.5 million over five years.

Net cost

2010-11	2011-12	2012-13	2013-14	2014-15
\$0.1m	\$2.9m	\$38.2m	\$74.7m	\$72.6m

Other amendments

These amendments are part of the legislation for the Paid Parental Leave scheme and have no additional financial impact.

Regulation impact statement

The regulation impact statement for the Paid Parental Leave scheme appears at the end of the explanatory memorandum for the Paid Parental Leave Bill 2010.

Statement of compatibility with human rights

The statement of compatibility with human rights for this Bill appears at the end of this explanatory memorandum.

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NOTES ON CLAUSES

Abbreviations used in this explanatory memorandum

- **Data-matching Act** means the *Data-matching Program (Assistance and Tax) Act 1990*
- **Fair Work Act** means the *Fair Work Act 2009*
- **Income Tax Assessment Act** means the *Income Tax Assessment Act 1997*
- **Legislative Instruments Act** means the *Legislative Instruments Act 2003*
- **Paid Parental Leave Act** means the *Paid Parental Leave Act 2010*
- **PPL Rules** means the *Paid Parental Leave Rules 2010*
- **Social Security Act** means the *Social Security Act 1991*
- **Taxation Administration Act** means the *Taxation Administration Act 1953*
- **Veterans' Entitlements Act** means the *Veterans' Entitlements Act 1986*

Clause 1 sets out how the new Act is to be cited, that is, as the *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012*.

Clause 2 provides a table that sets out the commencement dates of the various sections in, and Schedules to, the new Act.

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

Schedule 1 – Dad and partner pay

Summary

This Schedule extends the Paid Parental Leave scheme by introducing a new payment, called dad and partner pay, for eligible working fathers and partners, including adopting parents and parents in same-sex couples, who are caring for a child born or adopted from 1 January 2013.

Eligible fathers and partners will be able to receive two weeks' dad and partner pay at the rate of the national minimum wage, the same weekly rate as for the existing parental leave pay – currently, \$590 a week before tax. Claims for dad and partner pay will be able to be lodged with the Department of Human Services from 1 October 2012, with payments to commence from 1 January 2013.

Background

Extending the Paid Parental Leave scheme

The Paid Parental Leave scheme commenced on 1 January 2011 and provides eligible primary carers (usually the mother) of children born or adopted from 1 January 2011 with up to 18 weeks' parental leave pay at the rate of the national minimum wage.

This Schedule extends the Paid Parental Leave scheme to introduce a new payment, called dad and partner pay, for eligible fathers and partners, including adopting parents and parents in same-sex couples, who are caring for a child born or adopted from 1 January 2013.

Dad and partner pay is based on the paid paternity leave payment recommended by the Productivity Commission in its 2009 inquiry report, *Paid Parental Leave: Support for Parents with Newborn Children*.

Overview of dad and partner pay

This Schedule amends the Paid Parental Leave Act to add dad and partner pay to the Paid Parental Leave scheme. To be eligible for dad and partner pay, a claimant will need to satisfy the same income test, work test and residency requirements as apply to parental leave pay. Claims for dad and partner pay will be able to be made through the Department of Human Services, which will deliver payments to eligible claimants. Employers will not make dad and partner pay payments.

Dad and partner pay will be available during the first 12 months after the birth or adoption of the child, and will give fathers and partners financial assistance to take more time off work to support new mothers and primary carers in their caring role. It will also help fathers and partners to spend more time bonding with their child and be involved in their child's care at an early age.

Eligible fathers and partners must be caring for the child (whether this be primary care or joint care) and must not be on paid leave or at work during the period they receive dad and partner pay.

Who can claim dad and partner pay

The following people can make a claim for dad and partner pay for a child:

- the biological father of the child;
- the partner of the child's birth mother (including same-sex partner);
- an adoptive parent of the child;
- a person who satisfies circumstances prescribed by the PPL Rules.

Birth mothers will not be able to claim dad and partner pay. A person can only make a claim for dad and partner pay for a child who was born or adopted on or after 1 January 2013.

Eligibility for dad and partner pay

To be eligible for dad and partner pay, a person will need to:

- satisfy the 'work test' – the person must:
 - have worked continuously for at least 10 of the 13 months prior to their nominated start date for dad and partner pay, with a break of no more than eight weeks between any two consecutive work days; and
 - have undertaken at least 330 hours of paid work during the 10-month period (an average of around one day of paid work a week);
- satisfy the 'income test' – the person must have income of \$150,000 or less, based on the dad or partner's adjusted taxable income in the previous financial year before the nominated start date for dad and partner pay or the date of claim, whichever is the earlier; and
- satisfy the 'Australian residency test' – the person must be an Australian resident; and
- be providing care (whether this be primary care or joint care) for a child born or adopted on or after 1 January 2013; and
- not be working during the period the person receives the payment.

Dad and partner pay will be available to eligible full-time, part-time, casual, seasonal, contract and self-employed workers. The payment will be available in addition to any employer-funded paid leave, or unpaid leave, but cannot be taken at the same time as paid leave.

Dad and partner pay will be available to fathers and partners who meet the eligibility requirements, regardless of whether the mother or primary carer has been in paid work or at home before the birth or adoption. A father may be eligible for dad and partner pay even if a mother is not receiving parental leave pay. However, dad and partner pay cannot be transferred to the mother.

Dad and partner pay will not be payable to a person for a child if it is already payable for the child in relation to a different claim or another person (that is, a partner or former partner).

In the case of a multiple birth or adoption, dad and partner pay will only be payable to the person in relation to one child of that multiple birth or adoption.

Similarly, a person cannot claim dad and partner pay for two children at the same time, even where those children were not born or adopted as part of the same birth or adoption.

A person may become eligible for dad and partner pay in other exceptional circumstances prescribed by the PPL Rules.

Payment of dad and partner pay

Eligible fathers and partners will be able to receive two weeks' dad and partner pay at the rate of the national minimum wage, the same weekly rate as for the existing parental leave pay – currently, \$590 a week before tax.

A person claiming dad and partner pay will need to nominate the date they want their payment to start. The earliest day for which dad and partner pay can be paid is the date of birth of the child or the date of placement of an adopted child. The nominated start date for dad and partner pay must be before the child's first birthday. Payment will be made from the nominated start date where all claim requirements have been met.

Claims for dad and partner pay will be able to be lodged from 1 October 2012, and eligible fathers and partners will receive payments from the Department of Human Services from 1 January 2013.

Eligible claimants will be able to receive dad and partner pay in addition to any unused parental leave pay transferred to them by the primary carer. However, both payments cannot be taken at the same time.

Families will be able to receive a maximum of 20 weeks' payment under the scheme. To maintain equity with the maximum parental leave pay entitlement for birth mothers, a father or partner will only be eligible to receive a maximum of 18 weeks' combined parental leave pay and dad and partner pay, should the mother transfer some or all of her payment to the father.

Families eligible for dad and partner pay may also continue to receive other family assistance payments, such as baby bonus and family tax benefit.

Consistency with parental leave pay

Provisions relating to compliance, enforcement and review of decisions for dad and partner pay will be consistent with those for parental leave pay. On this basis, the amendments made to Chapter 4 (Compliance and enforcement), Chapter 5 (Review of decisions) and Chapter 6 (Miscellaneous) of the Paid Parental Leave Act are minimal. However, references to employers and employees in these Chapters will not apply to dad and partner pay, as employers will have no role in providing dad and partner pay to their employees.

Consequential amendments

This Schedule also makes consequential amendments to the Data-matching Act, the Income Tax Assessment Act, the Social Security Act, the Taxation Administration Act, and the Veterans' Entitlements Act to allow dad and partner pay to operate in these Acts in the same way as parental leave pay.

This Schedule will commence on 1 October 2012, to allow claims for dad and partner pay to be lodged from this date and for payments to commence from 1 January 2013.

Explanation of the changes

Part 1 – Dad and partner pay

Amendments to the Paid Parental Leave Act

Item 1 repeals the long title of the Act and substitutes a new long title 'An Act to provide for a paid parental leave scheme, and for related purposes.'

Chapter 1 – Introduction

Part 1-1 Introduction

Item 2 repeals the heading to Division 1A of Part 1-1 of Chapter 1 and substitutes a new heading 'Division 1A – Objects of this Act.'

Item 3 repeals the heading to section 3A and substitutes a new heading '3A Objects of this Act'.

Item 4 inserts new subsections 3A(1A) and (1B) before subsection 3A(1) on the objects of the Act.

New subsection 3A(1A) provides that the Act establishes a Paid Parental Leave scheme with two payments – parental leave pay, and dad and partner pay.

New subsection 3A(1B) provides that the objects of the Paid Parental Leave scheme are to:

- signal that taking time out of the paid workforce to care for a child is part of the usual course of life and work for both parents; and
- promote equality between men and women and balance between work and family life.

Item 5 amends subsection 3A(1). This item omits ‘this Act’ and substitutes ‘parental leave pay’ in subsection 3A(1).

Item 6 amends paragraph 3A(1)(c). This item omits ‘workforce; and’ and substitutes ‘workforce’.

Item 7 repeals paragraph 3A(1)(d). This item is consequential to **item 4**.

Item 8 repeals subsection 3A(2) and substitutes a new subsection which provides that the object of dad and partner pay is to provide financial support to fathers and partners caring for newborn or newly adopted children, in order to:

- increase the time that fathers and partners take off work around the time of birth or adoption; and
- create further opportunities for fathers and partners to bond with the child; and
- allow fathers and partners to take a greater share of caring responsibilities and to support mothers and partners from the beginning.

Item 9 amends the first paragraph under the heading ‘Overview’ in the Guide to the Act in section 4 to include an outline of dad and partner pay.

Item 10 amends the last paragraph under the heading ‘Overview’ in the Guide to the Act in section 4, to include reference to dad and partner pay.

Item 11 amends the Guide to the Act in section 4 by adding an overview of new Chapter 3A – Dad and partner pay.

Item 12 amends the last paragraph under the heading ‘Chapter 4 – Compliance and enforcement’. This item omits ‘parental leave pay scheme’ and substitutes ‘paid parental leave scheme’ in the Guide to the Act in section 4.

Item 13 amends the third paragraph under the heading ‘Chapter 6 – Miscellaneous’ in the Guide to the Act in section 4.

Part 1-2 – Definitions

Item 14 inserts into section 6 a reference to the new term ***caring***. The new term is defined in new subsections 115CL(1) and 115CL(4). New subsection 115CL(1) provides that a DAPP claimant is caring for a child on a day in the DAPP claimant's reference period if the child is in the DAPP claimant's care in that period. **Item 31** defines reference period. New subsection 115CL(4) provides that, despite subsection 115CL(1), a person is not caring for a child on a day if, before that day, the child has died.

Item 15 repeals the definition of ***claim*** in section 6 and substitutes a new definition. For parental leave pay, a claim means a primary claim, a secondary claim or a tertiary claim for parental leave pay for a child. For dad and partner pay, a claim means a claim for dad and partner pay for a child.

Item 16 amends the definition of ***claimant*** in section 6 by omitting 'or tertiary claimant' and substituting 'tertiary claimant or DAPP claimant'. Claimant means a person who is a primary claimant, secondary claimant or tertiary claimant in relation to parental leave pay or a DAPP claimant.

Item 17 inserts into section 6 a definition of the new term ***dad and partner pay***. Dad and partner pay means payments of dad and partner pay under the Paid Parental Leave Act.

Item 18 inserts into section 6 a definition of the new term ***DAPP claimant***. A DAPP claimant means a person who has made an effective claim for dad and partner pay for a child.

Item 19 inserts into section 6 a reference to the new term ***DAPP period***. A DAPP period is defined in new subsection 115AE(1), which provides that, if the Secretary makes a determination that dad and partner pay is payable to a person for a child, the Secretary must specify, in the determination, the period for which dad and partner pay is payable to the person. That period is the person's DAPP period.

Item 20 repeals the definition of ***effective claim*** in section 6 and substitutes a new definition. An effective claim, for parental leave pay, means a claim that is made in accordance with Part 2-4. An effective claim, for dad and partner pay, means a claim that is made in accordance with new Part 3A-4.

Item 21 repeals the definition of ***eligible*** in section 6 and substitutes a new definition. The new definition of eligible provides that section 31 sets out when a person is eligible for parental leave pay and new section 115CB sets out when a DAPP claimant is eligible for dad and partner pay.

Item 22 repeals the definition of ***income test*** in section 6 and substitutes a new definition. The new definition refers the reader to section 37 for the income test definition for parental leave pay, and new section 115CG for the income test definition for dad and partner pay.

The new note under the definition of **income test** provides guidance that, for dad and partner pay, Division 4 of new Part 3A-3 (which includes new section 115CG) is relevant in applying the income test to claimants for dad and partner pay.

Item 23 repeals the definition of **initial eligibility determination** in section 6 and substitutes a new definition. The new definition provides that an initial eligibility determination for parental leave pay is set out in section 26 and an initial eligibility determination for dad and partner pay is set out in new section 115BL.

New section 115BL provides that, if a person makes an effective claim for dad and partner pay, the Secretary may make a determination (the **initial eligibility determination**) that the person is initially eligible for dad and partner pay for the child if, when making the determination, the Secretary is satisfied that the person satisfies the work test, the income test and the Australian residency test, or will satisfy those tests on the day immediately before the person's nominated start date.

Item 24 inserts into section 6 a reference to the new term **maximum DAPP period**. The new term is defined in new subsection 115AE(3), which provides that the maximum DAPP period for a child is the period that starts on the child's maximum DAPP period start day and ends on the child's maximum DAPP period end day.

Item 25 inserts into section 6 a reference to the new term **maximum DAPP period end day**. The new term is defined in new subsection 115AE(5), which provides that the maximum DAPP period end day for a child is the earlier of the day that is 13 days after the maximum DAPP period start day or the day before the child's first birthday.

Item 26 inserts into section 6 a reference to the new term **maximum DAPP period start day**. The new term is defined in new subsection 115AE(4), which provides that the maximum DAPP period start day for a child is the later of the day the child is born or the claimant's nominated start date.

Item 27 repeals the definition of **nominated start date** in section 6 and substitutes a new definition. The nominated start date for parental leave pay is set out in subsection 57(1), which provides that, if a claim for parental leave pay is a primary claim, the claim must state a specific date (the nominated start date) on which the primary claimant wants parental leave pay to start being paid.

