



Paid Parental Leave (Consequential Amendments) Act 2010

No. 105, 2010

An Act to make amendments consequential on the enactment of the *Paid Parental Leave Act 2010*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 105, 2010

An Act to make amendments consequential on the enactment of the *Paid Parental Leave Act 2010*, and for related purposes

[Assented to 14 July 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Paid Parental Leave (Consequential Amendments) Act 2010*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 14 July 2010 |
| 2. Schedule 1, items 1 and 2 | At the same time as the <i>Paid Parental Leave Act 2010</i> commences. | 1 October 2010 |
| 3. Schedule 1, item 3 | The latest of: (a) the start of 1 January 2011; and (b) the time the <i>Paid Parental Leave Act 2010</i> commences; and (c) immediately after the commencement of Schedule 2 to the <i>Child Support and Family Assistance Legislation Amendment (Budget and Other Measures) Act 2010</i> . However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (b) and (c) occur. | 1 January 2011 |
| 4. Schedule 1, items 4 to 12 | The later of: (a) the start of 1 January 2011; and (b) the time the <i>Paid Parental Leave Act 2010</i> commences. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. | 1 January 2011 |
| 5. Schedule 1, item 13 | The latest of: (a) the start of 1 January 2011; and (b) the time the <i>Paid Parental Leave Act 2010</i> commences; and | 1 January 2011 |

| Commencement information | | |
|---------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| | (c) immediately after the commencement of Schedule 2 to the <i>Child Support and Family Assistance Legislation Amendment (Budget and Other Measures) Act 2010</i> . However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (b) and (c) occur. | |
| 6. Schedule 1, items 14 to 18 | The later of: (a) the start of 1 January 2011; and (b) the time the <i>Paid Parental Leave Act 2010</i> commences. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. | 1 January 2011 |
| 7. Schedule 1, items 19 to 28 | At the same time as the <i>Paid Parental Leave Act 2010</i> commences. | 1 October 2010 |
| 8. Schedule 1, item 29 | The later of: (a) the start of 1 January 2011; and (b) the time the <i>Paid Parental Leave Act 2010</i> commences. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. | 1 January 2011 |
| 9. Schedule 1, items 30 to 37 | At the same time as the <i>Paid Parental Leave Act 2010</i> commences. | 1 October 2010 |
| 10. Schedule 1, item 38 | At the same time as the <i>Paid Parental Leave Act 2010</i> commences. However, if item 32 of Schedule 2 to the <i>Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010</i> commences on or before the time the <i>Paid Parental Leave Act 2010</i> commences, the provision(s) do not commence at all. | 1 October 2010 |
| 11. Schedule 1, items 39 to 82 | At the same time as the <i>Paid Parental Leave Act 2010</i> commences. | 1 October 2010 |

| Commencement information | | |
|---------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 12. Schedule 1, item 83 | <p>The later of:</p> <p>(a) the time the <i>Paid Parental Leave Act 2010</i> commences; and</p> <p>(b) immediately after the commencement of item 1 of Schedule 1 to the <i>Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010</i>.</p> <p>However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.</p> | |
| 13. Schedule 1, items 84 to 90 | At the same time as the <i>Paid Parental Leave Act 2010</i> commences. | 1 October 2010 |
| 14. Schedule 2 | At the same time as the <i>Paid Parental Leave Act 2010</i> commences. | 1 October 2010 |

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1)

Insert:

eligible for parental leave pay has the same meaning as in the *Paid Parental Leave Act 2010*.

2 Subsection 3(1)

Insert:

PPL period has the same meaning as in the *Paid Parental Leave Act 2010*.

3 Subsection 3(1)

Insert:

primary carer, in relation to a child who is an FTB child of an individual and is also an FTB child of another individual who is not the individual's partner, has the meaning given by subsection 36(8).

4 After paragraph 36(2)(aa)

Insert:

- (ab) the individual, or the individual's partner, is, or was, the primary carer of the child at any time within the period of 26 weeks starting on the day of the child's birth; and

5 After paragraph 36(2)(b)

Insert:

- (ba) in a case where the individual or the individual's partner is eligible for parental leave pay in respect of the child—the PPL period applying to the individual or the individual's partner has not started; and
- (bb) in a case where a former partner of the individual, or of the individual's partner, is eligible for parental leave pay in

respect of the child—the PPL period applying to the former partner:

- (i) has not started; or
- (ii) did not start while the former partner was the partner of the individual, or of the individual’s partner; and

6 Paragraph 36(3)(b)

Repeal the paragraph, substitute:

- (b) within the period of 26 weeks starting on the day of the child’s birth:
 - (i) the child is entrusted to the care of the individual or the individual’s partner; and
 - (ii) the individual, or the individual’s partner, becomes the primary carer of the child; and

7 After paragraph 36(3)(ca)

Insert:

- (cb) the individual, or the individual’s partner, continues, or is likely to continue, to be the primary carer of the child for not less than 26 weeks; and

8 After paragraph 36(3)(d)

Insert:

- (da) in a case where the individual or the individual’s partner is eligible for parental leave pay in respect of the child—the PPL period applying to the individual or the individual’s partner has not started; and
- (db) in a case where a former partner of the individual, or of the individual’s partner, is eligible for parental leave pay in respect of the child—the PPL period applying to the former partner:
 - (i) has not started; or
 - (ii) did not start while the former partner was the partner of the individual, or of the individual’s partner; and