The nominated start date for dad and partner pay is set out in new subsection 115DG(1), which provides that the claim for dad and partner pay must state a specific date (the nominated start date) which is the first day of the period for which the claimant wants to be paid dad and partner pay.

Item 28 inserts into section 6 a reference to the new term **not working**. Not working is defined in new section 115CM, which provides that a DAPP claimant is not working on a day unless, on that day, the DAPP claimant performs one hour or more of paid work, other than for a permissible purpose for self-employed workers, or the DAPP claimant is on paid leave.

Item 29 repeals the definition of **payability determination** in section 6 and substitutes a new definition. A payability determination for parental leave pay means a determination made under section 13, 14, 15, 16 or 17 that parental leave pay is, or is not, payable to a person for a child. A payability determination for dad and partner pay means a determination made under new section 115BB that dad and partner pay is, or is not, payable to a person for a child.

Item 30 repeals the definition of **reference income year** in section 6 and substitutes a new definition. The reference income year for a primary claimant or secondary claimant for parental leave pay is defined in section 39. Paragraph 39(a) provides that the reference income year for a person who is a primary claimant is the income year that ended before the earlier of the day the person made the claim and the day the child was born. Paragraph 39(b) provides that, if the person is a secondary claimant, the reference income year is the income year that ended before the earlier of the day the person made the claim and the day the person became the child's primary carer.

The reference income year for a DAPP claimant is defined in new section 115CH, which provides that the reference income year for a DAPP claimant is the year that ended before the earlier of the day the claimant made the claim for dad and partner pay and the DAPP claimant's nominated start date.

Item 31 repeals the definition of **reference period** in section 6 and substitutes a new definition. The reference period for a person claiming parental leave pay is defined in subsection 47(2), which provides that a person's reference period is the period that is determined by the Secretary for the purposes of making a payability determination on the person's claim.

The reference period for a person claiming dad and partner pay is defined in new subsection 115CL(2), which provides that a DAPP claimant's reference period is the period that is determined by the Secretary for the purposes of making a payability determination on the person's claim.

Item 32 repeals the definition of **relevant PPL income limit** in section 6 and substitutes a new definition.

The relevant PPL income limit for a primary claimant or a secondary claimant is defined in section 40. Paragraph 40(a) provides that, if the person is a primary claimant, the relevant PPL income limit is the PPL income limit that applies on the earlier of the following days – the day the person made the claim and the day the child was born. Paragraph 40(b) provides that, if the person is a secondary claimant, the relevant PPL income limit is the PPL income limit that applies on the earlier of the following days – the day the person made the claim and the day the person became the child's primary carer.

The relevant PPL income limit for a DAPP claimant is defined in new section 115CJ, which provides that the relevant PPL income limit for a DAPP claimant is the PPL income limit that applies on the earlier of the following days – the day the DAPP claimant made the claim for dad and partner pay and the DAPP claimant's nominated start date.

Item 33 repeals the definition of **saved amount** and substitutes a new definition. The meaning of saved amount for parental leave pay comes from subsection 97(2). The method statement in subsection 97(2) outlines how a saved amount for parental leave pay in relation to a garnishee order is worked out.

The meaning of a saved amount for dad and partner pay comes from new subsection 115EK(2). The method statement in new subsection 115EK(2) outlines how a saved amount for dad and partner pay in relation to a garnishee order is worked out.

Item 34 repeals the definition of **work test** in section 6 and substitutes a new definition. The work test is set out in Division 3 of Part 2-3 and new sections 115CE and 115CF.

The note under the new work test definition provides guidance that new sections 115CE and 115CF and other provisions of Division 3 of new Part 3A-3 are relevant in applying the work test to claimants for dad and partner pay.

Item 35 repeals the definition of **work test period** in section 6 and substitutes a new definition. The work test period for a primary claimant or secondary claimant is set out in section 33. The work test period for a DAPP claimant is set out in new section 115CD.

Chapter 2 – When parental leave pay is payable to a person

Part 2-2 – Determinations about whether parental leave pay is payable to a person

Item 36 repeals the heading to section 21 and substitutes the heading '21 Parental leave pay is already payable to the person etc'.

Item 37 repeals subsection 21(1) and substitutes a new subsection. New subsection 21(1) provides that the Secretary must not make a payability determination that parental leave pay is payable to a person for a child if any of the following applies:

- there is in force another payability determination that parental leave pay is payable to the person for the child, in respect of a different claim made by the person; or
- if the person is the primary claimant – there is in force a payability determination that parental leave pay is payable to the person's partner for the child, or the person's former partner (when he or she was the person's partner) for the child; or

- if the person is the secondary claimant – there is in force a payability determination that parental leave pay is payable to the person’s partner for the child (other than as the primary claimant to which the person’s secondary claim relates) or the person’s former partner (when he or she was the person’s partner) for the child (other than as the primary claimant to which the person’s secondary claim relates).

Items 38, 39, 40, 42, 43 and 44 insert ‘about parental leave pay’ into sections 22, 23, 24, 27, 28 and 29 to clarify that these sections relate to parental leave pay and not dad and partner pay.

Item 41 repeals the heading to Division 5 of Part 2-2 and substitutes a new heading ‘Division 5 – Initial eligibility determinations about parental leave pay’. This amendment is to clarify that the Division includes provisions on initial eligibility determinations about parental leave pay and does not include provisions relating to dad and partner pay.

Part 2-3 – Eligibility for parental leave pay

Items 45 amends the Guide to Part 2-3 in section 30 to omit ‘pregnancy.’ and substitute ‘pregnancy (see section 36A) or if the person is already eligible for dad and partner pay (see section 36B)’.

Item 46 amends the Guide to Part 2-3 in section 30 to omit ‘indexed’ and substitute ‘indexed. A special rule applies if the person is already eligible for dad and partner pay (see subsection 37(2)).’.

Item 47 inserts the heading ‘*Eligible*’ before subsection 31(2). This heading relates to subsections 31(2), (3) and (4), which deal with the main cases when a person is eligible for parental leave pay for a child on a day.

Item 48 inserts new subsections 31(4A) and (4B) after subsection 31(4). New subsections 31(4A) and (4B) deal with situations in which a person is not eligible for dad and partner pay.

New subsection 31(4A) applies if there is in force a payability determination that dad and partner pay is payable to a person for a child for the person’s DAPP period. In this situation, despite subsections (2), (3) and (4), the person is not eligible for parental leave pay for the child on a day that is in the person’s DAPP period. This means that a person cannot be eligible for parental leave pay if there is an overlap with their DAPP period.

Example

This situation will apply where a father has been deemed eligible and dad and partner pay is payable with a nominated start date of 6 March. Based on this date, the father will receive dad and partner pay until 19 March. If the father makes a subsequent claim as a secondary claimant for 15 weeks' parental leave pay to start on 13 March, which is half-way through his nominated DAPP period, the father will not be eligible for parental leave pay on the days for which dad and partner pay has already been determined to be payable, that is, the days that overlap (13 March – 19 March).

New subsection 31(4B) applies if there is in force a payability determination that dad and partner pay is payable for a child for the person's DAPP period, and the total number of days in the DAPP period and the reference period for the person's claim for parental leave pay for the child exceeds 126 days. In this situation, despite subsections (2), (3) and (4), the Secretary must exclude from the person's reference period the excess number of days. The person is not eligible for parental leave pay for the child on a day excluded by the Secretary in this situation. This subsection will apply where a father or partner claims more than 18 weeks of combined dad and partner pay and parental leave pay.

Example

When a father takes two weeks' (14 days') dad and partner pay from the date of birth of his child and subsequently claims all 18 weeks (126 days) of parental leave pay, transferred from the mother, the father will only be eligible for the first 16 weeks (112 days) of parental leave pay. The Secretary excludes the final two weeks' (14 days') parental leave pay as those weeks would result in the father receiving 20 weeks (140 days) of combined dad and partner pay and parental leave pay, exceeding the 18-week (126-day) cap for individuals claiming payments under the Act.

Item 49 repeals Step 1 in the method statement to the work test in section 32 and substitutes a new Step 1. New Step 1 explains that the first step in working out whether a person satisfies the work test on a day is to work out the person's work test period.

The new note under Step 1 provides guidance that the work test period for DAPP claimants is defined in section 33 for primary claimants and for secondary claimants and in new section 115CD.

Item 50 omits 'Note' and substitutes 'Note 1' in the note under section 32.

Item 51 amends the note under section 32 to omit 'section 36A' and substitute 'sections 36A (for claimants for parental leave pay) and 115CE (for DAPP claimants)'.

Item 52 adds a note (Note 2) at the end of section 32. The note provides guidance that section 36B is an alternative way of satisfying the work test for a person claiming parental leave pay who is already eligible for dad and partner pay. Similarly, an equivalent provision is provided in new section 115CF for a DAPP claimant who is already eligible for parental leave pay.

Item 53 adds a note at the end of subsection 33(3). The note provides guidance that the work test period for a DAPP claimant is provided for in new section 115CD.

Item 54 adds new section 36B at the end of Division 3 of Part 2-3. New section 36B provides that a claimant for parental leave pay also satisfies the work test on a day if the Secretary is satisfied that the claimant is eligible for dad and partner pay for the child. This will benefit fathers and partners who would otherwise have to meet the work test twice.

Example

A father takes two weeks' dad and partner pay from the date of birth of his child, after satisfying the work test for his dad and partner pay claim by working for more than 330 hours in 10 of the 13 months before his nominated start date for dad and partner pay. When the baby is six months old, the father becomes the child's primary carer and claims the remaining 10 weeks of parental leave pay, transferred from the birth mother. This section will apply to allow the father to rely on his established eligibility for dad and partner pay to satisfy the work test for parental leave pay. The father will not be required to satisfy the work test a second time, by working at least 330 hours in 10 of the 13 months before the date he takes on primary care of the child, in order to be eligible for parental leave pay.

Item 54 also adds a note under new section 36B, which provides guidance that new section 115CF is the equivalent provision for a DAPP claimant.

Item 55 inserts '(1)' before 'A person' in section 37. This item is consequential to **item 56**.

Item 56 adds new subsection 37(2). New subsection 37(2) provides that a claimant for parental leave pay also satisfies the income test on a day if the Secretary is satisfied that the claimant is eligible for dad and partner pay for the child. This subsection will benefit fathers and partners applying for both parental leave pay and dad and partner pay and who would otherwise have to meet the income test twice based on different income reference years.

Example

A father claims dad and partner pay with a nominated start date of 24 June 2013. The mother decides to return to work early and transfers her remaining 16 weeks' parental leave pay to the father from 8 July 2013, when he takes over primary care of their child. The father met the income test for his DAPP period in May 2013, when he lodged his claim for dad and partner pay, based on his adjusted taxable income in the financial year ending 30 June before the day he made his claim for dad and partner pay, that is, the 2011-12 financial year. When the father takes over primary care of the child on 8 July 2013 (and later lodges his claim for parental leave pay), the income reference year for his PPL period will be the 2012-13 financial year, that is, the financial year ending 30 June before he became the child's primary carer. This section will apply so the father is treated as having satisfied the income test for his claim for parental leave pay despite its applying to a different income reference year, based on the father's previously establishing his eligibility for dad and partner pay for the child. The father will not be required to satisfy two income tests for his two payment claims under the Act.

The new note under new subsection 37(2) provides guidance that new subsection 115CG(2) provides an equivalent rule in relation to a DAPP claimant to subsection 37(2) for a parental leave pay claimant.

Item 57 adds a note under section 39, which deals with the reference income year for a person. The note provides guidance that the reference income year for a DAPP claimant is provided for in new section 115CH.

Item 58 adds a note at the end of section 40, which deals with the relevant PPL income limit for a person. The note provides guidance that the relevant PPL income limit for a DAPP claimant is provided for in new section 115CJ.

Part 2-4 – Claims for parental leave pay

Items 59, 60, 61, 62, 63, 64, 65 and 66 insert 'for parental leave pay' into sections 52 and 60 and subsections 53(1), 55(1), 55(2), 55(3), 56(1), 59(1), 61(1) and 61(3), to clarify that that these provisions relate to parental leave pay and not dad and partner pay.

Chapter 3A – Dad and partner pay

Part 3A-1 – Key provisions

Item 67 inserts after Chapter 3 new chapter 3A – Dad and partner pay.

Division 1 – Guide to this Part

New section 115AA sets out the Guide to Part 3A-1, which deals with the key provisions for new Chapter 3A about dad and partner pay.

Division 2 – When dad and partner pay is payable to a person

A determination must be made for dad and partner pay to be payable to a person

New section 115AB provides that dad and partner pay is payable to a person for a child, for a period, if a determination of the Secretary that dad and partner pay is payable to the person for that period is in force under new section 115BB.

The note under new section 115AB provides guidance that new Part 3A-2 deals with the rules about when the Secretary can make a determination that dad and partner pay is, or is not, payable to a person.

For the determination to be made, the person must be eligible

New section 115AC provides that the Secretary cannot make a determination that dad and partner pay is payable to a person, for a child for a period unless the person was or will be eligible for dad and partner pay during the period.

The note under new section 115AC provides guidance that new Part 3A-3 provides for the rules about when a person is eligible for dad and partner pay.

For the determination to be made, the person must claim

New section 115AD provides that the Secretary cannot make a determination that dad and partner pay is payable to a person for a child for a period unless the person has made an effective claim for the child.

The note under new section 115AD provides guidance that new Part 3A-4 provides for the rules about how to make an effective claim.

The determination must specify the person's DAPP period

New section 115AE inserts provisions dealing with the person's DAPP period in relation to a Secretary determination that dad and partner pay is payable.

New subsection 115AE(1) provides that the person's **DAPP period** is the period that the Secretary specifies in a determination as being the period for which dad and partner pay is payable to the person. If the Secretary makes a determination that dad and partner pay is not payable, the person does not have a DAPP period.

The note under new subsection 115AE(1) provides guidance that the reader should refer to new subsection 115BB(3) for a DAPP claimant's DAPP period.

New subsection 115AE(2) provides that a person's DAPP period must be the same as, or within, the maximum DAPP period for the child.