9 Paragraph 36(4)(aa)

Repeal the paragraph, substitute:

- (aa) had the child been born alive:

- (i) the child would have been an FTB child of the individual at birth; and
- (ii) the individual, or the individual's partner, would have been the primary carer of the child at birth; and

10 After paragraph 36(4)(b)

Insert:

- (ba) in a case where the individual or the individual's partner is eligible for parental leave pay in respect of the child—the PPL period applying to the individual or the individual's partner has not started; and
- (bb) in a case where a former partner of the individual, or of the individual's partner, is eligible for parental leave pay in respect of the child—the PPL period applying to the former partner:
 - (i) has not started; or
 - (ii) did not start while the former partner was the partner of the individual, or of the individual's partner; and

11 After paragraph 36(5)(bb)

Insert:

- (bc) the individual, or the individual's partner, is, or was, the primary carer of the child at any time within the period of 26 weeks starting on the day the child is entrusted to the care of the individual; and

12 After paragraph 36(5)(c)

Insert:

- (ca) in a case where the individual or the individual's partner is eligible for parental leave pay in respect of the child—the PPL period applying to the individual or the individual's partner has not started; and
- (cb) in a case where a former partner of the individual, or of the individual's partner, is eligible for parental leave pay in respect of the child—the PPL period applying to the former partner:
 - (i) has not started; or
 - (ii) did not start while the former partner was the partner of the individual, or of the individual's partner; and

13 At the end of section 36

Add:

Primary carers in cases of shared care

- (8) If a child is an FTB child of an individual and is also an FTB child of another individual who is not the individual's partner, the *primary carer* of the child is:
- (a) if the individual who gave birth to the child has a percentage of care for the child of at least 48%—that individual; or
 - (b) if paragraph (a) does not apply, but one individual has a higher percentage of care for the child than anyone else—that individual; or
 - (c) if paragraphs (a) and (b) do not apply, but 2 individuals have an equal percentage of care for the child that is higher than anyone else's percentage of care for the child:
 - (i) if one of those individuals gave birth to the child—that individual; or
 - (ii) whichever of those individuals the Secretary decides is the primary carer of the child.

14 After section 36

Insert:

36A Effect of favourable review of payability determinations etc. for parental leave pay

- (1) If:
- (a) an individual would, but for this section, be eligible for baby bonus in respect of a child; and
 - (b) either:
 - (i) a payability determination (within the meaning of the *Paid Parental Leave Act 2010*) was made to the effect that parental leave pay is not payable for the child; or
 - (ii) a decision made under that Act, on review of another decision under that Act, has the effect that parental leave pay is not payable for the child; and
 - (c) a decision (the *favourable review decision*) made under that Act on review of:
 - (i) the payability determination; or

(ii) the decision on review referred to in subparagraph (b)(ii);
has the effect that parental leave pay is payable for the child; the individual is not, and is taken never to have been, eligible for baby bonus in respect of the child.

(2) Despite subsection (1), if:

- (a) the favourable review decision is made before the PPL period relating to the parental leave pay starts; and
- (b) before that PPL period starts, a decision made under that Act, on review of the favourable review decision, has the effect that parental leave pay is not payable for the child;

this section does not affect, and is taken never to have affected, the individual's eligibility for baby bonus in respect of the child.

(3) Despite subsection (1), if:

- (a) the favourable review decision is made before the PPL period relating to the parental leave pay starts; and
- (b) before that PPL period starts, the payability determination (as in force following the favourable review decision) is revoked under section 25 of that Act;

this section does not affect the individual's eligibility, after the determination is revoked, for baby bonus in respect of the child.

Note: If this subsection applies, subsection 39(1A) of the Family Assistance Administration Act allows for an additional claim for payment of baby bonus in respect of the child.

15 Subsections 37(2) and (3)

Omit "subsection 36(2), (3) or (4)", substitute "subsection 36(2) or (3)".

16 Paragraph 39(3)(b)

Repeal the paragraph, substitute:

- (b) had the child been born alive:
 - (i) the child would have been an FTB child of the individual at birth; and
 - (ii) the individual, or the individual's partner, would have been the primary carer of the child at birth; and

17 At the end of Division 2 of Part 4

Add:

66A Amount of baby bonus to take into account parental leave pay of others

(1) If:

- (a) an individual has been, or is being, paid parental leave pay for a child; and
- (b) at any time within the period of 26 weeks starting on the day of the child's birth, the individual has been, or is, the primary carer of the child; and
- (c) another individual is eligible for baby bonus, under subsection 36(2) or (3), in respect of the same child (whether or not that eligibility is affected by a determination under subsection 37(3));

the Secretary may determine a percentage by which it is reasonable to reduce the other individual's amount of baby bonus in respect of the child in order to take into account that the individual referred to in paragraph (a) is eligible for parental leave pay in respect of the child.

- (2) Despite section 66, the amount of baby bonus for the other individual in respect of the child is reduced in accordance with the determination.

18 At the end of Subdivision AA of Division 1 of Part 4 of Schedule 1

Add:

28C Paid parental leave

Despite Subdivisions A and B, the Part B rate that an individual is eligible for in respect of a day is nil if the day occurs during a PPL period applying to the individual, or the individual's partner.

Note: The heading to clause 28B of Schedule 1 is replaced by the heading "**Adjusted taxable income exceeding \$150,000**".