New subsection 115AE(3) provides that the **maximum DAPP period** for a child is the period that starts on the child's maximum DAPP period start day and ends on the child's maximum DAPP period end day.

New subsection 115AE(4) provides that the **maximum DAPP period start day** for a child is the later of the following days – the day the child was born and the claimant’s nominated start date.

New subsection 115AE(5) provides that the **maximum DAPP period end day** for a child is the earlier of the following days – the day that is 13 days after the maximum DAPP period start day and the day before the child’s first birthday.

Part 3A-2 – Determinations about whether dad and partner pay is payable to a person

Division 1 – Guide to this Part

New section 115BA sets out the Guide to new Part 3A-2, which deals with determinations about whether dad and partner pay is payable to a person.

Division 2 – Determinations about whether dad and partner pay is payable to a person

Determination on a claim for dad and partner pay

New section 115BB deals with determinations on a claim for dad and partner pay.

New subsection 115BB(1) provides that, if a person has made an effective claim for dad and partner pay for a child, the Secretary must make a determination on the claim.

New subsection 115BB(2) provides that the Secretary must determine that dad and partner pay is payable to the DAPP claimant for the claimant’s DAPP period if, when making the determination, the Secretary is satisfied that the DAPP claimant was or will be eligible for dad and partner pay on each day in that period.

The note under new subsection 115BB(2) clarifies that the Secretary is prevented from making a determination under new subsection 115BB(2) in certain circumstances. The note provides guidance that Division 3 deals with these situations.

New subsection 115BB(3) provides that the Secretary must specify in the determination made under subsection (2) that the claimant’s DAPP period:

- starts on the child’s maximum DAPP period start day; and
- ends on the child’s maximum DAPP period end day – if the Secretary is satisfied that the DAPP claimant was or will be eligible for dad and partner pay on each day in the child’s maximum DAPP period; or
- ends on the last day in the child’s maximum DAPP period that the DAPP claimant was or will be eligible for dad and partner pay – if the Secretary is satisfied that the DAPP claimant was or will be eligible for a period that is shorter than the child’s maximum DAPP period.

New subsection 115BB(4) provides that the Secretary must determine that dad and partner pay is not payable to the DAPP claimant if the Secretary is not satisfied of the matters in subsection (2).

Division 3 – When the Secretary cannot make a determination that dad and partner pay is payable

The child's birth has not been verified

New section 115BC provides that the Secretary must not make a payability determination that dad and partner pay is payable to a person for a child unless a person has verified the child's birth.

The note under new section 115BC provides guidance to refer to subsection 18(2) for how a person verifies a child's birth.

Subsection 18(2) provides that a person verifies a child's birth if the person gives the Secretary a completed birth verification form for the child, and, if applicable, gives the Secretary information showing that the child's birth has been registered under the law, or that the person has applied to have the birth of the child registered under the law.

New section 115BC does not require the person verifying the child's birth for the purpose of a dad and partner pay claim to be the person claiming dad and partner pay. For example, a mother claiming parental leave pay may verify the child's birth for the purpose of her claim. This birth verification can be used to satisfy the requirements of new section 115BC for a claim for dad and partner pay.

The child was born before 1 January 2013

New section 115BD provides that the Secretary must not make a payability determination that dad and partner pay is payable to a person for a child if the child was born before 1 January 2013. Payments of dad and partner pay will commence from 1 January 2013 for eligible fathers and partners.

Multiple births

New section 115BE provides that the Secretary must not make a payability determination that dad and partner pay is payable to a person for a child if the child and another child are born during the same multiple birth, and dad and partner pay is or was payable to the person or another person for the other child. This restriction applies even if children born during the same multiple birth are being cared for within different families.

Dad and partner pay is already payable to the person etc.

New subsection 115BF(1) provides that the Secretary must not make a payability determination that dad and partner pay is payable to a person for a child if there is in force another payability determination that dad and partner pay is payable to the person for the child, in respect of a different claim made by the person, or there is in force a payability determination that dad and partner pay is payable to another person for the child.

New subsection 115BF(2) provides that, if a claim is made in circumstances prescribed by the PPL Rules and there is in force a payability determination that dad and partner pay is payable to another person for the child – this restriction does not apply.

Division 4 – General provisions applying to determinations about whether dad and partner pay is payable

Assumptions when making the determination

New section 115BG provides that, in deciding whether to make a payability determination about dad and partner pay, the Secretary may act on the assumption that the state of affairs known to the Secretary when making the determination will remain unchanged. This would not prevent the Secretary from reviewing the determination if the Secretary becomes aware that the state of affairs has changed or was different.

When the determination is in force

New section 115BH provides that a payability determination about dad and partner pay comes into force on the day it is made and continues in force unless it is revoked or set aside. Revocation of a determination for dad and partner pay may occur under new section 115BK, or the determination may be set aside under Chapter 5 which deals with review of decisions.

Notice of the determination

New section 115BJ provides that, if the Secretary makes a payability determination about dad and partner pay, the Secretary must give a notice of the determination to the DAPP claimant, stating whether dad and partner pay is payable. If dad and partner pay is payable, the Secretary must state in the notice the DAPP claimant's DAPP period. The notice must also state that the DAPP claimant may apply for review of the determination in the manner set out in Chapter 5.

Revoking the determination on request

New section 115BK allows a DAPP claimant to request a revocation of their payability determination that dad and partner pay is payable.

New subsection 115BK(1) provides that, if a payability determination is made that dad and partner pay is payable to a person and the person requests the Secretary to revoke the determination before the start of the person's DAPP period, then the Secretary must revoke the determination. The revocation must be in the form approved by the Secretary.

New subsection 115BK(2) provides that the revocation is taken to have come into force on the day the person requested the Secretary to revoke the determination.

Division 5 – Initial eligibility determinations about dad and partner pay

Initial eligibility determinations

New section 115BL provides that, if a person makes an effective claim for dad and partner pay, the Secretary may make a determination (called the **initial eligibility determination**) that the person is initially eligible for dad and partner pay for the child, if the Secretary is satisfied that the person satisfies: the work test, the income test and the Australian residency test, or will satisfy these tests on the day immediately before the person's nominated start date.

Assumptions when making the initial eligibility determination

New section 115BM provides that, in deciding whether to make an initial eligibility determination about dad and partner pay, the Secretary may act on the assumption that the state of affairs known to the Secretary when making the determination will remain unchanged. Despite this section, the Secretary can look at the actual state of affairs again when a payability determination is being made.

When the initial eligibility determination comes into force

New section 115BN provides that an initial eligibility determination about dad and partner pay comes into force on the day it is made.

Notice of the initial eligibility determination

New section 115BP provides that, if the Secretary makes an initial eligibility determination about dad and partner pay under section 115BL, the Secretary must give a notice of the determination to the DAPP claimant.

Part 3A-3 – Eligibility for dad and partner pay

Division 1 – Guide to this Part

New section 115CA sets out the Guide to new Part 3A-3, which deals with eligibility for dad and partner pay.

Division 2 – When a DAPP claimant is eligible for dad and partner pay

When a DAPP claimant is eligible for dad and partner pay

New subsection 115CB(1) provides that this section sets out when a DAPP claimant is eligible for dad and partner pay for a child on a day.

New subsection 115CB(2) provides that a person is eligible for dad and partner pay on a day, if, on that day:

- the claimant satisfies the work test (Division 3 of Part 2-3 and new sections 115CD, 115CE and 115CF); and
- the claimant satisfies the income test (Division 4 of Part 2-3 and new sections 115CG, 115CH and 115CJ); and
- the claimant satisfies the Australian residency test (Division 5 of Part 2-3); and
- the claimant is caring for the child (Division 6 of Part 3A-3); and
- the claimant is not working (Division 7 of Part 3A-3).

New subsections 115CB(3) and (4) set out the eligibility criteria for dad and partner pay, when the child is stillborn or where exceptional conditions as prescribed by the PPL Rules apply.

New subsection 115CB(3) provides that a DAPP claimant is eligible for dad and partner pay for a child on a day if the child is stillborn or has died before that day and, on that day, the claimant would be eligible for dad and partner pay under subsection (2), disregarding whether the claimant is caring for the child and is or is not working, and considering instead whether the claimant would have been caring for the child on that day had the child not been stillborn or died.

New subsection 115CB(4) provides that a DAPP claimant is eligible for dad and partner pay for a child on a day if, on that day, the claimant satisfies: the work test, the income test, the Australian residency test and the conditions prescribed by the PPL Rules. This gives flexibility to allow tailored eligibility criteria to be determined for exceptional situations.

Example

A police officer claims two weeks' dad and partner pay starting on his child's date of birth and is deemed eligible and payable. In the second week of his DAPP period, he is compulsorily recalled to duty and returns to work for four days that week. As for parental leave pay, PPL Rules could be made that would enable people in his situation to continue to receive dad and partner pay even though they may no longer meet the usual eligibility criteria because they are working for part of their DAPP period.

New subsection 115CB(5) provides that, if there is in force a payability determination that parental leave pay is payable to a person for a child for the person's PPL period, then, despite subsections (2), (3) and (4), the person is not eligible for dad and partner pay for the child on a day that is in the PPL period. This means a person cannot be eligible for dad and partner pay if there is an overlap with a person's PPL period.

Example

A father has been deemed eligible and payable for 10 weeks of parental leave pay as a secondary claimant, receiving the payment from 4 February 2013 until 14 April 2013. If the father then makes a subsequent claim for two weeks' dad and partner pay for the period 11 to 24 March 2013, which is during the father's PPL period, the father will not be eligible for dad and partner pay for any day of that period because parental leave pay has already been determined to be payable for those days, that is, the days that overlap (11 to 24 March 2013). In these cases, the father may be advised to test his eligibility for dad and partner pay for a period that does not overlap with his parental leave pay period.

New subsection 115CB(6) provides that, if there is in force a payability determination that dad and partner pay is payable to a person for a child for the person's DAPP period, then, despite subsections (2), (3) and (4), the person is not eligible for dad and partner pay for another child on a day that is in that DAPP period. This means that a person cannot be eligible for dad and partner pay if there is an overlap with the DAPP period for another child.

Example

A father has a child under one year old with a former partner and a newborn baby with his current partner and he makes a claim for dad and partner pay in relation to each of his children, listing the same nominated start date (10 December) for both claims. This subsection prevents this father from receiving dad and partner pay for both children at the same time. In this situation, the father will only be eligible for dad and partner pay in relation to one child for the period 10 December to 23 December. To receive dad and partner pay for the second child, the father will have to list a different nominated start date which is not during the DAPP period (10 December to 23 December) for the claim for dad and partner pay for the first child.

New subsection 115CB(7) applies to the situation in which the Secretary has made a payability determination that parental leave pay is payable to a person for a child for the person's PPL period and the total number of days in the PPL period and the reference period for the person's claim for dad and partner pay for the child exceeds 126 days. In this situation, despite subsections (2), (3) and (4), if a payability determination is in force for parental leave pay, the Secretary must exclude from the reference period the excess number of days. The person is not eligible for dad and partner pay for the child on a day excluded by the Secretary.

Example

A father or partner claims more than 18 weeks of combined dad and partner pay and parental leave pay. If the father takes 17 weeks' (119 days') parental leave pay, transferred from the mother, and subsequently claims two weeks' (14 days') dad and partner pay, the father will only be eligible for the first week (seven days) of dad and partner pay. The Secretary excludes the second week (seven days) of dad and partner pay as those weeks would result in the father receiving 19 weeks' (133 days') combined dad and partner pay and parental leave pay, exceeding the 18-week (126-day) cap for individuals claiming payments under the Act.

New subsection 115CB(8) provides that, despite subsections (2), (3) and (4), a DAPP claimant is not eligible for dad and partner pay for a child on a day if, on that day, the claimant is deceased.

Division 3 – Applying the work test to claimants for dad and partner pay

When a DAPP claimant satisfies the work test

New section 115CC outlines when a DAPP claimant satisfies the work test. To work out whether a DAPP claimant satisfies the work test on a day, the method statement in section 32 and the work test period in new section 115CD need to be used.

Section 32 sets out a method statement for working out whether a person satisfies the work test. The work test applies by reference to work performed prior to the birth of the child. The result of the work test in relation to a particular day will be the same result for all days in the person's PPL period.

The method statement at section 32 sets out five steps for working out whether a person satisfies the work test.

1. Step one requires the Secretary to determine the person's work test period. The work test period for a person claiming dad and partner pay is set out in section 115CD as the 392 days (which is broadly equivalent to 13 months) immediately before the DAPP claimant's nominated start date.
2. Step two requires the Secretary to work out the days in the work test period on which the person has and has not performed qualifying work (qualifying work is defined in section 34 as including one hour of paid work on a day, or a period of paid leave of at least one hour on a day).
3. Step three requires the Secretary to work out whether any of the days on which the person has not performed qualifying work during the work test period fall within a permissible break. For DAPP claimants, a permissible break is defined in section 36.
4. Step four requires the Secretary to work out whether there is a qualifying period of 295 consecutive days in the work test period that are days on which the person has performed qualifying work or that fall within a permissible break.

5. Step five requires the Secretary to work out whether the person has performed at least 330 hours of qualifying work in the qualifying period. A person who has performed 330 hours of qualifying work in the qualifying period will meet the work test.

If a DAPP claimant does not meet the work test in line with the requirements in the method statement, the Secretary will consider whether the exceptions under sections 115CE or 115CF apply to the person. If either section 115CE or section 115CF applies, the person will meet the work test.

The note under new section 115CC provides guidance that new sections 115CE and 115CF in Division 3 are alternative ways of satisfying the work test for DAPP claimants.

The work test period

New section 115CD provides that, for the purposes of satisfying the work test in accordance with section 32, the **work test period** for a DAPP claimant is the 392 days (which is broadly equivalent to 13 months) immediately before the claimant's nominated start date.

The note under new section 115CD provides guidance that sections 115CE and 115CF in Division 3 are alternative ways of satisfying the work test for DAPP claimants.

Premature birth

New section 115CE provides that a DAPP claimant also satisfies the work test on a day if the Secretary is satisfied that the child was born prematurely and if the Secretary is also satisfied that the DAPP claimant would have satisfied the work test on the day in accordance with section 32 if the child had not been born prematurely.