A New Tax System (Family Assistance) (Administration) Act 1999

19 Subsection 3(1)

Insert:

early claim day, in relation to:

- (a) a claim for payment of family tax benefit by instalment; or
- (b) a claim for payment of baby bonus in normal circumstances; or
- (c) a claim for payment of maternity immunisation allowance in normal circumstances;

means the day occurring 97 days before the day that, on the day the claim is made, is the expected day on which the child to whom the claim relates will become an FTB child of the claimant. It does not matter whether the child becomes such an FTB child on the expected day.

20 Subsection 3(1)

Insert:

parental leave pay has the same meaning as in the *Paid Parental Leave Act 2010*.

21 At the end of section 7

Add:

- (3) A claim is not effective if it is made before the early claim day.

22 After section 15A

Insert:

15B Deferral of determination of early claims

If:

- (a) an individual makes a claim for payment of family tax benefit by instalment in respect of a child before the child is an FTB child of the claimant; and
- (b) the Secretary is satisfied that, at the time the determination would otherwise be made, the claimant would be likely to be eligible for family tax benefit in respect of the child if the child were to become an FTB child of the claimant;

the Secretary must not determine the claim for family tax benefit until the earlier of the following:

- (c) the time when the child becomes an FTB child of the claimant, or is stillborn;

- (d) 28 days after the day that, on the day the claim is made, is the expected day on which the child to whom the claim relates will become an FTB child of the claimant.

23 After subsection 38(2)

Insert:

- (2A) A claim is not effective if it is made before the early claim day.

24 After subsection 39(1)

Insert:

- (1A) However, subsection (1) does not apply to a claim for payment of baby bonus in respect of a child if:
 - (a) section 36A applied in relation to an individual's eligibility for baby bonus in respect of the child, but ceased to apply because of subsection 36A(3); and
 - (b) the claim is the individual's first claim for payment of baby bonus in respect of the child after that section so ceased to apply.

25 Subsection 39(2)

Omit "subsection (3)", substitute "subsections (3) and (3A)".

26 After subsection 39(3)

Insert:

- (3A) If:
 - (a) the claimant, or the claimant's partner, made a claim in accordance with Part 2-4 of the *Paid Parental Leave Act 2010* for parental leave pay for the child to whom the claim for payment of baby bonus relates; and
 - (b) the Secretary notifies the claimant, or the claimant's partner, under section 24 of that Act that parental leave pay is not payable for the child; and
 - (c) the notice is given:
 - (i) after the end of the period of 52 weeks mentioned in subsection (2) of this section; or
 - (ii) during the last 13 weeks of that period of 52 weeks;

subsection (2) of this section does not apply if the claim for payment of baby bonus is made within the period of 13 weeks after the day on which the notice is given.

27 Subsections 41(3) and (4)

Repeal the subsections, substitute:

Deferral of “normal circumstances” baby bonus determination pending birth etc. of child

(3) If:

- (a) the claim is one for payment of baby bonus in normal circumstances, based on eligibility for baby bonus under subsection 36(2), (3) or (5) of the Family Assistance Act; and
- (b) at the time the determination would otherwise be made, the child to whom the claim relates is not an FTB child of the claimant; and
- (c) the Secretary is satisfied that, at the time the determination would otherwise be made, the claimant would be likely to be eligible for baby bonus in respect of the child if the child were to become an FTB child of the claimant;

the Secretary must not determine the claim for baby bonus until the earlier of the following:

- (d) the time when the child becomes an FTB child of the claimant, or is stillborn;
- (e) 28 days after the day that, on the day the claim is made, is the expected day on which the child to whom the claim relates will become an FTB child of the claimant.

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

(4) If:

- (a) the claim is one for payment of baby bonus in normal circumstances; and
- (b) the claimant, or the claimant’s partner, has made a claim in accordance with Part 2-4 of the *Paid Parental Leave Act 2010* for parental leave pay for the child to whom the claim for baby bonus relates;

the Secretary must not determine the claim for baby bonus until one of the following occurs:

- (c) if the Secretary determines under that Act that parental leave pay for the child is payable:
 - (i) the PPL period applying to the individual who made the claim for parental leave pay starts; or
 - (ii) the Secretary revokes the determination under section 25 of that Act;
- (d) the Secretary determines under that Act that parental leave pay for the child is not payable;
- (e) the claim for parental leave pay is withdrawn under section 61 of that Act.

Deferral of “normal circumstances” maternity immunisation allowance determination pending birth etc. of child

(4A) If:

- (a) the claim is one for payment of maternity immunisation allowance in normal circumstances, based on eligibility for the allowance under subsection 39(2), (2A) or (5) of the Family Assistance Act, or subsection 39(6) of that Act (where subsection 39(7) of that Act applies), in respect of a child; and
- (b) at the time the determination would otherwise be made, the child is not an FTB child of the claimant; and
- (c) the Secretary is satisfied that, at the time the determination would otherwise be made, if the child were to become an FTB child of the claimant, the claimant:
 - (i) would be likely to be eligible for family tax benefit in respect of the child; or
 - (ii) would be likely to be so eligible except that the claimant’s rate of family tax benefit, worked out under Division 1 of Part 4 of the Family Assistance Act, would be nil;

the Secretary must not determine the claim for maternity immunisation allowance until the earlier of the following:

- (d) the time when the child becomes an FTB child of the claimant, or is stillborn;
- (e) 28 days after the day that, on the day the claim is made, is the expected day on which the child to whom the claim relates will become an FTB child of the claimant.