DAPP claimant who is already eligible for parental leave pay

New section 115CF provides that a DAPP claimant also satisfies the work test on a day if the Secretary is satisfied that the DAPP claimant is eligible for parental leave pay for the child. This will benefit fathers and partners who would otherwise have to meet the work test twice.

Example

A father makes a secondary claim for 10 weeks' parental leave pay, transferred from the birth mother, when his child is six months of age, satisfying the work test for his parental leave pay claim as he has worked for more than 330 hours in 10 of the 13 months before he takes on primary care of his child with no more than an eight-week break between consecutive working days. After the 10 weeks of parental leave pay, the father claims two weeks of dad and partner pay. This section will apply to allow the father to rely on his eligibility for parental leave pay to satisfy the work test for dad and partner pay. The father will not be required to satisfy the work test again, by working at least 330 hours in 10 of the 13 months before his nominated start date for dad and partner pay. This section prevents the unfortunate possibility of the father failing the work test for his dad and partner pay claim, based on having 10 weeks out of the workforce providing primary care for his child and receiving parental leave pay.

Division 4 – Applying the income test to claimants for dad and partner pay

When a DAPP claimant satisfies the income test

New section 115CG outlines when a DAPP claimant satisfies the income test. New subsection 115CG(1) provides that, to work out whether a DAPP claimant satisfies the income test in subsection 37(1) on a day, the income test in subsection 37(1) needs to be used with the reference income year in new section 115CH and the relevant PPL income limit in new section 115CJ.

Subsection 37(1) provides that a person satisfies the income test on a day if the person's adjusted taxable income for the reference income year is not more than the relevant PPL income limit. To work out whether a person claiming dad and partner pay satisfies the income test, the Secretary will determine two elements:

1. The reference income year:

For a DAPP claimant, the reference income year is set out at new section 115CH as the income year that ended before the earlier of the following days – the day the DAPP claimant made the claim for dad and partner pay and the DAPP claimant's nominated start date.

2. The relevant PPL income limit:

For a DAPP claimant, the relevant PPL income limit is set out at new section 115CJ as the PPL income limit that applies on the earlier of the following days – the day the DAPP claimant made the claim for dad and partner pay and the DAPP claimant's nominated start date.

The PPL income limit is defined in section 41, which provides that the PPL income limit that applies for a day that is on or after 1 October 2010 but before 1 July 2014, is \$150,000. If the day is after 1 July 2014, the indexed amount is worked out under Subdivision B.

Once the Secretary has determined the income reference year for the person and the relevant PPL income limit, the Secretary can determine whether the person's adjusted taxable income for that year is below the relevant PPL income limit. If this test is satisfied, the person satisfies the income test.

New subsection 115CG(2) provides that a DAPP claimant also satisfies the income test on a day if the Secretary is satisfied that the DAPP claimant is eligible for parental leave pay for the child. This subsection will benefit fathers and partners applying for both parental leave pay and dad and partner pay and who would otherwise have to meet the income test twice based on different income reference years.

Example

A father makes a secondary claim for 14 weeks of transferred parental leave pay for the period 27 May 2013 to 1 September 2013. The father then makes a subsequent claim for dad and partner pay for the period 2 September 2013 to 15 September 2013. The father met the income test for his parental leave pay claim (which was made in June 2013), based on his adjusted taxable income in the financial year ending 30 June before he took on primary care of the child, that is, the 2011-12 financial year. When the father claims dad and partner pay in August 2013, the income reference year for his DAPP period will be the 2012-13 financial year. This section will apply so the father is considered to have satisfied the income test for his claim for dad and partner pay, despite it applying to a different income reference year, based on the father previously establishing his eligibility for parental leave pay for the child. The father will not be required to satisfy the PPL income test twice for two payment claims under the Act.

The reference income year

New section 115CH sets out the reference income year for a DAPP claimant. The **reference income year** for a DAPP claimant is the income year that ended before the earlier of the following days – the day the DAPP claimant made the claim for dad and partner pay and the DAPP claimant's nominated start date.

The relevant PPL income limit

New section 115CJ sets out the relevant PPL income limit for a DAPP claimant. The **relevant PPL income limit** for a DAPP claimant is the PPL income limit that applies on the earlier of the following days – the day the DAPP claimant made the claim for dad and partner pay and the DAPP claimant's nominated start date.

The relevant PPL income limit that applies on a day is, if the day is on or after an indexation day (the relevant index day) but before the next indexation day – the indexed amount worked out under Subdivision B of Division 4 of Part 2-3 on the relevant indexation day.

The note under new section 115CJ provides guidance that the PPL income limit is set out in section 41 and that it may be indexed under Subdivision B of Division 4 of Part 2-3.

Division 5 – Applying the Australian residency test to claimants for dad and partner pay

When a DAPP claimant satisfies the Australian residency test

New section 115CK outlines when a DAPP claimant satisfies the Australian residency test. To work out whether a DAPP claimant satisfies the Australian residency test on a day, the Australian residency test in sections 45 and 46 are used.

Subsection 45(1) provides that a person satisfies the Australian residency test on a day if, on that day, the person is an Australian resident. The Dictionary, in section 6, provides that 'Australian resident' has the same meaning as in the Social Security Act. A person can be an Australian resident even if they are physically located outside Australia if they meet a range of factors set out in that Act.

Alternatively, the test will be met if the person is a special category visa holder residing in Australia. Section 6 provides that a special category visa has the same meaning as in the *Migration Act 1957*. These visas are generally held by New Zealand citizens. Section 6 provides that 'resides in Australia' has the same meaning as in the Social Security Act.

Additionally, the test will be met under subsection 45(2) if the person is the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the Social Security Act, and either the person is in Australia, or the person is temporarily absent from Australia for not more than 13 weeks, and the absence is an allowable absence in relation to special benefit within the meaning of Part 4.2 of that Act.

Section 46 outlines the effect of absence from Australia for the purposes of the residency test.

Subsection 46(1) provides an exception to section 45. Despite section 45, a person does not satisfy the Australian residency test on a day if, before the relevant day, the person left Australia and, on the relevant day, the person has been absent from Australia for more than three years since the day the person left Australia.

Subsection 46(2) provides that, if the person has been absent from Australia for more than 13 weeks but less than three years, and then returns to Australia but leaves Australia again less than 13 weeks later, the person is taken not to have returned to Australia for the purposes of section 46.

Subsection 46(3) provides that, if the person returns to Australia after having been absent for three years (but would have continued to satisfy the Australian residency test while the person was absent from Australia but for the three-year limitation), but then leaves again less than 13 weeks later, the person does not satisfy the residency test at any time during their return to Australia of less than 13 weeks, or the time following their departure.

Division 6 – Caring for a child

When a DAPP claimant is caring for a child

New subsection 115CL(1) provides that a DAPP claimant is caring for a child on a day in the claimant's reference period if the child is in the DAPP claimant's care in that period. A DAPP claimant's **reference period** is outlined in new subsection 115CL(2) as meaning the period that is determined by the Secretary for the purposes of making a payability determination on the DAPP claimant's claim. New subsection 115CL(3) provides that more than one person may be caring for the same child on any particular day. This does not prevent one of the persons being the primary carer of the child under section 47. However, new subsection 115CL(4) provides that despite subsection 47(1), a person is not caring for a child on a day if, before that day, the child has died.

Division 7 – Not working

When a DAPP claimant is not working

New subsection 115CM(1) provides that a DAPP claimant is **not working** on a day if the following do not apply on that day: firstly, that the DAPP claimant performs one hour or more of paid work other than for a purpose that is a permissible purpose under subsection 49(2); and, secondly, that the DAPP claimant is on paid leave. The meaning of paid work is set out in section 35.

New subsection 115CM(2) provides that the PPL Rules may prescribe circumstances in which a DAPP claimant is taken to be not working even though the claimant performs one hour or more of paid work other than for a permissible purpose under subsection 49(2) or where the claimant is on paid leave.

The PPL Rules are a legislative instrument made by the Minister. These rules provide for matters required or permitted by the Act to be provided, or necessary or convenient to be provided, in order to carry out or give effect to the Act. It is appropriate to include provision for delegated legislation in this way, particularly to enable the Government to bring certain people in less usual or exceptional circumstances within the Paid Parental Leave scheme, when they would not otherwise have the benefit of entitlement under the Act.

Part 3A-4 – Claims for dad and partner pay

Division 1 – Guide to this Part

New section 115DA sets out the Guide for new Part 3A-4, which deals with claims for dad and partner pay.

Division 2 – Claims for dad and partner pay

Who can claim

New section 115DB provides that only a natural person can make a claim for dad and partner pay.

Form of claim

New section 115DC provides that a claim for dad and partner pay must be made in the form approved by the Secretary for claims for dad and partner pay.

Who can make a claim for dad and partner pay

New section 115DD provides that the following people can make a claim for dad and partner pay for a child: the biological father of the child; the partner of the child's birth mother; an adoptive parent of the child; or a person who satisfies circumstances prescribed by the PPL Rules.

For the purposes of this section, a partner could include a birth mother's defacto partner who is not the biological father of the child, or the birth mother's same-sex partner. The PPL Rules could include other relationships such as commissioning parents in a surrogacy arrangement.

Section 6 defines 'partner' as having the same meaning as in the Social Security Act. Subsection 4(1) of the Social Security Act provides that partner, in relation to a person who is a member of a couple, means the other member of a couple. A partner in relation to a person who is a member of a couple is the other member of the couple, whether legally married or otherwise. This includes couples of the same sex or a different sex. However, this definition excludes former partners, whether legally married or otherwise, who have separated from the person.

When a claim is effective

New section 115DE provides that a claim for dad and partner pay is not effective unless the requirements of new sections 115DF, 115DG, 115DH, 115DJ and 115DK are satisfied.

New subsection 115DE(2) provides that a claim for dad and partner pay is also not effective if it is made by a person who cannot make a claim under new section 115DD.

New subsection 115DE(3) provides that a claim for dad and partner that is not effective is taken not to have been made.

Requirements of the claim

New section 115DF provides that the claim for dad and partner pay must be made in the form approved, and the manner required, by the Secretary for dad and partner pay. The claim for dad and partner pay must contain any information required by the Secretary and be accompanied by any documents required by the Secretary. The kinds of information the Secretary can require a person to provide are limited to information that the Secretary considers may be relevant to determining whether the person is eligible for dad and partner pay, whether dad and partner pay is payable to the person and details of the payment destination. This could include information on the DAPP claimant's adjusted taxable income for the relevant income year, residency details, work history information including the number of hours worked and any unpaid leave taken, tax file number, bank account details and the child's name and date of birth.

Nominated start date

New section 115DG outlines the requirements for the nominated start date in the claim for dad and partner pay.

New subsection 115DG(1) provides that the claim must state a specific date (***the nominated start date***) which is the first day of the period for which the claimant wants to be paid dad and partner pay.

New subsection 115DG(2) provides that, if the claim is made before the child is born, the nominated start date must be on or after the expected date of birth of the child. If the claim is made after the child is born, the nominated start date must be on or after the child's actual date of birth.

New subsection 115DG(3) provides that, before a payability determination is made on the claim for dad and partner pay, the claimant may change his or her nominated start date by notifying the Secretary of the new nominated start date.

New subsection 115DG(4) provides that, if a payability determination is made that dad and partner pay is payable to the claimant, the claimant may only change his or her nominated start date (the old date) by notifying the Secretary, before the old date, of the new nominated start date.

Expected or actual date of birth

New section 115DH provides that the claim for dad and partner pay for a child must specify the child's expected date of birth or, if made after the child is born, the child's actual date of birth.

Tax file number statement

New section 115DJ provides that the claim for dad and partner pay must contain the person's tax file number statement, which is a statement of the kind set out in subsections 59(2), (3) or (4). The claimant must provide either:

- their tax file number (subsection 59(2)); or
- authorisation to the Commissioner of Taxation to provide the claimant's tax file number (if any) to the Secretary (subsection 59(3)); or
- authorisation to the Commissioner of Taxation to advise the Secretary of the outcome of the claimant's pending application for a tax file number (subsection 59(4)).

Tax file number information is required for dad and partner pay claimants to ensure that income eligibility is correctly assessed, and to allow remission of tax withholdings to the Commissioner of Taxation.

When to claim

New section 115DK provides that a claim for dad and partner pay for a child must be made in the period that starts on the day that is 97 days (three months) before the expected date of birth of the child and ends on the day before the child's first birthday.

Claim may be withdrawn or varied

New section 115DL allows a claimant who has made an effective claim for dad and partner pay to withdraw or vary the claim before a payability determination is made on it. New subsection 115DL(2) provides that the person may only do so in a manner approved by the Secretary. New subsection 115DL(3) provides that, if a claim is withdrawn, it is taken never to have been made.

Part 3A-5 – Payment of dad and partner pay

Division 1 – Guide to this Part

New section 115EA sets out the Guide to Part 3A-5, which deals with payment of dad and partner pay.

Division 2 – Payment of dad and partner pay

Payment of dad and partner pay

New section 115EB provides that, if the Secretary makes a payability determination that dad and partner pay is payable to a person for a child, the Secretary must pay the dad and partner pay to the person as soon as practicable after making the determination, but not before the start of the person's DAPP period.

Amount of dad and partner pay

New section 115EC provides that the amount of dad and partner pay to be paid to the person is the total of the daily national minimum wage amounts for each week day during the person's DAPP period.

The note under new section 115EC provides guidance that subsection 65(2) outlines how to work out the daily national minimum wage amount for a day.

Subsection 65(2) provides that the **daily national minimum wage amount** for a day is defined as 7.6 times the amount of the national minimum wage (expressed as a monetary amount per hour) set by a national minimum wage order that is in operation on that day, irrespective of whether it takes effect on that day.

Method of payment of dad and partner pay

New subsection 115ED(1) provides that the Secretary must pay dad and partner pay that is payable to a person to the credit of a bank account nominated and maintained by the person. However, new subsection 115ED(2) provides that the Secretary may direct the whole or part of a payment of dad and partner pay is to be paid in a way different from that provided for by subsection (1). If the Secretary gives the direction, the payment is to be paid in accordance with the direction. New subsection 115ED(3) provides that a direction made under subsection (2) is not a legislative instrument. This provision is merely declaratory of the law and is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

Giving person record of payment

New section 115EE provides that, if the Secretary pays dad and partner pay to or in relation to a person, in particular circumstances, the Secretary must give the person the information prescribed by the PPL Rules in relation to dad and partner pay paid in those circumstances.

Effect of extending DAPP period after review

New section 115EF outlines the effect of extending the DAPP period after a review. If the Secretary has made a payability determination that dad and partner pay is payable to a person, and, after the Secretary has paid the dad and partner pay, a decision is made in relation to the payability determination that has the effect that a higher amount of dad and partner pay is payable to the person, the Secretary must pay the person the difference between the higher amount and the amount already paid to the person as soon as practicable after the decision is made. New subsection 115EF(2) provides that, to avoid doubt, any difference worked out under subsection (1) is also dad and partner pay.

New section 115EF would not apply if it had been previously determined that DAPP is not payable to a person, but, following a review, it was determined that DAPP is payable to the person. In this situation, the full amount of dad and partner pay would be paid under new section 115EB.

Protection of payment

New section 115EG protects a payment of dad and partner pay from sale, assignment, charge, execution, bankruptcy or otherwise by making it inalienable. The note under new section 115EG directs the reader to new section 115EK, a related provision, which also provides protection from garnishee for an account into which dad and partner pay has been paid. However, new subsection 115EG(2) provides that subsection (1) has effect subject to new section 115EH which deals with deductions for PAYG withholding. This is the only amount that can be deducted by the Secretary from dad and partner pay that is payable to the person.

Deductions for PAYG withholding

New section 115EH provides that the Secretary may deduct an amount from a payment of dad and partner pay to a person if the Secretary is required to withhold the amount under section 12-110 in Schedule 1 to the Taxation Administration Act (PAYG withholdings).

No other deductions

New section 115EJ provides that an amount must not be deducted from a payment of dad and partner pay except in accordance with new section 115EH. This section applies despite any other law of the Commonwealth, a State or a Territory.

Effect of garnishee etc. order

New section 115EK provides some protection for a payment of dad and partner pay that has been paid into an account from the effect of a court order in the nature of a garnishee order. The court order does not apply to a saved amount, which is worked out under the method statement in this section.

The saved amount is worked out in two steps.

The first step is to work out the total amount of dad and partner pay that has been paid to the credit of the account during the four-week period immediately before the court order came into force.

The second step is to subtract from the step 1 amount the total amount withdrawn from the account during the same four week period – the result is the **saved amount**.

Exemption from operation of workers' compensation and accident compensation laws

New subsection 115EL(1) clarifies that the payment of dad and partner pay is not relevant for the purposes of the provisions of any Commonwealth, State or Territory law dealing with workers' compensation or accident compensation. Similarly, under new subsection 115EL(2), the payment would not be taken into account for the purposes of laws, or provisions of laws, prescribed by the PPL Rules to the extent that they deal with workers' compensation or accident compensation. The PPL Rules may exclude particular laws or provision of laws from the operation of this section.

The Minister, by legislative instrument, may make rules providing for matters required or permitted by the Act to be provided, or necessary or convenient to be provided, in order to carry out or give effect to the Act. It is appropriate to include provision for delegated legislation in this way, to enable the Government to ensure that the PPL Act continues to interact with workers' compensation and accident compensation law in a way that provides appropriate cover for people in these circumstances.

This new section ensures that compensation recipients would not have their compensation payments reduced because they are receiving dad and partner pay during the same period. Additionally dad and partner pay would not affect premiums or other contributions required in relation to compensation arrangements.

DAPP period is not a period of paid leave

New section 115EM makes clear that, despite any law of the Commonwealth, a State or a Territory, or any industrial instrument (however described), a period of unpaid leave is not to be taken to be a period of paid leave just because a person receives dad and partner pay for all or part of that period.

Chapter 4 – Compliance and enforcement

Part 4-1 – Information gathering

Item 68 amends section 116. This item amends the Guide to Part 4-1 dealing with information gathering, to include dad and partner pay.

Item 69 amends section 117 and is consequential to **item 70**.

Item 70 inserts new subsection 117(2) at the end of section 117. New subsection 117(2) provides that the Secretary may require a person to give information, or produce a document that is in the person's custody or under the person's control, to a specified agency if the Secretary considers that the information or document may be relevant to one or more of the matters specified in this section. These matters are: determining whether a person who has made an effective claim for dad and partner pay is or was eligible for dad and partner pay, or is or was initially eligible for dad and partner pay; determining whether dad and partner pay is or was payable to a person; and ensuring the Secretary can pay dad and partner pay into the bank account of a person to whom dad and partner pay is payable.

Item 71 amends paragraph 122(1)(a) and is consequential to **item 70**.

Item 72 amends paragraph 123(a). This amendment clarifies that the information that the Secretary can seek under this section is limited to information about a person who has made an effective claim for parental leave pay, and dad and partner pay.

Item 73 inserts new paragraphs (c) and (d) at the end of subsection 124(2).

New paragraph 124(2)(c) provides that a tax file number provided to the Secretary as referred to in subsection (1) may be used to detect cases in which dad and partner pay has been paid when it should not have been paid.

New paragraph 124(2)(d) provides that a tax file number provided to the Secretary as referred to in subsection (1) may also be used to verify, in relation to persons who have made effective claims for dad and partner pay, the eligibility of those persons for that pay.

Item 74 repeals and substitutes new subsections 125(1) and (2).

New subsection 125(1) provides that a person who has made an effective claim for parental leave pay, in respect of which there is not in force any payability determination that parental leave pay is not payable, must notify the Secretary of certain things. These things are: anything that causes the person to cease to be eligible for parental leave pay on a day; and anything that is likely to have the effect of causing the person to cease to be eligible for parental leave pay on a day.

New subsection 125(2) provides that a person who has made an effective claim for dad and partner pay, in respect of which there is not in force any payability determination that dad and partner pay is not payable, must notify the Secretary of certain things. These things are: anything that causes the person to cease to be eligible for dad and partner pay on a day; and anything that is likely to have the effect of causing the person to cease to be eligible for dad and partner pay on a day.

Item 75 repeals the heading to section 133 and substitutes the heading '133 Repayment of instalments of parental leave pay, PPL funding amount or dad and partner pay'. This item is consequential to **item 76**.

Item 76 inserts new subparagraph 133(1)(b)(iii) at the end of paragraph 133(1)(b).

New subparagraph 133(1)(b)(iii) provides that, if a person is convicted of an offence against Part 7.3 or Part 7.4 of the Criminal Code in relation to this Act, the court may impose a penalty in relation to the offence and order the person to pay the Commonwealth an amount equal to any amount paid to, or in relation to, the person by way of dad and partner pay because of the act, failure or omission that constituted the offence.

Item 77 amends paragraph 138(2)(a). This amendment clarifies that this section also applies to dad and partner pay.

Part 4-3—Debt recovery

Item 78, 79, 80 amend the Guide to Part 4-3 in section 164, to clarify that dad and partner pay applies to this part of the Act.

Item 81 amends section 165. This amendment allows dad and partner pay to be included in an amount that has been paid for the purposes of section 165 dealing with debts due to the Commonwealth.

Item 82 inserts new section 168A after section 168. New section 168A deals with dad and partner pay debts.

New subsection 168A(1) provides that this section applies if the Secretary pays an amount (the **Secretary payment**) to, or in relation to, a person for a child by way of dad and partner pay and the total of Secretary payments paid for the child exceeds the total of amounts that are payable to, or in relation to, the person for the child under new Part 3A-5 (which deals with the payment of dad and partner pay by the Secretary).

The note under new subsection 168A(1) provides guidance that dad and partner pay may cease to be payable after it has already been paid, if the payability determination is later set aside or varied.

New subsection 168A(2) provides that an amount equal to the amount of the excess (the amount that has been overpaid) is a debt due to the Commonwealth by the person.

The note under new subsection 168A(2) provides an example that, if no dad and partner pay is payable to, or in relation to, a person for the child, the amount of the excess is the total amount of the Secretary payments.

New subsection 168A(3) provides that the debt under subsection (2) arises in two circumstances. Firstly, if the person has a DAPP period for the child – immediately after the end of the person’s DAPP period, or, otherwise, when subsection (1) starts to apply in relation to a Secretary payment.

Note 1 under new subsection 168A(3) provides guidance that the person does not have a DAPP period for the child if a payability determination that dad and partner pay is payable to the person for the child has not been made, or has been set aside. In such a case, a debt will arise as soon as there is an excess as referred to in subsection (1).

Note 2 under new subsection 168A(3) provides guidance that section 167A may apply to overpayments by way of payments that are mistakenly paid. For example, an overpayment or mistaken payment may arise due to administrative error, the setting aside or variation of a payability determination or payments following a stay order under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975*.

Item 83 repeals the heading to section 169 and substitutes the new heading ‘169 Wrong person receives parental leave pay instalment, PPL funding amount or dad and partner pay’. This item is consequential to **item 84**.

Items 84, 85, 86 and 87 amend paragraphs 169(1)(a), 171(a), 192(1)(a) and 192(2)(a) to allow an amount of dad and partner pay to be treated in the same way as parental leave pay for these sections.

Chapter 5 – Review of decisions

Part 5-2 – Review by the Social Security Appeals Tribunal

Item 88 inserts new subparagraphs 215(2)(a)(viia), (viib), (viic) and (viid) after subparagraph 215(2)(a)(vii). Section 215 lists the decisions to which Division 2 (which deals with review by the SSAT of claimant decisions) of Part 5 applies and does not apply.

New subparagraph 215(2)(a)(viia) provides that Division 2 of Part 5 does not apply to a decision under new subparagraph 115BK(1)(c)(ii), which deals with revoking a payability determination for dad and partner pay on request.

New subparagraph 215(2)(a)(viib) provides that Division 2 of Part 5 does not apply to a decision under new section 115DC, which deals with the form of a claim for dad and partner pay.

New subparagraph 215(2)(a)(viic) provides that Division 2 of Part 5 does not apply to a decision under new section 115DF, which deals with the requirements of the claim for dad and partner pay.

New subparagraph 215(2)(a)(viid) provides that Division 2 of Part 5 does not apply to a decision under new section 115DL(2), which deals with a claim for dad and partner pay being withdrawn or varied.

Part 5-5 – Other matters relating to review

Items 89, 90 and 91 amend subparagraphs 273(1)(a)(i) and 273(1)(a)(ii) and paragraph 273(1)(c) to include reference to dad and partner pay.

Chapter 6 – Miscellaneous

Part 6-1 – How this Act applies in particular circumstances

Item 92 inserts new subsection 277(1A) after subsection 277(1). New subsection 277(1A) provides that, if a claim is made for dad and partner pay for a child and, before or after the claim is made, the child is stillborn or dies, the Act (other than new sections 115CB and 115CL) applies as if a reference to the DAPP claimant caring for the child were a reference to the DAPP claimant caring for the child had the child not been stillborn or died. This means that a claim can be made by a claimant for a child who was stillborn or who has died, and the operation of the Act is modified by new subsection 277(1A) to establish eligibility correctly.

The note under new subsection 277(1A) provides guidance that new section 115CB deals with eligibility for dad and partner pay and new section 115CL defines when a person is caring for a child for the purposes of dad and partner pay.

Item 93 amends subsection 277(2). This item inserts 'or (1A)' at the end of subsection 277(2). The amendment allows the PPL Rules to modify the operation of new subsection 277(1A).

The Minister, by legislative instrument, may make rules providing for matters required or permitted by the Act to be provided, or necessary or convenient to be provided, in order to carry out or give effect to the Act. It is appropriate to include provision for delegated legislation in this way, particularly to enable the Government to bring certain people in less usual or exceptional circumstances within the Paid Parental Leave scheme, when they would not otherwise have the benefit of entitlement under the Act.

Part 6-2 – Nominees

Items 94, 95, 97, 98 amend section 279, paragraph 280(1)(a), subsection 280(1) and subsection 281(1) to clarify that these provisions apply to dad and partner pay.

Item 96 amends paragraph 280(1)(b). This item amends paragraph 280(1)(b) to clarify that this paragraph applies to parental leave pay.

Item 99 repeals the heading to Division 3 of Part 6-2 and substitutes a new heading 'Division 3 – Payment to payment nominee'.

Division 3 – Payment to payment nominees

Item 100 inserts new section 284A after section 284. New subsection 284A(1) provides that, if a person has a payment nominee and the whole or part of a payment of dad and partner pay is payable to the person and the Secretary has given a direction in relation to the payment under section 281, the payment must be paid in accordance with the direction.

New subsection 284A(2) provides that a payment of dad and partner pay paid to the payment nominee of a person is paid to the payment nominee on behalf of the person and is taken, for the purposes of the Act (other than Part 6-2), to have been paid to the person and to have been so paid when it was paid to the nominee.

New subsection 284A(3) provides that a payment of dad and partner pay that is to be paid to the payment nominee of a person must be paid to the credit of a bank account nominated and maintained by the nominee.

New subsection 284A(4) provides that the Secretary may direct that the whole or part of a payment of dad and partner pay that is to be paid to a payment nominee be paid to the payment nominee in a different way from that provided for by subsection (3). If the Secretary gives such a direction, a payment to which the direction relates must be paid in accordance with the direction.

New subsection 284A(5) provides that a direction given under subsection (4) is not a legislative instrument. This provision is merely declaratory of the law and is included to assist readers, as the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act.

Item 101 repeals and substitutes new section 285, which sets out provisions dealing with actions of correspondence nominees on behalf of the principal.

New subsection 285(1) provides that, if a person has a correspondence nominee for parental leave pay, any act that may be done by the person under or for the purposes of this Act (other than Division 2 or 3) in relation to parental leave pay may be done by that correspondence nominee. A correspondence nominee means a person who is appointed as a correspondence nominee under section 281.

The note under new subsection 285(1) provides guidance that this subsection is subject to section 296 (which deals with the right of the nominee to attend with a principal) and subsection (3) of this section.

New subsection 285(2) provides that, without limiting subsection (1), if a person has a correspondence nominee for parental leave pay, an application or claim that may be made by a person under the Act in relation to parental leave pay may be made by that correspondence nominee on behalf of the person. An application or claim made is taken to be made by the person.