28 Subsection 41(7)

Before “subparagraphs”, insert “paragraphs (4A)(b), (c) and (d) and”.

Note: The following heading to subsection 41(7) is inserted “*Effect of section 22A of the Family Assistance Act*”.

29 Paragraph 47B(1)(c)

Repeal the paragraph, substitute:

- (c) as a result of that change in care:
 - (i) the child ceases to be an FTB child of the individual; or
 - (ii) neither the individual nor the individual’s partner is the primary carer of the child; and

30 Paragraph 84(1)(b)

After “the *Farm Household Support Act 1992*”, insert “, the *Paid Parental Leave Act 2010*”.

31 Subparagraphs 84A(1)(b)(ii), 92(1)(a)(i) and 92A(1)(a)(i)

After “the *Farm Household Support Act 1992*”, insert “, the *Paid Parental Leave Act 2010*”.

Child Support (Registration and Collection) Act 1988**32 Subsection 4(1)**

Insert:

instalment of parental leave pay means an instalment of parental leave pay under the *Paid Parental Leave Act 2010*.

33 After section 72AC

Insert:

72AD Deductions from parental leave pay

- (1) The Registrar may give a written notice to the Secretary (within the meaning of the *Paid Parental Leave Act 2010*) if:
 - (a) the Secretary is required under the *Paid Parental Leave Act 2010* to pay an instalment of parental leave pay to a person; and
 - (b) either of the following applies:

- (i) the person is a payer of an enforceable maintenance liability;
 - (ii) the person owes a child support debt in relation to an enforceable maintenance liability and an amount of the debt remains unpaid after the day on which the debt became due and payable under section 66 of this Act.
- (2) The notice must:
 - (a) specify the person's name; and
 - (b) set out sufficient particulars to enable the Secretary to identify the person; and
 - (c) if subparagraph (1)(b)(i) applies, or both subparagraphs (1)(b)(i) and (ii) apply—instruct the Secretary to make, subject to subsections (3) and (4), fortnightly deductions of an amount specified in the notice from the person's instalments of parental leave pay from a specified day; and
 - (d) if subparagraph (1)(b)(ii) applies and subparagraph (1)(b)(i) does not apply—instruct the Secretary to make, subject to subsections (3) and (4), fortnightly deductions of an amount specified in the notice from the person's instalments of parental leave pay from a specified day until the debt is paid.
- (3) The amount to be deducted from the person's instalment of parental leave pay for a period must not exceed the amount (if any) by which the person's instalment for the period exceeds the amount ascertained by applying the protected earnings rate to that period.
- (4) An amount is not to be deducted from the person's instalment of parental leave pay for a period if the person's instalment for the period is less than the amount ascertained by applying the protected earnings rate to that period.
- (5) A notice under subsection (1) is not invalid merely because:
 - (a) it specifies under paragraph (2)(c) or (d) an amount that exceeds the amount that subsection (3) allows to be deducted; or
 - (b) subsection (4) does not allow an amount to be deducted.

Data-matching Program (Assistance and Tax) Act 1990

34 Subsection 3(1) (at the end of paragraphs (d), (daa) and (dd) of the definition of *personal assistance*)

Add “or”.

35 Subsection 3(1) (after paragraph (df) of the definition of *personal assistance*)

Insert:

or (e) an instalment of parental leave pay under the *Paid Parental Leave Act 2010*;

Fringe Benefits Tax Assessment Act 1986

36 Subsection 136(1) (after paragraph (a) of the definition of *salary or wages*)

Insert:

(aa) a payment from which an amount must be withheld (even if the amount is not withheld) under paragraph 12-110(1)(ca) (about parental leave pay) in Schedule 1 to the *Taxation Administration Act 1953*, other than a payment under Part 3-3 of the *Paid Parental Leave Act 2010* (Payment of instalments by Secretary); and

Income Tax Assessment Act 1936

37 Subsection 6(1)

Insert:

member of a family tax benefit (Part B) family without shared care: a taxpayer is a ***member of a family tax benefit (Part B) family without shared care*** if:

- (a) the taxpayer, or the taxpayer’s spouse while being the taxpayer’s partner (within the meaning of the *A New Tax System (Family Assistance) Act 1999*), is eligible for family tax benefit at the Part B rate (within the meaning of that Act); and
- (b) clause 31 of Schedule 1 to that Act does not apply in respect of the Part B rate.

38 After paragraph 16(4)(fc)

Insert:

(fca) the Families Secretary, or the Chief Executive Officer of Centrelink, for the purpose of the administration of the *Paid Parental Leave Act 2010*; or

39 Sub-subparagraph 23AB(7)(a)(ii)(AA)

Omit “subsections 159L(3A), (5A) and (5B)”, substitute “section 159LA”.

40 Sub-subparagraph 23AB(7)(a)(ii)(BA)

Omit “subsections 159J(1AA), (3AA) and (3AB)”, substitute “section 159JA”.

41 Sub-subparagraph 23AB(7)(a)(ii)(D)

Omit “subsections 159J(1AA), (3AA) and (3AB)”, substitute “section 159JA”.

42 Subsection 79A(4) (paragraph (aa) of the definition of *relevant rebate amount*)

Omit “subsections 159L(3A), (5A) and (5B)”, substitute “section 159LA”.