New subsection 285(3) provides that, if, under a provision of this Act, the Secretary gives a notice in relation to parental leave pay to a person who has a correspondence nominee for parental leave pay, subsection (1) does not extend to an act that is required by the notice to be done by the person.

New subsection 285(4) provides that, if a person has a correspondence nominee for dad and partner pay, any act that may be done by the person under, or for the purposes of, this Act (other than Division 2 or 3) in relation to dad and partner pay may be done by that correspondence nominee.

The note under new subsection 285(4) provides guidance that this subsection is subject to section 296 (which deals with the right of the nominee to attend with a principal) and subsection (6) of this section.

New subsection 285(5) provides that, without limiting subsection (4), if a person has a correspondence nominee for dad and partner pay, an application or claim that may be made by a person under this Act in relation to dad and partner may be made by that correspondence nominee on behalf of the person. An application or claim made is taken to be made by the person.

New subsection 285(6) provides that, if, under a provision of this Act, the Secretary gives a notice in relation to dad and partner pay to a person who has a correspondence nominee for dad and partner pay, subsection (1) does not extend to an act that is required by the notice to be done by the person.

New subsection 285(7) provides that an act done by a person's correspondence nominee under this section has effect, for the purposes of this Act (other than this Part), as if it had been done by the person.

Item 102 repeals subsection 286(1) and substitutes new subsections 286(1) and (1A). New subsection 286(1) provides that, if a person has a correspondence nominee for parental leave pay, any notice that the Secretary is required or authorised by this Act to give to the person in relation to parental leave pay may be given by the Secretary to that correspondence nominee.

New subsection 286(1A) provides that, if a person has a correspondence nominee for dad and partner pay, any notice that the Secretary is required or authorised by this Act to give to the person in relation to dad and partner pay may be given by the Secretary to that correspondence nominee.

Item 103 amends subsection 286(2). This item omits 'The notice' and substitutes 'A notice given under subsection (1) or (1A)'. This item is consequential to **item 101**.

Item 104 amends paragraphs 286(3)(a) and (4)(a) to insert in each case 'or (1A)' after '(1)'. This item is consequential to **item 101**.

Item 105 amends subsection 289(1). This item inserts ', or a payment of dad and partner pay' after 'an instalment' in subsection 289(1).

Part 2 – Consequential amendments

Amendments to the Data-matching Act

Item 106 amends the definition of 'personal assistance' in subsection 3(1) of the Data-matching Act to include the payment of dad and partner pay under the Paid Parental Leave Act. This change will include dad and partner pay within the compliance activities in that legislation. The amendment will not allow deductions to be made from dad and partner pay.

Amendments to the Income Tax Assessment Act

Item 107 amends the definitions section of the Income Tax Assessment Act, section 995-1, to include a definition of dad and partner pay. This term is used in the Taxation Administration Act (see below).

Amendments to the Social Security Act

Item 108 inserts a new definition of dad and partner pay into subsection 8(1) of the Social Security Act. This term will mean dad and partner pay under the Paid Parental Leave Act.

Item 109 amends subsection 8(8) to insert reference to dad and partner pay in a new paragraph 8(8)(da). This will allow dad and partner pay to be excluded from the general concept of income, in the same way as parental leave pay is excluded.

Item 110 amends the definition of pension bonus bereavement payment (PBBP) employment income in section 93WC so as to include dad and partner pay. In working out the amount of PBBP under section 93WC, any PBBP employment income is to be disregarded. PBBP employment income includes 'leave payments', which includes an instalment of parental leave pay under paragraph 93WC(2)(aa). This item adds dad and partner pay to the meaning of leave payments in subsection 93WC(2), to exclude dad and partner pay from working out the amount of a PBBP.

Item 111 repeals points 1064-F14, 1066A-G14, 1067G-H20, 1067L-D16, 1068-G7AR, 1068A-E12 and 1068B-D18 in the definitions of leave payment and substitutes a new definition of leave payment. The new definition of leave payment includes a payment in respect of sick leave, annual leave, maternity leave and long service leave, but does not include an instalment of parental leave pay or dad and partner pay. This item adds dad and partner pay to the definition of leave payment, to exclude this as a leave payment, in the same way as parental leave pay is excluded.

Item 112 amends point 1071A-4 to include dad and partner pay within the expanded definition of income for the purposes of the health care card income test. Including dad and partner pay within the health care card income test is consistent with other inclusions in the test, helping to ensure targeting of the card to genuine low-income earners.

Item 113 inserts new paragraph 1228(2)(cb) to enable a payment of dad and partner 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 Paid Parental Leave Act.

Amendments to the Taxation Administration Act

Item 114 amends section 12-110 in Schedule 1 to the Taxation Administration Act to include dad and partner pay within its scope. As a result, an entity making a payment of dad and partner pay to an individual must withhold tax from that payment. This includes a payment from the Secretary (within the meaning of the Paid Parental Leave Act). This allows dad and partner pay to be treated in the same way as parental leave pay for the purposes of PAYG withholdings.

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) 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.

Item 115 repeals the heading to subsection 16-155(3) and substitutes the new heading 'Parental leave pay or dad and partner pay paid in error'. This amendment is consequential to **item 116**.

Item 116 amends section 16-155 to provide that an entity must ensure that an amount of dad and partner 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.

Item 117 amends section 16-160 to provide that an entity must not report an amount of dad and partner 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 dad and partner pay was not lawfully so payable before the recipient requested the part-year payment summary.

Items 118 and 119 amend section 18-65 and section 18-70 respectively to provide that an individual may recover an amount withheld from a payment of purported dad and partner pay that was not lawfully so payable under those sections.

Amendments to the Veterans' Entitlements Act

Item 120 inserts a new definition into subsection 5H(1) of the Veterans' Entitlements Act. Dad and partner pay is defined to mean dad and partner pay under the Paid Parental Leave Act.

Item 121 amends subsection 5H(8). Consistent with the comparable amendment to the concept of income in the Social Security Act (**item 109**), this item inserts a new paragraph 5H(8)(da), which excludes dad and partner pay from the general concept of income.

Item 122 amends the definition of PBBP employment income in section 45UUC so as to include dad and partner pay in the definition. PBBP employment income is disregarded in working out the amount of a person's pension bonus bereavement payment. This is consistent with the comparable amendment in the Social Security Act to the definition of PBBP (**item 110**).

Item 123 amends subsection 46AB(1). This item inserts new paragraphs 46AB(1)(h) and (i) into subsection 46AB(1), to exclude parental leave pay and dad and partner pay from the definition of employment income.

Item 124 inserts new paragraph 205(1)(cc), which enables the recovery regime in section 205 to apply in relation to an amount that has been paid by way of dad and partner pay that was not lawfully payable. Such an amount would be a debt owed to the Commonwealth by the recipient under the Paid Parental Leave Act.

Item 125 amends paragraph 205(2)(a) to insert 'cc' after 'cb'. This item is consequential to **item 124**.

Item 126 makes a consequential amendment to the definition of 'excluded amount' in subsection 205(8). The effect is that overpayment of dad and partner pay will not be recovered by legal proceedings under authority of subsection 205(1C). This method of recovery would be available under the Paid Parental Leave Act.

Item 127 makes a consequential amendment to the definition of 'recoverable amount' in subsection 205(8) so that an amount of dad and partner pay can be recovered by instalments in accordance with paragraph 206(1)(c) of the Veterans' Entitlements Act.

Schedule 2 – Other amendments

Summary

This Schedule makes minor refinements to the Paid Parental Leave Act to improve clarity and consistency. The amendments include refining the provisions which permit ‘keeping in touch days’, and clarifying the operation of a number of provisions, including debt recovery provisions, notice provisions, and the provision relating to delegation of the Secretary’s powers under the Act.

This Schedule also amends the Fair Work Act, to clarify unpaid parental leave arrangements where there is a stillbirth or infant death, to enable early commencement of unpaid parental leave, and to enable employees who are on unpaid parental leave to perform permissible paid work for short periods for the purposes of ‘keeping in touch’.

Background

The Paid Parental Leave Act commenced on 1 October 2010. This Schedule makes minor amendments to that Act, including clarification regarding debt recovery, the provision of notices, and the delegation of the Secretary’s powers under the Act.

The amendments in Part 2 of this Schedule to the Fair Work Act will also ensure that the capacity to perform permissible paid work for the purposes of ‘keeping in touch’ will be available for employees on unpaid parental leave under the Fair Work Act. It will also ensure that the arrangements under the Fair Work Act align with the keeping in touch arrangements for those who are entitled to receive parental leave pay under the Paid Parental Leave Act.

The amendments will enable pregnant female employees, if they wish, to start unpaid parental leave more than six weeks before the expected date of birth where the employer agrees. The amendments also provide that, where unpaid parental leave has started and there is a stillbirth or infant death, the employee is entitled to return to work within four weeks of notifying the employer that they wish to return to work; if the employer wishes the employee to return to work, they must give the employee at least six weeks’ notice. The amendments also clarify that, where an employer engages a replacement employee to perform the work of another employee who is taking unpaid parental leave, the replacement employee must be notified that the engagement is temporary and of the rights of the employer and the employee who is taking, or will take, unpaid parental leave.

This Schedule also inserts notes to relevant provisions of the Fair Work Act to explain the operation of certain provisions and to refer readers to relevant provisions of the Paid Parental Leave Act. The amendments in Part 1 of this Schedule are taken to have commenced at the same time as the commencement of the Paid Parental Leave Act. No person's rights will be adversely affected by the retrospective commencement of the amendments in Part 1 of this Schedule. The amendments in Part 2 of this Schedule commence the day after Royal Assent.

Explanation of the changes

Part 1 – Amendments commencing at the same time as the Paid Parental Leave Act

Amendments to the Paid Parental Leave Act

Modification of the work test

Section 31 of the Paid Parental Leave Act deals with when a person is eligible for parental leave pay, including establishing through the 'work test' that they have a sufficient connection to the workforce. Subsection 31(4A) eases the work test to enable eligibility to be established where mothers do not meet the work test because the child was born prematurely or there were complications or illness relating to the pregnancy which prevented the person from performing paid work.

Subsection 31(4A) only deals with eligibility. However, there are other provisions in the Act under which the Secretary may make determinations referring specifically to the work test.

Items 1, 2, 3, 4, 5, 6 and 7 make amendments to allow the modification to the work test, as currently provided for in subsection 31(4A), to be considered wherever the work test applies in the Paid Parental Leave Act.

Item 1 makes a minor amendment to the definition of the work test to refer to Division 3 of Part 2-3.

Item 2 amends the Guide to Part 2-3, as set out in section 30 of the Paid Parental Leave Act, to indicate that, in relation to the work test, special rules apply in the case of premature birth or complications or illness related to the pregnancy.

Items 3 and 4 make minor consequential changes to paragraph 31(2)(a) and subparagraph 31(4)(a)(i) respectively, to remove the reference to subsection 31(4A). This is done because the amendments made by **items 5 and 7** of this Part will move the alternative to the work test (currently set out in subsection 31(4A)) into Division 3 of Part 2-3 as new section 36A.

Item 5 repeals subsection 31(4A), as the amendment made by **item 7** inserts the equivalent of this provision into Division 3 of Part 2-3, which deals with the work test, as new section 36A.

Item 6 adds a note at the end of section 32 to alert the reader to the fact that a person may also satisfy the work test if the child was born prematurely and if, while the person was pregnant with the child, they had complications or illness related to the pregnancy which prevented them from performing paid work. The note directs the reader to new section 36A.

Item 7 adds new section 36A at the end of Division 3 of Part 2-3. Division 3 of Part 2-3 deals with the work test for eligibility for parental leave pay. Section 32 sets out a method statement for when a person satisfies the work test. New section 36A sets out the alternative to the work test for premature births and pregnancy-related complications, which is the equivalent of current subsection 31(4A).

Notice of further review right and the validity of an SSAT decision

Part 5-2 of the Paid Parental Leave Act deals with review of decisions by the Social Security Appeals Tribunal (the SSAT). The procedures for review by the SSAT are set out in Part 5-3, and section 257 deals with the procedure following a decision of the SSAT. Subsection 257(6) provides that, when the SSAT determines a review in relation to an SSAT reviewable claimant decision, the Principal Member must give each party to the review a written notice that includes a statement to the effect that, if the party is dissatisfied with the SSAT decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision.

Subsection 257(6) is the equivalent of subsection 141(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999* (the Family Assistance Administration Act). Subsection 141(3) of that Act specifically provides that a failure to comply with subsection 141(2) in relation to a decision of the SSAT does not affect the validity of the decision.

Item 8 inserts new subsection (7) into section 257. This new subsection is consistent with the approach taken in section 141 of the Family Assistance Administration Act. New subsection 257(7) provides that a failure to comply with subsection 257(6) in relation to a decision of the SSAT does not affect the validity of the decision.

Part 2 – Amendments commencing the day after Royal Assent

Amendments to the Fair Work Act

Item 9 inserts a signpost definition of ***keeping in touch day*** into the dictionary in section 12 of the Fair Work Act. The definition refers readers to subsections 79A(2) and (3).

Item 10 amends Note 1 to section 70 of the Fair Work Act to alert readers to the operation of subsection 77A(3), which deals with the situation in which there is a stillbirth or infant death and the unpaid parental leave has not yet started.

Items 11 and 13 add an identical note to each of subsections 71(2) and 72(2) to clarify that periods of unpaid parental leave can include keeping in touch days on which an employee performs work, as provided for by section 79A.

Item 12 amends subsection 71(3) of the Fair Work Act to provide that, for a pregnant female employee, unpaid parental leave may start earlier than six weeks before the expected date of birth of her child if the employee and employer agree, but otherwise may start up to six weeks before the expected date of birth and must not start later than the date of birth of the child.

A note to subsection 71(3) reminds the reader that, if the female employee is not fit for work, then she may be entitled to paid personal leave under Subdivision A of Division 7 of Part 2-2 of the Fair Work Act or unpaid special maternity leave under section 80.

A second note alerts the reader to section 81 of the Fair Work Act, which may operate to entitle the female employee to transfer to an appropriate safe job or to paid no safe job leave.

A third note reminds readers that section 344 of the Fair Work Act operates to prohibit the exertion of undue influence on an employee to agree to early commencement of unpaid parental leave under paragraph 71(3)(b).

Item 14 amends subparagraph 72(3)(a)(i) to provide that, for a pregnant female employee, unpaid parental leave may start earlier than six weeks before the expected date of birth of the child, if the employer and employee so agree.

Item 15 adds a similar note (to the notes in **items 11 and 13**) to subsection 76(1) to clarify that extended periods of unpaid leave can include keeping in touch days.

Item 16 inserts new section 77A into Subdivision B of Division 5 of Part 2-2 of the Fair Work Act. Subsection 77A(1) provides that the new section applies to unpaid parental leave if the leave is birth-related (birth-related leave is defined at subsection 67(4) of the Fair Work Act) and there is either a still birth or an infant death.

Subsections 77A(2) and (3) provide that, if, before the unpaid parental leave starts, the employee or employer gives written notice cancelling the leave, then the employee is not entitled to unpaid parental leave. Subsections (2) and (3) will not apply in any circumstance in which the leave has already started, whether or not the employee taking the leave is the female employee who gave birth to the child.

An example below new subsection 77A(2) will make clear to the reader that subsections 77A(2) and (3) will not apply if the child dies after being born, and the employee is the female employee who gave birth to the child, because subsection 71(3) provides that unpaid parental leave cannot start later than the date of birth of the child.

A note to subsection (3) reminds the reader that, if the employee is a female employee who was pregnant with the child and who is not fit for work, then she may be entitled to paid personal leave under Subdivision A of Division 7 of Part 2-2 of the Fair Work Act or unpaid special maternity leave under section 80.

Subsections 77A(4) to (7) provide that, where unpaid parental leave has started and there is a stillbirth or infant death, the employee may, by giving notice to the

employer, return to work within four weeks of giving such notice, or the employer may, by giving notice to the employee, require the employee to return to work at least six weeks after that notice is given. The subsections provide that the employee's entitlement to unpaid parental leave ends immediately before the return to work. Subsection 77(8) clarifies that these provisions do not limit the capacity of parties to agree to reduce the period of parental leave under section 77.

Item 17 inserts a new subsection 78(1A), providing that section 78, which applies where an employee who has taken unpaid parental leave ceases to have responsibility for care of a child, does not apply where the pregnancy ends with a stillbirth or where there is an infant death (these circumstances are dealt with by new section 77A).

Item 18 inserts new sections 79A and 79B at the end of Subdivision B of Division 5 of Part 2-2 of the Fair Work Act.

New subsection 79A(1) provides that Subdivision B of Division 5 of Part 2-2 does not prevent an employee from performing work on a keeping in touch day while he or she is taking unpaid parental leave. In addition, this provision clarifies that performing work on a keeping in touch day does not break the continuity of the period of unpaid parental leave. This ensures that, as indicated by the new notes to subsections 71(2) and 72(2), inserted by **items 13 and 15** of this Schedule, the performance of work on a keeping in touch day will not break the single continuous period of unpaid parental leave.

New subsection 79A(2) sets out the circumstances in which a day (or part of a day) on which the employee performs work for the employer is a keeping in touch day. Such a day (or part of a day) will be a keeping in touch day if:

- the purpose of performing the work is to enable the employee to keep in touch with his or her employment so as to assist with the employee's return to employment once the period of leave has ended; and
- both the employee and the employer consent to the employee performing that work on that day; and
- the day is not within 42 days of the date of birth or day of placement of the child to which the period of leave relates, or, if the keeping in touch day was suggested or requested by the employee, is not within 14 days of the date of birth or day of placement of the child; and
- the employee has not already performed work on 10 days during the period of leave that were keeping in touch days.

New subsection 79A(2) provides that the duration of the work that the employee performs on the keeping in touch day is not relevant for the purposes of this subsection. An employee does not have to work a full day for it to constitute a keeping in touch day.

The note to new subsection 79A(2) informs readers that an employee who performs work on a keeping in touch day under new section 79A is entitled to payment from

their employer in relation to the performance of that work in accordance with the relevant contract of employment or industrial instrument.

New subsection 79A(3) provides that a decision whether to give consent to perform work on a keeping in touch day is taken to be a decision to make or not make an arrangement under the National Employment Standards for the purposes of section 344 of the Fair Work Act (which prohibits an employer from exerting undue influence or pressure on an employee in relation to a decision to make or not to make an arrangement under the National Employment Standards). This will ensure that there is no ambiguity about the application of section 344 to keeping in touch days.

New subsection 79A(4) clarifies that, for the purposes of new paragraph 79A(2)(d), a period of unpaid leave taken during the employee's available parental leave period and an extension of the available parental leave period are to be treated as two separate periods of unpaid parental leave.

The note to new subsection 79A(4) refers readers to the keeping in touch provisions of the Paid Parental Leave Act, which set out when paid work is for a permissible purpose and conditions for when a day is a keeping in touch day.

Section 79 of the Fair Work Act provides that an employee may take paid leave while he or she is taking unpaid parental leave, and that the taking of that paid leave does not break the continuity of the period of unpaid parental leave. New section 79A provides the same in respect of employees performing work on keeping in touch days. New section 79B clarifies that, if an employee takes paid leave, or performs work on a keeping in touch day during a period of unpaid parental leave, then that will not extend the period of unpaid parental leave.

Item 19 inserts new section 84A, which requires an employer, before engaging an employee to perform the work of another employee who is going to take, or is taking, unpaid parental leave, to notify the replacement employee that the engagement is temporary and that the employee and employer have particular rights under the Fair Work Act. The employer must specifically notify the replacement employee of rights under subsections 77A(2) and (3), which apply in the case of a stillbirth or infant death, under subsections 77A(4) to (6) or section 84 in relation to an employee's entitlement to return to work, and section 78, which enables an employer to require an employee to return to work where the employee ceases to have responsibility for the care of the child.

This new section 84A is intended to apply to cases where a replacement employee is engaged to perform the work of another employee who is going to take or is taking unpaid parental leave, as well as where the replacement employee is performing the work of an employee who, in turn, is performing the work of another employee who is going to take or is taking unpaid parental leave.

Item 20 inserts a note to section 344 of the Fair Work Act to remind readers that this section can apply to decisions about whether to consent to performing work on keeping in touch days under subsection 79A(3).

Item 21 inserts a note to subsection 536(1) of the Fair Work Act (which imposes an obligation on employers to provide pay slips to each employee) to refer readers to section 80 of the Paid Parental Leave Act, which imposes an obligation on employers to provide information to each employee in respect of instalments paid under that Act.

Amendments to the Paid Parental Leave Act

Definition of vocational placement

Item 22 inserts a new definition of ‘vocational placement’ into section 6 of the Paid Parental Leave Act. The new definition is consistent with the definition of this term in the Fair Work Act. The meaning of vocational placement is relevant to the definition of ‘employee’. A vocational placement means a placement that is: undertaken with an employer for which a person is not entitled to be paid any remuneration; and undertaken as a requirement of an education or training course; and authorised under a law or an administrative arrangement of the Commonwealth, a State or a Territory.

Keeping in touch days

Under section 48 of the Paid Parental Leave Act, a person is regarded as having returned to work on a day that is on or after the birth of their child if they perform one hour or more of paid work on that day (other than for a permissible purpose). Section 49 outlines when paid work is for a permissible purpose. Under subsection 49(1), work is for a permissible purpose if the person performs paid work for an entity as an employee, defence force member, or law enforcement officer, on a keeping in touch day which would otherwise be a day in a period of leave granted by that entity, and if the person has not already performed paid work on 10 keeping in touch days. Section 50 of the Paid Parental Leave Act sets out the conditions for when a day is a keeping in touch day, including that the purpose of performing the paid work is to enable the person to keep in touch with their employment or engagement in order to facilitate a return to that employment or engagement after the end of the period of leave. Another condition for a day to be a keeping in touch day, as set out in paragraph 50(c), is that the day is not within 14 days after the day the child was born.

Item 23 repeals and substitutes paragraph 50(c), providing the condition that the day is not within 42 days after the day the child was born. There is an exception to this, where the employee has suggested or requested that they perform the paid work on that day: in this case, the day must not be within 14 days after the child is born.

This will allow sufficient time after the birth of a child for the mother to recover physically and will enable an uninterrupted six-week period for the caring parent to bond with the child. This amendment is intended to support the primary objective of the scheme, which is to provide financial support to allow the primary carer to take time off work to care for their newborn or adopted child. The exception, that the day is not within 14 days after the day the child was born where the performance of work on a day is suggested or requested by the person, will retain flexibility for employees. In any case, where a keeping in touch day is requested, both the person and their employer must agree to the performance of paid work on a day that would otherwise be a leave day.

Item 24 adds several notes at the end of section 50 in relation to keeping in touch days. A number of these notes reference various provisions in the Fair Work Act which may be relevant to a person performing paid work on a keeping in touch day.

Note 1 refers the reader to new section 79A of the Fair Work Act, which sets out arrangements related to the performance of work on keeping in touch days while an employee is taking unpaid parental leave. This Part also makes consequential amendments to the Fair Work Act related to keeping in touch days for the purposes of unpaid parental leave, and **item 18** inserts new section 79A.

Note 2 advises the reader of an employer's obligation, under the relevant contract of employment or industrial instrument, to pay an employee for the performance of work on a keeping in touch day.

Notes 3 and 4 notify the reader of provisions in the Fair Work Act containing general protections against undue influence or pressure and coercion, which may be of assistance to a person in relation to the decision whether or not to consent to a keeping in touch day.

Note 3 informs the reader that section 344 of the Fair Work Act prohibits the exertion of undue influence or undue pressure on a person in relation to their decision whether to consent to performing work on a keeping in touch day. The note refers the reader to new subsection 79A(3), which is inserted by **item 18** of this Part in this Schedule. Under paragraph 344(a) of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make or not make an agreement or arrangement under the National Employment Standards. New subsection 79A(3) provides that an employee's decision whether or not to consent to performing work on a keeping in touch day is taken, for the purposes of section 344, to be a decision to make, or not to make, an arrangement under the National Employment Standards.

Note 4 advises the reader that section 344, and section 343, of the Fair Work Act contain other prohibitions on coercion and undue influence or pressure.

Employer requirement to notify the Secretary if certain events happen

Subsection 82(1) of the Paid Parental Leave Act provides that, if an employer determination has been made, the employer is required to notify the Secretary if any of the events set out in paragraphs 82(1)(a) to (l) happen. Subsection 82(2) specifies when the notice must be given, and also requires that the notice be given in writing (paragraph 82(2)(c)). Subsection 82(2) is a civil penalty provision.

Items 25 and 26 amend the requirement in paragraph 82(2)(c) that notice be given in the manner set out in a written notice given to the employer. This would allow the Secretary to approve the manner of notification: for example, whether the notice could be given in writing, including by email, or verbally by telephone, or in person.

Item 25 repeals and substitutes paragraph 82(2)(c), providing the requirement that the notice be given in the manner set out in a written notice given to the employer under new subsection 82(2).

Item 26 inserts new subsections 82(2A) and (2B) after subsection 82(2). New subsection 82(2A) requires the Secretary to approve a manner of notification that an employer must use when notifying of an event under section 82, and new subsection 82(2B) then requires the Secretary to notify the employer, by written notice, of the approved manner of notification.

Item 27 is an application and transitional provision. This is intended to improve administrative processes during the transitional period.

Subitem 27(1) provides that the amendments made by **items 25 and 26** apply in relation to notices which must be given to the Secretary under subsection 82(1) on or after the commencement of this item.

Subitem 27(2) provides that the Secretary is taken to give an employer written notice under new subsection 82(2B) if the Secretary publishes a notice setting out the manner of notification on a PPL agency's website, or notifies the employer of that manner by another means the Secretary considers appropriate. (The term 'PPL agency' is defined in section 6 of the Paid Parental Leave Act and means the Department or the Human Services Department.) However, **subitem 27(3)** provides that **subitem 27(2)** does not apply if the Secretary made the employer determination later than six months after the commencement of this item.

Subitem 27(4) provides that the delegation provisions in subsections 303(1) and (2) of the Paid Parental Leave Act apply in relation to **item 27** in the same way as they apply in relation to section 82 of that Act.

Requirement for notice given to employer after review

Section 105 of the Paid Parental Leave Act deals with the requirement of an employer to give the Secretary a written notice containing bank account and pay cycle information after review of an employer determination. This applies where an employer applies for review and either the employer withdraws the application, or the determination has not been set aside or quashed and is no longer subject to review, and the person's PPL period has not ended. The Secretary must give the employer a written notice requiring the employer to give the Secretary a written notice containing: the employer's bank account details, pay cycle information, and any other information prescribed by the PPL rules. Subsection 105(3) then provides that the employer must give the notice within 14 days of the date of the notice given by the Secretary.

Item 28 inserts new subsection (2A) into section 105, which requires that the notice given to the employer be dated. The date must be the date the preparation of the notice was completed.

Item 29 makes a minor amendment to subsection 105(3) to clarify that the employer must give the notice 'to the Secretary'.

Section 131 of the Paid Parental Leave Act

Items 30 and 31 make minor technical amendments to section 131 of the Paid Parental Leave Act, which deals with the offence for soliciting the disclosure of protected information.

Item 30 omits the word 'protected' from paragraph 131(1)(a). The term is not required in paragraph 131(1)(a), as paragraph 131(1)(c) explicitly requires that the information be 'protected information'.

Division 3 of Part 4-1 of the Act deals with the confidentiality of protected information. Section 131 currently makes it an offence to solicit the disclosure of protected information if the disclosure would be in contravention of the 'Subdivision'. As the confidentiality provisions are contained in a Division, rather than a Subdivision, **item 31** omits the word 'Subdivision' from paragraph 131(1)(c) and substitutes the word 'Division'.

Debt recovery

Section 147 of the Paid Parental Leave Act provides for civil penalty orders in relation to a contravention of a civil penalty provision under the Paid Parental Leave Act. If, on an application of the Secretary or Fair Work Ombudsman, the Federal Court or Federal Magistrates Court is satisfied that a person has contravened a civil penalty provision, the court may order the person to pay a pecuniary penalty to the Commonwealth. The pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the order in the same way as a judgment debt.

Part 4-3 of the Paid Parental Leave Act deals with debt recovery. Several provisions relating to debt notices, debt recovery and write-off and waiver of debts extend the operation of Part 4-3 to debts due to the Commonwealth under the Paid Parental Leave Act.