43 Subsection 79A(4) (paragraph (ba) of the definition of *relevant rebate amount*)

Omit “subsections 159J(1AA), (3AA) and (3AB)”, substitute “section 159JA”.

44 Subsection 79A(4) (paragraph (d) of the definition of *relevant rebate amount*)

Omit “subsections 159J(1AA), (3AA) and (3AB)”, substitute “section 159JA”.

45 Subsection 79B(6) (paragraph (aa) of the definition of *concessional rebate amount*)

Omit “subsections 159L(3A), (5A) and (5B)”, substitute “section 159LA”.

46 Subsection 79B(6) (paragraph (ba) of the definition of concessional rebate amount)

Omit “subsections 159J(1AA), (3AA) and (3AB)”, substitute “section 159JA”.

47 Subsection 79B(6) (paragraph (d) of the definition of concessional rebate amount)

Omit “subsections 159J(1AA), (3AA) and (3AB)”, substitute “section 159JA”.

48 Subsections 159J(1AA), (3AA) and (3AB)

Repeal the subsections.

49 After section 159J

Insert:

159JA Rebates for dependants—reduction because of certain other benefits*Families without shared care percentages*

- (1) A taxpayer is not entitled, in his or her assessment in respect of a year of income, to a rebate under section 159J in respect of a dependant for a part of the year, if:
- (a) the dependant is included in class 1 or 2 in the table in subsection 159J(2); and
 - (b) during that part of the year:
 - (i) the taxpayer is a member of a family tax benefit (Part B) family without shared care; or
 - (ii) parental leave pay is payable under the *Paid Parental Leave Act 2010* to the taxpayer, or to the taxpayer’s spouse while being the taxpayer’s partner (within the meaning of that Act).

Note: That part of the year may be the whole year.

- (2) Subject to subsection (3), the rebate allowable to the taxpayer under section 159J in respect of the dependant for the part (if any) of the year not covered by paragraph (1)(b) of this section is such part of the relevant rebate amount specified in column 3 of the

table in subsection 159J(2) as, in the Commissioner's opinion, is reasonable in the circumstances.

Families with shared care percentages

- (3) The rebate allowable to a taxpayer under section 159J in respect of a dependant for a part (the *shared care period*) of a year of income is to be worked out using the formula in subsection (4) of this section, if:
- (a) disregarding this subsection, the taxpayer would be entitled, in his or her assessment in respect of the year, to a rebate under section 159J in respect of the dependant; and
 - (b) the dependant is included in class 1 or 2 in the table in subsection 159J(2); and
 - (c) during the shared care period:
 - (i) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner (within the meaning of the *A New Tax System (Family Assistance) Act 1999*), was eligible for family tax benefit at the Part B rate within the meaning of that Act; and
 - (ii) clause 31 of Schedule 1 to that Act applied in respect of that Part B rate because the taxpayer, or the taxpayer's spouse, had a shared care percentage for an FTB child (within the meaning of that Act).

Note: The *shared care period* may be the whole year.

- (4) The formula is:

$$\left(1 - \frac{\text{Shared care rate}}{\text{Non-shared care rate}} \right) \times \text{Applicable rebate amount}$$

where:

applicable rebate amount is the amount of rebate that would have been allowable under section 159J in respect of the shared care period but for subsection (3) of this section.

non-shared care rate is the rate that would be the standard rate in respect of the taxpayer or the taxpayer's spouse under clause 30 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* if:

- (a) clause 31 of that Schedule did not apply; and

- (b) the FTB child in respect of whom the standard rate was determined under clause 31 was the only FTB child of the taxpayer or the taxpayer's spouse, as the case requires.

shared care rate is the standard rate in respect of the taxpayer or the taxpayer's spouse worked out under clause 31 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*.

50 Subsections 159L(3A), (5A) and (5B)

Repeal the subsections.

Note: The heading to section 159L is replaced by the heading "**Rebates for housekeepers**".

51 After section 159L

Insert:

159LA Rebates for housekeepers—reduction because of certain other benefits

Families without shared care percentages

- (1) A taxpayer is not entitled, in his or her assessment in respect of a year of income, to a rebate under section 159L in respect of a person (the *housekeeper*) for a part of the year, if, during that part of the year:
- (a) the taxpayer does not contribute to the maintenance of a dependant specified in paragraph 159L(1)(c); and
 - (b) either or both of the following subparagraphs apply:
 - (i) the taxpayer is a member of a family tax benefit (Part B) family without shared care;
 - (ii) parental leave pay is payable under the *Paid Parental Leave Act 2010* to the taxpayer, or to the taxpayer's spouse while being the taxpayer's partner (within the meaning of that Act).

Note: That part of the year may be the whole year.

- (2) Subject to subsection (3), the rebate allowable to the taxpayer under section 159L in respect of the housekeeper for the part (if any) of the year not covered by subsection (1) of this section is such part of the rebate specified in subsection 159L(2) in relation to the taxpayer as, in the Commissioner's opinion, is reasonable in the circumstances.