Item 32 adds new section 201A at the end of Division 8 of Part 4-3. New section 201A clarifies that normal civil debt recovery procedures are to apply to the recovery of debts arising from a civil penalty order, rather than the debt recovery provisions in Part 4-3 of the Paid Parental Leave Act.

Amendment to the application of Division 2 of Part 5-2

Division 2 of Part 5-2 deals with review by the SSAT of claimant decisions. Subsection 215(2) sets out those decisions to which Division 2 does not apply. This includes decisions under certain provisions specified in paragraph 215(2)(a), which deal with the making, form and manner of claims, and the form and manner of notices.

Item 33 inserts new subparagraph (va) into paragraph 215(2)(a) to provide that Division 2 of Part 5-2 does not apply to decisions under new subsection 82(2A) (see **item 26** above).

Commonwealth employees and the requirement for 12 months' employment for an employer determination to be made

Section 278 of the Paid Parental Leave Act deals with how the Act applies to Commonwealth employment. The Paid Parental Leave Act applies in relation to a person engaged to perform functions in a Commonwealth agency as if: the employee were employed by the agency (rather than the Commonwealth); the agency were a body corporate; and the agency head has all the rights, duties and powers of an employer in relation to the employee. 'Commonwealth agency' is defined in section 6 of the Paid Parental Leave Act.

Subsection 101(1) of the Paid Parental Leave Act provides that the Secretary must make an employer determination for an employer and a person if satisfied of the conditions set out in paragraphs (a) to (f). It is a requirement under paragraph 101(1)(c) that the person has, or will have, been employed by the employer for at least 12 months immediately before the applicable date. As section 278 applies the Act to a Commonwealth employee as if the person were employed by the agency rather than the Commonwealth, this effectively means that a Commonwealth employee would, for the purposes of paragraph 101(1)(c), need to have been employed by the particular agency for at least 12 months before the applicable date.

Item 35 inserts new subsection (2) into section 278 to give effect to the intention that, for the purposes of working out for paragraph 101(1)(c) whether the person has, or will have, been employed by the Commonwealth agency for at least 12 months, the reference in paragraph 101(1)(c) to the employer is to be treated as being a reference to the Commonwealth, and subsection 278(1) is disregarded. **Item 34** makes a minor amendment to insert '(1)' before 'this Act' in section 278.

Appointment of payment nominees under section 280

Section 280 of the Paid Parental Leave Act provides the Secretary with the discretion to appoint a person (including a body corporate) to be the payment nominee of another person for the purposes of the Act, and to direct that the whole or part of an instalment payable to the nominee's principal be paid to the nominee. The intention is that a payment nominee only be appointed in respect of a person if instalments of parental leave pay are payable by the Secretary, rather than by the person's employer. Part 3-3 of the Act deals with payment of instalments of parental leave pay by the Secretary, and section 84 sets out when the Secretary is required to pay instalments.

Item 36 clarifies the intended operation of section 280 by amending paragraph 280(1)(b) so that instalments can only be paid to a payment nominee where the instalment is payable by the Secretary under Part 3-3.

Delegation of the Secretary's powers under the Paid Parental Leave Act

Section 303 of the Paid Parental Leave Act provides for the Secretary to delegate his or her powers under the Act. Subsection 303(1) allows the Secretary to delegate his or her powers, with some exceptions, to a person such as an officer or person engaged by an Agency or other Commonwealth authority. This does not include the Chief Executive Centrelink, the Chief Executive Medicare, or an APS employee in the Human Services Department, as subsection 303(2) expressly provides for the Secretary to delegate his or her powers under the Act (other than certain provisions) to the Chief Executive Centrelink, the Chief Executive Medicare, or an APS employee in the Human Services Department.

Items 37, 38, 39 and 40 make minor amendments in relation to subsection 303(1) for clarity.

Item 37 inserts the heading 'General powers' before subsection 303(1).

Item 38 substitutes 'Commonwealth;' with 'Commonwealth.'

Item 39 omits all words after subparagraph 303(1)(iii), as new subsection 303(1A) (see **item 40** below) now provides that paragraphs 303(1)(a) and (b) do not apply to the Chief Executive Centrelink, the Chief Executive Medicare, or an APS employee in the Human Services Department.

Item 40 inserts new subsection 303(1A), which provides that paragraphs 303(1)(a) and (b) do not apply to the Chief Executive Centrelink, the Chief Executive Medicare, or an APS employee in the Human Services Department.

Subsection 303(3) of the Paid Parental Leave Act provides for the delegation of the Secretary's powers under Division 3 or 5 of Part 4-2 of the Act (which deal with civil penalty orders and infringement notices) to the Chief Executive Centrelink, the Chief Executive Medicare, or an SES employee or acting SES employee.

Item 41 inserts the heading ‘Powers under Division 3 or 5 of Part 4-2’ before subsection 303(3).

It is intended that the Secretary’s powers in relation to infringement notices and civil penalty orders, if delegated under the Paid Parental Leave Act, may only be exercised by the Chief Executive Centrelink, the Chief Executive Medicare, or an SES or acting SES employee.

Item 42 inserts new subsections (3A) and (3B) into section 303 to clarify this intention. New subsection 303(3A) provides that, if the Secretary delegates any of his or her powers under Division 3 or 5 of Part 4-2 to the Chief Executive Centrelink, the Chief Executive Centrelink cannot, despite any provision in the *Human Services (Centrelink) Act 1997*, delegate the power to a Departmental employee (within the meaning of that Act) who is not an SES employee or an acting SES employee.

Similarly, if the Secretary delegates any of his or her powers under Division 3 or 5 of Part 4-2 to the Chief Executive Medicare, new subsection 303(3B) provides that the Chief Executive Medicare cannot, despite any provision of the *Human Services (Medicare) Act 1973*, delegate the power to a Departmental employee (within the meaning of that Act) who is not an SES employee or an acting SES employee.

Item 42 also inserts the heading ‘Power under paragraph 128(1)(b)’.

Subsection 303(4) of the Paid Parental Leave Act prevents the Secretary from delegating to anyone, other than the Chief Executive Centrelink or the Chief Executive Medicare, the Secretary’s power under paragraph 128(1)(b) to disclose information to an Agency Head (within the meaning of the *Public Service Act 1999*). Subsection 303(5) provides that, if the Secretary delegates the power mentioned in subsection 303(4) to the Chief Executive Centrelink, the Chief Executive Centrelink cannot, despite any other provision in the *Human Services (Centrelink) Act 1997*, delegate that power to a Departmental employee (within the meaning of the *Human Services (Centrelink) Act 1997*). Similarly, subsection 303(6) provides that, if the Secretary delegates the power mentioned in subsection 303(4) to the Chief Executive Medicare, the Chief Executive Medicare cannot, despite any other provision in the *Human Services (Medicare) Act 1973*, delegate that power to a Departmental employee (within the meaning of *Human Services (Medicare) Act 1973*).

Item 43 makes a minor amendment to subsection 303(5) for clarity. The words ‘the power mentioned in subsection (4)’ are omitted and substituted with ‘his or her power under paragraph 128(1)(b)’ to make clear that subsection 303(5) is limiting the Chief Executive Centrelink’s ability to delegate further the Secretary’s power under paragraph 128(1)(b) to disclose information to an Agency head.

Item 44 omits the word ‘other’ from subsection 303(5).

Item 45 omits the second occurrence of ‘the *Human Services (Centrelink) Act 1997*’ from subsection 303(5) and substitutes ‘that Act’.

Items 46, 47 and 48 make similar amendments to subsection 303(6) for clarity.

Item 46 omits 'the power mentioned in subsection (4)' from subsection 303(6), and substitutes 'his or her power under paragraph 128(1)(b)'.

Item 47 omits the word 'other' from subsection 303(6).

Item 48 omits the second occurrence of 'the *Human Services (Medicare) Act 1973*' from subsection 303(6) and substitutes 'that Act'.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Bill 2012

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Overview of the Bill

The *Paid Parental Leave Act 2010* provides for the Paid Parental Leave scheme, a national, Government-funded payment to complement the entitlement to unpaid leave under the National Employment Standards (NES) in the *Fair Work Act 2009*. The scheme currently consists of parental leave pay, an 18 week payment for eligible primary carers (mostly birth mothers) of newborn and newly adopted children at the National Minimum Wage.

Parental leave pay is particularly aimed at advancing the human rights of children and birth mothers. The object of parental leave pay is to provide financial support to primary carers (mainly birth mothers) of newborn and adopted children, in order to:

- allow those carers to take time off work to care for the child after the birth or adoption, and
- enhance health and development of birth mothers and children, and
- encourage women to participate in the workforce.

The *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Bill 2012* (“the Bill”) will extend the scheme by introducing dad and partner pay, a two week dedicated payment for eligible fathers and partners caring for a newborn or newly adopted child. Payments will be available to eligible fathers and partners (including adoptive parents and parents in same-sex couples) but will not be transferrable to birth mothers. The requirement to meet work, income and residency tests, and the rate of pay and will be consistent with parental leave pay. Subject to the passage of legislation, payments will commence from 1 January 2013 with first claims able to be lodged from 1 October 2012.

Dad and partner pay will advance the protection of human rights by facilitating both parents’ participation in caring responsibilities. The object of dad and partner pay is to provide financial support to fathers and partners caring for newborn or newly adopted children to:

- increase the time that fathers and partners take off work around the time of a birth or adoption,
- create further opportunities for fathers and partners to bond with the child, and
- allow fathers and partners to take a greater share of caring responsibilities and support mothers and partners from the beginning.

The Bill also makes a number of minor technical amendments to clarify the operation of the *Paid Parental Leave Act 2010* in relation to parental leave pay and changes to the *Fair Work Act 2009* to improve flexibility for parents accessing unpaid parental leave under the NES.

Human rights implications

The right to social security

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises ‘the right of everyone to social security, including social insurance’. That right requires a country to, within its maximum available resources, provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. Article 26 of the Convention on the Rights of the Child (CRC) ensures that right to ‘every child’ and requires that ‘the benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child’. The financial assistance provided by dad and partner pay will build on support for the right to social security provided by the existing Paid Parental Leave Scheme.

Rights to work

Article 10 (2) of the International Covenant on Civil and Political Rights (ICCPR) states that ‘working mothers should be accorded paid leave or leave with adequate social security benefits’ for a ‘reasonable period before and after childbirth’. The Convention to Eliminate all forms of Discrimination Against Women (CEDAW) also requires States Parties to ‘introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances’ under Article 11(2)(b). Although Australia maintains a reservation to Article 11(2)(b) of the CEDAW, the Paid Parental Leave scheme introduced a Government-funded entitlement to 18 weeks parental leave pay in 2011, to complement the existing entitlement to unpaid leave under the NES. Dad and partner pay will extend families’ entitlements under the scheme by up to two weeks.

Amendments to the *Fair Work Act 2009* to improve flexibility for parents accessing unpaid parental leave under the NES will promote the intent of maternity leave rights by strengthening protections for the right to return to work. Amendments will be made to make sure that employees on unpaid parental leave will be able to perform paid work for up to 10 days for the purposes of keeping in touch with their employer, without losing eligibility for further unpaid leave. Amendments will also be made to give parents the right to return to their employment, subject to four weeks’ notice, in the event of a still birth or infant death.

Rights of parents and children

Article 18 of the CRC states that 'States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child'. In guaranteeing and promoting those rights, 'States Parties shall render appropriate assistance to the parents and legal guardians in the performance of their child-rearing responsibilities'. Dad and partner pay will promote the understanding that both parents have an important role to play in raising a child and support working parents to fulfil those roles, in line with Australia's obligations under the CRC.

Rights to health

Amendments to allow employees and employers to agree that a pregnant employee's unpaid leave period under the NES may begin earlier than six weeks before a child's expected due date, and to prevent employers from requesting that an employee take a "keeping in touch" day within six weeks after birth will support the 'right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction', as recognised under Article 11(1)(f) of the CEDAW. Enabling employees to access leave at an earlier stage in their pregnancy will also reinforce Australia's commitment to 'ensure appropriate pre-natal and post-natal health care for mothers' under Article 24(2)(d).

The right to privacy

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy. Privacy guarantees a right to secrecy from the public of personal information. For interference with privacy not to be arbitrary it must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. Reasonableness in this context incorporates notions of proportionality to the end sought and necessity in the circumstances.

Item 305 of the Bill will amend existing section 117 of the *Paid Parental Leave Act 2010* to allow the Secretary to require a person claiming dad and partner pay to provide information to a specified agency. This interference with the right to privacy is not arbitrary. It is limited by the *Paid Parental Leave Act 2010* and consistent with the aims and objectives of the ICCPR. The kinds of information the Secretary can require a person to provide are limited to information that the Secretary considers may be relevant to determining whether a person is eligible for dad and partner pay, whether dad and partner Pay is payable to a person or ensuring that the Secretary can pay dad and partner pay into a person's bank account. The collection of that information is necessary to identify eligible claimants and provide payments to deliver the benefits of the policy including the promotion of rights under the ICCPR discussed above.

Information collected under section 117 is also protected by provisions under sections 120, 127 and 128 of the *Paid Parental Leave Act 2010* and the requirement that disclosure of any personal information obtained be authorised under the *Privacy Act 1988*. Section 120 requires the Secretary to request the information in writing notifying the person affected of the agency and officer to whom the information will be given. Section 127 limits the ways in which information collected under section 117 can be used and section 128 limits the people to whom information collected by the Secretary can be disclosed. In disclosing information to a person not specifically identified in section 128 the Secretary must grant a public interest certificate in accordance with the public interest certificate guidelines set out in the Paid Parental Leave Rules.

Conclusion

The *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Bill 2012* is compatible with human rights. Dad and partner pay will advance the protection of human rights by facilitating both parents' participation in caring responsibilities through the provision of financial support following the birth or adoption of a child. To the extent that it may limit human rights those limitations are reasonable, necessary and proportionate to achieving the legitimate objective of increasing the time away from work that fathers and partners take to bond with their child following a birth or adoption.

**Minister for Families, Housing, Community Services and Indigenous Affairs,
Minister for Disability Reform, the Hon Jenny Macklin MP**