Families with shared care percentages

- (3) The rebate allowable to a taxpayer under section 159L in respect of a person (the *housekeeper*) for a part (the *shared care period*) of a year of income is to be worked out using the formula in subsection (4) of this section, if:
- (a) disregarding this subsection, the taxpayer would be entitled, in his or her assessment in respect of the year, to a rebate under section 159L in respect of the housekeeper; and
 - (b) during the shared care period:
 - (i) the taxpayer, or the taxpayer's spouse while being the taxpayer's partner as defined in the *A New Tax System (Family Assistance) Act 1999*, was eligible for family tax benefit at the Part B rate within the meaning of that Act; and
 - (ii) clause 31 of Schedule 1 to that Act applied in respect of that Part B rate because the taxpayer, or the taxpayer's spouse, had a shared care percentage for an FTB child (within the meaning of that Act); and
 - (iii) the taxpayer did not contribute to the maintenance of a dependant specified in paragraph 159L(1)(c) of this Act.

Note: The *shared care period* may be the whole year.

- (4) The formula is:

$$\left(1 - \frac{\text{Shared care rate}}{\text{Non-shared care rate}} \right) \times \text{Applicable rebate amount}$$

where:

applicable rebate amount is the amount of rebate that would have been allowable under section 159L in respect of the shared care period but for subsection (3) of this section.

non-shared care rate is the rate that would be the standard rate in respect of the taxpayer or the taxpayer's spouse under clause 30 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999* if:

- (a) clause 31 of that Schedule did not apply; and
- (b) the FTB child in respect of whom the standard rate was determined under clause 31 was the only FTB child of the taxpayer or the taxpayer's spouse, as the case requires.

shared care rate is the standard rate in respect of the taxpayer or the taxpayer's spouse worked out under clause 31 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*.

52 After paragraph 202(l)

Insert:

(la) to facilitate the administration of the *Paid Parental Leave Act 2010*; and

Income Tax Assessment Act 1997**53 Subsection 995-1(1)**

Insert:

parental leave pay has the meaning given by the *Paid Parental Leave Act 2010*.

Medicare Levy Act 1986**54 Paragraph 8(1)(b)**

Omit “subsection 159J(1AA) or (1AB)”, substitute “subsection 159J(1AB) or 159JA(1)”.

55 Paragraph 8(1)(d)

Omit “subsection 159L(3A) or (3B)”, substitute “subsection 159L(3B) or 159LA(1)”.

56 Paragraph 8(2)(b)

Omit “subsection 159J(1AA) or (1AB)”, substitute “subsection 159J(1AB) or 159JA(1)”.

57 Paragraph 8(2)(d)

Omit “subsection 159L(3A) or (3B)”, substitute “subsection 159L(3B) or 159LA(1)”.

Social Security Act 1991**58 Subsection 8(1)**

Insert:

instalment of parental leave pay means an instalment of parental leave pay under the *Paid Parental Leave Act 2010*.

59 After paragraph 8(8)(c)

Insert:

(d) an instalment of parental leave pay;

60 After paragraph 93WC(2)(a)

Insert:

(aa) includes an instalment of parental leave pay; and

61 Point 1064-F14 (at the end of the definition of *leave payment*)

Add “, but does not include an instalment of parental leave pay”.

62 Point 1066A-G14 (at the end of the definition of *leave payment*)

Add “, but does not include an instalment of parental leave pay”.

63 Point 1067G-H20 (at the end of the definition of *leave payment*)

Add “, but does not include an instalment of parental leave pay”.

64 Point 1067L-D16 (at the end of the definition of *leave payment*)

Add “, but does not include an instalment of parental leave pay”.

65 Point 1068-G7AR (at the end of the definition of *leave payment*)

Add “, but does not include an instalment of parental leave pay”.

66 Point 1068A-E12 (at the end of the definition of *leave payment*)

Add “, but does not include an instalment of parental leave pay”.

67 Point 1068B-D18 (at the end of the definition of *leave payment*)

Add “, but does not include an instalment of parental leave pay”.

68 Point 1071A-4 (at the end of the definition of *income*)

Add:

; and (f) instalments of parental leave pay.

69 After paragraph 1228(2)(c)

Insert:

(ca) an instalment of parental leave pay; or

70 Paragraph 1234A(1)(a)

After “the *Farm Household Support Act 1992*”, insert “, the *Paid Parental Leave Act 2010*”.

Taxation Administration Act 1953

71 Paragraphs 8WA(1AA)(b) and 8WB(1A)(a) and (b)

After “(kb)”, insert “, (la)”.

72 After paragraph 12-110(1)(c) in Schedule 1

Insert:

(ca) *parental leave pay; or

73 At the end of section 16-155 in Schedule 1

Add:

Paid parental leave paid in error

- (3) Despite subsection (2), the *payment summary must not cover a *withholding payment if:
 - (a) the withholding payment is a payment of an amount purported to have been paid by way of *parental leave pay; and
 - (b) the amount was not lawfully so payable.
- (4) The payer must, within 28 days of becoming aware that the *payment summary covers a *withholding payment to which subsection (3) applies:
 - (a) give the recipient an amended payment summary that does not cover the withholding payment; or
 - (b) give the recipient notice in the *approved form; or

- (c) give the Secretary (within the meaning of the *Paid Parental Leave Act 2010*) notice in writing that the payer does not intend to give the recipient an amended payment summary or notice under this subsection.

74 At the end of section 16-160 in Schedule 1

Add:

- (3) Despite subsection (1), the *payment summary must not cover a *withholding payment if:
 - (a) the withholding payment is a payment of an amount purported to have been paid by way of *parental leave pay; and
 - (b) at the time the recipient asks for the payment summary, the payer is aware that the amount was not lawfully so payable.

75 Paragraph 18-65(1)(b) in Schedule 1

Repeal the paragraph, substitute:

- (b) either:
 - (i) the amount was so withheld, or paid to the Commissioner, in error; or
 - (ii) in the case of an amount withheld from a payment of an amount purported to have been paid by way of *parental leave pay—the amount paid was not lawfully so payable; and

76 Subparagraph 18-65(1)(c)(i) in Schedule 1

Omit “error”, substitute “matter mentioned in paragraph (b)”.

77 Paragraph 18-65(1)(c) in Schedule 1

Omit “21 July in the financial year after the one”, substitute “the *financial year”.

78 Paragraph 18-65(3)(e) in Schedule 1

Omit “error”, substitute “matter mentioned in paragraph (1)(b) of this section”.

79 Subsection 18-65(4) in Schedule 1

Omit “error”, substitute “matter mentioned in paragraph (1)(b)”.

80 Paragraph 18-70(1)(b) in Schedule 1

Repeal the paragraph, substitute:

(b) either:

- (i) the amount was so withheld, or paid to the Commissioner, in error; or
- (ii) in the case of an amount withheld from a payment of an amount purported to have been paid by way of *parental leave—the amount paid was not lawfully so payable; and

81 Paragraph 18-70(1)(c) in Schedule 1

Omit “error”, substitute “matter mentioned in paragraph (b)”.

82 Paragraph 18-70(2)(e) in Schedule 1

Omit “error”, substitute “matter mentioned in paragraph (1)(b)”.

83 Subsection 355-65(2) in Schedule 1 (after table item 5)

Insert:

- | | | |
|----|--|---|
| 5A | (a) the *Families Secretary; or (b) the Chief Executive Officer of Centrelink | is for the purpose of administering the <i>Paid Parental Leave Act 2010</i> . |
|----|--|---|

Veterans’ Entitlements Act 1986

84 Subsection 5H(1)

Insert:

instalment of parental leave pay means an instalment of parental leave pay under the *Paid Parental Leave Act 2010*.

85 After paragraph 5H(8)(c)

Insert:

- (d) a payment of an instalment of parental leave pay;

86 After paragraph 45UUC(2)(a)

Insert:

- (aa) includes an instalment of parental leave pay; and

87 After paragraph 205(1)(ca)

Insert:

(cb) an amount has purported to have been paid by way of parental leave pay that was not lawfully so payable; or

88 Paragraph 205(2)(a)

After “, (ca)”, insert “, (cb)”.

89 Subsection 205(8) (paragraph (ba) of the definition of *excluded amount*)

Omit “(1)(ca)”, substitute “(1)(ca) or (cb)”.

90 Subsection 205(8) (paragraph (a) of the definition of *recoverable amount*)

Omit “or (ca)”, substitute “, (ca) or (cb)”.

Schedule 2—Transitional provisions

Part 1—Transitional provisions relating to employer determinations under the Paid Parental Leave Act 2010

1 Employer determination made where expected or actual date of birth is before 1 July 2011

- (1) The *Paid Parental Leave Act 2010* applies, with the modifications set out in this item, in relation to a person who has made a claim for parental leave pay for a child, if:
- (a) for a claim made before the day the child is born—the expected date of birth of the child is before 1 July 2011; or
 - (b) for a claim made after the child is born—the day the child is born is before 1 July 2011.

Note: For a claim made before the day the child is born, see subitem (9) if the expected date of birth of the child is before 1 July 2011, but the child is born on or after that date.

- (2) Section 101 of that Act (and the other provisions of that Act so far as they relate to that section) applies in relation to the person as if subsections (1) and (2) of that section were omitted and the following subsection substituted:
- (1) The Secretary must make a determination under this section (the ***employer determination***) that a person's employer is to pay the person instalments if the Secretary is satisfied, when making the determination, that:
- (a) a payability determination that parental leave pay is payable to the person, or an initial eligibility determination for the person, is in force; and
 - (b) the employer has made an election under section 109 that applies to the person; and
 - (c) the person has consented in the claim to the employer paying instalments to the person; and
 - (d) the person is likely to be an Australian-based employee of the employer during whichever of the following periods applies:

Schedule 2 Transitional provisions

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

- (i) if the Secretary has made a payability determination that parental leave pay is payable to the person—the person’s PPL period;
 - (ii) otherwise—the period of days for which instalments are likely, if the determination is made, to be payable to the person by the employer; and
 - (e) the employer has an ABN; and
 - (f) if paragraphs (b) to (e) are satisfied in relation to more than one employer of the person—the person nominated the employer in the claim as the employer who would be required to pay instalments to the person.
- (3) For the purposes of this item, an employer determination made under subsection 101(1), as that subsection applies because of subitem (2) of this item, is a ***transitional employer determination***.
- (4) The following provisions of that Act do not apply in relation to a transitional employer determination:
- (a) section 103 (which deals with responding to a notice of an employer determination);
 - (b) subsection 107(2) (which deals with when an employer determination comes into force);
 - (c) subsections 207(3) and 224(1) (which deal with applying for review of employer determination decisions).
- (5) Within 14 days after the date of the notice given under section 102 of that Act in relation to the transitional employer determination, the employer may give the Secretary a written notice (the ***acceptance notice***) that complies with section 104 of that Act.
- (6) If the employer gives the acceptance notice to the Secretary within that 14 day period, the transitional employer determination comes into force on the day the Secretary receives the acceptance notice.
- (7) If the employer does not give the acceptance notice to the Secretary within that 14 day period, the following paragraphs have effect:
- (a) the Secretary must revoke the transitional employer determination;
 - (b) the revocation comes into force on the day of the revocation;
 - (c) to avoid doubt, subsection 108(5) of that Act (which deals with giving notice of the revocation) applies in relation to the revocation.
-

- (8) The Secretary may extend the 14 day period referred to in subitem (5) in relation to an employer. If the Secretary does so, subitems (6) and (7) have effect accordingly.
- (9) Despite paragraph (1)(a) and subitem (2) of this item, if the person's child is born on or after 1 July 2011, then the following paragraphs have effect:
- (a) the Secretary may make an employer determination for the person and the person's employer under section 101 of the *Paid Parental Leave Act 2010*, as that section applies apart from this item;
 - (b) if the Secretary does so and has previously made a transitional employer determination for the person and the employer, the Secretary is taken never to have made the transitional employer determination.
- (10) The following provisions of the *Paid Parental Leave Act 2010*, apply in relation to this item as if it were a provision of that Act:
- (a) section 275 (which deals with how that Act applies to an adopted child);
 - (b) section 276 (which deals with how that Act applies to claims made in exceptional circumstances).

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

- (1) This item applies if:
- (a) the Secretary makes an employer determination for an employer and a person under the *Paid Parental Leave Act 2010*; and
 - (b) the person's claim is made before the day the child is born; and
 - (c) the expected date of birth of the child is on or after 1 July 2011; and
 - (d) the child is born before 1 July 2011; and
 - (e) the person's employer has not made an election under section 109 of that Act that applies to the person.
- (2) If, after the employer determination is made, the Secretary makes a payability determination that parental leave pay is payable to the person for the child, the notice given to the employer under section 113 of that Act must:

Schedule 2 Transitional provisions

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

- (a) state the day the child was born; and
 - (b) be dated as at the date the preparation of the notice was completed; and
 - (c) contain a statement to the effect that the employer determination will be revoked, unless the employer:
 - (i) agrees to being required to pay instalments to the person, even though the child was born before 1 July 2011; and
 - (ii) gives the Secretary a written notice indicating that agreement within 14 days of the date referred to in paragraph (b).
- (3) If the employer does not give the notice referred to in subparagraph (2)(c)(ii) to the Secretary within that 14 day period, the following paragraphs have effect:
- (a) the Secretary must revoke the employer determination;
 - (b) the revocation comes into force on the day of the revocation;
 - (c) to avoid doubt, subsection 108(5) of that Act (which deals with giving notice of the revocation) applies in relation to the revocation;
 - (d) section 103 of that Act (which deals with responding to a notice of an employer determination) is taken to have never applied in relation to the employer determination.
- (4) The following provisions of that Act apply in relation to this item as if it were a provision of that Act:
- (a) section 275 (which deals with how that Act applies to an adopted child);
 - (b) section 276 (which deals with how that Act applies to claims made in exceptional circumstances).

Part 2—Other transitional provisions

3 Eligibility for baby bonus

The amendments of section 36 of the *A New Tax System (Family Assistance) Act 1999* made by this Act do not affect:

- (a) an individual's eligibility under subsection 36(2) of that Act for baby bonus in respect of a child who was born before 1 January 2011; or
- (b) an individual's eligibility under subsection 36(3) of that Act for baby bonus in respect of a child who was entrusted to the person's care before 1 January 2011; or
- (c) an individual's eligibility under subsection 36(4) of that Act for baby bonus in respect of a child who was delivered before 1 January 2011; or
- (d) an individual's eligibility under subsection 36(5) of that Act for baby bonus in respect of a child who was entrusted to the person's care before 1 January 2011.

4 Eligibility for maternity immunisation allowance

The amendment of section 39 of the *A New Tax System (Family Assistance) Act 1999* made by this Act does not affect an individual's eligibility under subsection 39(3) of that Act for maternity immunisation allowance in respect of a child who was delivered before 1 January 2011.

5 Claims for family tax benefit, baby bonus or maternity immunisation allowance

- (1) The amendments of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Act do not affect a claim for family tax benefit, baby bonus or maternity immunisation allowance made under that Act before 1 October 2010.
- (2) Without limiting subitem (1), the amendment of section 47B of the *A New Tax System (Family Assistance) (Administration) Act 1999* made by this Act does not affect a claim for baby bonus made under that Act before 1 January 2011.

6 Existing notifications given under section 45 of the *Child Support (Registration and Collection) Act 1988*

To avoid doubt, if:

- (a) a notice was given under section 45 of the *Child Support (Registration and Collection) Act 1988* before the commencement of this item instructing an employer to make periodic deductions from a person's salary or wages; and
- (b) the notice was in force immediately before that commencement;

the notice continues in force after that commencement as if those salary or wages included the person's instalments of parental leave pay.

7 Application of section 72AD of the *Child Support (Registration and Collection) Act 1988* to existing liabilities

To avoid doubt, section 72AD of the *Child Support (Registration and Collection) Act 1988* as inserted by this Act applies in relation to:

- (a) a liability of a kind referred to in subparagraph (1)(b)(i) of that section; or
- (b) a debt of a kind referred to in subparagraph (1)(b)(ii) of that section;

that existed immediately before the commencement of this item in the same way that it applies to such a liability or debt that comes into existence after that commencement.

[Minister's second reading speech made in—
House of Representatives on 26 May 2010
Senate on 15 June 2010]